

AN ORDINANCE **2016-03-03-0165**

AUTHORIZING FUNDING FOR THE PLANNED RENOVATIONS TO THE GOOD SAMARITAN HOSPITAL BUILDING TO OPERATE AS A VETERANS OUTREACH AND TRANSITION CENTER LOCATED IN COUNCIL DISTRICT 2 IN THE FOLLOWING MANNER: 1) A SECOND AMENDMENT TO THE FUNDING AGREEMENT WITH ALAMO COMMUNITY COLLEGE DISTRICT ("ALAMO COLLEGES") TO PROVIDE FOR FUNDING IN AN AMOUNT NOT TO EXCEED \$5,070,426.00; 2) THE ACCEPTANCE OF A \$500,000.00 GRANT FROM THE GREEHEY FAMILY FOUNDATION; 3) AN INTERLOCAL AGREEMENT WITH ALAMO COLLEGES AND SAN ANTONIO HOUSING AUTHORITY ("SAHA") FOR A \$600,000.00 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT GRANT; AND 4) A FUNDING AGREEMENT WITH THE INNER CITY TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN ("TIRZ") BOARD OF DIRECTORS AND ALAMO COLLEGES IN AN AMOUNT NOT TO EXCEED \$950,000.00.

* * * * *

WHEREAS, San Antonio has one of the nation's largest active and retired military populations and is home to the Department of Defense's largest Joint Base known as Joint Base San Antonio; and

WHEREAS, the City and Alamo Colleges recognize that veterans are a vital and integral part of the community of San Antonio and that a need exists to support veterans as they transfer into a civilian role within the community; and

WHEREAS, on December 15, 2011, by Ordinance 2011-12-15-1023, City Council approved a Funding Agreement with Alamo Colleges for the expenditure of \$2,000,000.00 for Alamo College's renovation of the historic Good Samaritan Hospital building located at 1602 Dakota and for real estate acquisition costs, and, by Ordinance 2011-12-15-1024, authorized a 25-year lease for the Good Samaritan building and lot for the operation by Alamo Colleges of a Veterans Outreach and Transition Center (VOTC) at the renovated facility (the "Project"); and

WHEREAS, on February 14, 2013 by amendment to the Funding Agreement, the City provided additional funding in the amount of \$1,167,679.00 for the Project, and by amendment to the Lease, the Leased Premises were expanded to include various lots surrounding the Good Samaritan building for use by Alamo Colleges for parking for the VOTC, which lots the City has acquired or is in the process of acquiring pursuant to Ordinance 2011-12-15-1022; and

WHEREAS, in October 2015, Alamo Colleges received the lowest bid of \$6,256,000.00 for construction and contingency costs for a total cost of \$7,497,926.00 to redevelop the building as the Veterans Outreach and Transition Center; and

WHEREAS, the City has worked with Alamo Colleges to commit resources necessary to begin renovations including securing \$1,000,000.00 from the State of Texas, \$950,000.00 from the Inner City Tax Increment Reinvestment Zone Fund, an additional \$902,747.00 in City Inner City Incentive Funds, \$600,000.00 in HUD grants, \$500,000.00 in Fiscal Year 2016 Certificates of Obligation, a \$500,000.00 grant from the Greehey Family Foundation, \$15,000.00 from Citibank, \$12,500.00 from San Antonio Conservation Society, and \$450,000.00 from St. Phillips College for furniture fixtures and equipment; and

WHEREAS, Alamo Colleges has received a preliminary commitment of \$600,000.00 from the Department of Housing and Urban Development Choice Implementation Grant (“HUD Grant”) from San Antonio Housing Authority (“SAHA”); and

WHEREAS, SAHA, Alamo Colleges, and the City have negotiated a Tri-Party Interlocal Agreement to manage the \$600,000.00 HUD grant for the Project; and

WHEREAS, on November 13, 2015 the TIRZ Board approved a Resolution authorizing the execution of a Funding Agreement in the amount of up to \$950,000.00 from the Inner City TIRZ fund for the Project; and

WHEREAS, the City will fund the remaining gap to finance the Project by utilizing up to but not to exceed \$902,747.00 in available Inner City Incentive Funds (“ICIF”) to be given to Alamo Colleges as a 380 Economic Development Program Grant Agreement, of which \$600,000.00 is approved should HUD approval of the HUD Grant not pass, as a component of the Funding Agreement; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Second Amended Funding Agreement, the Tri-Party Interlocal Agreement, and the Inner City TIRZ Funding Agreement, are approved.

SECTION 2. A copy of the Agreements, in substantially final form are attached to this Ordinance as **Exhibits A, B, and C**, respectively. The City Manager or her designee is authorized to execute the Agreements referenced above and such other documents as are necessary to carry out the intent of this Ordinance. A copy of the fully executed Agreements will be substituted for these Exhibits upon receipt of all signatures.

SECTION 3. City Council authorizes City staff to amend the Inner City TIRZ Project and Finance Plans to incorporate the Veterans Outreach and Transition Center Project.

SECTION 4. Funding in an amount not to exceed \$500,000.00 for this Ordinance is authorized from the Fiscal Year 2016 Capital Improvement Budget with funds available from Certificates of Obligation.

SECTION 5. The City hereby accepts the Greehey Family Foundation Grant in the amount of Five Hundred Thousand Dollars (\$500,000.00).

SECTION 6. Funds are authorized to be received from Greehey Family Foundation to SAP Fund 40099000, Other Capital Projects, SAP Project Definition 19-00020, Good Samaritan VOTC, and the budget shall be revised by increasing WBS element 19-00020-90-10-01, Greehey Family Foundation Grant and SAP General Ledger 4502280, Contribution from other Agencies, in the amount of \$500,000.00.

SECTION 7. The amount of \$500,000.00 is appropriated in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 19-00020, Good Samaritan VOTC, SAP WBS Element 19-00020-05-02-01, Construction-City and SAP General Ledger 5201040.

SECTION 8. Funding in the amount of \$950,000.00 for this Ordinance is available in Fund 29086007, Cost Center 0703290001 and General Ledger 5201040.

SECTION 9. Funding in the amount of \$902,747.00 for this Ordinance is available in Fund 29104000, Cost Center 1909010001 and General Ledger 5201040 as part of the Fiscal Year 2016 Budget.

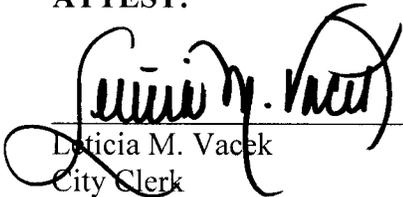
SECTION 10. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 11. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

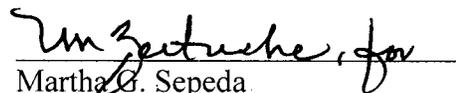
PASSED AND APPROVED this 3rd day of March, 2016.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:


Martha G. Sepeda
Acting City Attorney

Agenda Item:	15						
Date:	03/03/2016						
Time:	10:43:45 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a second amendment to the funding agreement with Alamo Community College District to provide for funding an amount not to exceed \$5,070,426.00; the acceptance of a \$500,000.00 grant from the Greehey Family Foundation; an Interlocal Agreement with Alamo Colleges and San Antonio Housing Authority for a \$600,000.00 Department of Housing and Urban Development Grant; and a Funding Agreement with the Inner City Tax Increment Reinvestment Zone Number Eleven Board of Directors and Alamo Colleges in an amount not to exceed \$950,000.00 for the planned renovations to the Good Samaritan Hospital Building to operate as a Veterans Outreach and Transition Center located on the 1600 block of Dakota street in Council District 2. [Lori Houston, Assistant City Manager, John Jacks, Interim Director, Center City Development and Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		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				x
Michael Gallagher	District 10		x				

EXHIBIT A

STATE OF TEXAS § **SECOND AMENDMENT TO FUNDING**
 § **AGREEMENT BETWEEN THE CITY OF**
COUNTY OF BEXAR § **SAN ANTONIO AND ACCD**

SECOND AMENDMENT TO FUNDING AGREEMENT

A **FUNDING AGREEMENT** (the “Agreement”) was made by and between the **CITY OF SAN ANTONIO, TEXAS** (the “City”), a Texas Municipal Corporation, acting through its City Manager pursuant to Ordinance No. 2011-12-15-1023 passed and approved by the City Council on the 15th day of December, 2011, **ALAMO COMMUNITY COLLEGE DISTRICT** (the “ACCD”), a political subdivision of the State of Texas, acting through its Board of Trustees on the 23rd day of August, 2010, and whom together may be referred to as the “Parties.” A First Amendment to the Funding Agreement was entered in by City acting through its City Manager pursuant to Ordinance No. 2013-02-14-0112 passed and approved by City Council on the 14th day of February, 2013.

NOW THE FOLLOWING SECOND AMENDMENT TO THE Agreement is made by and between the City, acting through its City Manager pursuant to Ordinance No. 2016-__ - __ - __ passed and approved by the City Council on _____ 2016, the ACCD, acting through its Board of Trustees on October 27, 2015.

RECITALS

WHEREAS, ACCD is willing to renovate the historic Good Samaritan Building located at 1602 Dakota Street, San Antonio, Texas 78203 (the “Building”) for the operation of a veterans Outreach program associated with St. Phillip’s College of ACCD (“Project”); and

WHEREAS, City, and ACCD entered into a Funding Agreement (the “Agreement”) authorized by City of San Antonio Ordinance No. 2011-12-15-1023, passed and approved on December 15, 2013, and a first amendment authorized by City of San Antonio Ordinance No. 2013-02-14-0112, passed and approved on February 14, 2013 and attached hereto as EXHIBIT A; and

WHEREAS, the City and ACCD seek to amend the Funding Agreement to account for changes in funding and project milestones; and

WHEREAS, prior to this **SECOND AMENDMENT**, the Agreement was in full effect and, subject to the terms of this **SECOND AMENDMENT**, all parties were in compliance with all terms and conditions of the Agreement; and

WHEREAS, the Parties, now seek to amend the terms and conditions of the Agreement as stated in this Second Amendment and affirm that all other provisions of the Agreement remain in full force and effect; and

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in the Agreement, the City, and the ACCD hereby agree to amend the Agreement as follows except as herein modified or amended, the recitals, provisions, conditions and terms of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the date hereof,;

AMENDMENT

1. Amendment. The Parties hereby mutually agree to amend the Funding Agreement as follows:

(A) Under “RECITALS” the Agreement is amended by deleting the third WHEREAS lines and substituting the following in its place respectively:

“**WHEREAS**, the City has agreed to commit up to but not to exceed Six Million Twenty Thousand Four Hundred and Twenty-Six Dollars (\$6,020,426.00), divided as follows: 1) Two Million Dollars (\$2,000,000.00) in City Fiscal Year 2010 Certificate of Obligation funds; 2) One Million Dollars (\$1,000,000.00) in Section 108 Funds; 3) Five Hundred Thousand Dollars (\$500,000.00) in City Fiscal Year 2016 Certificate of Obligation funds; 4) Five Hundred Thousand Dollars (\$500,000.00) in Greehey Family Foundation Grant funds; 5) Four Hundred and Seventy Thousand Four Hundred and Twenty-Six Dollars (\$470,426.00) in ICIF funds; 6) Six Hundred Thousand Dollars (\$600,000.00) in the form of a HUD grant to be funded under the terms and conditions of a separate agreement with SAHA (expected to be funded by SAHA/HUD, but nevertheless hereinafter committed by City); and 7) Nine Hundred Fifty Thousand Dollars (\$950,000.00) in Inner City Number Eleven TIRZ Funds under the terms and conditions of a separate agreement.”

(B) Under “RECITALS” the Agreement is amended by adding a sixth, seventh, eighth, ninth, tenth and eleventh WHEREAS lines as follows:

“**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and within the TIRZ; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, CITY created such a program for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, part of this Agreement shall be a Chapter 380 Economic Development Program Grant in the amount of Four Hundred and Seventy Thousand Four Hundred and Twenty-Six Dollars and Zero Cents (\$470,426.00) in Inner City Incentive Funds (“ICIF”); and”

WHEREAS, the CITY and ACCD have negotiated a triparty agreement with the San Antonio Housing Authority (“SAHA”) providing for the application of Six Hundred Thousand Dollars (\$600,000.00) in United States Department of Housing and Urban Development (“HUD”) Promise Zone funds to the Project (“SAHA/HUD Funding”), which agreement awaits final approval by the governing bodies of CITY, ACCD, SAHA and HUD; and

WHEREAS, the CITY has obtained City Council approval for the application of up to an additional Six Hundred Thousand Dollars (\$600,000.00) in ICIF funds for the Project, but only in substitution for any failure of application of SAHA/HUD funding of Six Hundred Thousand Dollars (\$600,000.00) hereinabove referenced (“Contingent Funding Authorization”); and

WHEREAS, the CITY has proposed, and obtained TIRZ Board of Directors approval for, the application of Nine Hundred Fifty Thousand Dollars (\$950,000.00) in funding from the Inner City TIRZ Number Eleven fund to reimburse ACCD under the terms and conditions of a separate agreement for eligible Project costs (“TIRZ #11 Funding”); and

(C) Under “ARTICLE III”, the Agreement is amended by deleting Section 3.01, 3.02, 3.04, and 3.05 and replacing it with the following respectively:

“Section 3.01 Feasibility Milestones. By April 1, 2016, ACCD will prepare the Development Plan for the Building, the Schedule, the Operating Manifest, and Operating Budget and shall determine the Quality Standard and obtain the CITY’s approval thereof.”

“Section 3.02 Commencement of Construction. The Construction Commencement Date shall occur not later than April 1, 2016, and ACCD shall provide the Certificate of Commencement of Construction to the CITY on or before such date. The Certificate of Commencement of Construction form is attached as Exhibit B hereto and incorporated herein for all purposes.

“Section 3.04 Substantial Completion. Subject to Force Majeure Events, as provided in Section 18.01, ACCD shall cause the Substantial Completion of the Project not later than the Scheduled Completion Date of February 18, 2018, and to evidence and confirm such Substantial Completion, ACCD shall deliver to the CITY a certificate of substantial completion for the Project in the form set forth in Exhibit C attached hereto and incorporated herein.”

“Section 3.05 Preconstruction Milestones. Not later than the date specified herein, or if no date is specified, not later than April 1, 2016”:

- A. Completion of Final Plans. Not later than *April 1, 2016*, ACCD shall complete and submit to the CITY and obtain the CITY's approval of the Final Plans for the Project.
- B. Pre-Construction Consultation. Prior to awarding any Construction Contracts for the Project, ACCD shall cause the completion of a Phase 1 environmental analysis of the Property, shall submit the Plans and Specifications to the CITY's Historic Design and Review Commission (at the meeting of which CITY agrees to send representatives to appear in support of approving the Project substantially as submitted), obtain preliminary CITY review of the Plans and Specifications, and solicit proposals from prospective General Contractors for the Project. ACCD shall thereafter, either prior to selecting a General Contractor or, at its election, thereafter but prior to the CITY issuing a building permit for the Project, meet with the CITY Representative to determine whether the Project as specified in the Plans and Specifications, as they may have been revised by interaction with the CITY, can reasonably be expected to be completed, including comprehensive completion bonding and a contingency reserve of approximately ten percent (10%) of the costs of the proposal of ACCD's intended General Contractor, without total Project Costs exceeding the amount of the Available Project Funds. If ACCD reasonably expects that the Project cannot be completed without total Project Costs exceeding the amount of the Available Project Funds, then unless the parties renegotiate the Plans and Specifications and the Capital Budget to reduce total Project Costs, or the City determines, in its absolute discretion, and subject to CITY Council approval, to increase the amount of the CITY Contribution, or both, with the result that anticipated total Project Costs will not exceed the amount of the Available Project Funds, then neither party shall be under any obligation to proceed further, nor will either party have any liability to the other by reason thereof or otherwise under this Funding Agreement.
- C. Construction Contracts. ACCD shall provide a copy of each of the Construction Contracts for all Work, services, and purchase orders for all materials to be supplied for construction of the Project to the CITY at least ten (10) Business Days following the execution of a Construction Contract or purchase order, with all Construction Contracts required to be furnished to the CITY on or before *April 1, 2016*.
- D. Operating Budget. ACCD shall provide the CITY with a final Operating Budget projecting the anticipated income and expenses on a five (5) year rolling budget. The Operating Budget shall demonstrate that ACCD can operate the Building on a fiscally sound basis.
- E. Operating Reserve. The Operating Budget will include an Operating Reserve to cover operating deficits. ACCD's Contribution will include the Operating Reserve.

- F. Development Plan. Not later than *April 1, 2016*, ACCD shall prepare and submit to the CITY a Development Plan for the Project.
- G. Completion of Preconstruction Milestones. ACCD shall not proceed with commencement of construction of the Project until all Preconstruction Milestones have been fully satisfied.”

“**Section 3.06 Extensions.** The CITY may extend the time for performance of any target date, scheduled date, Deadline or Milestone appearing anywhere in this Funding Agreement. All milestones and deadlines set forth in this Agreement shall be adjusted forward if the CITY’s Historical Design and Review Commission delays the Project by postponing a hearing, requiring a second hearing or requiring a substantial revision of the Plans and Specifications. Any such delay shall postpone all such milestones and deadlines by the amount of the delay.”

(D) Under “**ARTICLE IV**”, the Agreement is amended by deleting Section 4.04 and 4.05, and replacing it with the following respectively:

“**Section 4.04 Operation of the Project.** The Building will remain open to the public after the Work is completed. ACCD shall operate the Building according to the Operating Manifest.”

“**Section 4.05 Completion of Project.** By *February 18, 2018*, ACCD shall have completed the renovation of the entire Building according to the Development Plan and Quality Standard, but delay in completion shall not constitute a default until the date specified at Section 15.03Q hereof”.

(E) Under “**ARTICLE VI CONSTRUCTION OF THE PROJECT**”, the Agreement is amended by deleting Section 6.02 Capital Budget, Subsection B.

(F) Under “**ARTICLE VIII NONDISCRIMINATION AND SBEDA POLICY**”, the Agreement is amended by deleting all of Article VIII including Exhibit G and replacing it with the following:

“ARTICLE VIII NONDISCRIMINATION AND SECTARIAN ACTIVITY

ACCD shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with public funds. Further no portion of the funds received shall be used in support of any sectarian or religious activity.”

(G) Under “ARTICLE IX” FINANCING OF THE PROJECT, the Agreement is amended by deleting Section 9.02, and replacing it with the following:

“Section 9.02 The CITY Contribution. The CITY will obtain and secure at least Five MILLION SEVENTY THOUSAND FOUR HUNDRED AND TWENTY-SIX DOLLARS (\$5,070,426.00) for the Capital Budget, to be made when and in the amounts needed to fund the CITY Contribution, which will be funded through the issuance of certificates of obligation or from any other legally available funds of the CITY which the CITY decides to use. In the event construction and/or renovation costs exceed the Available Project Funds, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the Available Project Funds. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023, then CITY shall add said funds to the CITY Contribution. Under no circumstances will this Agreement be construed to obligate ACCD to pay any funds for the Project with the exception of the ACCD-Sourced Funding as defined herein.”

(H) Under “ARTICLE XV”, TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES, the Agreement is amended by deleting subsection 15.03Q, and replacing it with the following:

“Q. The failure of ACCD to complete the entire Project by February 18, 2018, unless caused by the CITY’s issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the Available Project Funds.”

(I) Under “Exhibit A” DEFINITIONS, the Agreement is amended by deleting the definition of “CITY Contribution” and Scheduled Completion Date, and replacing it with the following respectively:

“CITY Contribution” means the funding of up at least \$5,070,426.00 by the City under the terms of this Funding Agreement. In the event construction and/or renovation costs exceed the Available Project Funds, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the Available Project Funds. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023,

then CITY shall add said funds to the CITY Contribution. CITY agrees to apply all or such portion of the Contingent Funding Authorization as may be required to substitute for the SAHA/HUD Funding should that funding fail to attain final approval by the U.S. Department of Housing and Urban Development. Should SAHA/HUD Funding be approved, then the CITY is under no obligation to utilize the Contingent Funding as a funding source under this Agreement. This Funding Agreement shall not be construed to obligate ACCD to pay any of its own funds for the Project with the exception of the ACCD-Sourced Funding as defined herein.

“Scheduled Completion Date” means February 18, 2018.”

(J) Under “Exhibit A” DEFINITIONS, the Agreement is amended by adding the following new definitions:

“ACCD-Sourced Funding” means Project funding sourced through ACCD but not deriving from ACCD’s own funds, which as of the date of this Second Amendment consists of One Million, Twenty-Seven Thousand, Five Hundred Dollars (\$1,027,500) in legislative appropriations and private grants received by ACCD for the Project.

“Available Project Funds” means the total of the CITY Contribution, the ACCD-Sourced Funding and that portion of the TIRZ #11 Funding reasonably anticipated to be payable no later than thirty (30) days after the date of substantial completion of the Project.

“TIRZ #11 Funding” means Nine Hundred Fifty Thousand Dollars (\$950,000.00) in funding from the Inner City TIRZ Number Eleven fund to reimburse ACCD under the terms and conditions of a separate agreement for eligible Project costs.

2. **Effective Date.** This Second Amendment shall be effective upon the later of the date of the passage of a duly authorized minute order by the Board of Trustees of the Alamo Community College District and the date of passage of a duly authorized ordinance of the City Council of the City of San Antonio authorizing this Second Amendment, which shall be attached hereto and made a part of this Second Amendment.
3. **No Default.** Neither party is in default under the Funding Agreement and neither party is aware of a cause of action against the other arising out of or relating to the period before the effective date of this Second Amendment.
4. **No Other Changes.** Except as specifically set forth in this Second Amendment, all of the terms and conditions of the Funding Agreement, as amended by the First Amendment thereto, shall remain the same and are hereby ratified and confirmed. The Funding Agreement, as amended by the

First Amendment thereto, shall continue in full force and effect, and with this Second Amendment shall be read and construed as one instrument. Nothing therein contained shall be interpreted to waive the City's funding obligations to ACCD should funding of ACCD from any component identified hereunder not become available on a timely basis.

5. Choice of Law. This Second Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

6. Counterparts. This Second Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Third Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures on next page.

IN WITNESS HEREOF, the parties hereto have executed in triplicate originals.

**CITY OF SAN ANTONIO,
a Texas municipal corporation**

**ALAMO COMMUNITY
COLLEGE DISTRICT:**

Sheryl L. Sculley
City Manager or designee

Dr. Bruce Leslie
Chancellor

Date: _____

Date: _____

ATTEST:

ATTEST: (If Necessary)

Leticia Vacek
City Clerk
Date: _____

Name:
Title:
Date: _____

APPROVED AS TO FINANCIAL CONTENT BY ALAMO COMMUNITY COLLEGE
ACCD:

Date: _____

Date: _____

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Date: _____

EXHIBIT B

THE STATE OF TEXAS § INTERLOCAL AGREEMENT BETWEEN
§ SAN ANTONIO HOUSING AUTHORITY,
COUNTY OF BEXAR § CITY OF SAN ANTONIO, AND
§ ST. PHILIP’S COLLEGE

This Interlocal Agreement (“Agreement”) executed pursuant to the authority granted and in compliance with the provisions of the INTERLOCAL COOPERATION ACT (“Act”), Chapter 791, Texas Government Code and pursuant to Ordinance No. _____ is entered into by and between the San Antonio Housing Authority (“SAHA”), the City of San Antonio, Texas (“the City”) and the Alamo Community College District, d/b/a “Alamo Colleges,” on behalf of its St. Philip’s College (“College”) whom together may be referred to as the “Parties”.

RECITALS

WHEREAS, SAHA is a Texas housing authority created pursuant to Chapter 392 of the Texas Local Government Code; and

WHEREAS, the City is a Texas municipal corporation; and

WHEREAS, St. Philip’s College is a two year public college within the Alamo Community College District; and

WHEREAS, the City has acquired the former Corinth Baptist Church/Good Samaritan Hospital building located at 1602 Dakota Street (Lot 1A, Block 8, New City Block 1508) on the east side of San Antonio (“Project site”); and

WHEREAS, the City, the College and SAHA recognize that Veterans are vital and integral part of the community of San Antonio; and

WHEREAS, the City, the College and SAHA recognize that a need exists to support Veterans as they transfer into a civilian role within the community; and

WHEREAS, the City has entered into a partnership with St. Philip’s College, to rehabilitate the building located at 1602 Dakota Street and operate the facility as a Veterans Outreach and Transition Center; and

WHEREAS, the City, as a result of their partnership with the College, has entered into a separate Lease Agreement and a Funding Agreement with the College regarding the management and operation of the Veterans Outreach Center to be known as the Good Samaritan - Veterans Outreach Transition Center (“VOTC”); and

WHEREAS, SAHA has received a CHOICE Implementation Grant (the “Grant”) from the United States of Department of Housing and Urban Development (“HUD”) to revitalize the neighborhood which is the subject of the City and the College VOTC rehabilitation project; and

WHEREAS, SAHA desires to transfer Six Hundred Thousand Dollars (\$600,000.00) in funds awarded through the HUD Grant to the City to assist in the St. Philip’s College’s rehabilitation of the Veterans Outreach and Transition Center project;

NOW, THEREFORE, and in consideration of the mutual covenants, obligations, and benefits contained in this Agreement, the Parties do hereby agree as follows:

ARTICLE I. RIGHTS AND OBLIGATIONS OF THE PARTIES

A. CITY OF SAN ANTONIO, TEXAS

1. Funding, compliance and reporting

Subject to the terms of this Agreement, the City will accept Six Hundred Thousand Dollars (\$600,000.00) in HUD grant funds from SAHA (“funds”) and use the funds to renovate the Good Samaritan Hospital Building located at 1602 Dakota Street for the purpose of creating the Veterans Outreach and Transition Center, which is described more fully in Exhibit A attached hereto. The City agrees to monitor such expenditures and ensure that the expenditures comply with the requirements of the Choice Neighborhoods Implementation Grant Agreement (“HUD Grant Agreement”) between SAHA and HUD, a copy of which is attached hereto as Exhibit B. The City shall comply with Exhibit B of the HUD Grant Agreement. The Parties agree that Exhibit A of the HUD Grant Agreement does not apply to the City. The City agrees during construction and rehabilitation of the VOTC to provide SAHA quarterly reports in writing on the 15th of January, April, July, and August detailing expenditure of the funds received from SAHA until the rehabilitation and construction of the Project Site is complete. The City agrees to ensure funds shall be expended for construction hard costs to complete rehabilitation of the building within two (2) years from the effective date of this Agreement.

2. Scope of Work and Services

The City shall ensure through a separate agreement that College shall renovate the Project Site and operate the VOTC in accordance with Exhibit A for a minimum of twenty (20) years following the Operations Commencement Date.

