SW/vv
02/18/16
Item #28

AN ORDINANCE **2016-02-18-0113**

AUTHORIZING A FUNDING AGREEMENT WITH THE MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO AND THE APPROPRIATION OF $600,000.00 FROM THE TREE CANOPY AND MITIGATIOM FUND TO PLANT TREES AT CITY-OWNED GOLF COURSES MANAGED BY THE MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO.

* * * * *

WHEREAS, the Municipal Golf Association-SA (MGA-SA) has efficiently managed and operated the City's municipal golf courses over the past eight (8) years while making improvements to increase the quality of these golf facilities; and

WHEREAS, one of the short-term planned improvements is the reforestation of municipal golf courses which was successfully initiated in 2014 at the Mission Del Lago Golf Course where over 1,000 trees were planted through a funding agreement in the amount of $500,000.00 in Tree Canopy and Mitigation Funds; and

WHEREAS, as a result of this successful project, MGA-SA plans to initiate tree planting projects at the Riverside and Willow Springs Golf Courses; and

WHEREAS, continuation of MGA-SA's reforestation efforts supports the City's goal of protecting and increasing the tree canopy in San Antonio; and

WHEREAS, the City's Tree Canopy and Mitigation Fund can be used for tree plantings and presents a good opportunity for a collaborative approach to develop a tree succession and reforestation plan by targeting golf courses which are situated on public park land; and

WHEREAS, this large scale tree planting project will provide numerous environmental benefits as new trees provide cleaner air and reduce temperatures while increasing the aesthetics of the City-owned golf courses; and

WHEREAS, this agreement allows MGA-SA oversight and responsibility for the administration of the reforestation project at the City-owned golf courses; and

WHEREAS, trees will be of appropriate species and sourced locally, to the extent possible, and MGA-SA has full responsibility for irrigation and maintenance of all trees planted through the establishment period; and

WHEREAS, approximately 900 trees will be planted at the Riverside golf course; and

WHEREAS, under this effort, the trees will be three times the standard size normally installed on public land; and

WHEREAS, this caliper of tree is most appropriate for planting on golf courses as they are mature and frame the course of play while providing privacy to the surrounding area; and

WHEREAS, Riverside Golf Course has existing irrigation ideal for newly planted trees which will be expanded as necessary to maximize the tree survival rate during the establishment period; and

WHEREAS, trees planted under this agreement will not be used to offset any tree mitigation requirements; and

WHEREAS, this agreement will be executed in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on the contract; and

WHEREAS, this agreement is consistent with the park system plan and City policy to increase the number of trees planted on public property to improve overall air quality, storm-water runoff control, reduce temperatures, and enhance the overall beauty of the greater San Antonio area; and

WHEREAS, this collaboration allows for a multi-strategy approach to increasing the City's tree canopy while minimizing long-term maintenance of trees by the City; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department of Parks and Recreation or his designee, is authorized execute a Funding Agreement with the Municipal Golf Association-San Antonio (MGA-SA) for $600,000.00 from the Tree Canopy and Mitigation Fund to plant trees at City-owned golf courses managed by the MGA-SA. A copy of the funding agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The amount of $600,000.00 is appropriated for this ordinance in Fund 29619000, Cost Center 2616010001, General Ledger 5201040 and the Fiscal Year 2016 budget is amended to reflect this change.

SECTION 3. Payment not to exceed the budgeted amount of $600,000.00 is authorized to and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP

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Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 18th day of February, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**28 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 30A, 30C, 30D, 30E, 30F)**
Date:	02/18/2016
Time:	10:40:05 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Funding Agreement with the Municipal Golf Association-San Antonio and the appropriation of $600,000.00 from the Tree Canopy and Mitigation Fund to plant trees at City-owned golf courses managed by the Municipal Golf Association-San Antonio. [María Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks and Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

STATE OF TEXAS	§	**FUNDING AGREEMENT –**
	§	**MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO**
COUNTY OF BEXAR	§	**"TREE PLANTING PROJECT"**

This AGREEMENT ("Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO ("CITY"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2016 and **MUNICIPAL GOLF ASSOCIATION - SAN ANTONIO** ("GRANTEE"), a Texas non-profit corporation, acting by and through its President/CEO, hereto duly authorized.