B. SAN ANTONIO HOUSING AUTHORITY

1. Funding

SAHA shall provide funds to the City in the amount of Six Hundred Thousand Dollars (\$600,000.00) from a HUD Grant to assist in the cost of rehabilitation of the Project site for the proposed Good Samaritan – Veterans Outreach and Transition Center as described in Exhibit A of this Agreement. The HUD Grant funds will be disbursed to the City

2. Referrals

SAHA will provide referrals of individuals to The Good Samaritan – Veterans Outreach and Transition Center from its developments and the local community.

C. ACCD/ST. PHILIP'S COLLEGE

1. Scope of Work and Services

The College agrees that the HUD Grant is of benefit to the College as the grant funds will be used for construction costs to rehabilitate the VOTC and allow the College to provide a workforce development program in accordance with Exhibit A. The College agrees to operate and rehabilitate the VOTC as a community center for Veterans as well as the general public on terms agreed with the City. The College agrees to operate the VOTC in accordance with Exhibit A for at least twenty (20) years following the Operations Commencement Date. The College will allow non-discriminatory access to all qualified individuals for the services provided by the Good Samaritan – Veterans Outreach and Transition Center as agreed with the City.

2. Compliance and Reporting

The College will work with the City to provide SAHA with reports on the phases of the construction as well as the operational aspects of the VOTC as required in Article I, A. 1, of this Agreement and as described and attached in Exhibit D. The College will provide operational reports regarding the operation of the VOTC to SAHA annually for a period of 20 years with an annual reporting corresponding to an October 1st through September 30th timeframe. The annual report shall provide a summary of activities described in Exhibit A "Choice Neighborhood Implementation Plan Metrics".

ARTICLE II. TERM OF AGREEMENT

A. Agreement Term and Termination

This Agreement shall commence on its effective date listed on the signature page and terminate upon the earlier of: (i) two (2) years following the effective date; or (ii) the date this Agreement is terminated as provided for in this Agreement or by mutual agreement of all

parties to the Agreement. Provided, however, this Agreement shall remain in effect with respect to the College's obligation to submit annual operational reports until all such reports have been submitted.

ARTICLE III. LIABILITY; NO WAIVER OF IMMUNITY

A. It is expressly understood and agreed that under this Agreement no party waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement, performance or non-performance of the covenants contained herein, or against claims arising in the exercise of governmental powers and functions.

B. The parties acknowledge that they are either an agency of the State of Texas and or a political subdivision and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code §§ 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

ARTICLE IV. DEFAULT, TERMINATION, AND CURE

A. Should any Party fail to meet its obligations under this Agreement, the non-defaulting party at their sole discretion, and with ninety (90) days notice to the defaulting Party may terminate the Agreement in whole or in part and subject to the limitations in Article IV. The notice of termination shall be in written form and shall describe the nature of the default.

B. Upon notification of default, the defaulting party shall have ninety (90) days to cure such default. Should the defaulting party fail to cure the default within ninety (90) days after notice of default, the non-defaulting party may terminate this agreement in whole or in part. The defaulting Party shall have an extended period beyond the required ninety (90) days if the nature of the cure is such that it reasonably requires more than ninety (90) days and provided that the defaulting Party shall: (1) immediately upon receipt of Notice of Default advise the non-defaulting Party of their intention to institute all steps necessary to cure such default and the associated time frame and; (2) commences the cure within a thirty (30) day period and thereafter continuously and diligently pursues the to cure to completion.

C. In addition to the above, this Agreement may be terminated by written agreement of the Parties in which case all parties shall agree upon the termination conditions, and the effective date of termination.

D. Any failure of any 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, 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 any Party 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.

E. The Parties expressly understand and agree that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between Parties or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

ARTICLE V. MISCELLANEOUS

A. Entire Agreement. This agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. No modification of, or waiver of, any right under this Agreement will be effective unless it is evidenced in writing executed by an authorized representative of each party to this Agreement.

B. Severability. The phrases, clauses, sentences, paragraphs or sections of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid by the final decree or judgment of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Agreement. It is also the intention of the Parties that in lieu of each phrase, clause, sentence, paragraph, or section of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

C. State Law and Venue Determination. This Agreement shall be subject to and governed under laws of the State of Texas. All Local, State and Federal laws shall supersede any provisions made in this Agreement. Any provision so affected will not negate the rest of the Agreement. The parties agree that venue for the purposes of any and all lawsuits, causes of action, arbitrations, or other disputes arising from this Agreement shall be in Bexar County, Texas.

D. Paragraph headings. The captions, numbering sequences, titles, paragraph headings, punctuations, and organization used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.

E. Understanding, Fair Construction. By execution of this Agreement, the parties acknowledge that they have read and understand each provision, term, and obligation

contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.

F. Independent Contractors. All Parties expressly agree that in performing their services under this Agreement, no party shall be acting as agents for each other. The Parties further agree that any and all consultants or contractors engaged by a Party to this Agreement shall not be an independent contractor of the other Parties to this Agreement. No Party to this Agreement shall be liable for any claims that may be asserted by any third party occurring in connection with services performed by another Party to this Agreement and/or any Developer, under this Agreement unless any such claims are due to the fault of the Party.

The Parties are solely responsible for compensation payable to any employee, contractor, or subcontractor of the party who engaged the employee, contractor, or employee, and none of the parties' employees, contractors, or subcontractors will be deemed employees, contractors, or subcontractors of the other Parties because of this or any other Agreement.

G. Notice. Any notice required to be given hereunder shall be in writing and delivered to the addresses and titles set forth below by certified mail (return receipt requested), a recorded delivery service, or by other means of delivery requiring a signed receipt. All notices shall be deemed delivered the earlier of (i) when actually received or, (ii) on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (return receipt requested) addresses to the respective other party at the address prescribed below. The addresses provided herein may be changed at any time on prior written notice.

SAHA: David Nisivoccia, Interim President and CEO
San Antonio Housing Authority
818 South Flores
San Antonio, Texas 78204

City of San Antonio: Director
Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

Alamo Community College District
Bruce H. Leslie
Chancellor
201 W. Sheridan
San Antonio, Texas 78204

St. Philip's College: Attn: Dr. Adena Williams Loston
President, St. Philip's College
1801 Martin Luther King Drive,
San Antonio, Texas 78203

H. Assignment. No party may assign this Agreement without the prior written consent of the other parties, and no party shall delegate any portion of its performance under this Agreement without the written consent of the other parties. All parties to this Agreement understand and recognize that only the City Council of CITY has authority to approve an assignment or delegation of this Agreement on behalf of CITY by a party to this Agreement.

I. Successors. This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any trustee, officer, employee, elected official, or agent of a party hereto.

J. Force Majeure. Any Party may grant temporary relief from any deadline for performance of any term of this Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the defaulting Party. The burden of proof for the need for such relief shall rest upon the defaulting Party. To obtain relief based upon *force majeure*, the defaulting Party must file a written request with the non-defaulting party. The non-defaulting party shall not unreasonably withhold its consent.

K. Public Information. Each Party acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to this Agreement waives an otherwise applicable exception to disclosure.

L. Litigation and claims. Each party shall give immediate notice in writing of any action, including any proceeding before an administrative agency, filed against them arising out the performance of any activities hereunder. Except as otherwise directed, the party the subject of the claim or action shall furnish immediately to other party copies of all pertinent papers received by the party with respect to such action or claim. Each party the subject of such claims or actions shall submit a copy of such notice to the other party within thirty (30) calendar days after receipt.

M. Entire Agreement and Incorporation of Exhibits. This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties. There are no other agreements, assurances, conditions, covenants (express or implied), or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof. Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the Parties:

- Exhibit A –Project Description, Scope of Work, Choice Implementation Plan Elements
- Exhibit B – Grant Agreement between SAHA and HUD
- Exhibit C – Choice Program Provisions
- Exhibit D – Quarterly Report for Construction Activity

N. Written Amendment. This Agreement may be changed or amended only by a written instrument duly executed on behalf of each party hereto.

O. Legal Authority. Each Party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the Incentives and services authorized by this Agreement, and to perform their obligations hereunder.

This Agreement shall be administered by the appropriate persons, on behalf of the Parties, as appointed by them to perform such duties. Each party paying for the performance of governmental functions or services under this Agreement agrees that it will make those payments from current revenues available to the paying party and represents that there are sufficient current revenues to make such payments.

The UNDERSIGNED PARTIES do hereby certify that, (1) the responsibilities specified above are properly within the statutory functions and programs of the parties to this Agreement; and that (2) the parties hereto are legally authorized to perform the required duties of the Agreement.

IN WITNESS THEREOF, the Parties have made and executed this Agreement, to be effective on the date of the last signature below (“Effective Date”).

Signatures of the following page.

CITY OF SAN ANTONIO

**SAN ANTONIO HOUSING
AUTHORITY**

Sheryl Sculley
City Manager or designee
Date: _____

David Nisivoccia
Interim President and CEO
Date: _____

**ALAMO COMMUNITY COLLEGE
DISTRICT**

ST. PHILIP'S COLLEGE

Dr. Bruce H. Leslie
Chancellor
Date: _____

Dr. Adena Williams Loston
President
Date: _____

ATTEST/SEAL:

Leticia Vacek
City Clerk
Date: _____

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney
Date: _____

EXHIBIT A

**PROJECT DESCRIPTION
SCOPE OF WORK
CHOICE IMPLEMENTATION PLAN ELEMENTS
FINANCIAL STRUCTURE**

PROJECT DESCRIPTION

Subproject 5.1: Community Center

CCI Budget: \$600,000

Goal: The development of the Good Samaritan Veteran's Outreach and Transition Center (GSVOTC) will accomplish the following:

- Eliminate blight by repurposing an abandoned, dilapidated, 15,000 sq./ft., historic building into a contributing asset for the community
- Serve as a focal center for all Veteran's and their families that are transitioning out of the military and those that are living in the greater San Antonio 12 county area
- Utilize the Center to bridge the transition and service gap between Joint Bases Lackland, Randolph and Fort Sam Houston to actively target Veteran's to utilize their benefits such as GI Bill for education and Veteran specific financial services to develop businesses and invest in homes within the footprint
- Serve as a center that interacts with the larger plan for integrated service delivery model for all Choice/EastPoint residents to secure much needed services including access to workforce and social service programs

Activity 1: Invest \$600,000 of CCI funding with the COSA to renovate a blighted building in the Choice footprint and repurpose the building's use for a veteran's outreach and community center.

Activity 2: Develop a triparty MOU with SAHA, COSA, and St. Philip's College for the financing, development and operation of the Center.

- COSA owns property, is providing financial resources, and securing all financial resources needed for the renovation of the building as needed
- SAHA will provide financial resources in the amount of \$600,000 to the development and will partner in outreach and referrals for the Center
- St. Philip's will operate the Center (GSVOTC) and will serve as the operational partner Center (GSVOTC) for activities and services

Outcome 1: Collaborate with partners to redevelop a dilapidated building and eliminate blight.

Outcome 2: 1,000 individuals will be offered the opportunity to received workforce development services annually

SCOPE OF WORK

The building is located within the Choice footprint, at 1602 Dakota Street, which is one block from the major New Braunfels business corridor. St. Philip's College will serve as the operational partner for the building and lease the building for \$1 for 25 years with renewable options. This building was built in 1915 as the Corinth Baptist Church. It was significantly remodeled and reopened in 1948 as the Good Samaritan Hospital to provide hospital services for the City's African American residents. Over the past several decades, the building has been vacant and has fallen into severe blight and disrepair. As this structure is a "historical" building, City and St. Philip's College have worked with the Texas Historical Commission to ensure compliance with relevant Statutes and requirements.

The scope of work of proposed exterior improvements include:

Roof replacement, window replacement, replacement of existing exterior stucco walls and details, repair/replacement of existing exterior concrete steps, removal of emergency fire escape slides and related structures, removal of exterior emergency doors, gutter downspout replacement, replacement of exterior paint, removal of ivy and climbing plants, repair/replacement of wood cornices, trims and frames, repair/replacement of wood entry columns and elements as needed per current conditions, and installation of new wrought iron gates and/or planters at former main entrance at Connelly St. to prevent public access to non-ADA compliant existing stairs

The scope of work of proposed interior improvements include:

The existing interior conditions of the building are extremely deteriorated and hazardous and pose potential threats to the life, health and safety of its occupants. A recent Asbestos and Lead Paint Survey performed by Terracon Consultants, Inc. shows that there is evidence of asbestos and lead found in different materials throughout the building. Additionally, an Assessment of Existing Structural Conditions performed by Jaster Quintanilla Structural Engineering has determined that "the overall structural condition of the building is generally poor, and will become increasingly tenuous unless intervention measures are started soon". Because of the seriously damaged, non-code compliant and potentially unsafe existing conditions described above, it has been recommended to completely remove/demolish the interior of the building. The existing elements to remain will be reinforced and repaired/replaced as necessary to preserve the physical integrity of the structure.

CHOICE IMPLEMENTATION PLAN ELEMENTS

Related Choice Neighborhood Implementation Plan Metrics:

- Neighborhood 1.1: Total number of public services and amenities offered within the defined boundaries of CN grant.
- Neighborhood 1.1.4: Total Count of Community and Recreational Centers.
- Neighborhood 2.2: Number of jobs in the neighborhood
- Neighborhood 2.3: Number of neighborhood residents employed
- Neighborhood 2.6: Percent business addresses vacant, unoccupied 3 months or more
- Neighborhood 2.7: Total number of building permits filed within CN grant neighborhood.
- Neighborhood 2.8: Number of new businesses established within the CN grant neighborhood after award of CN grant.
- Neighborhood 3.6: Total number of abandoned and/or distressed properties in the CN grant neighborhood.

The City of San Antonio’s Base Realignment and Closure (BRAC) Growth Management Plan, recommended aggressive improvement of communities near the Fort Sam Houston Base so that San Antonio can market a “quality, connected living and working environment”. In addition, the plan recommended that the community and military form a working partnership to maximize the community and economic impact associated with improvements being realized at Fort Sam Houston.

The Choice Neighborhood Initiative and CCI plan is a vehicle through which many of the tenets of the BRAC document can be realized. Currently in San Antonio, there are over 150,000 Veteran’s with over 11,000 living below the poverty line and nearly 3,000 are separating from the military each year. Over 40% of the families living in the footprint fall below the federal poverty level. The St. Philip’s Good Samaritan Veteran’s and Outreach Transition Center () serves as an organization for Veteran’s and community residents that will provide “first time” services to improve their quality of life and offer opportunities for Veteran’s and residents to improve their economic status. This Center will serve as another entry point for Veteran’s and residents to solicit and secure needed services to improve the community.

St. Philip’s College has researched and evaluated various models in the United States and is in the process of developing the operational and logistical framework necessary to implement the programs and services to assist Veteran’s, their families, and the community at large. Two specific models and their practices are being utilized to develop the GSVOTC, the Augusta Warrior Project in Augusta GA. (<http://augustawarriorproject.org/>) and the Veteran’s One-stop Center of WNY, Inc. (<http://vocwny.org/>). The GSVOTC will deliver a

service model that will provide Active Duty, Retirees, Veteran's, Community members and their families with services, referrals or information.

The Good Samaritan Veteran's and Outreach Transition Center meets the Eastside Choice Community Transformation Plan Community Developed Principles (page 8) including:

- Quality of Services
 - Provide a variety of social, educational, and recreational services
 - Center will create intersections between Veteran's and residents in the footprint
 - Improve existing services, attract and create new ones
 - Center will bring new services not currently offered in the community
 - Improve access and connections to surrounding neighborhoods, city and region
 - Center will bridge Veteran's, Fort Sam Houston, and Choice footprint
- Neighborhood Reinvestment
 - Reinvest in existing properties
 - Center will redevelop and revitalize a 15,000 square foot facility and eliminate blight
 - Prioritize civic infrastructure
 - Center is publicly owned and could serve to strengthen the physical and social infrastructure by creating a new center offering first time services
 - Build a sense of pride among residents
 - Center will be redeveloped with an emphasis on the historical significance of the building and will fulfill a long term goal of the community to preserve that history
- Investment in our Neighbors
 - Provide sustainable opportunities for new jobs
 - There will be opportunities for jobs during construction, Alamo College can provide needed training to maximize opportunities for residents to benefit from the construction by securing jobs
- A Healthy, Walkable Community
 - Provide access to opportunities for a variety of health and wellness services and referrals
 - Center will provide health and wellness services and referrals to any Veteran to assist in transition from military service into the greater San Antonio area community

In order to meet the goals of the Transformation Plan, the proposed Veteran's Outreach Center builds on local assets leveraging history and local institutions:

- The redevelopment of the historical Good Samaritan Hospital (the hospital that served African Americans during segregation)
- Fort Sam Houston, as a major employer, which is adjacent to the Choice footprint and employees thousands of local residents that currently don't live in the footprint nor frequent the local business community in any significant numbers
- St. Philip's College which is expanding its community influence on the footprint by investing its resources to take the lead on the redevelopment and operation of the Center

Further the Veteran's Outreach Center proposes to fulfill the short term "potential" outlined in page 24 of the Transformation Plan, "Public and Social Support"

- Develop a cluster of public/social support facilities, ranging from health clinics to community centers that serve the surrounding area

The development of this project has been largely focused on the construction and financing of the facility and the details regarding the programmatic functions are still being finalized; however, the following represents the types of programming that may be offered and benefit Veteran's and Choice residents:

Outreach and Community Engagement:

- Center will participate and work with other Veteran and community oriented partners as necessary to assist in events such as; Veteran's Day BBQ, Memorial Day Run, Thanksgiving Turkey collection, and the United States Marine Corps Toy's For Tot's Campaign
- Center will synchronize efforts for Veteran's to have the transition opportunity to connect them with the Promise Neighborhood schools and volunteer their time, expertise, and their service to country attitude with such initiatives such as mentoring and coaching at schools, college and universities ROTC units, and other internal spirit building programs such as the United States Marine Corps "Devil Pup" program.
- The center will offer the opportunity for qualified agencies and non-profits to present classes or Veteran's, their families and local residents to attend Parenting Education Workshops and Veteran's Writing Groups to improve resident involvement and responsibility for their own success in order to assist in restoring families that have suffered traumatic stress
- Center will work with other Veteran organizations and other community oriented agencies to assist in the "Operation Welcome Home" program which will honor Veteran's and offer the opportunity for residents to take pride in their community
- Center will work with other Veteran, community oriented agencies and non-profit's for educational and informational activities that assist in reducing violence that may occur in some families of our service members who have serve in combat zones over the past 14 years. This would also include working with such groups as the Battered Women's Shelter, Martinez Women's Center, Grace After Fire, Family Endeavors, and other

centers providing services to women who have suffered abuse in an effort to restore hope and improve lives

Economic Development:

- Center will collaborate with Veteran and other community oriented agencies to foster knowledge of and provide opportunities for local businesses to participate in a Veteran's Discount Program in an effort to bring new clientele to businesses within the footprint
- Center is already partnering with the University of Texas at San Antonio Institute for Economic Development, Veteran's Development Unit that offers educational opportunities for Veteran's to become entrepreneurs and encourages Veteran's to open small business enterprises within the greater San Antonio area especially an area such as the Eastside that needs a greater business footprint

Housing:

- Center will work with the San Antonio Housing Authority's Home Buyer Readiness Program to offer opportunities for residents and Veteran's to become potential homeowners
- Center will work with the Veteran's Land Board, City of San Antonio, local employers such as Spurs Sports and Entertainment, and others to offer residents and Veteran's down payment assistance to purchase homes
 - A benefit of this program is the ongoing opportunities with SAHA's homeownership opportunities that will be developed as part of the Choice Neighborhood (housing) component
- Center will work with City of San Antonio Veteran's Affairs Commission and Bexar County Veteran's Advisory Committee to provide opportunities and referrals to assist in stabilizing families that could include utility assistance, emergency housing, residential support services
 - These services will also be offered to eligible residents within the footprint
- Center will assist in referrals to Veteran oriented agencies and non-profits, such as SAHA, for the Veterans Affairs Supportive Housing and other housing programs targeting Veteran's

Volunteer:

- Center will continue to work with Mission Continues (soldiers transitioning join the service platoon) within the Choice neighborhood footprint to advertise and solicit volunteers to assist in the revitalization of the community e.g., paint-a-thons, clean ups, etc.

- Center will assist in the Resurgence Collaborative at the Barbara Jordan Center to offer opportunities for “Probationers” to complete required community service hours and to help restore the Choice footprint in accordance with St. Philip’s College security policy and procedures.
- Center will collaborate with the proposed Community Safety Center to pair Veteran’s with law enforcement agencies to assist in officer friendly programs and mentoring and coaching youth at risk
- Center will collaborate with local based community organizations to develop mentor programs for youth such as Big Brothers/Big Sisters
- Center will collaborate with the Fatherhood Initiative in order to promote responsible fatherhood and to pair qualified Veteran’s with Choice footprint residents for coaching and mentoring opportunities.

Workforce Development:

- Center will collaborate with agencies such as; San Antonio ISD, Region 20, Each One Teach One, Workforce Solutions Alamo, Goodwill Industries, Project Quest, Alamo Colleges (including St. Philip’s), United Way (dual-generation), SAHA’s Jobs Plus and Section 3 Programs and others to provide opportunities for access to education, training, jobs, work experience, and careers
- Center will assist agencies such as the Alamo Chamber of Commerce, other Chambers of Commerce (Ex: Black, Hispanic & Asian), City of San Antonio and SAHA and other agencies with opportunities for work experience for Summer Youth Employment
- Center will assist local universities in providing opportunities for student internships and work experience for undergraduate and graduate studies.

Family Stability:

- Center will work with local, state, and federal agencies to provide referrals for: VA benefits, benefits offered by the State of Texas, legal assistance, Medicare and Social Security, access to transportation and other services
- Center will work with faith based organizations, such as Antioch Baptist Church, to provide counseling and support services for Veteran’s and residents of the footprint

The Veterans Outreach Center will serve as an entry point for veterans and residents to solicit and secure services. The community engagement strategy includes implementing a “No wrong door” for residents to be connected to needed services. Some of these services may be provided by other centers located within the footprint, including:

- Ella Austin focusing on elderly and working families: providing workforce services through Goodwill Industries, childcare through United Way, case management through Ella Austin, United Way, Urban Strategies, Goodwill, and SAHA

- Barbara Jordan focusing on families in the Justice system: providing, workforce through Alamo Workforce Solutions, substance abuse, family counseling, adult literacy and GED prep, legal assistance and other services
- Wheatley Community School focusing on parents with young children providing job training, adult education, financial literacy
- University Health Systems Eastside Clinic (\$4 million clinic to be constructed adjacent to Sutton Oaks community)
- New Braunfels Community Safety Center (rehab of existing building along New Braunfels commercial corridor to increase the presence of law enforcement and reduce crime)

Each of these centers will create the “social eco-system” that will act as entry points for all residents to secure services to improve economic and social conditions of the footprint.

The Center plans to host workforce services amongst a number of other services. An MOU with Workforce Investment Board has been provided. In addition it is important to point out that Alamo Colleges was recently tasked by the Mayor and County Judge to develop a workforce strategy for the whole city and there is a large amount of coordination with the local workforce board and other workforce partners. The Center will benefit from this planning and ultimate execution of the new strategy.

FINANCIAL STRUCTURE

The renovation of this building was identified through the 2010 City led Eastside Economic Development Summit and prioritized as a “Catalytic Project,” that could help transform the community. The total cost of redevelopment is \$7 million. The City has allocated and committed \$3.6 million towards the project while St. Philip’s has committed \$450,000 for furniture, fixtures, equipment and finish out costs for the redevelopment.

The approximately \$7M cost estimate was developed in coordination with St. Philip’s hired Pfluger Architects to develop architectural drawings and a floor plan based upon the program needs (please see architect’s cost estimate). This plan incorporated requirements to be in compliance with guidelines established for the rehabilitation for historic structures and ADA accessibility. This cost estimate includes all development costs. The cost of construction was based upon bids received for the project.

The funds are being used for hard construction costs. Please see attached redevelopment budget. In addition to the construction budget, St. Philip’s College has committed over \$3 million to cover operational costs for the first five years (please see detailed operational pro-forma).

GS VOTC Timeline	
Receive Letters of Support & Cooperation	February 10, 2016
Execute Funding Agreement	February 26, 2016
Commence Construction	February 28, 2016
Complete Construction and Grand Opening	February 28, 2018

PROJECT USES	AMOUNT
Pre-Construction cost	\$791,926
Construction cost	5,440,000
Contingency	816,000
FF&E	450,000
Total	\$7,497,926

Sources of Funds	Amount
COSA FY 2010 C of O's	\$2,000,000
COSA Section 108	1,000,000
TX Appropriation	1,000,000
COSA Inner City TIRZ	950,000
HUD Choice Grant	600,000
Greehey Family Foundation	500,000
COSA FY 2016 C of O's	500,000
COSA Inner City Incentive Fund	470,426
St. Philips (FFE)	450,000
Citibank	15,000
SA Conservation Society	12,500
Total	7,497,926

Operational Budget	Estimated Amount
Year 1	\$1,694,578
Year 2	491,382
Year 3	499,998
Year 4	508,786
Year 5	720,750
Total	\$3,915,494



Quarterly Report for Construction-Related Projects
Veterans Outreach and Transition Center Redevelopment
 (Due to the City of San Antonio's CCDO and DPCD in accordance with Agreed Due Date Terms)

Reporting Quarter and Year: Jan 1, 201 - Mar 31, 2016

<u>Funding Source</u>	<u>Account Number</u>	<u>Planned Amount</u>	<u>Actual Amount</u>
HUD 108	TBD	\$ 1,000,000	\$
TX Earmark	N/A	1,000,000	
TIRZ #11	TBD	950,000	
COSA Certs of Obligation	TBD	2,500,000	
COSA Greehey Grant	TBD	500,000	
COSA ICIF	TBD	470,426	
SAHA CHOICE	TBD	600,000	
Citibank	N/A	15,000	
SA Conservation Society	N/A	12,500	
St. Philips FFE	N/A	450,000	
Total		\$ 7,497,926	\$

Project Information

Project Manager:	John W. Strybos
Project Name:	Veterans Outreach and Transition Center
Project Number:	15C-020
WBS Element:	
Type of Contract:	Multiple City and SAHA Agreements
Pre-Bid Meeting:	July 7, 2015
Pre-Construction Meeting:	TBD
Council Award Date:	10/27/2015; 2/18/16

Timeline

Design Start Date:	
Design Completion Date:	
Design % Completed:	
Construction Start Date:	
Construction Completion Date:	
Construction % Completed:	

General Contractor Information

Company Name:	SpawGlass Contractors Inc.
Contact Person:	Chuck Calvin
Address:	9931 Corporate Dr
City, State, Zip:	Selma, TX 78154-1250
Phone:	210-651-9000
E-mail:	n/a

Section 3 Employee Hiring

Total # of New Hires to Date:	
Section 3 New Hires To Date:	

Narrative: Describe any delays, issues, or progress on this project.