WHEREAS, Ordinance 2007-12-13-1354 assigned a License Agreement between City and GRANTEE to ensure a more efficient management of all municipal golf facilities in San Antonio; and

WHEREAS, Ordinance 2007-05-03-0479 approved a Management Agreement for the Management of the Municipal Golf Facilities; and

WHEREAS, Ordinance 2014-12-11-1030 provided $500,000 in Tree Canopy Funds to plant trees on municipal courses to improve the overall air quality, stormwater control, reduce temperatures and enhance the overall beauty of the greater San Antonio area; and

WHEREAS, Ordinance 2015- 09-10-0754 provided $500,000 in Tree Canopy Funds to plant trees on municipal courses to improve the overall air quality, stormwater control, reduce temperatures and enhance the overall beauty of the greater San Antonio area; and

WHEREAS, CITY and GRANTEE continue to share a common goal to improve the overall air quality, stormwater control, reduce temperatures and enhance the overall beauty of the greater San Antonio area by planting trees on CITY-owned municipal golf courses; and

NOW THEREFORE, the parties hereto ("Parties") severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DESCRIPTION OF "TREE PLANTING PROJECT"

1.01 Tree Mitigation and Tree Canopy Funds will be used to provide up to $600,000.00 to plant trees on municipal golf courses. The project includes a plan to install and maintain various tree species and address archaeological monitoring at Riverside Golf Course and other select municipal golf courses, subject to review and approval by the Parks and Recreation Department. GRANTEE will plant, maintain, water and replace trees installed under this agreement during the establishment period.

1.02 Unless written notification by GRANTEE to the contrary is received and approved by CITY, GRANTEE'S President/CEO shall be GRANTEE'S designated representative responsible for the administration of this Agreement on behalf of GRANTEE.

1.03 The Parks and Recreation Director ("Director") or his designee, is responsible for the administration of this Agreement on behalf of CITY.

1.04 This Agreement will permit the GRANTEE'S private contractor to perform installation of trees on City property.

II. TERM

2.01 This Agreement shall continue in full force and effect from the date of execution by the Parties until April 30, 2017.

III. GENERAL RESPONSIBILITIES

3.01 GRANTEE agrees to manage and perform all work as listed below:

(A) Plant a minimum of 900 trees at Riverside Golf Course and other select municipal golf courses, subject to approval by the Parks and Recreation Department.

(B) Select contractor, source and oversee nursery stock installation and all appropriate establishment activities.

(C) Source stock from local nurseries to the extent possible.

(D) Submit an Implementation Plan to the Parks and Recreation Department for approval prior to commencement of any purchase, delivery, or planting of trees. Such Implementation Plan shall include a schedule of activities related to advanced site preparation including irrigation, staging/set up costs, tree purchase, delivery and installation.

(E) Implement winter/spring planting timeline within the contract term as approved by the Parks and Recreation Department.

(F) Require GRANTEE'S contractor to warranty trees for a period of one year.

(G) Take appropriate measures to maximize the survival rate at 80% or more.

(H) Maintain irrigation, mulching, and all other appropriate activities for the maintenance and care of trees during the establishment period, which may extend beyond the term of this Agreement.

(I) Ensure that work will not impact utility lines.

(J) Ensure that a transparent process for the solicitation of a Request For Proposal (RFP) for the GRANTEE's selection of a contractor shall be easily accessible and viewable by the public, shall be clearly labeled "Request For Proposal" and posted directly on the GRANTEE's website, and shall include all terms, requirements and conditions of the RFP.

3.02 The funds provided under this Agreement shall only be used to plant trees on municipal golf courses which are managed by GRANTEE.

3.03 Trees planted under this Agreement will not be used to offset any other tree mitigation requirements.

3.04 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in Sections 1.02 and 1.03 hereinabove.

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

4.01 GRANTEE warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to GRANTEE, and to GRANTEE'S use of City Funds for this project.

4.02 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

(A) Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.

(B) Government Code provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

(C) Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that its construction contractor submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of CIMS.