EXHIBIT B

**HUD CHOICE IMPLEMENTATION GRANT
AGREEMENT**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

MAR 12 2013

RECEIVED

MAR 14 2013

EXECUTIVE OFFICE

Ms. Lourdes Castro Ramirez
President and Chief Executive Officer
San Antonio Housing Authority
818 S. Flores
San Antonio, TX 78204-1430

SUBJECT: Transmittal of FY2012 Choice Neighborhoods Implementation Grant Agreement

Dear Ms. Castro Ramirez:

Once again, congratulations on your selection to receive a FY2012 Choice Neighborhoods Implementation Grant funding award. Your proposal is one of the best that embodies the goals of the Choice Neighborhoods program and shows your capacity to implement your Transformation Plan to transform your selected neighborhood. This letter transmits your FY2012 Choice Neighborhoods Implementation Grant Agreement.

The Office of Public Housing Investments (OPHI) and the Office of Multifamily Housing (Multifamily) will jointly administer your grant. Your Team Coordinator will be your primary HUD contact person as you implement your Choice Neighborhoods grant and will be available to answer any questions you may have. By now, your Team Coordinator has contacted you. The main OPHI telephone number is (202) 401-8812 and the fax number is (202) 401-2370 (these are not toll-free numbers). OPHI is located at the following address:

U.S. Department of Housing and Urban Development
Office of Public Housing Investments
451 Seventh Street SW, Room 4130
Washington, DC 20410

The selection of your organization for a Choice Neighborhoods grant does not necessarily mean endorsement of each detail of the plan proposed in your application. The OPHI and Multifamily staff will be working with you in the coming months to ensure that your Transformation Plan is fully developed, maximally effective, and legally and financially sound.

Grant Agreement

Enclosed is one copy of your FY2012 Choice Neighborhoods Implementation Grant Agreement. This document memorializes the agreements made between you and your Co-Applicant(s) (if any), as the Grantees, and HUD, and incorporates all documents relating to the grant, including the FY2012 Notice of Funding Availability (NOFA), your application, and all subsequent documents. Please note that the terms of the Grant Agreement are not negotiable.

In order to proceed with the processing of your Grant Agreement, please do the following:

1. Obtain a Board Resolution authorizing the Lead Grantee's Executive Director/executive officer to sign all three HUD-1044s, Assistance Award/Amendment.

2. The Executive Director/executive officer of the Lead Grantee signs and dates each of the three HUD-1044 forms ("Award Assistance/Amendment") in block 19 of the form. The 1044 serves as the coversheet to the Grant Agreement.
3. The Executive Director/executive officer for both the Lead Grantee and any Co-Grantee(s) (if any) must sign the signature page in the Grant Agreement document (see Article XIX). The signatures of the Executive Director/executive officer of the Lead Grantee and the Executive Director/executive officer of any Co-Grantee(s) should be provided on the same signature page (not separate signature pages).
4. Return the signed Grant Agreement, including the 1044s, a copy of the Board Resolution, and a copy of the Lead Grantee's and any Co-Grantee's code(s) of conduct to Ms. Leigh van Rij, (202) 402-5788, at the address provided earlier in this letter by no later than **Friday, April 12, 2013**.

Once the Grant Agreement, copy of the Board Resolution, and copy of the code(s) of conduct are received by HUD, the Assistant Secretary for Public and Indian Housing will sign and date the final signature block on the signature page of the Grant Agreement (Article XIX), which will be the effective date of the Grant Agreement. The original will be kept by the Department and an executed copy will be returned to you to keep in your records and administer accordingly.

Choice Neighborhoods Guidance

Your Choice Neighborhoods Team Coordinator will be your primary source of guidance and information about your Implementation Grant. In addition, on the Choice Neighborhoods web site (www.hud.gov/cn) HUD will be posting information about accessing LOCCS and valuable information on mixed finance development, procurement, and other technical areas. I urge you to familiarize yourself with the website and take advantage of the information posted there.

Drawdown of Funds

Once your Grant Agreement has been executed, you may request HUD to approve the release of funds. This will be accomplished through the approval of your Choice Neighborhoods budget (form HUD-53236) as part of the Post Application Submissions. In accordance with the Grant Agreement, eligible costs for reimbursement include those incurred between the written notification of grant award and execution of your Grant Agreement. Your initial eligible costs include those for predevelopment and supportive services, as stated in the Implementation Grant Agreement. The official written notification date of your grant award is December 13, 2012, the date of your award letter. If you would like to draw down predevelopment funds, you must use the Choice Neighborhoods Budget form and submit it to HUD for approval.

Once you have completed your budget, sign and date it and submit it to your Team Coordinator for review. When the budget request is approved, your Team Coordinator will return a signed copy to you for your files and will have the approved funds spread in LOCCS. At that point, they will be available for drawdown. See Article VI for additional information on Choice Neighborhoods Budget and Funding Requests.

Authorization in LOCCS

In order to access grant funds, at least two staff members must be authorized for Choice Neighborhoods in LOCCS, HUD's grant payment system. Banking information also must be submitted to HUD. If you are not familiar with LOCCS, please refer to "Grantee Financial

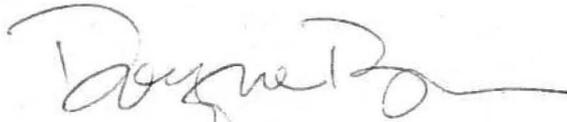
Instructions” which is posted on the Choice Neighborhoods website and which provides detailed information about LOCCS access, banking information, and completion of the Choice Neighborhoods voucher.

Expenditure of FY2012 Choice Neighborhoods Funds

FY2012 Choice Neighborhoods grants are subject to the requirements established under 31 U.S.C. § 1552. In accordance with this statute, **all FY2012 funds must be expended by September 30, 2019**. Any funds that are not expended will be cancelled and recaptured by the Treasury and thereafter will not be available for obligation or expenditure for any purpose. Given the statutory requirement, Grantees are asked to comply with their Program Schedule, developed in accordance with the time periods for implementation established in the Grant Agreement, and as approved by HUD.

Again, congratulations. Applications for this Choice Neighborhoods grant were extremely competitive, and you should be proud of your accomplishment. Please extend my congratulations to your entire team. We look forward to working jointly with you and your partners in carrying out the transformation of severely distressed public and assisted housing, and we thank you for your participation in the Choice Neighborhoods Initiative.

Sincerely,



Dominique Blom
Deputy Assistant Secretary
Office of Public Housing Investments

Assistance Award/Amendment

U.S. Department of Housing
and Urban Development
Office of Administration

1. Assistance Instrument <input type="checkbox"/> Cooperative Agreement <input checked="" type="checkbox"/> Grant		2. Type of Action <input checked="" type="checkbox"/> Award <input type="checkbox"/> Amendment	
3. Instrument Number TX6J006CNG112	4. Amendment Number	5. Effective Date of this Action	6. Control Number
7. Name and Address of Recipient San Antonio Housing Authority 818 S. Flores San Antonio, TX 78204-1430		8. HUD Administering Office Office of Public Housing Investments Public and Indian Housing	
10. Recipient Project Manager		8a. Name of Administrator Dominique Blom	8b. Telephone Number 202-401-8812
11. Assistance Arrangement <input checked="" type="checkbox"/> Cost Reimbursement <input type="checkbox"/> Cost Sharing <input type="checkbox"/> Fixed Price		9. HUD Government Technical Representative	
12. Payment Method <input type="checkbox"/> Treasury Check Reimbursement <input type="checkbox"/> Advance Check <input checked="" type="checkbox"/> Automated Clearinghouse		13. HUD Payment Office	
14. Assistance Amount		15. HUD Accounting and Appropriation Data	
Previous HUD Amount	\$	15a. Appropriation Number	15b. Reservation number
HUD Amount this action	\$ 29,750,000	Amount Previously Obligated	\$
Total HUD Amount	\$ 29,750,000	Obligation by this action	\$ 29,750,000
Recipient Amount	\$	Total Obligation	\$ 29,750,000
Total Instrument Amount	\$ 29,750,000		

16. Description

FY 2012 Choice Neighborhoods Planning Grant
Public and/or Assisted Housing Site(s): Wheatley Courts
Neighborhood: Eastside
Located In: San Antonio, TX

17. <input checked="" type="checkbox"/> Recipient is required to sign and return three (3) copies of this document to the HUD Administering Office		18. <input type="checkbox"/> Recipient is not required to sign this document.	
19. Recipient (By Name) Lourdes Castro Ramirez		20. HUD (By Name) Sandra B. Henriquez	
Signature & Title President and Chief Executive Officer	Date (mm/dd/yyyy)	Signature & Title  Assistant Secretary	Date (mm/dd/yyyy) DEC 13 2012

FY2012 Choice Neighborhoods Implementation Grant Agreement

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Exhibit A: For-Profit Subgrantee and Contractor Certifications and Assurances

Exhibit B: Non-Profit Subgrantee Certifications and Assurances

**FY2012 Choice Neighborhoods
IMPLEMENTATION GRANT AGREEMENT**

This grant agreement ("Grant Agreement") is made by and between the United States Department of Housing and Urban Development ("HUD") and the Lead and Co-Applicant(s) ("Grantee"). The Grantee received a Choice Neighborhoods Implementation Grant from fiscal year 2012 funds, for the implementation of a Transformation Plan ("Transformation Plan") that is identified in this Grant Agreement below.

While the Implementation Grant is awarded to the Grantee, only the Lead Applicant identified in the Grantee's Choice Neighborhoods Application ("Lead Grantee") will have access to draw down funds in LOCCS. HUD agrees, subject to the terms of this Grant Agreement, to provide grant funds to the Lead Grantee, in the total amount listed on the form HUD-1044, for the activities described in the Transformation Plan as defined in Article III.

The assistance that is the subject of this Grant Agreement is authorized by, and required to be used in accordance with, Section 24 of the U.S. Housing Act of 1937 and the Consolidated and Further Continuing Appropriations Act, 2012 (Public Law 112-55, 125 Stat. 552, approved November, 18, 2011) ("2012 HUD Appropriations Act"), (collectively the "Choice Neighborhoods Authorization"). The 2012 HUD Appropriations Act appropriates \$120 million for the Choice Neighborhoods program.

The form HUD-1044 and the Exhibits are incorporated into and subject to the terms of this Grant Agreement.

HUD and the Grantee hereby agree to be bound by the following terms and conditions of this Grant Agreement:

ARTICLE I. Choice Neighborhoods Requirements

The Grantee agrees to conduct all activities to be assisted with funds provided under this Grant Agreement in accordance with the following requirements, as such requirements now exist or as they may hereafter be amended (hereafter collectively referred to as the "Choice Neighborhoods Requirements"):

- (A) the U.S. Housing Act of 1937 (the "1937 Act") as applicable, , and all implementing regulations;
- (B) the 2012 HUD Appropriations Act, (Public Law 112-55, 125 Stat. 552, approved November, 18, 2011);
- (C) the Fiscal Year (FY) 2012 NOFA for the Choice Neighborhoods Initiative Implementation Grants published via Grants.gov on January 10, 2012 (the "Choice Neighborhoods Implementation NOFA") and NOFA Policy Requirements and General Section ("General Section") to HUD's FY2012 NOFAs for Discretionary Programs, published via www.grants.gov on September 19, 2011 incorporated therein.
- (D) 31 U.S.C. § 1552. In accordance with this statute, all FY2012 Choice Neighborhoods funds must be expended by September 30, 2019. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.
- (E) In accordance with section 24(e)(2)(D) of the 1937 Act, Grantees must involve affected residents of the targeted public and/or assisted housing during the implementation process. Grantees are required to involve the affected public and/or assisted housing residents in the implementation of the Transformation Plan. This involvement must be continuous from the beginning of the planning process through the implementation and management of the grant. In addition to the statutory requirement, unless HUD indicates otherwise in writing, Grantees will be expected to undertake resident and community involvement in a manner and method at least as comprehensive as that described in your grant application.
- (F) all executive orders applicable to the activities being conducted with funds provided under this Grant Agreement;
- (G) the terms and requirements of this Grant Agreement, and any amendments or addenda thereto;
- (H) all other applicable Federal requirements, including, without limitation, those set forth in Appendix A; and
- (I) all regulations, handbooks, notices, and policies applicable to the activities being conducted with funds provided under this Grant Agreement.

ARTICLE II. Program Overview

(A) **Goals of the Choice Neighborhoods Program.** The Choice Neighborhoods Program employs a comprehensive approach to neighborhood transformation. The program transforms neighborhoods of concentrated poverty into mixed-income neighborhoods of long-term viability by revitalizing severely distressed public and/or assisted housing; improving access to economic opportunities; and investing and leveraging investments in well-functioning services, effective schools and education programs, public assets, public transportation, and improved access to jobs. Choice Neighborhoods ensures that current residents benefit from this transformation by preserving affordable housing in the neighborhood or providing the choice to move to affordable housing in another neighborhood of opportunity. The purpose of this grant is to implement a Transformation Plan that has been developed through a local planning process and furthers the goals of the Choice Neighborhoods Program. The core goals of Choice Neighborhoods are:

- 1. Housing:** Replace distressed public and assisted housing with high-quality mixed-income housing that is well-managed and responsive to the needs of the surrounding neighborhood;
- 2. People:** Improve educational outcomes and intergenerational mobility for youth with services and supports delivered directly to youth and their families; and
- 3. Neighborhood:** Create the conditions necessary for private and public reinvestment that enhances the neighborhood such that families with choices choose to live and stay there.

ARTICLE III. Choice Neighborhoods Transformation Plan

(A) **General.** The Grantee's Choice Neighborhoods Transformation Plan ("Transformation Plan") consists of a document or documents reviewed and accepted by HUD to govern the transformation of the neighborhood. The Transformation Plan should integrate effective strategies to implement public and/or assisted housing revitalization, the coordination and design of supportive services, including educational opportunities for children, and neighborhood-level planning to improve a range of neighborhood assets. The Transformation Plan should be created as part of a collaborative planning process that involves neighborhood stakeholders and local governmental entities.

The Transformation Plan should translate the three core goals of Choice Neighborhoods – Housing, People and Neighborhood – into a strategy that will direct investments, demonstrate the commitment among a range of public and private partners to address interdependent neighborhood challenges, utilize data to set and monitor progress toward implementation goals, and engage community stakeholders and residents in meaningful decision-making roles.

(B) **Components of the Transformation Plan.** The Grantee's Transformation Plan includes each of the following components, as needed for the Transformation Plan and as approved by HUD. Because some of these documents may be submitted to HUD for approval throughout the implementation of the Grant Agreement, an approved Transformation Plan shall be deemed to mean the most recent set of documents that have been submitted to (as set forth in this Article) and approved by HUD:

- (1) the Grantee's Choice Neighborhoods applications, submitted in response to the FY2012 Choice Neighborhoods Implementation NOFA (the "Choice Neighborhoods Application");
- (2) requests for predevelopment costs, as described in Article VI.
- (3) Post Application Submissions that HUD requires the Grantee to submit following HUD's review of the Choice Neighborhoods application and as a result of a site visit to the housing which is the target of redevelopment under this grant ("Development"), including but not limited to:
 - (a) any additional information required in order for HUD to approve demolition based on the Choice Neighborhoods application;
 - (b) certifications and assurances;
 - (c) a Program Schedule, in accordance with the timeframes established in this Article;
 - (d) a Choice Neighborhoods Budget (all phases) as described in Article VI; and
 - (e) any other information or documentation that is not otherwise required under any other component of the Transformation Plan that is requested by HUD to supplement or refine information provided in the Choice Neighborhoods Application or to meet any terms or conditions of the Grant Agreement.
 - (f) any waiver requests;

(Subparagraphs (a) through (f) are hereafter collectively referred to as, "Post Application Submissions.")

(4) The Grantee must plan for and provide current public and assisted housing residents, relocated public and assisted housing residents, and returning and new public and assisted housing residents with supportive services for the term of the Grant Agreement. Supportive Services programs and services must be carefully planned so that they will be sustainable after the Choice Neighborhoods grant period ends. The Grantee is responsible for tracking and providing Supportive Services programs and services to baseline and revitalization development residents. Baseline residents are those residents that lived in the targeted redevelopment site at the time of application for Choice Neighborhoods. The grantee and HUD will also work together to track the experiences and changing characteristics of revitalization development residents who live at the revitalized site. Supportive Services activities must be well integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities. The Grantee should provide final outcomes and metrics on Supportive Services as identified in the Transformation Plan. The Grantee will report to HUD on those outcomes and measure progress using those metrics as discussed in Article XII. HUD will use these reports to determine if the Grantee has met their supportive service requirements as listed in their Transformation Plan. While public and HUD assisted housing residents have first preference in any Supportive Services provided under this grant, HUD also

encourages the Grantee to provide Supportive Services for residents of the surrounding neighborhood as they are able. To the extent that the Grantee proposed Supportive Services to the surrounding neighborhood residents as part of the application, public housing and HUD assisted housing resident Supportive Services should be tracked in the same way or as proposed in the application.

(5) the Grantee's submissions to HUD in connection with an Endowment Trust, if applicable, in accordance with Article IV(J) (including but not limited to submission of a Choice Neighborhoods Endowment Trust Addendum);

(6) for public housing only, a Demolition Application, if applicable, as described in Article IV;

(7) for public housing only, a Disposition Application relating to the Development, as described in Article IV, to the extent applicable;

(8) for public housing only, a Standard or Mixed Finance development proposal(s), as described in Article IV;

(9) a Homeownership Proposal, as applicable, as described in Article IV; and

(10) any amendment or modification of the foregoing, as approved in writing by HUD.

(C) Incorporation into Grant Agreement. As each component of the Transformation Plan is approved in writing by HUD, it will be deemed to be incorporated into this Grant Agreement.

(D) Time Periods for Implementation. The Grantee agrees to implement its Transformation Plan in accordance with the approved Program Schedule, including but not limited to the following time periods:

(1) In accordance with the Choice Neighborhoods Implementation Grants NOFA as incorporated by Article I(C) above.

(2) Items identified in paragraph (B) of this Article must be submitted to HUD in accordance with the HUD-approved Program Schedule. The Program Schedule is due to HUD within 90 calendar days (weekends and holidays are not excluded) from the Grant Award Date. HUD reserves the right to require Grantee to make edits to these items to put them in a form and substance acceptable to HUD.

(3) The Grantee must start service coordination and case management services as soon as possible, if they have not already. The Grantee must have started these services within 30 days of the Grant Award Date (which was December 13, 2012). It is imperative that case management services begin immediately so that residents who will be relocated have time to participate in and benefit from Supportive Services activities before leaving the site; and that residents who have already been relocated are able to participate in and benefit from Supportive Services activities.

(4) The closing of the first housing phase of development must take place within 18 months of the Grant Award Date. For this purpose, "closing" means all financial and legal arrangements have been executed and actual activities (construction, etc.) are ready to commence. The construction Notice to Proceed or equivalent must be issued no later than 90 days after the closing date, unless otherwise approved by HUD.

(5) Grantees must start housing rehabilitation/construction within 21 months of the Grant Award Date.

(6) Grantees must complete replacement housing rehabilitation/construction by obtaining a certificate of occupancy or equivalent for units funded with Choice Neighborhoods funds by September 30, 2019.

(E) Time Extensions. All requests for extensions of the time periods for implementation listed in paragraph (D)(1)-(4) of this Article must be requested by the Grantee in advance of the deadline date. All requests for extensions must be made in writing and will be reviewed and approved or disapproved by the Deputy Assistant Secretary for the Office of Multifamily Housing Programs, the Assistant Secretary of Public and Indian Housing, and/or the Deputy Assistant Secretary for the Office of Public Housing Investments.

ARTICLE IV: Transformation Activities and Requirements

(A) Program Requirements. Grantees must comply with the Program Requirements stated in Section III.C.3 of the FY 2012 Choice Neighborhoods Implementation Grants NOFA.

(B) Eligible Activities. Grantees may be eligible to complete the activities stated in Section III.C.1.b of the FY 2012 Choice Neighborhoods Implementation Grants NOFA as well as all activities listed in this Article.

(C) Development Activities. If Grantee completes any Development Activities listed below, Grantee must comply with the requirements listed below for each activity.

(1) Standard Development Activity. For any standard (non-mixed finance) public housing development activity under the Transformation Plan (whether on-site reconstruction or off-site development), the Grantee must obtain HUD approval of a development proposal submitted under 24 CFR part 941 (or successor part), as this part may be amended from time to time ("Standard Development Proposal").

(2) Mixed-Finance Housing Development. For mixed-finance housing development under the Transformation Plan, the Grantee must obtain HUD approval of a mixed finance proposal submitted under 24 CFR part 941, subpart F (or successor part and subpart), as may be amended from time to time ("Mixed Finance Development Proposal").

(3) New construction of community facilities. For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Development and residents of off-site replacement housing, the Grantee must comply with

24 CFR part 941 (or successor part) as this part may be amended from time to time. Information required for this activity may be included in either a Standard or Mixed Finance Development Proposal.

(D) **Rehabilitation Activities.** For rehabilitation and physical improvement of public housing and/or community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Development and residents of off-site replacement housing under the Transformation Plan, the Grantee will comply with 24 CFR § 968.112(b), (d), (e), and (g)-(o) and 24 CFR §§ 968.130 and 968.135(b) and (d) or successor part, as may be amended from time to time.

(E) **Homeownership Activities.** Public housing homeownership units developed with Choice Neighborhoods funds must be done in accordance with a homeownership proposal, which must conform with either Section 24(d)(1)(J) of the 1937 Act; or Section 32 of the 1937 Act (see 24 CFR part 906). Additional information on this option may be found at www.hud.gov/offices/pih/centers/sac/homeownership. The homeownership proposal must be consistent with the Section 8 Area Median Income (AMI) limitations (80 percent of AMI) and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at <http://huduser.org/portal/datasets/il/il111/index.html>.)

(F) **Demolition.** You cannot carry out nor permit others to carry out the demolition of the targeted public housing project or any portion of the project until HUD approves, in writing, one of the following ((1) - (3) of this section), and until HUD has also: (i) approved a Request for Release of Funds submitted in accordance with 24 CFR part 58, or (ii) if HUD performs an environmental review under 24 CFR part 50, has approved the property for demolition, in writing, following its environmental review.

(1) Information regarding demolition in your Choice Neighborhoods Application, along with Post Application Submissions requested by HUD after the award of the grant. Section 24(g) of the 1937 Act provides that severely distressed public housing that is demolished pursuant to a revitalization plan is not required to be approved through a demolition application under section 18 of the 1937 Act or regulations at 24 CFR part 970.

(2) A demolition application under section 18 of the 1937 Act.

(3) A section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104-134, approved April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

(G) **Disposition.** This section applies only to disposition of public housing.

(1) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, must be done in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970, as applicable.

(2) The Grantee will comply with the provisions of section 18 of the 1937 Act, and 24 CFR part 970 as applicable, as may be modified or amended from time to time, and the provisions of its approved disposition application (the approved "Disposition Application"), unless otherwise modified in writing by HUD. The Grantee will also comply with procedures for processing dispositions associated with mixed-finance projects as set forth by HUD.

(3) A lease of one year or more that is not incident to the normal operation of a development is considered to be a disposition that is subject to section 18 of the 1937 Act.

(H) Relocation. The following applies only to public housing.

(1) General. The Grantee will provide suitable, decent, safe, and sanitary housing for each family required to relocate as a result of transformation activities under the Transformation Plan.

(2) Relocation Plan. The Grantee must carry out its relocation activities in compliance with a relocation plan that conforms with the following statutory and regulatory requirements, as applicable (the "Relocation Plan"):

(a) Relocation or temporary relocation carried out as a result of **rehabilitation** under an approved Plan is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*; 49 CFR part 24) (URA) and regulations at 24 CFR § 968.108 or successor part and meets the requirements of the Choice Neighborhoods Implementation Grants NOFA.

(b) Relocation carried out as a result of **acquisition** under an approved Transformation Plan is subject to the URA and regulations at 24 CFR § 941.207 or successor part.

(c) Relocation carried out as a result of **disposition** under an approved Transformation Plan is subject to section 18 of the 1937 Act as amended.

(d) Relocation carried out as a result of **demolition** under an approved Transformation Plan is subject to the URA.

(e) If the project also utilizes Community Development Block Grant (CDBG) or HOME funds, section 104(d) of the Housing and Community Development Act of 1974 may also apply. Please refer to the Tenant Assistance Relocation and Real Property Acquisition Handbook (HUD Handbook 1378) for detailed information.

(I) Replacement of Multifamily Housing.

(1) HUD-assisted housing. For projects subject to a project-based section 8 Housing Assistance Payments ("HAP") contract, the Grantee will not engage in or permit the partial or

total demolition of the project, or any activities related thereto, including any activities in preparation for such demolition, without the prior written consent of HUD. Such consent will not be provided until HUD has first approved (i) a proposal for preserving the project-based section 8 HAP contract consistent with applicable statutory authority (e.g., section 212(a) of the 2012 HUD Appropriations Act, or successor legislation; or section 8(bb)(1) of 1937 Act) and all related Departmental policies, procedures, and requirements; (ii) a proposal for project rehabilitation; and (iii) a replacement housing plan that provides for the orderly, temporary relocation of displaced families (e.g., based on the requirements of Housing Handbook 4350.1 REV-1 CHG-2, Chapter 38 (Multifamily Emergency/Disaster Guidance), section 38-32C (Section 8 Pass Through)) that ensures decent, safe, and sanitary housing, consistent with 24 C.F.R. Part 5 Subpart G (Physical Condition Standards and Inspection Requirements) and 24 C.F.R. Part 200 Subpart P (Physical Condition of Multifamily Properties), at the beginning of and throughout the displacement period.

(2) For projects subject to a project-based section 8 HAP contract, the Grantee will (i) secure or cause to be secured temporary replacement housing for displaced families; will ensure that (ii) the temporary housing is available for the entire duration of the displacement period; and (iii) the housing meets the requirements of 24 C.F.R. Part 5, Subpart G (“Physical Condition Standards and Inspection Requirements”) and 24 C.F.R. Part 200 Subpart P (“Physical Condition of Multifamily Properties”) at the beginning of and throughout the displacement period. To satisfy this requirement, the Grantee is encouraged to adopt the model and the related procedures in Housing Handbook 4350.1 REV-1 CHG-2, Chapter 38 (“Multifamily Emergency/Disaster Guidance”), section 38-32 C (“Section 8 Pass Through”) for the temporary relocation of section 8-assisted families necessitated by a natural disaster or other emergency. Based on this model and the related procedures, the Grantee is authorized to enter into a temporary lease for a unit in the same locale that meets the foregoing regulatory requirements on behalf of a displaced section 8-assisted family. During this period, the Owner of a property subject to a project-based section 8 HAP contract (“Owner”), whether the Owner is the Grantee or one of the Grantee’s partners, may voucher for the contract rent for that unit on a temporary basis. The Owner pays no more than the contract rent on the temporary dwelling until the resident’s permanent rental unit has been restored to habitable condition and the Owner notifies the resident that they may resume occupancy of their former unit. The resident is still responsible for the resident’s share of the rent. Should the displaced resident fail to return, the Owner may rent the repaired unit to an eligible section 8 applicant. Before doing so, however, the Owner must inform the resident in writing that their assistance is terminated. In the event that the Owner rents the unit to an eligible section 8 applicant, the Owner must first terminate the “pass through” lease that the Owner executed on behalf of the displaced resident. In addition, should the temporarily displaced resident move from the temporarily leased unit before their permanent rental unit is repaired and made available for their return, the Owner can no longer voucher for the temporary unit and the resident is considered permanently housed. (See Housing Handbook 4350.1 REV-1 CHG-2, Chapter 38 (“Multifamily Emergency/Disaster Guidance”), section 38-32 C (“Section 8 Pass Through”)).