V. LEGAL AUTHORITY

5.01 GRANTEE represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

5.02 GRANTEE represents, warrants, assures and guarantees that the undersigned has full legal authority to execute this Agreement on behalf of GRANTEE and to bind GRANTEE to all terms, performances and provisions herein contained.

VI. FUNDING AND ASSISTANCE BY CITY

6.01 In consideration of GRANTEE'S performance of all services and activities set forth in this Agreement, CITY agrees to pay GRANTEE for all Eligible Expenses (as defined in Section 8.01) incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed $600,000.00.

6.02 In order to partially offset GRANTEE'S expenses associated with the Project, the City will provide advanced payment in multiple disbursements during the term of this Agreement for the expenses reflected in Section 8.01 of this Agreement, as directly tied to the Implementation Plan reflected in Section 3.01 (D).

Distribution of funds will be based upon requests submitted by GRANTEE. Subsequent to disbursement, GRANTEE shall provide City with evidence of amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the paid invoice(s).

The Director of the Parks and Recreation Department may amend this Agreement without further action by City Council in order to revise the Allowable Expenses in Section 8.01.

6.03 CITY shall not be obligated nor liable under this Agreement to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

7.01 GRANTEE understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support of the use of such CITY funds.

7.02 GRANTEE agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. GRANTEE further agrees:

(A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

(B) That GRANTEE's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

7.03 GRANTEE agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to

activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

7.04 In order to be reimbursed for Eligible Expenses, GRANTEE agrees to submit to CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the subsequent paid invoice(s).

7.05 CITY agrees to provide GRANTEE written notice regarding any expenditure the CITY reasonably determines to be outside the permissible parameters of this Agreement. GRANTEE shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to GRANTEE, refund to the CITY those funds, determined to:

(A) Have not been spent by GRANTEE strictly in accordance with the terms of this Agreement; or

(B) Not be supported by adequate documentation to fully justify the expenditure.

7.06 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) calendar days of receipt of a request for reimbursement as defined above.

7.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) calendar days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VIII. ALLOWABLE EXPENDITURES

Expenditures of the funds by GRANTEE provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

8.01 The following shall be considered Eligible Expenses under this Agreement:

(A) Purchase of all trees for implementation of this project.

(B) Installation of all trees for implementation of this project.

(C) Other allowable expenses associated with this work effort such as irrigation and maintenance activities, archaeological monitoring, repair of irrigation bubblers, and installation and repair of tree supports for the establishment period as deemed appropriate by the Parks and Recreation Department.

8.02 Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

IX. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

9.01 GRANTEE further represents and warrants that as of the date hereof:

(A) All information, data or reports heretofore or hereafter provided to CITY is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY.

(B) It is financially stable and capable of fulfilling its obligations under this Agreement and that GRANTEE shall provide CITY immediate written notice of any adverse material change in the financial condition of GRANTEE that may materially and adversely effect its obligations hereunder.

(C) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE.

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing indenture or agreement of GRANTEE.

X. ACCESSIBILITY OF RECORDS

10.01 At any time during normal business hours and as often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all of its records pertaining to this Agreement available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

10.02 GRANTEE agrees and represents that it will cooperate with CITY, at no charge to the CITY, to satisfy, to the extent required by law, any and all requests for information received by CITY under the Texas Public Information Act or related laws pertaining to this AGREEMENT.

XI. MONITORING AND EVALUATION

11.01 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities, and GRANTEE shall provide reasonable access to CITY for such activities, so as to ensure compliance by GRANTEE with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

XII. INDEMNIFICATION

12.01 GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to GRATNEE'S activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, GRANTEE or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

12.02 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

XIII. INSURANCE

13.01 Prior to the commencement of any work under this Agreement, GRANTEE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's PARKS AND RECREATION Department, which shall be clearly labeled **"TREE PLANTING PROJECT"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and telephone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's PARKS AND RECREATION Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

13.02 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

13.03 A GRANTEE's financial integrity is of interest to the City; therefore, subject to GRANTEE's right to maintain reasonable deductibles in such amounts as are approved by the City, GRANTEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at GRANTEE's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000

13.04 GRANTEE agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of GRANTEE herein, and provide a certificate of insurance and endorsement that names the GRANTEE and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.05 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). GRANTEE shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. GRANTEE shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: PARKS AND RECREATION Department
P.O. Box 839966
San Antonio, Texas 78283-3966

13.06 GRANTEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

(A) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

(B) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

(C) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

(D) Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, GRANTEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend GRANTEE's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.08 In addition to any other remedies the City may have upon GRANTEE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order GRANTEE to stop work hereunder, and/or withhold any payment(s) which become due to GRANTEE hereunder until GRANTEE demonstrates compliance with the requirements hereof.