(J) Acquisition.

(1) Acquisition Proposal. Any acquisition activities you undertake with Choice Neighborhoods or other public housing funds must be done in accordance with an acquisition proposal that meets the requirements of 24 CFR 941.303.

(2) **Rental Units.** For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must obtain HUD approval of a Development Proposal in accordance with 24 CFR 941.304 (conventional development) or 24 CFR 941.606 (mixed-finance development).

(3) **Land for Replacement Units outside the target neighborhood.** For acquisition of land for replacement housing outside the target neighborhood, you must comply with 24 CFR part 941.202 (site and neighborhood standards) or successor part.

(4) **Land for Economic Development-Related Activities.** Acquisition of land for this purpose is eligible if the activities specifically promote the economic self-sufficiency of residents of the neighborhood, such as construction or rehabilitation of parks and community gardens, environmental improvements; or promoting economic development, such as development or improvement of transit, retail, community financial institutions, public services, facilities, assets or other community resources. You may request an amount not to exceed 15 percent of the total Choice Neighborhoods grant to pay the costs of non-housing capital costs as described above for Critical Community Improvements.

(a) Acquisition of land for this purpose is eligible only if the economic development-related activities specifically promote the economic self-sufficiency of residents.

(b) Limited infrastructure and site improvements associated with development retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site, are eligible activities with prior HUD approval.

(K) **Supportive Services.**

(1) **Funding.** Consistent with sections 24(d)(1)(L) and 24(j)(3) of the 1937 Act and the Choice Neighborhoods Implementation Grants NOFA, the Grantee may use an amount up to 15 percent of the total Choice Neighborhoods Grant to pay the costs of community and supportive service programs. Of this amount, 5 percent will be held back by HUD and released in the form of an endowment at the end of the grant term, only if anticipated supportive service outcomes have been achieved and if such services can be demonstrated to further desired outcomes beyond the grant term. The Grantee may spend additional sums on community and supportive services programs using donations, HUD funds made available for that purpose, or other Grantee funds.

(2) **Supportive Services Endowment Trust.** The Grantee may deposit up to 15 percent of the Choice Neighborhoods Grant amount (the maximum amount of the grant allowable for Supportive Services programs) into an endowment trust to provide Supportive Services activities (the "Endowment Trust").

(a) The Grantee may not draw down funds provided under this Grant Agreement for deposit into an Endowment Trust until it has a HUD-approved Endowment Trust plan and has executed with HUD an addendum to this Grant Agreement (the "Choice Neighborhoods Endowment Trust Addendum"), as directed by HUD. The Choice Neighborhoods Endowment Trust Addendum

establishes the requirements governing the establishment, operation, and management of an Endowment Trust.

(b) In reviewing the amount of the Grantee's proposed allocation of Choice Neighborhoods Grant funds to an Endowment Trust, HUD will take into account the Grantee's demonstrated ability to pay for current Supportive Services activities with Choice Neighborhoods or other funds, and the projected long-term sustainability of the Endowment Trust to carry out such activities.

(c) Endowment Trust funds (including any non-Choice Neighborhoods funds donated or otherwise made available to the Endowment Trust, and any interest earned on Choice Neighborhoods and non-Choice Neighborhoods funds) may only be used for eligible and necessary Supportive Services activities.

(3) Although targeted housing residents must be the primary beneficiary of Supportive Services, Supportive Services provided to the surrounding neighborhood residents, beyond public and HUD assisted housing residents, are an eligible use of funds.

(L) Administration, Fees and Costs. Reasonable costs for administration, planning, technical assistance, and fees and costs, as established by the Cost Control and Safe Harbor Standards guidance dated April 9, 2003. These costs are limited to the costs of implementing the Transformation Plan, as specifically approved by HUD, such as fees for architectural and engineering work, program management (if any), and reasonable legal fees. You may not use Choice Neighborhoods Implementation Grant funds to pay for any implementation activities carried out on or before the date of the letter announcing the award of the Choice Neighborhoods Grant (December 13, 2012).

(M) Lobbying. The Grantee hereby certifies that no funds provided under this Grant Agreement will be expended for lobbying activities, as prohibited by Section 319 of Public Law 101-121 (which prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government), and implemented for HUD at 24 CFR part 87, as the same may be amended from time to time. The Grantee will disclose promptly any commitment or expenditure of non-appropriated funds for lobbying activities if those activities would be prohibited if paid with appropriated funds.

(O) Right of Return. Each tenant who wishes to return to the on-site or off-site replacement housing may return if the tenant was lease-compliant at the time of departure from the housing prior to relocation and continued to remain lease-compliant during the relocation period. A returning tenant shall be provided a preference for occupancy of on-site or off-site replacement units before such units are made available to any other eligible households, or the tenant may choose to retain tenant-based voucher assistance, subject to appropriations and availability, provided under section 8(o) of the United States Housing Act of 1937 for relocation from the properties revitalized under this Grant Agreement. These preferences are retained even if the resident has already received permanent relocation benefits. This preference remains available until the initial lease-up of the new units. Prior written approval for any new tenant-based

voucher assistance, including but not limited to Tenant Protection Vouchers, is required prior to Grantee obtaining voucher assistance.

(P) Site and Neighborhood Standards for Replacement Housing.

(1) Grantee's Election of Requirements. A Grantee, at its election, separately with regard to each site it proposes, will comply with the development regulations regarding Site and Neighborhood Standards (24 CFR § 941.202), or with the Site and Neighborhood Standards contained in this Article.

(2) Replacement Housing Located on Site or in the Target Neighborhood. Because the objective of the Choice Neighborhoods program is to alleviate distressed conditions at the targeted development and in the target neighborhood, replacement housing under Choice Neighborhoods that is located within the target neighborhood will not require approval by HUD under Site and Neighborhood Standards.

(3) Replacement Housing Located Outside of the Neighborhood.

(a) Replacement housing outside the target neighborhood must offer access to economic opportunities and public transportation and be accessible to social, recreational, educational, commercial, health facilities and services, and other municipal services and facilities that are comparable to those that will be provided in the target neighborhood.

(b) Replacement housing outside the target neighborhood shall be located neither in areas of minority concentration (defined as areas where the neighborhood's total percentage of minority persons is at least 20 percentage points higher than the total percentage of all minorities for the MSA as a whole) nor in areas with a poverty rate above 40 percent. The term "area of minority concentration" is any neighborhood in which:

1. The percentage of households in a particular racial or ethnic minority group is at least 20 points higher than the percentage of that particular minority group for the housing market area; i.e., the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located; or

2. The neighborhood's total minority percentage is at least 20 points higher than the total percentage of all minorities for the MSA as a whole; or

3. In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(Q) Research and Evaluation Cooperation.

HUD and its contractors shall perform research and evaluation activities on the Choice Neighborhoods program, including interviews with the Grantee and community, review of grantee documents and data, surveys of assisted households and neighborhood residents, and documentation of changing physical conditions in the buildings and neighborhood. The Grantee shall make all reasonable efforts to cooperate with HUD and its contractors in carrying out these

activities, including but not limited to facilitating interviews of Grantee's staff and partners, providing HUD's contractor with access to observe community meetings; to data systems, documents, and assisted and public housing residents; and to buildings for conducting physical inspections.

(R) Operation and Management Principle and Policies, and Management Agreement for PHAS.

Grantee must develop a Management Agreement that describes their operation and management principles and policies for their public housing units. Grantees and their procured property manager, if applicable, must comply (to the extent required) with the provisions of 24 CFR part 966 in planning for the implementation of the operation and management principles and policies described below.

(1) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(2) Instituting a system of local preferences adopted in response to local housing needs and priorities, e. g., preferences for victims of domestic violence, residency preferences, working families, and disaster victims. Note that local preferences for public housing must comply with Fair Housing requirements at 24 CFR 960.206. No preference should lead to disparate negative impact on any Fair Housing Act protected class;

(3) Lease requirements that encourage self-sufficiency by promoting involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(4) Implementing site-based waiting lists that follow project-based management principles for the redeveloped public housing. Note that site-based waiting lists for public housing must comply with Fair Housing requirements at 24 CFR 903.7(b)(2);

(5) Strictly enforcing lease and eviction provisions;

(6) Implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, etc. to improve the safety and security of residents;

(7) Enhancing ongoing efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with federal, state, and local crime prevention programs and entities.

ARTICLE V. Changes to the Transformation Plan

(A) Changes Requiring Prior HUD Approval. If the following activities in the application are to be modified or amended, the Grantee must request and obtain prior written HUD approval:

(1) the Program Schedule. The Grantee must inform HUD immediately, in writing, of any problems, delays or adverse conditions that will impair materially the Grantee's ability to comply

with the Program Schedule, and include a statement of action taken, or proposed to be taken, and any assistance needed to resolve the situation. HUD must approve any proposed changes to the Program Schedule that would modify any date or time period.

- (2) the form of program oversight or governance;
- (3) the overall strategy for community involvement;
- (4) the approved disposition;
- (5) the approved demolition;
- (6) the total number of housing units to be developed or rehabilitated, whether or not there is an associated budgetary revision requiring prior approval;
- (7) changes in any Choice Neighborhoods Budget or phase budget that propose an increase or decrease in any line item, except as permitted by Article VI;
- (8) an extension of the period of availability of the Choice Neighborhoods Grant funds provided under this Grant Agreement, not to go beyond the statutory timeframes;
- (9) changes in the entities or individuals, including any key partners specified in the Transformation Plan as having key responsibilities for carrying out the Transformation Plan (or any component(s) of the Transformation Plan). Subgranting, subcontracting or otherwise obtaining the services of a third party to perform activities that are central to the purposes of the Transformation Plan will constitute such a change in entities or individuals; and
- (10) changes requested by a subgrantee that relate to any of the itemized categories listed in paragraph (A) of this Article.

(B) **Changes Requiring Grant Agreement Amendment.** For the following types of revisions to the Transformation Plan, the Grantee must submit a written request to HUD and must receive HUD's written authorization prior to making any such changes:

- (1) change in the total dollar amount of the grant; and/or
- (2) change in the Development for which funds provided under this Grant Agreement are made available.

Upon HUD's written approval, the change will be implemented by the execution of an amendment to this Grant Agreement, and shall consist of a revised Form HUD-1044 if there is a change in the dollar amount of the grant.

(C) **Waiver Requests.**

(1) **Standard for Approval.** The activities to be conducted under this Grant Agreement are subject to the terms of this Grant Agreement and the Choice Neighborhoods Requirements. Nevertheless, HUD seeks innovative solutions under the Choice Neighborhoods Program to the long-standing problems of severely distressed public and assisted housing developments located in neighborhoods of concentrated poverty, and will consider granting a waiver of specific regulatory requirements, provided that:

- (a) such a waiver would be consistent with applicable statutory requirements; and
- (b) the Grantee is able to demonstrate good cause to support HUD's granting of such a waiver.

(2) **Waiver Request Procedure.** If the Grantee wants HUD to approve a waiver of a regulatory requirement, it must submit a request with sufficient information and justification to enable HUD to make a determination of good cause for granting any such request to deviate from existing regulations. Until such time as the Grantee requests and HUD, in its discretion, approves any such requests in writing, the Grantee does not have authority to implement the activities described in the Choice Neighborhoods Application to which the request for approval applies (or for which a request for approval is needed).

ARTICLE VI. Choice Neighborhoods Budget and Funding Requests

(A) **Budget.** The Grantee must ensure that funds provided under this Grant Agreement are expended in accordance with the Choice Neighborhoods Requirements and a Choice Neighborhoods Budget. Each Grantee must submit to HUD for approval a Choice Neighborhoods Budget as part of the Post Application Submissions. The Choice Neighborhoods Budget allocates ALL Choice Neighborhoods Grant funds into Budget Line Items. The Choice Neighborhoods Budget will serve as the primary budget and may be subject to revision.

(B) **Budget Form.** Each budget submitted in accordance with paragraph (A) of this Article must be submitted on the Choice Neighborhoods Budget Form (form HUD-53236). Part I must be signed and dated by the Lead Grantee, and Part II must include a detailed description of the uses of the funds. Grantees should also track their leveraged fund expenditures and maintain this information on file should HUD request it.

(C) **Pre-Grant Agreement Execution Costs.** After the execution of this Grant Agreement, the Grantee may include in its Choice Neighborhoods Budget, and the Lead Grantee may draw down funds for, costs that were incurred prior to execution of this Grant Agreement, provided that such costs:

- (1) were incurred after the date of HUD's notification letter awarding this Choice Neighborhoods Implementation Grant to the Grantee (December 13, 2012);
- (2) are directly associated with the activities to be funded under this Choice Neighborhoods Grant; and

(3) are approved as reasonable and eligible by HUD.

(D) Predevelopment Costs.

(1) Funding Requests. The Grantee may request a Choice Neighborhoods Grant funds for predevelopment costs by submitting the Choice Neighborhoods Budget to HUD. Funds may be drawn down for eligible Predevelopment Costs (as defined in subparagraph (2) below), subject to receiving HUD approval and the requirement for an environmental review under Article VII(B), in accordance with the provisions of this Grant Agreement.

(2) Eligible Predevelopment Costs. Eligible predevelopment costs ("Predevelopment Costs") may include funds for:

(a) administration costs related to having additional and/or existing staff work on the Choice Neighborhoods Grant;

(b) fees and costs related to procuring goods and services from third parties in connection with eligible predevelopment activities such as architectural and engineering (A&E) fees;

(c) resident relocation;

(d) supportive services costs, including costs dedicated to case management and services;

(e) costs associated with carrying out environmental reviews, in accordance with 24 CFR § 58.23; and

(f) site remediation and demolition costs, provided that HUD has notified the Grantee in writing of the approval.

(3) Predevelopment Funds. Upon review and approval of the Choice Neighborhoods Budget as described in Article VI, HUD will make the approved predevelopment funds available to the Grantee for drawdown in LOCCS. The Grantee will ensure that the funds are expended in conformance with the HUD-approved Predevelopment Budget.

(E) Program Income. Unless otherwise approved by HUD in accordance with 24 CFR § 85.25, if the Grantee receives program income:

(1) prior to grant closeout (e.g., from repayment of loans or sale of homeownership replacement units) the program income:

(a) must be reinvested in the Development or neighborhood and used for Choice Neighborhoods eligible purposes, unless otherwise approved by HUD; and

(b) must be used for eligible activities authorized under this Grant Agreement before the Grantee may draw down additional cash payments from the Choice Neighborhoods Grant.

(2) after grant closeout (e.g., from repayment of loans or sale of homeownership replacement units) the program income must be reinvested in the Development or neighborhood and used for Choice Neighborhoods eligible purposes. Before the grant is closed out, Grantee will provide HUD a plan for how program income will be reinvested in perpetuity, in a form and substance that is acceptable to HUD.

ARTICLE VII. Project Drawdowns

(A) LOCCS Payment System. Notwithstanding any contrary provisions of 24 CFR § 85.21, the Lead Grantee will request all drawdowns of Choice Neighborhoods Grant funds under the Line of Credit Control System (e-LOCCS), unless and until another payment system is designated by HUD. The Lead Grantee will comply with all rules, guidelines, and notices established for Choice Neighborhoods under LOCCS, or any substitute system, in connection with any drawdown of Choice Neighborhoods Grant funds. If HUD designates a different payment system, it will be based upon the provisions of section 85.21 (subject to the provisions of Article XVI (D)).

(B) Drawdowns.

(1) The Lead Grantee may draw down Choice Neighborhoods Grant funds for a Budget Line Item (BLI) in an amount up to 100 percent of the amount of that BLI that HUD has approved and made available for drawdown.

(2) Any request for funds in excess of ten (10) percent of the entire grant amount in any month must be approved by HUD.

(C) Drawdown Consequences of Default.

(1) Withholding of Payments. HUD may withhold payments in accordance with 24 CFR § 85.21(g).

(2) Grantee Representations. Each drawdown request by the Lead Grantee will constitute, and be deemed to be, a representation that the Grantee is not in default under this Grant Agreement (except as the Grantee previously may have disclosed to HUD in writing).

(3) Overdue Reports. HUD may elect to suspend draws under this Grant Agreement during any period in which the Grantee has failed to file with HUD any quarterly report.

ARTICLE VIII. Matching and Leveraged Funds

(A) Match Requirements.

(1) Grantee must have secured a match in the amount of 5 percent of the grant amount in cash or in-kind donations.

(2) **Additional Supportive Services Match.** The lesser of that provided for in your Transformation Plan or up to 15 percent of the Choice Neighborhoods grant may be used for supportive services activities. However, if the Grantee is using more than 5 percent of the grant funds for supportive services activities, funds (cash or in-kind donations) from sources other than Choice Neighborhoods must be secured for the amount between 5 and 15 percent of the grant that Grantee will use for supportive services activities. These resources must be NEW commitments in order to be counted for match.

(B) **Match Donations and Leverage Resources.** Grantee shall keep documentation on matching and leveraged funds during the term of this Grant Agreement and shall provide this documentation in a format acceptable to HUD upon request by HUD, until the closeout of this grant. The documentation should show that the funds are secured and the Grantee should keep records showing how those funds have been expended over time.

ARTICLE IX. Subgrantees and Contractors

(A) **General Grantee Responsibilities.**

(1) **Implementation Team.** The Grantee agrees to promptly assemble a competent implementation team, if you have not already, to assist in working with the Grantee's partners and coordinating all phases of the implementation process.

(2) **Choice Neighborhoods Requirements.** The Grantee shall ensure that any entity to which it makes grant funds available will comply with the Choice Neighborhoods Requirements.

(3) **Required Certifications.**

(a) The Grantee must ensure that all subgrantees and contractors execute an original document in the form of Exhibit A or B, as appropriate, to this Grant Agreement at the time the Grantee executes any contract with any subgrantee or contractor to provide goods or services under this Grant Agreement. The Grantee will retain the executed original certificate together with the executed contract documents.

(b) The Grantee must ensure that the requirements contained in the General Conditions for Non-Construction Form (Form 5370-C) are included in any solicitation in connection with non-construction contracts that will be made by the Grantee and paid for with assistance under this Grant Agreement. Such conditions must also be included in any non-construction contract entered into by the Grantee.

(B) **Administrative Requirements for PHA, Government and Nonprofit Grantees.**

(1) **Administrative requirements applicable to Grantees that are public housing authorities or local governments are:**

- (a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR part 941 or successor part, relating to the procurement of partners in mixed finance developments;
 - (b) 2 CFR 225 (Cost Principles for State, Local and Indian Tribal Governments); and
 - (c) 24 CFR 85.26 (audit requirements).
- (2) Administrative requirements applicable to nonprofit organizations are:
- (a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations, 2 CFR Part 215);
 - (b) OMB Circular A-122 (2 CFR Part 230, Cost Principles for Nonprofit Organizations); and
 - (c) 24 CFR 84.26 (audit requirements).
- (3) Non-profit instrumentalities of state or local governments are subject to 24 CFR Part 85 because of the degree of control exercised by the governmental bodies over the instrumentality non-profit entities.
- (4) Subgrant Agreements
- (a) Grantee Responsibilities Regarding Subgrantees. Grantees will be responsible for:
 - (i) ensuring that subgrantees are aware of the requirements imposed upon them by Federal statutes, regulations, and this Grant Agreement;
 - (ii) ensuring that all subgrant agreements between Choice Neighborhoods Grantees and non-profit subgrantees contain all the provisions required by 24 CFR § 84.48 and Appendix A to Part 84;
 - (iii) ensuring that subgrant agreements include any clauses required by Federal statutes and executive orders, and their implementing regulations; and
 - (iv) monitoring subgrantees' performance to ensure compliance with the Choice Neighborhoods Requirements.
 - (b) State or Local Subgrantee Requirements. State or local government subgrantees are subject to, and required to comply with, the Administrative requirements at 24 CFR part 85 ("Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments") and the cost principles of 2 CFR 225 ("Cost Principles for State, Local and Indian Tribal Governments").
 - (c) Nonprofit Subgrantee Requirements. Nonprofit subgrantees are subject to, and required to comply with, the provisions and standards set forth in the regulations at 24 CFR part 84

("Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations" or the "Nonprofit Administrative Requirements") and OMB Circular A-122 ("Cost Principles for Nonprofit Organizations" or the "Nonprofit Cost Principles").

(5) Contractors and Subcontractors

(a) Grantee Responsibilities Regarding Contractors and Subcontractors. Grantees that are subject to 24 CFR part 85 as described in (B)(1) of this Article will be responsible for the following:

(i) For-Profit Entities. Obtain the services of a for-profit entity through a competitive procurement under 24 CFR part 85. However, if the Grantee can demonstrate to HUD that the services to be provided by the for-profit entity can be obtained only from that one source, the Grantee may request HUD approval to select the entity under a sole-source procurement in accordance with 24 CFR § 85.36(d)(4).

(ii) Consultant Services. Obtain consultant services provided under an independent contractor relationship according to the procurement requirements in 24 CFR § 85.36 and the principles of cost reasonableness contained in 2 CFR 225.

(b) Trigger for the Submission of Contracts. Contract documents must be submitted to HUD for prior approval if required or requested by HUD under 24 CFR § 85.36 or 84.44. Any modification of such contracts is also subject to HUD's written approval before execution.

(c) Debarred or Suspended Parties. Prior to executing any contract, Grantees which are local governments or PHAs will comply with, and ensure compliance with, 24 CFR § 85.35 and 24 CFR part 24, which prohibit the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

(d) Minority, Women's, and Resident-Controlled Business Enterprises. In accordance with Executive Orders 11246, 11625, 12432, and 12138, the Grantee will adopt the goal of awarding a specified percentage of the dollar value of the total of the Choice Neighborhoods contracts to be awarded as a result of this grant to minority business enterprises and take appropriate affirmative action to assist resident-controlled and women's business enterprises.

(6) Administrative Requirements. Administrative requirements applicable to for-profit organizations under contract with a Grantee subject to 24 CFR part 85 as described in (B)(1) of this Article are 48 CFR part 31 (contract cost principles and procedures).

(C) Administrative Requirements for Non-profit Grantees

(1) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(2) 48 CFR part 31 (contract cost principles and procedures); and

(3) 24 CFR 84.26 (audit requirements). The audit requirements of HUD for for-profit grantees for the purpose of this grant are an audit that complies with Generally Accepted Accounting Principles and that is completed once a year. An audit that complies with A-133 is optional but not required.

ARTICLE X. No Third Party Rights

The Grantee and HUD are the sole parties to this Grant Agreement and do not intend to create any third party beneficiaries to this Grant Agreement. Nothing in this Grant Agreement may be construed as conferring the status of third party beneficiary upon the residents; and in no event shall any entity other than the Grantee have direct rights to the Choice Neighborhoods funds provided for under this Grant Agreement.

ARTICLE XI. Conflict of Interest

(A) Prohibition. The Grantee shall comply with the conflict of interest requirements in 24 CFR part 85. No person who is an employee, agent, officer, or elected or appointed official of the Grantee or member of his immediate family and who exercises any functions or responsibilities with respect to activities assisted under this Choice Neighborhoods Grant may have a direct interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder.

(B) HUD-Approved Exception.

(1) Standard. HUD may grant an exception to the prohibition in paragraph (A) of this Article on a case-by-case basis when it determines that such an exception will serve to further the purposes of Choice Neighborhoods and its effective and efficient administration.

(2) Procedure. HUD will consider granting a regulatory waiver only after the Grantee has provided a written request which provides a disclosure of the nature of the conflict, accompanied by:

(a) an assurance that there has been public disclosure of the conflict;

(b) a description of how the public disclosure was made; and

(c) an opinion of the Grantee's attorney that the interest for which the exception is sought does not violate State or local laws.

(3) Consideration of Relevant Factors. In determining whether to grant a requested exception under paragraph (B) of this Article, HUD will consider the cumulative effect of the following factors, where applicable:

(a) whether the exception would provide a significant cost benefit or an essential degree of expertise to the Transformation Plan that would otherwise not be available;

- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a group or class intended to be the beneficiaries of the Transformation Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (d) whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;
- (e) whether the interest or benefit was present before the affected person was in a position as described in paragraph (A) of this Article;
- (f) whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (g) any other relevant considerations.

ARTICLE XII. Reporting Requirements

(A) Quarterly Report.

(1) The Grantee will submit to HUD a Quarterly Report as prescribed by HUD 15 calendar days after the end of each quarter, with the first report due April 15, 2013. In the Quarterly Report the Grantee will report at a minimum the progress of their grant, including but not limited to progress against their schedule and budget, expenditures to date, a narrative statement on their progress, progress on priority outcomes as described in the Choice Neighborhoods Implementation NOFA, progress against the priority metrics identified by HUD, and description of financing secured to date for implementation. The Grantee should also include, as appropriate, best practices and lessons learned from the date of the prior Quarterly Report. The Quarterly Reports must be submitted until the Transformation Plan is complete.

(2) Failure to submit to HUD a timely Quarterly Report will result in a suspension of Choice Neighborhoods Grant funds in LOCCS until such time as the report is received and approved by HUD, and/or any other default remedy authorized by Article XIV.

(B) Obligations and Expenditures. The Grantee must enter cumulative obligation and expenditure data into LOCCS by the due dates established by HUD, whether or not there has been any change in the cumulative amounts since the end of the last quarter.

(C) Additional Information Requests. Subject to paragraph (D) of this Article, the Grantee will comply with all other reporting requirements from time to time established by HUD, in its sole discretion, in connection with the Choice Neighborhoods Program. The Grantee will:

- (1) fully cooperate with all reasonable information gathering requests made by HUD or contractors of HUD in the course of authorized evaluations of the Choice Neighborhoods Program; and
 - (2) submit a final report on grant funds by 90 days after the last funded activity, in the form prescribed by HUD.
 - (3) submit a final Transformation Plan report when the Transformation Plan has been completed that details the number of units produced, the status of people outcomes, and any other metrics that HUD prescribes.
- (D) **Additional Requirements.** The Grantee agrees to comply with all other terms and conditions HUD may establish to administer, monitor, or evaluate the Choice Neighborhoods Program in an effective and efficient manner. Notwithstanding the foregoing, however, except as provided in Article XIV, HUD hereafter will not establish any additional terms and conditions without:
- (1) consideration of the burden imposed on the Grantee by such conditions or requirements;
 - (2) consideration of the availability of less burdensome conditions or requirements; and
 - (3) in the case of a term or condition applicable solely to the Grantee, consulting in advance with the Grantee.

ARTICLE XIII. Technical Assistance

- (A) **Site Visits.** The Grantee acknowledges and agrees that HUD, or its designees, may conduct site visits and inspections as deemed necessary by HUD based upon the Grantee's needs in implementing the Transformation Plan or the needs of the Choice Neighborhoods Program. Technical assistance site visits may be provided by HUD or its designees:
- (1) in response to requests from the Grantee; or
 - (2) based upon demonstrated needs of the Choice Neighborhoods Program; or
 - (3) as provided in paragraph (B) of this Article.
- (B) **HUD Assessment.** HUD representatives will visit the site and make an assessment of any technical assistance and/or training that the Grantee may require for the implementation of the Transformation Plan. HUD will consult with the Grantee in determining the Grantee's specific technical assistance and training needs and will carry out subsequent on-site assessments as necessary.
- (C) **Technical Assistance Provider.** If HUD determines, in its discretion, that technical assistance and/or training is necessary for the implementation of the Transformation Plan, it will assign a technical assistance provider to work with the Grantee for this purpose.

(D) **Grantee Training/Technical Assistance.** The Grantee agrees to use its best efforts to attend any training and to accept any technical assistance provided or sponsored by HUD.

ARTICLE XIV. Unsatisfactory Performance/Default

(A) In accordance with Section 24(i) of the 1937 Act, if the Grantee defaults under this grant agreement, HUD may withdraw any unobligated grant amounts and may pursue other actions as described in this Article. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for Choice Neighborhoods assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Transformation Plan of the original Grantee. This section applies to all Grantees regardless of their status as a government, PHA, for-profit, or other entity.

(B) **Default.** Each of the following events or occurrences, to the extent it constitutes a material breach or occurrence, may constitute a default by the Grantee under this Grant Agreement, as determined by HUD in its sole discretion:

- (1) use of funds provided under this Grant Agreement for any purpose, in any manner or at any time, other than as authorized by this Grant Agreement;
- (2) failure to comply with the Choice Neighborhoods Requirements or any other Federal, State, or local laws, regulations or requirements applicable in creating the Transformation Plan;
- (3) failure to make any submission under Article III, perform any obligation, or otherwise fail to proceed in a manner consistent with the Transformation Plan, (including, without limitation, failure to accomplish an activity by the date specified in the Program Schedule);
- (4) any material misrepresentation in any of the required submissions, including, without limit, any misrepresentations in any of the submissions required by Article III(B); or
- (5) failure to comply with, or any material breach of, any other requirements, conditions or terms of this Grant Agreement.

(C) **Notice of Default and Action(s) to Cure.**

(1) **General.** HUD will give the Grantee written notice of any default. The notice will give the Grantee the opportunity to cure such default within 30 days of the date of the notice, or to demonstrate within this time period, by submitting substantial evidence satisfactory to HUD, that it is not in default. If the default is not able to be cured within the 30-day period, the Grantee will demonstrate, to HUD's satisfaction, that the Grantee has taken actions necessary to cure the default and that the default is curable within 90 days from the date of the default notice. Additionally, the Grantee must agree to carry out such cure diligently and to complete the cure within the 90-day period.

(2) **Immediate Default.** Notwithstanding the provisions of paragraph (C)(1) of this Article, HUD in its sole discretion may place the Grantee into immediate default for not being in

compliance with its Program Schedule or for non-compliance with Choice Neighborhoods requirements once written notification of default has been provided to the Grantee. At that time, HUD may immediately begin imposing consequences of default, including specifically the suspension of draws of the Choice Neighborhoods grant.

(3) **Imminent Threat.** Notwithstanding the provisions of subparagraph (C)(1) of this Article concerning the opportunity to cure defaults, if HUD reasonably determines that there is an imminent threat that the Grantee will expend additional Choice Neighborhoods Grant funds in violation of the provisions of this Grant Agreement, HUD may implement the remedial action provided for under subparagraph (C)(4)(d) of this Article to prevent any such unauthorized expenditure until such time as the Grantee has complied with the cure provisions set forth above. HUD will implement such remedial action by written notice set forth either in the notice of default given under paragraph (C)(1) of this Article or by subsequent written notice to the Grantee. An imminent threat is not an immediate default.

(4) **Consequences of Default.** If the Grantee fails to cure all defaults specified in the notice of default within the time periods set forth in paragraph (C)(1) of this Article, or fails to diligently pursue or complete any cure as provided in paragraph (C)(1), HUD may take any of the following remedial actions, upon written notice to the Grantee:

- (a) requiring a Grantee in default to provide evidence to HUD of acceptable performance over such period of time as specified by HUD and to obtain written approval from HUD to proceed to the next phase of activities;
- (b) requiring additional, more detailed financial reports;
- (c) requiring additional project monitoring;
- (d) requiring the Grantee (or subgrantee) to obtain technical or management assistance;
- (e) establishing additional prior approvals; and
- (f) require the Grantee, within a time period established by HUD, to prepare a revised Program Schedule, obtain HUD's approval thereto, and follow such revised Program Schedule to complete the activities under the Grant Agreement;
- (g) require the Grantee, within a time period established by HUD, to revise any activity under the Grant Agreement in order to successfully complete the activities under the Grant Agreement in a manner satisfactory to HUD, including, without limitation, exclusion or revision of affected activities, revision of the Choice Neighborhoods Budget as necessary, and substitution of other eligible activities;
- (h) require submission of additional documentation before any additional request for funds will be approved;

- (i) temporarily suspend the Grantee's authority to draw down Choice Neighborhoods Grant funds for affected activities, or at HUD's sole discretion for all activities, pending action to cure the defaults;
 - (j) disallow use of Choice Neighborhoods Grant funds for all or part of the cost of the activity or action not in compliance;
 - (k) recover amounts determined by HUD to have been improperly expended, including any property obtained by the Grantee with such grant funds;
 - (l) require reimbursement by the Grantee for Choice Neighborhoods Grant funds determined by HUD to have been improperly expended;
 - (m) make arrangements satisfactory to HUD, in its sole discretion, for use of an entity other than the Grantee to carry out activities assisted under the Grant Agreement, including requiring the Grantee to assign any outstanding contracts obligating grant funds to another entity.
- (5) Additional Enforcement Actions. If HUD determines that the remedial actions taken by HUD under paragraph (C)(4) of this Article have not been effective in curing the default, or if the Grantee has not complied with the requirements imposed by HUD under paragraph (C)(4) and has not otherwise cured the default, or if HUD exercises its discretion under subparagraph (C)(2) of this Article to institute any of the following actions, HUD may take any of the following remedial or enforcement actions (in addition to any of the remedies permitted under paragraph (C) of this Article upon written notice to the Grantee):
- (a) reduce the Choice Neighborhoods Grant in the amount affected by the default;
 - (b) terminate the Choice Neighborhoods Grant as to all further activities and initiate closeout procedures;
 - (c) recapture any Choice Neighborhoods Grant funds not obligated by the Grantee.
- (i) If the basis for the Grantee's default is its failure to comply with the reasonable time periods established by HUD under Article III(C), HUD shall, in accordance with section 24(i) of the 1937 Act, and unless otherwise approved by HUD under paragraph (C)(3) of this Article, recapture any Choice Neighborhoods Grant funds not obligated by the Grantee.
 - (ii) If the Grantee fails to comply with the reasonable time periods established in Article III(C), HUD may take into account whether factors beyond the Grantee's control are the cause of the delay.
- (d) take action against the Grantee under 24 CFR part 24 and Executive Order 12549 with respect to future HUD or Federal grant awards; and
 - (e) take any other available legal or equitable remedial action, including, but not limited to, any remedial actions available under a PHA's ACC and/or premised on HUD's interest in the

housing development established in the relevant Declaration of Trust or Declaration of Restrictive Covenants or housing assistance contract, as applicable.

(6) Delinquent Federal Debts. Consistent with the purposes and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), Grantees with an outstanding federal debt must provide to HUD a negotiated repayment schedule which is not delinquent or have made other arrangements satisfactory to HUD. If arrangements satisfactory to HUD cannot be completed within 90 days of notification of selection, HUD will not make an award of funds to the Grantee, but offer the award to the next eligible Grantee. Applicants selected for funding, or awarded funds, must report to HUD changes in status of current agreements covering federal debt. If a previously agreed-upon payment schedule has not been adhered to or a new agreement with the federal agency to which the debt is owed has not been signed, the Grantee will be considered to be in default under this Agreement.

ARTICLE XV. Project Close-Out

(A) Termination of Disbursements Letter. Within 90 days after completion of all grant funded activities, the Grantee will initiate close-out, in accordance with procedures established by HUD, by submitting a Termination of Disbursements letter, which states that:

- (1) The Grantee has completed all activities to be performed using Choice Neighborhoods Implementation Grant funds.
- (2) All requirements of the Grant Agreement have been met.
- (3) All obligated Choice Neighborhoods grant funds have been disbursed; and
- (4) The Grantee will abide by any continuing Federal requirements;

At HUD's option, the Grantee may delay initiation of close-out until the resolution of any HUD monitoring findings. If HUD exercises this option, the Grantee must promptly resolve the findings.

(B) Preliminary Closeout Materials. The Grantee must submit the following Preliminary Close-Out Materials along with the Termination of Disbursements Letter:

- (1) Final Choice Neighborhoods Budget;
- (2) Final Financial Status Report (Form SF-269-A), which contains a cumulative summary of all expenditures and indicates the balance of unexpended funds.
- (3) Actual HOPE VI Cost Certificate (Cost Certificate) (Form HUD-53001-A), or a Choice Neighborhoods successor form if created, which summarizes the information on the Financial Status Report and serves as the document that officially closes out the grant.

(C) HUD Review of Preliminary Close-Out Materials. HUD will review Preliminary

Close-Out Materials to confirm that:

(1) The amounts on the final Choice Neighborhoods Budget and Cost Certificate agree as to funds approved, obligated and expended.

(2) The amount of funds approved and disbursed on the Cost Certificate agrees with HUD records in LOCCS.

(3) If HUD disbursed more funds than the Grantee expended, the Grantee will immediately remit to HUD the excess funds, without waiting for completion of the final audit.

(D) Final Audit. Following HUD approval of the Preliminary Close-Out Materials, the Grantee must conduct a final audit of the Implementation Grant in accordance with the requirements of 24 CFR 85.26 and forward the audit to HUD for approval.

(E) Cost Certificate. Upon receipt of the final audit, the designated HUD official will execute the Cost Certificate once HUD determines to its satisfaction that:

(1) the expenditure of funds provided under this Grant Agreement was allowable and reasonable, as determined by the final audit;

(2) the activities to be completed using Choice Neighborhoods Grant funds were completed, as required by the Grant Agreement; and

(3) all Federal requirements, were satisfied.

(F) Final Close-Out. Following execution of the Cost Certificate, any funds remaining in the Implementation Grant will be recaptured by HUD. A Post-Audit Date will be entered into LOCCS and the grant will be closed.

(G) Close-Out Procedures on the Choice Neighborhoods website. Grantees must follow the detailed Close-Out Procedures for the Choice Neighborhoods program, as posted to the Choice Neighborhoods website, including procedures for the Final Choice Neighborhoods Close-Out Approval.

ARTICLE XVI. Grant Award Date

The Grant Award Date is December 13, 2012. Except for Quarterly Reports, which are due according to the dates in Article XII, all deliverables in the Grant Agreement are based on the Grant Award Date.

ARTICLE XVII. Funding Obligation Date, Date of Funding Availability and Effective Date

The date of obligation of the funding to the Grantee under this Grant Agreement is the date HUD signed the form HUD-1044. The date of fund availability for this Grant Agreement is

the date that the Lead Grantee signs the 1044. The effective date of the Grant Agreement is the date that HUD signs the signature page of the Grant Agreement (See Article XIX).

ARTICLE XVIII. Points of Contact

Any correspondence related to this Grant Agreement should be directed to the following points of contact for HUD, the Lead Grantee, and any other Grantees:

For the U.S. Department of Housing and Urban Development:

Dominique Blom
Deputy Assistant Secretary, Office of Public Housing Investments
U.S. Department of Housing and Urban Development
451 7th Street, SW Room 4130
Washington, D.C. 20410

For the Lead Grantee:

Ms. Lorraine Robles
Assistant Director
San Antonio Housing Authority
818 South Flores
San Antonio, TX 78204-1430

Article XIX. Signature Page.

Ms. Lourdes Castro-Ramirez
President and Chief Executive Officer
San Antonio Housing Authority

Sandra B. Henriquez
Assistant Secretary, Public and Indian Housing
U.S. Department of Housing and Urban Development

Date

Appendix A

Additional statutory, regulatory, and other requirements with which Grantee must comply as applicable include:

1. OMB Circulars A-102, A-110, A-87, A-122 are applicable to the availability of using federal funds for matching.
2. Fair Housing Certifications, as the same maybe amended from time to time, and any additional Fair Housing requirements that may become applicable:
 - (A) the Fair Housing Act (42 U.S.C. §§ 3601-19) and regulations pursuant thereto 24 CFR part 100;
 - (B) Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR part 107);
 - (C) the fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 108);
 - (D) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and regulations pursuant thereto (24 CFR part 1) relating to nondiscrimination in housing;
 - (E) the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 CFR part 146);
 - (F) the prohibitions against discrimination on the basis of disability, including requirements that the Grantee make reasonable modifications and accommodations and make units accessible, under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and regulations issued pursuant thereto (24 CFR part 8);
 - (G) the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and its implementing regulation at 28 CFR part 36; and
 - (H) the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151) and regulations issued pursuant thereto (24 CFR part 40).
 - (I) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a Grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any Federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, email and web pages) facsimile machines, copiers and telephones. When developing, procuring, maintaining or using EIT, grantees must ensure that the EIT allows:
 - (1) Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

(2) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data and comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

3. Finance and Accounting

(A) **Commingling of Grant Funds.** The Grantee agrees that, in its recordkeeping, it will not commingle Choice Neighborhoods Grant funds with funds from any other sources including, but not limited to, other HUD program funds or funds from other Federal, State or local government agencies. (Such other funds may be used to carry out the Transformation Plan, so long as they are not commingled in the Grantee's recordkeeping.)

(B) **Duplication of Funding.** The Grantee will ensure that Choice Neighborhoods Grant funds are not used to duplicate work that is funded with any other HUD funds, funds from any other Federal program, or from any other funding source identified under the Transformation Plan, and will establish controls to assure non-duplication of funding.

4. Recordkeeping

(A) **Recordkeeping Authorities.** The Grantee will comply with and be subject to all Federal recordkeeping requirements, including, but not limited to:

(1) the retention and access requirements for records under 24 CFR § 85.41, or 84.46 and 84.53;

(2) the non-Federal audit requirements under 24 CFR § 85.26 or 84.26; and

(3) the requirements of 24 CFR § 85.20 or 84.21 that facilitate an effective audit to determine compliance with program requirements.

(B) **Recordkeeping Requirements.** Grantees must retain records in accordance with the requirements of paragraph (A) above, including, but not limited to:

(1) the amount and disbursement of funds received under this Choice Neighborhoods Grant, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) the amount and nature of any other assistance, including cash, services, or other items contributed to assist in the development of the Transformation Plan or contributed as a condition of receiving this Choice Neighborhoods Grant;

(3) any other proceeds received for, or otherwise used in connection with, the Transformation Plan; and

(A) **Access to Records.** For the purpose of audit, examination, monitoring, and evaluation, the Grantee will give HUD (including any duly authorized representatives and the Inspector General) access, and will ensure that any participating party will give HUD such access, to any books, documents, papers, and records of the Grantee, or such participating party, that are pertinent to assistance received under this Choice Neighborhoods Grant or under the Transformation Plan, including all records required to be kept by paragraph (B) above.

5. Reporting

(A) **Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282) (Transparency Act), as amended.**

(1) **Recipient Reporting to Meet the Requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended.**

a. **Prime Awardee Reporting.** Prime recipients of HUD financial assistance are required to report subawards in the federal government-wide website www.fsrs.gov or its successor system. Starting with awards made October 1, 2010 prime financial assistance awardees receiving funds directly from HUD are required to report subawards and executive compensation information both for the prime award and subaward recipients, including awards made as pass-through awards or awards to vendors, where both the initial award is \$25,000 or greater or the cumulative award will be \$25,000 or greater if funded incrementally as directed by HUD in accordance with OMB guidance. If subaward recipients' executive compensation is reported through the Central Contractor Registration (CCR) system, the prime recipient is not required to report this information. The reporting of award and subaward information is in accordance with the requirements of Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252, hereafter referred to as the "Transparency Act" and OMB Guidance issued to the Federal agencies on September 14, 2010 (75 FR 55669) and in OMB Policy guidance. The prime awardee will have until the end of the month plus one additional month after a subaward or pass-through award is obligated to fulfill the reporting requirement. Prime recipients are required to report the following information for applicable subawards. This information will be displayed on a public government website pursuant to the Transparency Act.

1. Name of entity receiving award;
2. Amount of award
3. Funding agency;
4. North American Industry Classification System (NAICS) code for contracts/CFDA program for financial assistance awards;
5. Program source;
6. Award title descriptive of the purpose of the funding action;
7. Location of the entity (including Congressional district);
8. Place of Performance (including Congressional district);
9. Unique identifier of the entity and its parent; and
10. Total compensation and names of top five executives.

For the purposes of reporting into the FFATA Sub-award Reporting System (FSRS) reporting

site, the unique identifier is the DUN and Bradstreet Universal Numbering System (DUNS) number the entity has obtained from Dun and Bradstreet, and for Prime awardees the DUNS number registered in the Central Contractor Registration as required by HUD regulation 24 CFR 5.1004.

b. **Prime Grant Awardee Executive Compensation Reporting.** Prime awardees must also report in the government-wide website the total compensation and names of the top five executives in the prime awardee organization if:

1. More than 80 percent of the annual gross revenues are from the Federal government, and those revenues are greater than \$25 million annually; and
2. Compensation information is not readily available through reporting to the Securities Exchange Commission (SEC.)

c. **Subaward Executive Compensation Reporting.** Prime awardees must also report in the government-wide website the total compensation and names of the top five executives in the subawardees if:

1. More than 80 percent of the annual gross revenues are from the Federal government, and those revenues are greater than \$25 million annually; and
2. This required compensation information is not readily available through reporting to the Securities Exchange Commission (SEC). If the subaward recipient's executive compensation is reported through the Central Contractor Registration (CCR), the prime recipient is not required to report the information again.

d. **Transparency Act Reporting Exemptions.** The Transparency Act exempts any sub-awards less than \$25,000 made to individuals and any sub-awards less than \$25,000 made to an entity whose annual expenditures are less than \$300,000. Subawards with a cumulative total of \$25,000 or greater are subject to subaward reporting beginning the date the subaward total award amount reaches \$25,000. The Transparency Act also prohibits reporting of any classified information. Any other exemptions to the requirements must be approved by the Office of Management and Budget.

NOTE: For the purposes of FFATA reporting requirements, "prime grant awardee" includes awardees of capital advances for the Section 202 Housing for the Elderly and Section 811 Housing for Persons with Disabilities programs.

(B). **Compliance with Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417),** hereafter referred to as "Section 872." Section 872 requires the establishment of a government-wide data system – the Federal Awardee Performance and Integrity Information System (FAPIIS) - to contain information related to the integrity and performance of entities awarded federal financial assistance and making use of the information by federal officials in making awards. OMB is in the process of issuing regulations regarding federal agency implementation of section 872 requirements. A technical correction to this General section may be issued when such regulations are promulgated.

**For-Profit Subgrantee and Contractor
Certifications and Assurances**

The Department of Housing and Urban Development (HUD) requires that all for-profit Subgrantees and Contractors on HOPE VI projects sign this "Certifications and Assurances" form certifying that they will comply with the specific federal requirements described below. The parties who must sign a "Certifications and Assurances" form are defined below:

- **Subgrantees:** These are for-profit organizations to which the Housing Authority (Housing Authority or Grantee) has awarded a grant from the HOPE VI grant that the Housing Authority received from HUD. The subgrantee is accountable to the Housing Authority for the use of the funds provided, but the Housing Authority is ultimately accountable to HUD.
- **Contractors:** This includes any for-profit contractor, consultant, service provider, or supplier that the Housing Authority contracts with for goods or services on any HOPE VI project.

.....

Certification and Assurance: The subgrantee or contractor executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time, including adding appropriate provisions to all contracts between Grantee and for-profit Subgrantees or Contractors:

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
- (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
- (3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
- (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
- (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

The information contained in this certification is true and accurate, to the best of my knowledge.

Name of Subgrantee or Contractor	Name and Contract Number:	
Signature of Authorized Certifying Official:	Title:	Date:

WARNING: Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.

Return this form to:

Housing Authority Name _____

Address _____

City, State, Zip Code _____

**Non-Profit Subgrantee
Certifications and Assurances**

The Department of Housing and Urban Development (HUD) requires that all non-profit Subgrantees on HOPE VI projects sign this "Certifications and Assurances" form certifying that they will comply with the specific federal requirements described below. The parties who must sign a "Certifications and Assurances" form are defined below:

- **Subgrantees:** These are non-profit organizations to which the Housing Authority (Housing Authority or Grantee) has awarded a grant from the HOPE VI grant that the Housing Authority received from HUD. The subgrantee is accountable to the Housing Authority for the use of the funds provided, but the Housing Authority is ultimately accountable to HUD.

Certification and Assurance: The subgrantee executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time, including adding appropriate provisions to all contracts between Grantee and Subgrantees in accordance with 24CFR Part 84 and Appendix A to Part 84.

- 1) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- 2) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- 3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - i) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- ii) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
 - iv) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
- 4) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
 - 5) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A, as follows:
 - 6) Equal Employment Opportunity-All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - 7) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)-All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.
 - 8) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)-When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to

laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

- 9) Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)-Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 10) Rights to Inventions Made Under a Contract or Agreement- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.
- 11) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended-Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).
- 12) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

13) Debarment and Suspension (E.O.s 12549 and 12689)-No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

14) Drug-Free Workplace Requirements-The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

The information contained in this certification is true and accurate, to the best of my knowledge.

Name of Subgrantee	Name and Contract Number:	
Signature of Authorized Certifying Official:	Title:	Date:

WARNING: Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.

Return this form to:

Housing Authority Name _____

Address _____

City, State, Zip Code _____

EXHIBIT C
CHOICE PROGRAM PROVISIONS

ARTICLE I
RECORDS

- 1.01 The City and the College shall provide SAHA with a fully-executed copy of each contract entered into with each other, and entered into by the City or the College with each third-party service provider pursuant to this Agreement.
- 1.02 The City and the College shall keep all records related to the service provided under this Agreement for no less than three (3) years and make such records available for review by SAHA upon reasonable notice.

ARTICLE II
INSURANCE

- 2.01 In any contracts entered into by the City or the College under this Agreement, the City and the College shall include provisions requiring:
- a. All consultants, contractors, and subcontractors to maintain the insurance coverage limits which are sufficient to compensate SAHA and the City or the College for their respective interests with regard to any liability a third party may have due to the services provided.
 - b. SAHA shall be named as an additional insured on all insurance policies. The City and the College shall provide SAHA with copies of the completed Certificates of Insurance which Certificates shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. SAHA reserves the right to review the insurance requirements during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverage and limits when deemed necessary and prudent by SAHA's Risk Manager based upon changes in statutory law or court decisions. The City and the College will not allow any modifications to the insurance coverage through which SAHA may incur increased risks. SAHA may authorize the City or the College to modify or waive these requirements upon terms and conditions authorized in writing by SAHA.
 - c. The College shall require any subcontractors and service providers to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of SAHA and the City or the College.
 - d. The College shall require in any contracts with third party providers of services an indemnification of SAHA and the College, their officials, employees, and agents from all claims by third parties.
- 2.02 The College will procure, pay for, and maintain during the term of this Agreement comprehensive general liability insurance coverage of ONE MILLION DOLLARS

(\$1,000,000.00), aggregate coverage. In addition, the College shall maintain ONE MILLION DOLLARS (\$1,000,000.00) errors and omissions insurance coverage. The College shall also maintain commercial/business automobile liability insurance coverage with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000.00), each occurrence, with respect to vehicles owned, hired, and non-owned vehicles assigned to, or used in the performance of the work of the College under this Agreement.

- a. The College shall name SAHA as an additional insured for its comprehensive general liability coverage and its automobile liability coverage. The City and the College shall provide SAHA with Certificates of Insurance coverage prior to the execution of this Agreement evidencing that the required coverage has been obtained.
- b. The College shall provide and maintain, at its expense, Worker's Compensation Insurance, as required by law, with a waiver of subrogation in favor of SAHA, and agree to provide a Certificate of Insurance upon execution of this Agreement.
- c. The College shall provide SAHA with thirty (30) days written notice of cancellation or material change to its policies.

2.03 Prior to commencement of work pursuant to this Agreement, the College shall each execute and deliver to SAHA the form of Certifications and Assurances attached as Exhibit B to the HUD Choice grant agreement.

ARTICLE III

NON-DISCRIMINATION REQUIREMENTS

3.01 The College shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances, including, but not limited to: the Civil Rights Act of 1964, 42 USC 2000 et seq., as amended, and all regulations promulgated thereunder. The City and the College shall particularly remain in compliance at all times with: Executive Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 USC 200(e) note, as amended by Executive Order 11,375, 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 USC 6101-6106 (1989); Rehabilitation Act of 1973, 29 USC 793-794 (1988); Fair Housing Amendments Act, 42 USC 3601 et seq. (1988); Americans with Disabilities Act of 1990, 42 USC 2101 and 41 CFR Part 60, et seq. (1990).

3.02 In the performance of this Agreement, the College shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The College shall, in all respects in the performance of this Agreement, comply with Executive Order 11,246, as amended by Executive Order 11,375, and as supplemented by Department of Labor Regulations (41 CFR Part 60). The College shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, religion, sex, disability, color or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer,

recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The College agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided by the Labor Department, setting forth the provisions of this non-discrimination clause, and shall comply with state and federal disability laws.

ARTICLE IV **CONFLICT OF INTEREST**

5.01 No member of the governing body of SAHA or other units of government, and no other officer, employee or agent of SAHA or other unit of government who exercises any functions or responsibilities in connection with the scope of services, to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

5.02 Additionally, pursuant to the conflict of interest requirements in 2 CFR 200.112, no person who is an employee, agent, contractor, officer, or appointed official of SAHA and who exercises or has exercised any functions or responsibilities with respect to SAHA or HUD-assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such SAHA and HUD activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure or for one year thereafter.

5.03 Further, the City and the College represent that they are and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 USC Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52.309 ff (1989), as amended.

ARTICLE V **SECTION 3 REQUIREMENTS**

5.01 This Agreement is subject to the conditions contained in Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and the regulations at 24 CFR Part 135.

A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701u). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very-low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties

to the Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The College agrees to send each labor organization or representative of workers with which the College has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the City's and the College's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work will begin.

D. The College agree to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agree to take appropriate action, as provided in applicable provisions of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The City and the College will not subcontract with any subcontractor where the City or the College has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The College will certify that any vacant employment positions, including training positions, that are filled (i) after official action by the parties approving this Agreement but before this Agreement is executed, and (ii) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

G. With respect to work performed in Section 3-covered Indian housing assistance, section 7(b) of the Indian Self-determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible, (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

EXHIBIT D

**QUARTERLY REPORT
FOR CONSTRUCTION ACTIVITY**

EXHIBIT C

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ALAMO COMMUNITY COLLEGE DISTRICT, and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ELEVEN,
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**FUNDING AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS
ALAMO COMMUNITY COLLEGE DISTRICT, and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ELEVEN,
CITY OF SAN ANTONIO, TEXAS**

This Funding Agreement (“Agreement”), pursuant to City of San Antonio Ordinance Number 2016-__-__-____, passed and approved on the ____ day of _____, 2016, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (“the City”); Alamo Community College District, (“ACCD”ACCD), and the Board of Directors for Reinvestment Zone Number Eleven, City of San Antonio, Texas, a tax increment reinvestment zone (the “Board”) and whom together may be referred to as the “Parties.”

BACKGROUND:

WHEREAS, the City recognizes the importance of its continued role in economic development, community development, planning and urban design; and

WHEREAS, a tax increment reinvestment zone created pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the “Act”) may only be designated by the City within the city limits; and

WHEREAS, by Ordinance Number 93101, dated December 14, 2000, the City created Reinvestment Zone Number Eleven in accordance with the Act, to promote development and redevelopment of the Zone Property, the Inner City area, through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future, and established a Board of Directors for the Zone, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, in accordance with the Act, the City created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such Boards under the Act or by action of the City Council; and

WHEREAS, on the 13th day of November, 2015 the Board approved funding for this project; and

WHEREAS, the Board will adopt and approve an amended Project Plan and an amended Finance Plan defined hereunder and referred to as “Project Plan” and “Finance Plan” which will include this project for development of the Zone Property; and

WHEREAS, pursuant to the Act and City of San Antonio Ordinance Number 2016-__-__-____, passed and approved on the ____ day of _____, 2016, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Finance Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

WHEREAS, pursuant to said authority above, the Board, the City, and ACCD each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as may be specified in any future amended Project Plans, and Finance Plans and this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the City, the Board, and ACCD agree as follows:

ARTICLE I. DEFINITIONS

1.1 The “City,” the “Board” “ACCD” and the “ shall have the meanings specified above.

1.2 “Act” means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as amended from time to time.

1.3 “Administrative Costs” means reasonable costs directly incurred by any Participating Taxing Entity related to its agreement to participate in the funding of the Zone, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the Zone incurred prior to entering into and during this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective.

1.4 “Agreement” means this document by and among the City, the Board and ACCD, which may be amended from time to time.

1.5 “Available Tax Increment Funds” means the “Tax Increment” contributed by each Participating Taxing Entity to the TIF Fund, as paid out in accordance with the priority of payment listed in Section 7.6 below.

1.6 “Captured appraised value of real property taxable by a taxing unit for a year” has the meaning provided by §311.012(b) of the Act.

1.7 “City Manager” means the City Manager of the City or her designee.

1.8 “City Code” means the City Code of the City of San Antonio, as amended.

1.9 “Completion” means final approval of the construction of a Public Improvement in for the Project in accordance with ACCD’s engineer’s design, and this Agreement. In order for a Public Improvement to have achieved a state of “Completion” for the purpose of reimbursement under Article VII of this Agreement, the improvement must:

- (1) Be approved and accepted by the City in accordance with the Funding Agreement.

1.10 “Funding and Lease Agreement” means the Agreements entered into between the City of San Antonio and Alamo Community College District regarding the funding of the Veterans Outreach and Transition Center and related Lease and all subsequent amendments and future

amendments as approved by City Ordinances Nos. 2011-12-15-1023, 2011-12-15-1024, 2013-02-14-0112, and 2016-2-18-_____ and attached and incorporated as **Exhibit A**.

1.11 “Contract Progress Payment Request” (“CPPR”) means a request, prepared in accordance with the requirements of **Exhibit D**, Contract Progress Payment Request Form, attached and incorporated herein, for reimbursement to ACCD for work completed in accordance with the definition of “Completion” on specific improvements in the Zone in accordance with the Public Improvements in the Project Plan and in accordance with **Exhibit A**.

1.12 “CPPR Approval” means a written acknowledgement from the City to ACCD that the CPPR was completed and submitted correctly, and that the CPPR is ready for presentation to the Board for approval and consideration of reimbursement to ACCD.

1.13 “ACCD” means Alamo Community College District.

1.14 “Effective Date” means the last date that a Party signs this Agreement.

1.15 “Finance Plan” means the Reinvestment Zone Financing Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which Plan is hereby incorporated into this Agreement by reference for all purposes, as if set out in its entirety.

1.16 “Guidelines” means the current Tax Increment Financing (TIF) and Reinvestment Zone policy as passed and approved by the City Council of the City of San Antonio and amended from time to time.

1.17 “Participating Taxing Entity” means any governmental entity recognized as such by Texas law, which is participating in this Project by contributing a percentage of its tax increment.

1.18 “Phase” means a portion of the Project that is being constructed by ACCD during a specific timeline.

1.19 “Project” has the meaning specified in Section 3.1 of this Agreement.

1.20 “Project Costs” has the meaning provided by Section 311.002(1) of the Act.

1.21 “Project Plan” means the amended Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

1.22 “Project Status Report” means a report, prepared and submitted by ACCD in accordance with the requirements of this Agreement, and **Exhibit B** attached and incorporated herein for all purposes, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.23 “Public Improvements” include those improvements that provide a public benefit and that are listed in this Agreement in Section 3.1. When an improvement has both private and public benefits, only that portion dedicated to the public may be reimbursed to ACCD, such as, but not

limited to capital costs, including the actual costs of public improvements, alteration, remodeling, repair, or reconstruction of existing buildings, structures.

1.24 "Tax Increment" has the meaning assigned by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the Zone.

1.25 "TIF" means Tax Increment Financing.

1.26 "TIF Fund" means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled "Reinvestment Zone Number Eleven, City of San Antonio, Texas Tax Increment Fund."

1.27 "TIF Unit" means the employees of the City department responsible for the management of the City's Tax Increment Financing Program.

1.28 "TIRZ" means Tax Increment Reinvestment Zone.

1.29 "Zone" means Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas.

1.30 "Zone Property" means the contiguous geographic area of the City that is included in the boundaries of the Zone, which are more particularly described in the Project and Finance Plans incorporated herein.

1.31 "Interlocal Funding Agreement" means the Interlocal Funding Agreement between the parties, attached as Exhibit A hereto, as same may have been duly amended.

Singular and Plural: Words used in the singular, where the context so permits, also include the plural and vice versa, unless otherwise specified.

ARTICLE II. REPRESENTATIONS

2.1 **No Tax Increment Bonds or Notes:** The City, the Board and ACCD represent that they understand and agree that neither the City nor the Board shall issue any bonds or notes to cover any costs directly or indirectly related to ACCD's improvement of the Zone under this Agreement.

2.2 **City Authority.** The City represents to ACCD that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

2.3 **Board's Authority.** Board represents to ACCD that as of the date of the Board's signature to this Agreement the Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 93101, passed and approved on December 14, 2000, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 ACCD's Authority and Ability to Perform. ACCD represents to the City and to the Board that ACCD is a Texas junior college district and local governmental unit; that ACCD has the authority to enter into this Agreement and to perform the requirements of this Agreement; that ACCD's performance under this Agreement shall not violate any applicable judgment, order, law or regulation nor result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and that ACCD shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

2.5 Reasonable Efforts of All Parties. The City, the Board and ACCD represent each to the others that they shall each make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

2.6 All Consents and Approvals Obtained. The City, the Board and ACCD represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.7 Right to Assign Payment. The City and ACCD may rely upon the payments to be made to them out of the TIF Fund as specified in this Agreement and ACCD may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but ACCD's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to ACCD.

2.8 ACCD's Continuing Duty to Complete Improvements. The City, the Board and ACCD represent each to the others that they understand and agree that even after the Zone terminates, ACCD shall diligently work to successfully complete any and all required improvements that are not completed before the Zone terminates. Such completion shall be at no additional cost to the City and/or the Board.

2.9 No Interlocal Agreements. The City, the Board and ACCD represent each to the others that they understand and agree that the City is the only participating taxing entity contributing one hundred percent (100%) of its tax increment to the TIF Fund, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

2.10 ACCD Bears Risk of Reimbursement. ACCD understands and agrees that any expenditure made by ACCD in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, Board or participating taxing entities. ACCD shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, unanticipated effects covered under legal doctrine of force majeure.

2.11 **Not an Obligation of the General Fund.** Any contributions made by ACCD in anticipation of reimbursement from tax increments shall never be an obligation of the City's general fund, but are only obligations of the TIF Fund, and are subject to limitations herein.

ARTICLE III. THE PROJECT

3.1 **The Project.** The Project is projected to include the following Public Improvements to be constructed by ACCD:

ACCD will undertake completion of renovations to the Good Samaritan Hospital building located at 1602 Dakota Street, Lot 1A, Block 8, NCB 1508, to construct a Veterans Outreach and Transition Center, the scope of work for which includes demolition of the historic interior, preservation of the exterior historical stucco walls, removal and replacement of trim details, new roofing, new parking lots and repair of windows and other improvements as more thoroughly set forth in the Interlocal Funding Agreement **Exhibit A**, attached and incorporated herein for all purposes.

3.2 **Project Financing.** The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded by ACCD's own capital or through commercial or private construction loans/lines of credit secured solely by ACCD. No lien shall be placed on any City owned property. The City and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse ACCD for eligible Project Costs it has expended. These Available Tax Increment Fund reimbursements made to ACCD are not intended to reimburse ACCD for all of its costs incurred in connection with performing its obligations under this Agreement.

3.3 **Reimbursement.** Neither the City nor the Board can guarantee that Available Tax Increment Funds shall completely reimburse ACCD, but those Available Tax Increment Funds shall constitute the only source of reimbursement under this Agreement to ACCD for the construction of the Public Improvements within the Project.

ARTICLE IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on whichever of the following dates should occur the earliest: (i) the date ACCD receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or (iii) termination of the Inner City TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

ARTICLE V. DUTIES AND OBLIGATIONS OF ACCD

5.1 **Compliance with Laws and Ordinances.** Notwithstanding any other provision of this Agreement, ACCD agrees to retain and exercise supervision over the construction of the Public Improvements of the Project, shall comply and require its contractors and subcontractors to comply with all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City

Code (including the Unified Development Code such as Universal Design and Construction requirements), all City ordinances, state, federal and local law, as amended.

5.2 Duty to Complete. Subject to Article VII, "Compensation to ACCD," ACCD agrees to complete, or cause to be completed, the Public Improvements described in Section 3.1 and **Exhibit A** no later than February 18, 2018. ACCD agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. ACCD also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of Public Improvements.

5.3 Commencement of Construction. From the Effective Date of this Agreement forward, ACCD shall not commence any construction on any Phase of the Project until the plans and specifications for a Phase have been approved in writing by the appropriate City department and the requirements of all federal, state and local laws have been met. For purposes of this Section 5.3, letters of certification or acceptance issued by the City shall constitute written approval of the City. Provider, however, ACCD shall not commence construction later than April 1, 2016.

5.4 Payment and Performance Bonds. For all Phases, in accordance with Chapter 2253 of the Texas Government Code, ACCD shall cause its general contractor or general contractors to obtain payment and performance bonds naming the City as a beneficiary or obligee of the bonds. ACCD and its contractors must wait for approval of the bonds by the City's Risk Management Department prior to construction, in order for the Public Improvements to be eligible for reimbursement. Failure to meet the City's minimum standards for these bonds prior to the commencement of construction for each Phase will be considered a breach of this Agreement. The payment and performance bonds for each Phase shall be in an amount sufficient to cover the entire contract cost of the Public Improvements for that Phase.

The City's Risk Management Department shall determine whether the bonds meet the minimum standard. Failure of ACCD to comply with this Section or Chapter 2253 of the Texas Government Code is a breach of this Agreement, and the City may exercise the full range of legal remedies available, including but not limited to: terminating this Agreement, exercising its rights under Article X, and/or removing the value of Phases and lots which are ineligible for reimbursement.

5.5 Supervision of Construction. Notwithstanding any other provision of this Agreement, ACCD agrees to retain and exercise supervision over the construction of all public and private improvements of the Project, and cause the construction of all Public Improvements to be performed, at a minimum, in accordance with federal, state and local laws and ordinances, including, but not limited to the current TIF Guidelines, the Project Plan, the Financing Plan, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City and the Board. ACCD also agrees to provide reports including inspections of such construction and of compliance with such laws, ordinances, and contractual requirements to the City and to the Board quarterly, or more often if requested by the City or the Board, using the form attached as **Exhibit B**, as it may be amended. ACCD's failure to comply with this Section 5.5 is a breach of this Agreement, and the City may terminate this Agreement and exercise the full range of legal remedies available to the City, including Article X.

5.6 **Discretionary Program.** ACCD agrees that the TIF program is a discretionary program and that the City has no obligation to extend TIF to ACCD. In exchange for receiving TIF funding, ACCD agrees that it has no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future City charter, City Code, City ordinances, and City Unified Development Code, state or federal laws and regulations.

5.7 **Payment of Applicable Fees.** ACCD shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses, which have not been waived and are required for construction of the Project.

5.8 **Delays.** ACCD agrees to commence the Project no later than April 1, 2016 and complete the Project no later than February 18, 2018 and in accordance with the Funding Agreement attached as **Exhibit A**. If Project completion is delayed due to war, civil commotion, acts of God, inclement weather, governmental restrictions, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond ACCD's control, then at the City's reasonable discretion, the deadlines set forth in the Construction Schedule may be extended by the period of each such delay. In the event that ACCD does not complete the Project substantially in accordance with the Construction Schedule, then the Parties, in compliance with Section 22.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the Zone. If the Parties cannot reach an agreement on the extension of the Construction Schedule, or if ACCD continues to fail to complete the Project in accordance with the revised Construction Schedule, then the City may exercise its remedies including but not limited to termination of the Agreement.

5.9 **Litigation Against the City.** City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

5.10 **Maintenance.** ACCD shall, at its own cost and expense, maintain or cause to be maintained all Public Improvements to the extent required by the Funding Agreement and Lease Agreement.

5.11 **Duty to Cooperate.** ACCD shall cooperate with the City and the Board in providing all necessary information to the City and the Board in order to assist the City and the Board in determining ACCD's compliance with this Agreement.

5.12 **Quarterly Status and Compliance Reports.** ACCD shall submit to the City and the Board written and signed Project Status Reports (see Sections 1.22 and 5.5 above) containing all required information, starting no later than 30 days following the beginning of construction of the Project, and on the 15th days of January, April, July and October thereafter throughout the duration of the Project, or more often if requested by the City, County or Board, on its construction progress and construction expenses, proof of insurance and its compliance with laws, ordinances, and contractual requirements. If Project Status Reports are not submitted on the assigned dates as above, ACCD understands that the City may withhold tax increment reimbursements and exercise its rights in accordance with Article X.

5.13 **Duty to Comply.** ACCD shall comply and shall cause all contractors and subcontractors to comply with the City of San Antonio Unified Development Code, as amended, where applicable regarding the development of the Project.

ARTICLE VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 **No TIF Bonds.** Neither the City nor the Board shall sell or issue any bonds to pay or reimburse ACCD or any third party for any improvements to the Zone Property performed under the Project Plan, Finance Plan or this Agreement.

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, and termination of the Zone, the City and the Board hereby pledge all Available Tax Increment Funds as reimbursement to ACCD for approved Project costs, up to the maximum total amount specified in Section 7.3 in this Agreement, excluding those taxes collected after September 30, 2025.

6.3 **Form of Reimbursement Requests.** The City and the Board agree that all reimbursement requests from ACCD shall be initiated by the submission of a CPPR form, attached as **Exhibit D**.

ARTICLE VII. COMPENSATION TO ACCD

7.1 **CPPR Approval.** Upon completion of the Public Improvements in each Phase of the Project, ACCD shall submit to the Board within ninety (90) days a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in **Exhibit D** hereof. The CPPR shall be presented to the Board for review and possible reimbursement authorization after the City review and approval, as evidenced by a written CPPR Approval issued by the City. Failure to timely submit CPPR's in accordance with this Section 7.1 may result in delay in payment of any such ACCD requests for reimbursement of expenses.

7.2 **Corrections to CPPR.** Should there be discrepancies in the CPPR or if more information is required, ACCD will have thirty (30) days upon notice by City to correct any discrepancies or submit additional information requested by City. Willful failure to timely submit the additional information requested by the City may result in disallowance of ACCD's requested expense reimbursement.

7.3 **Maximum Reimbursement of ACCD.** Following the Board's authorizations, ACCD shall receive, in accordance with this Agreement, total reimbursements from the Inner City TIRZ fund of a maximum of Nine Hundred and Fifty Thousand Dollars (**\$950,000.00**) for eligible project costs.

7.4 **Processing of Payment Requests.** Board authorized reimbursements of Available Tax Increment Funds shall be made to ACCD after the deposit of the City's Tax Increment Payment to the TIF Fund, if ACCD is in compliance with laws, statutes, ordinances and the requirements of this Agreement and subject to available tax increment and priority of payment.

7.5 **Available Tax Increment Funds.** The sole source of the funds to reimburse ACCD for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the Participating Taxing Entities participating in the Zone to the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project.

7.6 **Order or Priority of Payment.** The Parties agree that the City and the Board may use funds in the Tax Increment Fund to pay eligible expenditures in the following order or priority of payment: (i) to fully reimburse eligible startup Administrative Costs incurred by City; (ii) to pay all other ongoing Administrative Costs to the City for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City, then the ongoing Administrative Costs of the City shall be reimbursed on a pro rata basis; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in this Development Agreement; (iv) to reimburse the City under any reclaim of funds pursuant to Article X; (v) to reimburse ACCD or any other Developer for Inner City project for eligible Project Costs, including financing costs, as provided in this Development Agreement and to the extent that funds in the TIF Fund are available for this purpose. The foregoing notwithstanding, no funds will be paid from the TIF Fund to a Participating Taxing Entity or ACCD for its financial or legal services in any dispute arising under this Agreement or a related interlocal agreement between ACCD and a Participating Taxing Entity or between Participating Taxing Entities.

7.7 **Partial Payments.** If Available Tax Increment Funds do not exist in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority above, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses or penalties shall be paid to any Party on any late payment.

7.8 **Repayment of Invalid Payments.** If any payment to ACCD is held invalid, ineligible, illegal or unenforceable under federal, state or local laws, including but not limited to the charter, codes, or ordinances of the City, then and in that event it is the intention of the Parties that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by ACCD to the City for deposit into the TIF Fund, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained in this Agreement.

ARTICLE VIII. INSURANCE

8.1 **Applicability.** ACCD will require that the insurance requirements contained in this Article be included in all its contracts or agreements for the construction of Public Improvements where ACCD is seeking payment under this Agreement, unless specifically exempted in writing by the City.

8.2 **Proof of Insurance.** Prior to the commencement of any work under this Agreement, ACCD shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City’s TIF Unit, which shall be clearly labeled “**Inner City TIRZ, Good Samaritan-Veterans Outreach and Transition Center**” in the Description of Operations block of the Certificate. The original 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 shall not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City at the same addresses listed in Section 8.5 of this Article. 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 TIF Unit. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement for the City.

8.3 **Right to Review.** 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 coverage’s and their limits when deemed necessary and prudent by the City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.

8.4 **Required Types and Amounts.** ACCD’s financial integrity is of interest to the City, therefore, subject to ACCD’s right to maintain reasonable deductibles in such amounts as are approved by the City, ACCD or ACCD’s contractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Project Plan and Finance Plan, and any extension hereof, at ACCD’s or ACCD’s contractor’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A- (VII), in the Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;

<p>the following:</p> <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/Impact-sufficiently broad to cover disposal liability. h. Damage to property rented to you. 	<p>\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>C</u>ombined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000 per occurrence</p>

8.5 **Requests for Changes.** The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and the City 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 or the underwriter of any such policies). ACCD and/or ACCD's contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the addresses provided below within ten days of the requested change. ACCD and/or ACCD's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following addresses:

City Clerk
City of San Antonio
Attn: Risk Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Planning and Community Development
Department
TIF Unit
1400 S. Flores
San Antonio, Texas 78204

8.6 **Required Provisions and Endorsements.** ACCD 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 and its respective officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, 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 if City is an additional insured shown on the policy;
- c. Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City; and
- d. Provide thirty (30) calendar days advance written notice directly to City at the same addresses listed in Section 8.5 of this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

8.7 **Cancellation, Suspension, and Non-Renewal.** Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, ACCD and/or ACCD’s contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same addresses listed in Section 8.5 of this Article. City shall have the option to suspend ACCD’s and/or ACCD’s contractor’s performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the City may exercise its remedies under Article X of this Agreement.

8.8 **City’s Remedies.** In addition to any other remedies the City may have upon ACCD and/or ACCD’s contractor’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, the City shall have the right to order ACCD to stop work, and/or withhold any payment(s), which become due to ACCD until ACCD and/or ACCD’s contractor demonstrates compliance with the requirements.

8.9 **Responsibility for Damages.** Nothing herein contained shall be construed as limiting in any way the extent to which ACCD and/or ACCD’s contractor may be held responsible for payments of damages to persons or property resulting from ACCD’s or its subcontractors’ performance of the work covered under this Agreement.

8.10 **Primary Insurance.** It is agreed that ACCD’s insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under this Agreement.

8.11 **Obligation of ACCD.** ACCD agrees to obtain all insurance coverage’s with minimum limits of not less than those limits delineated in Section 8.4 from each subcontractor to ACCD and provide a Certificate of Insurance and Endorsement that names ACCD and the City as an additional insured. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in this Agreement. ACCD and any subcontractors are responsible for all damages to their own equipment and/or property. ACCD must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to this Agreement in Quarterly Status and Compliance Reports.

8.12 **“All Risk”.** Prior to the commencement of any construction and at all times during the performance of such construction ACCD and/or ACCD’s contractors shall obtain and keep in full force and effect builder’s “all risk” insurance policies affording coverage of such

construction. The Builder's Risk Policies shall be written on an occurrence basis and on a "replacement cost" basis, insuring 100% of the insurable value of construction improvements.

ARTICLE IX. WORKERS COMPENSATION INSURANCE COVERAGE

9.1 **Applicability.** This Article is applicable only to construction of Public Improvements, the costs for which ACCD is seeking reimbursement from the City and the Board, and is not intended to apply to any private improvements made by ACCD.

9.2. **Definitions:**

- a. Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.
- b. Duration of the project - includes the time from the beginning of the work on the Phase of the Project until ACCD's/person's work on the project has been completed and accepted by the City.
- c. Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services ACCD has undertaken to perform on the Project, regardless of whether that person contracted directly with ACCD and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

9.3 ACCD shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of ACCD providing services on the Project, for the duration of the Project.

9.4 ACCD must provide a certificate of coverage to the City prior to proceeding under this Agreement.

9.5 If the coverage period shown on ACCD's current certificate of coverage ends during the duration of the Phase of the Project, ACCD must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

9.6 ACCD shall obtain from each person providing services on a project, and shall provide to the City:

- a. a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- b. no later than seven days after receipt by ACCD, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

9.7 ACCD shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

9.8 ACCD shall notify the City in writing by certified mail or personal delivery, within 10 days after ACCD knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

9.9 ACCD shall post on the Zone Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

9.10 ACCD shall contractually require each person with whom it contracts to provide services on the Project, to:

- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable Phase of the Project;
- b. provide to ACCD, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the applicable Phase of the Project;
- c. provide ACCD, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- d. obtain from each other person with whom it contracts, and provide to ACCD:
 - (1) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- e. retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;

- f. notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. perform as required by subsections a-g with the certificates of coverage to be provided to the person for whom they are providing services.

9.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, ACCD is representing to the City that all employees of ACCD who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject ACCD to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 ACCD's failure to comply with any of these provisions is a breach of this Agreement by ACCD, which entitles the City to declare the Agreement void and exercise all legal remedies including to terminate if ACCD does not remedy the breach within ten (10) days after receipt of notice of breach from the City without necessity of the ninety (90) day cure period set forth in Article X.

ARTICLE X. DEFAULT AND TERMINATION

10.1 In the event that ACCD or ACCD's contractors fail to commence construction of the Project, fail to complete construction of the Project, or fail to perform any other obligation pursuant to any term of this Agreement, the City and/or the Board may declare a material breach and notify ACCD by certified mail. The City or Board may terminate this Agreement if ACCD does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from the City and/or the Board requesting the failure be cured. In the event of such default, and as one of the remedies of the City and/or the Board, ACCD shall return any payments under this Agreement for the construction of Public Improvements for any Phase within ninety (90) calendar days after receiving written notice from the City and/or the Board that ACCD has defaulted on this Agreement; EXCEPT that no refund is due if ACCD, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes ACCD's obligations under this Agreement, pursuant to Article XVI (Assignment) herein.

10.2 After sending notice of failure under Section 10.1 above, the City and Board shall not distribute TIF funds to ACCD until ACCD's default is cured. If the default is not cured, the City and Board may retain all undistributed TIF funds, terminate this Agreement, and unencumber the unpaid balance under the terms of this agreement without further Board or Council action.

10.3 Notwithstanding Section 10.1 above, in the event the Board and/or ACCD fails to furnish any documentation required in Article XIV (Examination of Records) herein within thirty (30)

days following the written request for same, then the Board and/or ACCD shall be in default of this Agreement.

ARTICLE XI. INDEMNIFICATION

- 11.1 ACCD, the Board and City acknowledge that they are all governmental units of the State of Texas and are subject to, and comply with applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.**
- 11.2 Nothing in this Agreement waives any governmental immunity available to ACCD, the Board, or the City under the laws of the State of Texas.**

ARTICLE XII.

[Intentionally deleted]

ARTICLE XIII. RESPONSIBILITIES OF THE PARTIES

- 13.1 ACCD.** As between the City, ACCD, the Board, and any Participating Taxing Entity, ACCD shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of ACCD, and none of ACCD's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of the Agreement.
- 13.2 City and Board.** To the extent permitted by Texas law, no director, officer, employee or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIV. EXAMINATION OF RECORDS

- 14.1 Right to Review.** Following notice to the Board and ACCD, the City reserves the right to conduct, at its own expense, examinations, during regular business hours and of the books and records related to this Agreement (including contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or ACCD's services hereunder) no matter where the books and records are located. The City also reserves the right to perform any and all additional audits relating to the Board's and/or ACCD's services, provided that such audits are related to those services performed by the Board and/or ACCD for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or ACCD.

14.2 **Preservation of Records.** All applicable records and accounts of the Board and/or ACCD relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Board and/or ACCD throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred, upon City request, at no cost to the City, to the City for retention. During this time, the City, at its own expense, may require that any or all of such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within ten (10) business days following written request.

14.3 **Discrepancies.** Should the City discover errors in internal controls or in record keeping associated with the Project, the Board and/or ACCD shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by the City or the County to the Board and/or ACCD of such discrepancies. The Board and/or ACCD shall inform the City in writing of the action taken to correct such discrepancies.

14.4 **Overcharges.** If it is determined that the Board and/or ACCD has overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIF Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to ACCD for the year in which the discrepancy occurred, and the TIF Fund is entitled to a refund due to these overcharges, then ACCD shall pay the cost of the audit.

ARTICLE XV. NON-WAIVER

15.1 **Actions or Inactions.** No course of dealing on the part of the City, the Board, or ACCD nor any failure or delay by the City, the Board, or ACCD in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

15.2 **Receipt of Services.** The receipt by the City of services from an assignee of ACCD shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of ACCD from further observance or performance by ACCD of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such a waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVI. ASSIGNMENT

16.1 **Assignment by City.** The City and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City creates without prior consent of ACCD. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send ACCD written notice of such assignment within fifteen (15) days of such assignment.

16.2 Assignment by ACCD. ACCD may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City as evidenced by an ordinance passed and approved by the City Council, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of ACCD under this Agreement. This restriction on ACCD's rights to sell or transfer is subject to the right to assign as provided in Section 16.5 below.

16.3 Work or Services Subject to this Agreement. Any work or services contracted herein shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by ACCD's contractors and/or subcontractors with this Agreement shall be the responsibility of ACCD. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible Project Cost reimbursement.

16.4 No Third Party Obligation. The City shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of ACCD, for performance of work or services under this Agreement except as set forth in Section 16.6 of this Agreement.

16.5 Lending Institutions. Any restrictions in this Agreement on the transfer or assignment of ACCD's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. ACCD shall notify the City of all such assignments to a lending institution or other provider of capital. In no event, shall the City be obligated in any way to said financial institution or other provider of capital. The City shall only issue a check or any other form of payment made payable only to ACCD.

16.6 Written Instrument. Each transfer or assignment to which there has been consent, pursuant to Section 16.2 above, shall be by instrument in writing, in form reasonably satisfactory to the City, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and the Board to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the City. Failure to obtain, the City's consent in writing, or failure to comply with the provisions herein first shall prevent any such transfer or assignment from becoming effective. In the event the City approves the assignment or transfer of this Agreement, ACCD shall be released from such duties and obligations.

16.7 No Waiver. Except as set forth in Section 16.3, the receipt by the City of services from an assignee of ACCD shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of ACCD from further observance or performance by ACCD of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVII. NOTICE

17.1 **Addresses.** Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

CITY

Department of Planning and Community
Development
Attn: TIF Unit
1400 S. Flores
San Antonio, TX 78204

BOARD

Board of Directors, Inner City Tax Increment
Reinvestment Zone Number Eleven
City of San Antonio, Texas
C/O Planning and Community Development
ATTN: John Dugan, Director
1400 S. Flores
San Antonio, TX 78204

ALAMO COMMUNITY

COLLEGE DISTRICT

Office of Legal Services
201 W. Sheridan, #C-8
San Antonio, TX 78204

17.2 **Change of Address.** Each Party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile shall be deemed delivered when receipt of such is during normal business hours or the next business day if receipt is after normal business hours. Any communication delivered in person shall be deemed received when actually received by an officer of the Party to whom the communication is properly addressed. All notices, requests or consents under this Agreement shall be: (i) in writing, (ii) delivered to a principal officer or managing entity of the recipient in person, by courier, mail, facsimile, or similar transmission, and (iii) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required by applicable law or this Agreement, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each Party shall have the right to change its address by giving at least fifteen (15) days written notice to the other Parties.

ARTICLE XVIII. CONFLICT OF INTEREST

18.1 **Charter and Ethics Code Prohibitions.** The Board and ACCD each acknowledges that it is informed that the Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to

the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 **Warrant and Certification.** In accordance with Section 311.0091(h)(1) of the Act, and pursuant to Section 18.1 above, ACCD each warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. ACCD each further warrants and certifies that ACCD has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code using the form provided in **Exhibit E**.

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 **No Agency.** All Parties expressly agree that in performing their services under this Agreement, the Board and ACCD at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or ACCD respectively shall be independent contractors of the Board and/or ACCD. The City shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Board and/or ACCD respectively, under this Agreement unless any such claims are due to the fault of the City.

19.2 **No Authority.** The Parties further understand and agree that no Party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XX.

[Intentionally deleted]

ARTICLE XXI. PREVAILING WAGES

21.1 The TIF program is a discretionary program, and it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to TIF Agreements. The Board and ACCD each individually agree that ACCD will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

21.2 In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement is included as **Exhibit C**, and made a part of this Agreement. ACCD is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time ACCD calls for bids for construction of a given phase.

21.3 ACCD is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with ACCDs' general contractor and all subcontractors for construction of each Phase. ACCD shall forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by ACCD or any subcontractor under ACCD. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve ACCD from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

ARTICLE XXII. CHANGES AND AMENDMENTS

22.1 **Ordinance and Order Required.** Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing executed by the City, the Board and ACCD and evidenced by passage of a subsequent City ordinance.

22.2 **Automatic Incorporation of Laws.** Changes in local, state and federal rules, regulations or laws applicable to the Board's and ACCD's services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.

ARTICLE XXIII. SEVERABILITY

23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under federal, state or local laws, then said clause or provision shall not affect any other clause or provision and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable clause or provision, there be added to this 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.

ARTICLE XXIV. LITIGATION EXPENSES

24.1 Under no circumstances will the available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or any other public entity.

24.2 During the term of this Agreement, if the Board and/or ACCD files and/or pursues an adversarial proceeding against the City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City's option, all access to the funding provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account.

24.3 The Board and/or ACCD, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against the City remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.

24.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or ACCD against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XI above.

ARTICLE XXV. LEGAL AUTHORITY

25.1 **All Consents and Approvals Obtained.** Each person executing this Agreement on behalf of each Party, represents, warrants, assures and guarantees that he or she has full legal authority to (i) execute this Agreement on behalf of the City, the Board and/or ACCD, respectively and (ii) to bind the City, the Board and/or ACCD to all of the terms, conditions, provisions and obligations of this Agreement.

ARTICLE XXVI. VENUE AND GOVERNING LAW

26.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.** Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar, County Texas.

ARTICLE XXVII. PARTIES' REPRESENTATIONS

27.1 This Agreement has been jointly negotiated by the City, the Board and ACCD and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXVIII. CAPTIONS

28.1 All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

ARTICLE XXIX. LICENSES/CERTIFICATIONS

29.1 ACCD warrants and certifies that ACCD or its general contractor, and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXX. NONDISCRIMINATION AND SECTARIAN ACTIVITY

30.1 ACCD shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with public funds. Further no portion of the funds received shall be used in support of any sectarian or religious activity.

ARTICLE XXXI. ENTIRE AGREEMENT

31.1 **No Contradictions.** This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. The City acknowledges that nothing herein contained shall be interpreted to waive the City's funding obligations to ACCD under a separate agreement, as amended, and authorized via City Ordinance 2016-03-03-___ .

31.2 **Incorporation of Exhibits.** The **Exhibits A through E** attached to this Agreement are incorporated herein and shall be considered a part of this Agreement, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

Signatures on the following page.

IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of the each signature below. This Agreement will become effective on the date of the last signature below:

CITY OF SAN ANTONIO

ALAMO COMMUNITY COLLEGE DISTRICT

Sheryl Sculley
City Manager or designee
Date: _____

Dr. Bruce Leslie, Chancellor
Date: _____

**BOARD OF DIRECTORS
INNER CITY TIRZ**

ATTEST/SEAL:

Name: _____
Chairman, Board of Directors
Date: _____

Name: _____
Secretary, Board of Directors
Date: _____

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney
Date: _____

EXHIBIT A

VOTC Funding and Lease Agreement

AN ORDINANCE

2011-12-15-1023

**AUTHORIZING EXECUTION OF FUNDING AGREEMENT WITH
ALAMO COMMUNITY COLLEGE DISTRICT FOR PLANNED
RENOVATIONS TO THE GOOD SAMARITAN HOSPITAL BUILDING
LOCATED IN COUNCIL DISTRICT 2.**

* * * * *

WHEREAS, Alamo Community College District, a Texas local government unit, will undertake completion of renovations to the Good Samaritan Hospital building located at 1602 Dakota Street, Lot 1A, Block 8, NCB 1508, using City resources on a reimbursement basis in accordance with the terms of a Funding Agreement and a Master Lease for the operation of a Veterans Outreach and Transition Center at the Good Samaritan building, as well as real estate acquisition and construction of associated parking, with \$25,000.00 to be provided to Capital Improvements Management Services to manage the work being done by the Alamo Community College District; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to execute the Funding Agreement with Alamo Community College District, a Texas local government unit, for the completion of renovations to the Good Samaritan Hospital building located at 1602 Dakota Street, Lot 1A, Block 8, NCB 1508.

SECTION 2. Funding for the project of up to \$2,000,000.00 is allocated for both the acquisition of real estate for the project and renovations to the Good Samaritan Hospital building under the Funding Agreement, pursuant to this Ordinance and Ordinance 2011-12-15-1022(A). In no event shall the total cost of the project for real estate acquisition and building renovations exceed \$2,000,000.00. Payment in an amount not to exceed \$2,000,000.00 in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00214, for the Eastside Education & Workforce Development Center is authorized to be encumbered for renovation costs payable under the Funding Agreement related to the Good Samaritan building, and for real estate acquisition costs for the Veterans Outreach and Transition Center project; and payment in the amount not to exceed \$25,000.00 is authorized to be encumbered and made payable to Capital Improvements Management Services for management of the renovation project.

SECTION 3. Funding in an amount not to exceed \$2,000,000.00 for these two Ordinances is authorized from the FY2012 – 2017 Capital Improvement Budget with funds available from Certificates of Obligation.

SECTION 4. Funding in an amount not to exceed \$25,000.00 for this Ordinance is authorized to be encumbered and made payable to Capital Improvements Management Services for management of the renovation project from the FY2012 – 2017 Capital Improvement Budget with funds available from Certificates of Obligation.

SECTION 5: 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 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.

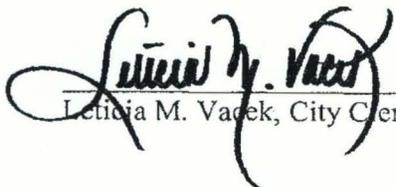
SECTION 6. Approval of this Ordinance authorizing Funding Agreement with Alamo Community College District is contingent upon and subject to City Council's approval of a separate Ordinance authorizing the Master Lease Agreement with Alamo Community College District for the lease of the Good Samaritan Hospital building located at 1602 Dakota Street, Lot 1A, Block 8, NCB 1508, and is also contingent upon and subject to City Council's approval of a separate Ordinance authorizing acquisition of the Good Samaritan Hospital building located at 1602 Dakota Street, Lot 1A, Block 8, NCB 1508 for the sum of \$100,000.00 to be drawn from the \$2,000,000.00 allocated herein, and completion of said acquisition.

SECTION 7. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

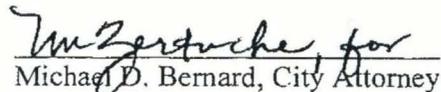
PASSED AND APPROVED this 15th day of December, 2011.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Michael D. Bernard, City Attorney

ATTACHMENT

FUNDING AGREEMENT
BETWEEN
CITY OF SAN ANTONIO, TEXAS
AND THE
ALAMO COMMUNITY COLLEGE DISTRICT

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**FUNDING AGREEMENT BETWEEN
CITY OF SAN ANTONIO AND ALAMO COMMUNITY COLLEGE DISTRICT**

This **FUNDING AGREEMENT** ("Funding Agreement") is made and entered into as of the date set forth on the signature page below ("Effective Date") by and between the **CITY OF SAN ANTONIO**, a home rule municipality under Article XI, Section 5, of the Texas Constitution primarily situated in Bexar County, Texas, (the "CITY"), and **ALAMO COMMUNITY COLLEGE DISTRICT**, a Texas local government entity ("ACCD"). The CITY and ACCD shall collectively be referred to as the "Parties" and individually as a "Party".

DEFINITIONS AND INTERPRETATIONS. Each term or phrase used in this Funding Agreement in which the first letter of each word is capitalized has the meaning set forth in the attached Exhibit A, unless the context in which such term or phrase is used in this Funding Agreement clearly indicates otherwise.

RECITALS

WHEREAS, ACCD is willing to renovate the historic Good Samaritan Building located at 1602 Dakota Street, San Antonio, Texas 78203 (the "Building") for the operation of a Veterans Outreach program associated with St. Philip's College of ACCD;

WHEREAS, the Building is in the process of being acquired by the CITY, and upon acquisition of the Building by the CITY, ACCD will be granted possession of the Building under the terms of a separate Lease Agreement by and between ACCD and the CITY dated December 15, 2011 ("CITY Lease") which allows ACCD to perform the renovations to the Building, and to operate the Veterans Outreach program at the Building;

WHEREAS, CITY has agreed to commit ONE MILLION SIX HUNDRED THOUSAND AND ZERO/HUNDRED DOLLARS (\$1,600,000.00) of funding to ACCD for the renovation of the Building for the proposed Veterans Outreach program;

WHEREAS, ACCD will obtain grants, loans, and charitable contributions to operate the Veterans Outreach program, and, if necessary, the Parties to this Agreement may amend this Agreement to take into account such additional financing; and

WHEREAS, this Agreement is designed to address the terms and conditions under which the CITY will provide funding to renovate the Building.

NOW, THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this Funding Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**ARTICLE I.
INTRODUCTORY MATTERS**

Section 1.01 Recitals. The recitals are hereby incorporated in the terms and provisions of this Funding Agreement and are fully binding on the Parties.

Section 1.02 Letter of Intent. Any letters of intent and all prior Funding Agreements, if any, are terminated, superseded and replaced by this Funding Agreement.

ARTICLE II.
TERM

Section 2.01 Term. The Term of this Funding Agreement will commence on the Effective Date and will terminate on the earliest of: (i) seven (7) years after the Project Completion Date; (ii) authorized termination for default; (iii) termination pursuant to Section 3.05(B); or (iv) termination of the CITY Lease, the terms of which are incorporated by reference herein for all purposes. If this Funding Agreement does not take effect or is terminated by mutual agreement of the Parties, or other event, the Parties shall promptly execute a document confirming the termination of this Funding Agreement, and such other documents as may be reasonable under the circumstances.

ARTICLE III.
MILESTONES

Section 3.01 Feasibility Milestones. By May 31, 2012 ACCD will prepare the Master Plan for the Building, the Schedule, the Operating Manifest, and Operating Budget and shall determine the Quality Standard and obtain the CITY's approval thereof.

Section 3.02 Commencement of Construction. The Construction Commencement Date shall occur not later than August 1, 2012, and ACCD shall provide the Certificate of Commencement of Construction to the CITY on or before such date. The Certificate of Commencement of Construction form is attached as Exhibit B hereto and incorporated herein for all purposes.

Section 3.03 Capital Budget. ACCD will prepare and the CITY will approve the Capital Budget for the Building.

Section 3.04 Substantial Completion. Subject to Force Majeure Events, as provided in Section 18.01, ACCD shall cause the Substantial Completion of the Project not later than the Scheduled Completion Date of April 1, 2013, and to evidence and confirm such Substantial Completion, ACCD shall deliver to the CITY a certificate of substantial completion for the Project in the form set forth in Exhibit C attached hereto and incorporated herein.

Section 3.05 Preconstruction Milestones. Not later than the date specified herein, or if no date is specified, not later than May 31, 2012:

- A. Completion of Final Plans. Not later than May 31, 2012, ACCD shall complete and submit to the CITY and obtain the CITY's approval of the Final Plans for the Project.
- B. Pre-Construction Consultation. Prior to awarding any Construction Contracts for the Project, ACCD shall cause the completion of a Phase 1 environmental analysis of the Property, shall submit the Plans and Specifications to the CITY's Historic Design and Review Commission (at the meeting of which CITY agrees to send representatives to appear in support of approving the Project substantially

as submitted), obtain preliminary CITY review of the Plans and Specifications, and solicit proposals from prospective General Contractors for the Project. ACCD shall thereafter, either prior to selecting a General Contractor or, at its election, thereafter but prior to the CITY issuing a building permit for the Project, meet with the CITY Representative to determine whether the Project as specified in the Plans and Specifications, as they may have been revised by interaction with the CITY, can reasonably be expected to be completed, including comprehensive completion bonding and a contingency reserve of approximately ten percent (10%) of the costs of the proposal of ACCD's intended General Contractor, without total Project Costs exceeding the amount of the CITY Contribution. If ACCD reasonably expects that the Project cannot be completed without total Project Costs exceeding the amount of the CITY Contribution, then unless the parties renegotiate the Plans and Specifications and the Capital Budget to reduce total Project Costs, or the City determines, in its absolute discretion, and subject to CITY Council approval, to increase the amount of the CITY Contribution, or both, with the result that anticipated total Project Costs will not exceed the amount of the CITY Contribution, then neither party shall be under any obligation to proceed further, nor will either party have any liability to the other by reason thereof or otherwise under this Funding Agreement.

- C. Construction Contracts. ACCD shall provide a copy of each of the Construction Contracts for all Work, services, and purchase orders for all materials to be supplied for construction of the Project to the CITY at least ten (10) Business Days following the execution of a Construction Contract or purchase order, with all Construction Contracts required to be furnished to the CITY on or before August 1, 2012.
- D. Operating Budget. ACCD shall provide the CITY with a final Operating Budget projecting the anticipated income and expenses on a five (5) year rolling budget. The Operating Budget shall demonstrate that ACCD can operate the Building on a fiscally sound basis.
- E. Operating Reserve. The Operating Budget will include an Operating Reserve to cover operating deficits. ACCD's Contribution will include the Operating Reserve.
- F. Development Plan. Not later than May 31, 2012, ACCD shall prepare and submit to the CITY the Development Plan for the Project.
- G. Completion of Preconstruction Milestones. ACCD shall not proceed with commencement of construction of the Project until all Preconstruction Milestones have been fully satisfied.

Section 3.06 Extensions. The CITY may extend the time for performance of any target date, scheduled date, Deadline or Milestone appearing anywhere in this Funding Agreement. All milestones and deadlines set forth in this Agreement shall be adjusted forward if CITY does not put ACCD in possession of the Property by January 9, 2012, or if the CITY's Historical Design

and Review Commission delays the Project by postponing a hearing, requiring a second hearing or requiring a substantial revision of the Plans and Specifications. Any such delay shall postpone all such milestones and deadlines by the amount of the delay.

ARTICLE IV.
DEVELOPMENT OF THE PROJECT

Section 4.01 Design and Construction Obligation.

- A. Subject to the terms and conditions of this Funding Agreement, ACCD shall or shall cause a party under its control to: (i) undertake and assume responsibility, in accordance with this Funding Agreement, to obtain the permitting, design, and commencement of construction of all improvements comprising the Project in accordance with the Master Plan and Final Plans and the Construction Documents; and (ii) cause Substantial Completion of same to occur on or before the Scheduled Completion Date, as the same may be extended pursuant to the provisions of this Funding Agreement; and (iii) pay all costs and expenses only to the extent funded by the CITY Contribution in connection with the design and construction of the Project, including without limitation, the amounts owing to architectural, engineering or other design consultants engaged for the Project, and to the General Contractor, subcontractors, suppliers, consultants, legal consultants or other persons engaged for the Project for supervision, transportation, labor, materials or Permits or other matters in connection with the Project.
- B. ACCD shall or shall cause a party under its control to undertake the coordination and supervision of the Work of all Persons involved in the Project. ACCD will meet on a regular basis through Project Completion with the architectural, engineering and other design consultants, General Contractor and other Persons providing the design and construction services to assure the performance of the Work in accordance with the terms of this Funding Agreement and as otherwise specifically provided herein. ACCD shall provide to the CITY Representative, or his designee, written notice, preferably by means of a schedule, of all meetings in order that the CITY will have the opportunity to have a representative present at those meetings.
- C. The Work and services to be performed on the Project shall be conducted through written contracts or agreements with third parties and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Funding Agreement. Compliance by design professionals, contractors, subcontractors, and suppliers with the terms of this Funding Agreement shall be the responsibility of ACCD.

Section 4.02 Services to be Performed by or on behalf of ACCD.

- A. Subject in all instances to funding of the CITY Contribution, as provided in this Funding Agreement, ACCD shall cause the Project to be designed and constructed in an orderly, expeditious and efficient manner in accordance with the

Schedule and the Construction Documents. Without limiting ACCD'S obligations hereunder, ACCD shall or shall cause a party under its control to:

- (1) update the Schedule and provide the reports required by Article XXI within the time periods therein prescribed;
- (2) retain the services of architectural, engineering or other design consultants and coordinate the design of the Project as more specifically set forth in Article V hereof;
- (3) direct, coordinate, and supervise the preparation of all submissions necessary in connection with all Permits, with ACCD being responsible for obtaining and negotiating with, and acting as liaison to, the Governmental Authorities in obtaining all Permits. ACCD shall obtain and provide to the appropriate Governmental Authorities all drawings, documents, information, consents and such other items necessary to secure the Permits;
- (4) use good faith and commercially reasonable efforts to obtain the best price and quality of goods and services, including from Affiliates, in connection with the Construction Documents for construction of the Project;
- (5) negotiate, procure, and retain the services of a General Contractor, who shall, among other things, execute the construction of the Project;
- (6) investigate, hire, contract with, train, pay, supervise and, when necessary, discharge the personnel reasonably required to be employed or engaged by ACCD in order to properly complete the Project. Such personnel shall in every instance be deemed independent contractors, agents or employees, as the case may be, of ACCD and not of the CITY, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of ACCD. ACCD shall use reasonable efforts to ensure that all Persons used by ACCD on the Project including architectural, engineering or other design consultants, the General Contractor and any Contractor in the performance of the design and/or construction of the Project be qualified by training and experience to perform the tasks and services for which they are contractually obligated;
- (7) from, and after, the Effective Date of this Funding Agreement and ending on the Project Completion Date, procure and maintain, and require the General Contractor and other Persons performing construction services for the Project to procure and maintain, with responsible companies having an Alfred M. Best Company, Inc. rating of at least A- (or if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar rating under the rating system then in effect) and licensed to

do business in the State of Texas, the insurance coverage as set out in Exhibit D. Such insurance shall name the CITY as an additional named insured. Such insurance shall include waivers by the respective insurance carriers of any and all rights of subrogation against the CITY. ACCD shall provide the CITY with certificates evidencing such insurance prior to the Effective Date for those Persons that have been retained by ACCD and prior to any Person commencing Work on the Project for those Persons not under contract with ACCD on the Effective Date;

- (8) at all times prior to the Project Completion Date, use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Project, claim for damages relating to the design and/or construction of the Project, and material damage to, or destruction of, the Project (and the estimated cost of repair thereof), and prepare and file any and all reports required by any insurance carriers in connection therewith and provide copies thereof to the CITY;
- (9) provided that: (i) the CITY is obligated to make disbursements for amounts due and payable as costs and expenses of the Project; and (ii) the CITY approves the Work represented through such requisition requests as well as the back-up documentation required, ACCD shall cause such disbursements to be made regularly and punctually to the General Contractor and Persons pursuant to the requisition procedure established in Article X;
- (10) maintain at its regular business office for four (4) years following the termination of this Funding Agreement separate, true and complete books, the records, accounts, journals and files regarding the design and construction of the Project, including all design documents (including, without limitation, the Construction Documents), shop drawings, change orders, requisition requests, Permits, contracts, rental agreements and records, insurance policies, non-proprietary correspondence directly related to the Project, receipts, bills, vouchers and any audits obtained by ACCD, all of which shall be available for review and copying (at the CITY'S expense) by the CITY;
- (11) promptly furnish to the CITY, upon receipt by ACCD, copies of all legal notices received by ACCD affecting the Project, including, without limitation, notices from Governmental Authorities and all notices from any party claiming any default in any financing or payment obligation, and any other notice not of a routine nature;
- (12) promptly notify the CITY of any suit, proceeding or action that is initiated or threatened in connection with the Building or against ACCD or the CITY in connection with the Building that could result in: (i) a lien against the Project; (ii) a material delay or increase in the cost of construction of the Project; or (iii) a claim against the CITY;

- (13) provide the CITY, as soon as reasonably practicable but in no event later than sixty (60) days after the Project Completion Date, with an original and one (1) sepia print of "as-built" drawings substantially reflecting and depicting the Project, as constructed, and indicating the changes in, and deviations from, the Construction Documents and an electronic version thereof as such version exists following the Project Completion Date. The "as-built" drawings will be an assembled set prepared by the various Contractors suitable for use by the CITY;
- (14) cooperate with the CITY in causing specified goals for including local, small, and minority-owned business participation to be established in connection with the construction of the Project, as required by Article VIII below;
- (15) send written notice, preferably by means of a schedule, to the CITY Representative, or his designee, in order that a representative of the CITY may attend the regularly scheduled meetings discussing the progress of the design and construction of the Project with such meetings to occur no less often than two (2) meetings per calendar month, or more frequently as reasonably determined by the CITY; and
- (16) advise the CITY Representative with respect to any Environmental Condition known to ACCD and all requirements imposed by, and negotiations with, any Governmental Authority concerning any such Environmental Condition.

Section 4.03 Affiliate Contracts. ACCD shall have the right to enter into contracts or transact business with qualified (either themselves or through their agents, contractors and/or consultants) Affiliates of ACCD, provided such activities are on terms and conditions no more favorable to the Affiliate than would be available in an arms-length basis with independent third parties. Prior to entering into a contract, or series of contracts, with an aggregate value in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) with an Affiliate of ACCD, ACCD shall provide the CITY with written notice that ACCD is planning to hire the Affiliate to perform the Work described in the notice and obtain the CITY'S written approval to hire the Affiliate.

Section 4.04 Operation of the Project. The Building will remain open to the public after the Work is completed. By May 31, 2012, ACCD shall develop an Operating Manifest and submit it to the CITY for approval. ACCD shall operate the Building according to the Operating Manifest.

Section 4.05 Completion of Project. By May 1, 2013, ACCD shall have completed the renovation of the entire Building according to the Master Plan and Quality Standard, but delay in completion shall not constitute a default until the date specified at Section 15.03Q hereof..

ARTICLE V.
DESIGN OF THE PROJECT

Section 5.01 Design of the Project.

- A. Master Plan. Within the times set forth in the Schedule, ACCD will deliver the Master Plan for the Building to the CITY for review and approval in accordance with Sections 5.01D and 5.02 hereof. The Master Plan for the Building may not be altered without the further approval of the CITY.
- B. Within the times set forth in the Schedule, Project Architect shall be directed by ACCD to prepare and deliver to the CITY, for review and approval in accordance with Sections 5.01(D) and 5.02 hereof, the Conceptual Design Documents and the Design Drawings (collectively described herein as the "Plans and Specifications"). The Plans and Specifications approved pursuant to Section 5.01(D) may not be changed without prior notice to, and the approval of, the CITY Representative if such change would: (i) materially affect the Plans and Specifications, or (ii) cause the Project to not meet the Quality Standard.
- C. Within the times set out in the Schedule referred to in Article XXI, the Project Architect shall be directed by ACCD to timely prepare and deliver the Construction Documents to the CITY, but in no event later than the date set forth in the Schedule, unless otherwise agreed to in writing by the CITY, for review and objection by the CITY in accordance with Section 5.01(D) hereof. The Construction Documents shall be based upon the approved Plans and Specifications.
- D. The Final Plans may not be altered without obtaining the prior written approval of the CITY which may not be unreasonably withheld. The CITY, by and through the CITY Representative, shall have the right to disapprove and object to the Construction Documents, or a portion thereof, but only to the extent that: (i) they deviate from the Plans and Specifications; (ii) there has been any new material element added to the Project which is inconsistent with the Quality Standard; or (iii) the Construction Documents fail to provide for the Project to be constructed to satisfy the Quality Standard. The CITY Representative shall notify ACCD in writing of the CITY'S approval or disapproval of the Plans and Specifications or its disapproval of, or objection to, the Construction Documents within fifteen (15) Business Days after receipt of such complete and correct copies of such documents and the written request for approval or disapproval from ACCD. In the event that the CITY Representative disapproves of all, or some portion, of the Plans and Specifications, or objects to the Construction Documents, the CITY Representative's written response shall contain, in reasonable detail, the reasons therefor and shall be furnished to ACCD within such fifteen (15) Business Day period. Further, in the event that the CITY Representative disapproves or objects, the CITY Representative shall meet on an expeditious basis with the ACCD Representative to resolve any items of dispute to the reasonable satisfaction of the Parties. The CITY Representative's failure to provide such written response

within the requested time shall be deemed to be approval on behalf of the CITY of such Plans and Specifications. To the extent that a portion of the Plans and Specifications have been deemed approved, such approval shall not be withdrawn and ACCD shall not be required to obtain re-approval of such portion deemed approved except to the extent that there is a subsequent change or clarification in the Plans and Specifications that materially changes the approved portion of the Plans and Specifications or makes them inconsistent with the subsequent changes. Any resubmission by ACCD of any proposed Plans and Specifications (or applicable portion thereof) that were disapproved or objected to by the CITY shall be approved or disapproved by the CITY, within five (5) Business Days after receipt of a complete resubmission which shall be approved or objected to in the same manner as an original submission under this Section.

- E. During the design process, ACCD shall establish, and update as necessary, the Schedule setting forth the dates for delivery of the various design documents.
- F. ACCD shall control the Project design process and all aspects of the design and specifications of the Project other than approval by the CITY of the Plans and Specifications and the objection right by the CITY of the Construction Documents as set forth in Section 5.01(D).

Section 5.02 Review, Approvals and Objections.

- A. Review, Approvals or Consent Rights. The provisions of this Section 5.02 shall be applicable with respect to all instances in which it is provided under this Funding Agreement that the CITY, or ACCD, exercises a review and approval or a consent right (a "Review and Approval or Consent Right"); provided, however, that if the provisions of this Section 5.02 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Funding Agreement providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Funding Agreement shall control. As used herein, the term "Review and Approval or Consent Rights" shall include, without limiting the generality of that term, all instances in which one Party (the "Submitting Party") is permitted or required to submit to the other Party (the "Reviewing Party") any document, notice or determination of the Submitting Party and with respect to which the Reviewing Party has a right or duty hereunder to review, comment, consent, approve, disapprove, object, dispute or challenge the submission or determination of the Submitting Party. Unless this Funding Agreement specifically provides that the Review and Approval or Consent Rights may be exercised in the sole or absolute discretion (or a similar standard) of the Reviewing Party, in connection with exercising its Review and Approval or Consent Rights under any provision of this Funding Agreement and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a commercially reasonable manner with regard to each and all of such Review and Approval or

Consent Rights and to not unreasonably withhold its approval of, or consent to, any submission.

- B. Standard for Review. The Submitting Party shall use reasonable efforts to cause any matter submitted to the Reviewing Party for which the Reviewing Party has Review and Approval or Consent Rights under this Funding Agreement to be submitted under cover of a request which: (i) contains the heading or caption "TIME SENSITIVE REQUEST FOR REVIEW/APPROVAL OR CONSENT" (or similar phrase); (ii) states the date of submission to the Reviewing Party by the Submitting Party (which date shall be presumed to be the Business Day following the date of dispatch by the Submitting Party if properly addressed and sent by same day messenger service or by Federal Express or other reliable overnight courier service for delivery on the morning of the next Business Day); (iii) states the date by which a response is required under the terms of this Funding Agreement; (iv) identifies the provision of this Funding Agreement pursuant to which such Review and Approval or Consent is sought; and (v) identifies (by document or drawing title, identifying number and revision date, or other clear description) all enclosures to such request with respect to which Review and Approval or consent is then being sought. The Reviewing Party shall review the same and shall promptly (but in any event within any applicable time period specified in this Funding Agreement) give the Submitting Party notice of the Reviewing Party's comments resulting from such review and, if the matter is one that requires approval or consent pursuant to the terms of this Funding Agreement, such approval, consent or disapproval, setting forth in detail the Reviewing Party's reasons for any disapproval. All submissions to the CITY shall be delivered to the CITY Representative unless otherwise directed in writing to ACCD by the CITY Representative.
- C. Deemed Approval or Consent. If no response from the Reviewing Party is delivered to the Submitting Party by the close of business on the date set out in the request following the complete submission of a particular matter (unless such longer period is approved by the Submitting Party, such approval to not unreasonably be withheld) and to which this Section 5.02 applies, such matters shall be deemed approved by the Reviewing Party.
- D. Disputes. The CITY and ACCD agree to attempt in good faith to resolve expeditiously any disputes concerning the approval of, or consent to, any matter submitted to either Party for approval or consent hereunder, but if any such dispute is not resolved between the Parties, such dispute shall be resolved in accordance with the provisions contained in Article XVI.
- E. Duties, Obligations and Responsibilities Not Affected. Approval or consent by the Reviewing Party of, or to, a matter submitted to such Party shall neither, unless specifically otherwise provided: (i) relieve the Submitting Party of its duties, obligations or responsibilities under this Funding Agreement with respect to the matter so submitted; nor (ii) shift the duties, obligations or responsibilities

of the Submitting Party with respect to the submitted matter to the Reviewing Party.

- F. No Implied Approval or Consent. Whenever used in this Funding Agreement, "approval", "approve", "approved", "consent" or "consented" means with respect to any item or matter for which the approval or consent of the CITY or ACCD is required under the terms of this Funding Agreement, then the specific approval of, or consent to, or disapproval of, such item or matter by the CITY or ACCD shall be required, and shall not include any implied or imputed approval or disapproval except as permitted pursuant to Section 5.02(C).
- G. Prior Submissions. The Parties hereby acknowledge that submissions by, and between, the Parties prior to the execution of this Funding Agreement shall not constitute a submission of the Plans and Specifications by ACCD nor constitute approval of the Plans and Specifications by the CITY or any other matter requiring the approval of the CITY pursuant to this Funding Agreement.

Section 5.03 Design Standards. Notwithstanding anything herein to the contrary, the Construction Documents shall comply with the requirements of the Plans and Specifications and the Quality Standard.

Section 5.04 Use of Plans. Without the prior written consent of ACCD, the CITY shall not use the Construction Documents, Plans and Specifications, drawings, models, samples and the like produced or developed in connection with the design and construction of the Project for any purpose other than as contemplated by this Funding Agreement.

ARTICLE VI.

CONSTRUCTION OF THE PROJECT

Section 6.01 General Contractor.

- A. The General Contractor, and any replacement thereof, shall be selected by ACCD and ACCD shall negotiate and execute a Contract between ACCD and the General Contractor. ACCD shall provide a copy of such Contract, and any amendments thereto, to the CITY Representative as required in this Funding Agreement.
- B. ACCD shall contractually require and use all reasonable efforts to cause the General Contractor to diligently pursue and prosecute to Final Completion, in accordance with the Schedule and the Construction Documents, the construction of the Project and shall, subject to Force Majeure Events and adjustments permitted by the terms of this Funding Agreement (but not resulting from change orders), use all reasonable efforts to cause Substantial Completion to occur on or before the Scheduled Completion Date. ACCD shall execute the contract between ACCD and the General Contractor, which shall contain the Construction Contract Requirements as set forth in Exhibit E hereto. ACCD shall direct the General Contractor to prepare, negotiate and enter into bid packages or contracts to retain the services of the Contractor(s) and such other subcontractor(s) and

consultants as are necessary or desirable to perform the Work, as ACCD or the General Contractor shall determine. Upon the execution of such Contracts, ACCD shall provide copies thereof to the CITY. Except as otherwise provided herein, amounts owing under Contracts, including costs, fees and expenses of Contractors and/or subcontractor(s) retained by ACCD, or the General Contractor on behalf of ACCD, in connection with the construction of the Project, shall be the responsibility of ACCD and not of the CITY. ACCD shall require that the General Contractor, Contractor(s) and others performing the Work obtain the Permits and any bonds and insurance required by this Funding Agreement and the Contracts to be obtained by them and shall provide the CITY Representative with copies of such Permits and bonds and of the certificates evidencing such insurance coverage.

Section 6.02 Capital Budget.

- A. Attached hereto as Exhibit F is the Preliminary Capital Budget for the Project.
- B. No later than May 31, 2012, ACCD will deliver the final Capital Budget for the Project to the CITY for review and approval, which will be based upon the Master Plan.
- C. The Parties have agreed that any expenses of any nature on the Project will be the obligation of the CITY, subject to the amount of the CITY Contribution. The costs of any extended maintenance contracts are not included in the Capital Budget and are the obligation of ACCD under the CITY Lease.

Section 6.03 Supervision of Construction. ACCD shall construct, or cause the renovation of, the Building in accordance with the Development Plan, Capital Budget and Final Plans. ACCD shall contractually require the General Contractor to supervise and coordinate the construction of the Project so that the Project is constructed, equipped, and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Funding Agreement and the Construction Documents. Subject to the sufficiency of the CITY Contribution, ACCD shall be responsible for the payment of all costs and expenses incurred in connection with the construction of the Project. ACCD shall use all reasonable efforts to enforce substantial compliance with the terms of the Contracts with the Project Architects, General Contractor, Contractors, subcontractors and/or design professionals and require their performance substantially in accordance therewith. ACCD shall administer the Contracts for the design and construction of the Project and require that work be continuously and diligently performed to achieve Substantial Completion on or before the Scheduled Completion Date. Without limiting the foregoing, ACCD shall, or shall cause a party within its control to:

- A. coordinate the Work as it progresses and the inspections of the Project, review inspection reports, schedule and conduct preconstruction and construction meetings, implement courses of action when requirements of Contracts for the design or construction of the Project are not being fulfilled, and review and revise estimates of construction costs;

- B. negotiate or prepare bid packages for any portion of the Work necessary for the award of Contracts and other agreements as set forth herein, coordinate selections and procedures therefor, maintain harmonious labor relations, and encourage local and minority owned companies in order to comply with Section 8.02;
- C. review all applications for payment and supporting documentation prepared by Contractors and others performing Work or furnishing materials for the Project and provide ACCD with evidence of such payments;
- D. negotiate final payments and/or final settlements, without additional cost to the CITY in excess of the CITY Contribution, with all Parties involved in the construction of the Project. ACCD shall commence, defend and settle without additional cost to the CITY in excess of the CITY Contribution, such legal actions and proceedings concerning the design and construction of the Project as are necessary or required in the opinion of ACCD, and retain counsel in connection therewith, unless such legal actions and proceedings are a result of the CITY's actions;
- E. cause any known defects in the construction of the Project, or in the installation or operation of any equipment or fixtures thereon, to be corrected during construction and applicable warranty periods;
- F. hold regular job meetings with all job-site personnel, including Contractors and subcontractors and the Project Architect, as appropriate and necessary, during the construction of the Project to review the progress of development of the Project and completion of the Project;
- G. if construction of the Project does not progress in accordance with the dates required by the Schedule, as it may be adjusted pursuant to the terms of this Funding Agreement, or if it is unlikely that such dates will be met based on the progress of the Work, ACCD may, but is not required to, cause an acceleration of the Work by all available means including utilization of overtime, additional work crews, and alternate material suppliers;
- H. require the General Contractor to provide sufficient security during construction to protect all persons on the premises of the construction site from injury and to protect the Project grounds from vandalism or theft; and
- I. supervise and coordinate the completion of "punch list" items and warranty work following Substantial Completion.

Section 6.04 Correction of Work. If during construction, ACCD reasonably determines, or otherwise becomes aware, that construction is not proceeding in accordance with the Construction Documents, as they may be modified as permitted under this Funding Agreement, ACCD shall cause any such nonconforming Work to be re-executed by the Party responsible therefore at no expense to ACCD or the CITY. If, however, ACCD determines it to be inexpedient to require the correction of such Work, an equitable deduction under the applicable

Contract or other remedy mutually acceptable to the parties may be pursued, provided, however, that any such action shall not result in any material deviation from the Quality Standard.

Section 6.05 ACCD'S Right to Make Changes. ACCD shall have the right to issue or make changes to the Project. Notwithstanding the foregoing, the CITY shall have the right, in its sole discretion, to approve or disapprove any material changes or additions to, or modifications of, the Project that result in a material deviation from the Plans and Specifications or in the CITY'S reasonable determination cause the Project to fail to meet the Quality Standard.

Section 6.06 Construction Change Order Procedure.

- A. Pursuant to Section 6.05 above, ACCD may, at any time and from time to time, by a written Change Order request, or upon its own initiative, cause changes in the Project within the general scope of the construction required by this Funding Agreement. Such changes may include, but are not limited to, changes in the Construction Documents.
- B. No Change Order request shall adversely impact the Quality Standard, and the costs of any such Change Order request shall either: (i) be paid for by ACCD; or (ii) not result in any increase to the Capital Budget.
- C. ACCD shall have no obligation to implement any Change Order that may be requested by CITY, either formally or informally, that will cause total Project Costs to exceed the amount of the CITY Contribution. Changes to the Work after issuance of a building permit, other than Changes required by CITY inspectors or other CITY authorities with regulatory authority over buildings and construction issued after issuance of a building permit, also shall be considered Change Orders, and if such would have the effect of causing total Project Costs to exceed the amount of the CITY Contribution, then CITY will either grant a variance sufficient to avoid that effect or authorize additional CITY funding to enable sufficient correction that a Certificate of Occupancy may be issued. CITY agrees to set aside \$50,000 of funds separately allocated for real estate acquisition for the Project as a contingency reserve for Change Orders resulting from Changes required by CITY or CITY authorities with regulatory authority over buildings and construction issued after issuance of building permit.

Section 6.07 Sales Tax. The purchase of materials for the construction of the Project shall be structured, to the maximum extent permitted by law, to be exempt from all state and local sales and use taxes pursuant to Chapter 34 of the Texas Tax Code, and other Applicable Law.

Section 6.08 Mechanic's Liens and Claims.

- A. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") shall be filed against the interest of ACCD in the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by, or on behalf of, ACCD, or any of its agents or Contractors, ACCD shall cause the same to be satisfied or discharged of record, or effectively prevent

the enforcement or foreclosure thereof against the Project by injunction, payment, deposit, bond, order of court or otherwise.

ARTICLE VII.
MODIFICATIONS TO THE PROJECT BUDGET

Section 7.01 Modifications to the Capital Budget. Subject to the provision of Section 6.05 of this Funding Agreement, which provides that any material deviation to the Plans and Specifications or a material deviation from the Quality Standard require the approval of the CITY, ACCD shall have the right, from time to time, to reallocate budgeted amounts from one category to any other category of the Capital Budget (provided that any amounts in the Capital Budget representing construction or equipment costs may not be reallocated to any Soft Costs). Nothing in this Section 7.01 shall alter the obligation of ACCD to meet the Quality Standard for construction of the Project.

ARTICLE VIII.
NON-DISCRIMINATION AND SBEDA POLICY

ACCD shall comply with the CITY's Small Business Economic Development Advocacy Program (SBEDA) requirements set forth in the attached Exhibit G, and incorporated herein by reference, for the award of contracts, subcontracts and other opportunities in the design, construction and operation of the PROJECT.

Prior to spending any portion of the CITY-provided funds for the PROJECT, ACCD agrees to develop a comprehensive scope for the work within the PROJECT that will be financed with CITY funds. This scope will provide sufficient detail so that CITY staff can review the scope, determine availability and submit to the CITY's applicable Goal Setting Committee, which shall determine and apply the appropriate Affirmative Procurement Initiative and goal for contracts and subcontracts procured in whole or in part with funds provided by CITY. Once developed, this scope of work shall be submitted by ACCD to:

Ruben Flores, SBEDA Team
Capital Improvements Management Services
100 West Houston Street, Suite 1900
San Antonio, TX 78205

ACCD agrees to provide the scope to CITY within 60 days of ACCD's execution of this Agreement outlining in detail the use of funds provided by CITY. ACCD further agrees not to commence any work, except for architectural services which shall be specifically exempted from this requirement, that will be paid for with CITY funds until CITY staff forwards the Affirmative Procurement Initiative and goal applied by the Goal Setting Committee to ACCD, and ACCD has received approval of its Subcontractor/Supplier Utilization form, and any other documentation required pursuant to the SBEDA Program, from CITY's Small Business Office (SBO) of the Economic Development Department. Upon approval of this Subcontractor/Supplier Utilization form and any other documentation required by the SBO, this Agreement shall be amended thereby without further City Council action to incorporate the

Affirmative Procurement Initiative and goal applied by the Goal Setting Committee, as well as the approved Subcontractor/Supplier Utilization Plan.

ACCD's failure to comply with the SBEDA provisions of this Agreement shall be considered a default and the CITY will pursue all remedies available to it as provided in this Agreement and the SBEDA Ordinance.

ARTICLE IX. FINANCING OF THE PROJECT

Funding for the development and completion of the Project shall be provided by ACCD and the CITY in accordance with the terms of this Funding Agreement.

Section 9.01 Financing Plan. The Project is expected to be funded from the CITY Contribution, as shown in the Capital Budget.

Section 9.02 The CITY Contribution. The CITY will obtain and secure up to ONE MILLION SIX HUNDRED THOUSAND AND ZERO/HUNDRED DOLLARS (\$1,600,000.00) for the Capital Budget, to be made when and in the amounts needed to fund the CITY Contribution, which will be funded through the issuance of certificates of obligation or from any other legally available funds of the CITY which the CITY decides to use. In the event construction and/or renovation costs exceed the CITY Contribution, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the CITY Contribution. Under no circumstances will this Agreement be construed to obligate ACCD to pay any funds for the Project.

Section 9.03 Financing Limitations. ACCD covenants and agrees not to permit the encumbrance, whether voluntary or involuntary, of the CITY Contribution, or any part thereof or interest therein, for any purpose whatsoever. The CITY Contribution may only be used to pay for capitalizable costs of the Project and may not be used to retire any outstanding debt incurred by ACCD, or to pay any working capital expenses shown in the Operating Budget.

Section 9.04 No program or activity fund from or through CITY, nor the personnel involved in the administration of the Project or activity, nor any of the funds received hereunder shall be involved, directly or indirectly, in the construction, operation or maintenance of such part of any facility as is used or will be used for sectarian instruction or activity or as a place of religious worship.

Section 9.05 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, 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.

ARTICLE X.
FUNDING THE PROJECT AND CITY RESPONSIBILITIES

Section 10.01 Development Costs.

- A. Any payment by the CITY for the Project (excluding the cost of the purchase of the building) shall reduce the balance of the CITY Contribution on a dollar-for-dollar basis.

- B. On the first day of the month following the execution of this Funding Agreement and ACCD'S incurrence of costs pertaining to the Project, and the first of each succeeding calendar month during the Term of this Funding Agreement, ACCD will submit a Project Costs payment request, including a Project Cost Reimbursement Request in the form of Exhibit H attached hereto ("Payment Request"), to the CITY Representative addressed to Director, Capital Improvements Management Services, P.O. Box 839966 San Antonio, Texas 78283. The CITY will promptly begin to process Payment Requests for services and Work performed, and materials provided, by the General Contractor, Contractors, subcontractors, suppliers, and vendors which have been approved, pertaining to the preceding payment period plus any unreimbursed amounts for prior payment periods. If there is a rejection of part of a Payment Request, the accepted portion of the Payment Request shall be processed as provided in this Article X and the rejected portion will be returned to ACCD within ten (10) Business Days from the date of submission to the CITY with a reasonably detailed explanation of the rejection. The CITY shall have the right, at the CITY'S option, to have a CITY employee or consultant inspect the Work completed which is set out in the Payment Request to ensure compliance with the Final Plans. The inspection shall not delay payment by the CITY unless such work does not comply with the Final Plans. If the CITY determines the Work, or any portion of the Work, set out in the Payment Request is not in compliance, the CITY shall advise ACCD in writing of the Work that is non-compliant and will conduct a follow-up inspection within five (5) Business Days after receiving written notice from ACCD that the Work is compliant with the Final Plans in order to confirm the Work represented by the Reimbursement Request is compliant.

- C. As soon as practicable, but in no event beyond the thirty (30) day period provided by Chapter 2251 of the Texas Government Code, the CITY will make payment of the Payment Requests through checks to ACCD. Payment Requests submitted by ACCD shall include: (i) an unconditional waiver or partial waiver as the case may be of liens from the General Contractor and a conditional waiver of liens, with the only condition being payment of the amount requisitioned from each Contractor, subcontractor, supplier or vendor providing Work or services on the Project; and (ii) an invoice for services rendered, or materials or supplies furnished, for all items for which payment is requested. Accompanying each new Payment Request shall be unconditional waivers of lien or partial waivers, as the case may be, of all subcontractors paid from the prior Payment Request. No waiver of lien

shall be required from entities that do not have the ability to place a lien on the Project. The CITY shall process ACCD's Payment Requests up to the maximum amount included in the Capital Budget; provided that the total aggregate amount reimbursed to ACCD by the CITY shall not exceed the CITY'S Contribution.

- D. ACCD agrees, and shall include in each Contract for design and construction of the Project, that the CITY, pursuant to Chapter 53 of the Texas Property Code, shall withhold payment in the amount of ten percent (10%) of each invoice that is otherwise due and payable under this Funding Agreement. All monies withheld under this provision will become due and payable thirty (30) days after Final Completion of the Project.

Section 10.02 Additional Obligations of the CITY. Without limiting the CITY'S obligations hereunder, and in addition to its obligations set forth elsewhere in this Funding Agreement, the CITY, acting through the CITY Representative, shall:

- A. promptly furnish to ACCD, upon receipt by the CITY, copies of all legal notices received by the CITY affecting the Project, including, without limitation, notices from Governmental Authorities, notices from any party claiming any default in any financing or payment obligation, and any other notice not of a routine nature;
- B. promptly notify ACCD of any suit, proceeding or action that is initiated or threatened in connection with the Project or against ACCD or the CITY; and
- C. cooperate with ACCD in all aspects of the development and construction of the Project and, except as expressly authorized by this Funding Agreement, not unreasonably hinder, delay or interfere with the development and construction of the Project.

Section 10.03 Additional Costs Resulting from Changes in Applicable Law. Any additional costs for construction of the Project resulting from a change in Applicable Law by any Governmental Authority shall be borne by the CITY; however, any such additional costs shall be approved by City Council.

Section 10.04 Limitation of Funding Obligations. Notwithstanding anything in this Funding Agreement to the contrary:

- A. Any and all amounts payable by the CITY under this Funding Agreement are payable solely from the CITY Contribution, and no claim for payment of any amount outside of the CITY Contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the CITY.
- B. The CITY shall have no obligation to pay any liens or encumbrances placed on the Building through financing obtained by ACCD.

ARTICLE XI.
MANAGEMENT AND OPERATION AND TAXES

Section 11.01 Expenses of Management and Operation. ACCD shall assume the risks of all costs of management and operation of the Building including maintenance, repair and replacement of the structural components, infrastructure improvements, and the operating systems, payment of insurance premiums for insurance maintained at levels necessary to replace all improvements, payment of utilities and other duties associated with the management and ownership of a first class Building.

Section 11.02 Taxes. The Parties contemplate that the Building will be exempt from payment of all ad valorem taxes and that costs of construction will be exempt from sales taxes. ACCD and the CITY shall work cooperatively to achieve tax exempt status for the Building.

ARTICLE XII.

[intentionally deleted]

ARTICLE XIII.
NAMING RIGHTS AND CITY PLAQUE

Section 13.01 ACCD is not allowed to sell naming rights to the building and shall obtain the CITY'S approval prior to changing the name of the Building.

Section 13.02 The CITY reserves the right to provide a plaque to ACCD recognizing the support of the CITY for the Project. The CITY shall provide a list of locations in the Building which would be suitable to place the plaque and ACCD shall select the location for the plaque from the CITY'S list.

Section 13.03 ACCD is required to publicly acknowledge that the Project is supported by CITY as direct by the CITY Representative. ACCD may share information regarding monies provided by the CITY as a part of its fund-raising efforts; however, no portion of the CITY Contribution may be used for fund-raising costs.

ARTICLE XIV.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 14.01 By ACCD. ACCD hereby makes the following representations, warranties and covenants to the CITY as of the Effective Date:

- A. Existence. ACCD is a public junior college district and a Texas local governmental unit, and will remain as such throughout the Term of this Agreement.
- B. Authorization. ACCD is duly and legally authorized to enter into this Funding Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its existence and authority to act, and the undersigned

representative is authorized to act on behalf of and bind ACCD to the terms of this Funding Agreement. ACCD has provided to the CITY, on or prior to the Effective Date, a certified copy of a resolution of its Board of Trustees authorizing ACCD's execution of this Funding Agreement through the undersigned representative. ACCD has all requisite power to perform all of its obligations under this Funding Agreement. The execution of this Funding Agreement by ACCD does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority. A copy of the Resolution by ACCD's Board of Trustees as set out herein is attached as Exhibit I hereto and incorporated herein for all purposes.

- C. Enforceable Obligations. Assuming due authorization, execution, and delivery by the Parties hereto, this Funding Agreement, all documents executed by ACCD, pursuant hereto, and all obligations of ACCD hereunder are enforceable against ACCD in accordance with their terms