13.09 Nothing herein contained shall be construed as limiting in any way the extent to which GRANTEE may be held responsible for payments of damages to persons or property resulting from GRANTEE's or its subcontractors' performance of the work covered under this Agreement.

13.10 It is agreed that GRANTEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

13.12 GRANTEE and any Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Contract Requirements and Commitment

CONTRACTOR understands and agrees that the following provisions shall be requirements of this contract, and by its execution, CONTRACTOR commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of CONTRACTOR to commit, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE and M/WBE subcontracting goals shall constitute default.

Waiver Request - A CONTRACTOR may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this contract by submitting the *Vendor Subcontracting Waiver Request* form *(which is available at* http://www.sanantonio.gov/SBO/Forms.aspx*)*. The CONTRACTOR's Waiver request must fully document subcontractor unavailability despite the CONTRACTOR's good faith efforts to comply with the goals. Such documentation shall include all good faith efforts made by CONTRACTOR including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation

by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.).

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or "Certified"– the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization

goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise,

and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor /Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to

advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

None. There are no Affirmative Procurement Initiatives being applied to this contract.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person

for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XV. NONDISCRIMINATION

15.01 As a party to this contract, GRANTEE understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XVI. CONFLICT OF INTEREST

16.01 GRANTEE covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. GRANTEE further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

16.02 GRANTEE further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

16.03 No member of CITY'S governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

(A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;

(B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

XVII. POLITICAL ACTIVITY

17.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XVIII. [RESERVED]

XIX. CONTRACTING

19.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of GRANTEE. GRANTEE is responsible to ensure that all permits required for the activities under this Agreement are obtained.

19.02 CITY shall in no event be obligated to any third party, including any sub-contractor of GRANTEE, for performance of or payment for work or services.

XX. CHANGES AND AMENDMENTS

20.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both CITY and GRANTEE under authority granted by formal action of the Parties' respective governing bodies.

20.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XXI. ASSIGNMENTS

21.01 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XXII. SEVERABILITY OF PROVISIONS

22.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIII. DEFAULT

23.01 Upon default by GRANTEE in the performance of its obligations hereunder, CITY shall give GRANTEE notice of the same and GRANTEE shall have 30 days following receipt of written notice of default from CITY (or such reasonably longer time as may be necessary provided GRANTEE commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If GRANTEE fails to timely cure such default, CITY may pursue all remedies available in law or at equity and/or other rights CITY may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

23.02 Upon default by CITY in the performance of its obligations hereunder GRANTEE shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from GRANTEE (or such reasonably longer time as may be necessary provided CITY commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If CITY fails to timely cure such default, GRANTEE may pursue all remedies available in law or equity and/or other rights GRANTEE may have in this Agreement, subject to the limitations set forth in Section 23.01.

XXIV. NON-WAIVER OF PERFORMANCE

24.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or

preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

24.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

24.03 No representative or agent of CITY may waive the effect of the provisions of this Article without formal action from the City Council.

XXV. ENTIRE AGREEMENT

25.01 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXVI. NOTICES

26.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

CITY: Director Parks and Recreation
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: President/CEO
Municipal Golf Association-San Antonio
2315 Avenue B
San Antonio, Texas 78215

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXVII. PARTIES BOUND

27.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXVIII. RELATIONSHIP OF PARTIES

28.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XXIX. TEXAS LAW TO APPLY

29.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

XXX. GENDER

30.01 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXXI. CAPTIONS

31.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

[Signatures appear on the following page]

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the _____ day of _____, 20____.

CITY OF SAN ANTONIO

By: _____
Xavier D. Urrutia, Director,
Parks and Recreation Department

MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO

By: _____
Jim Roschek, President and CEO

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney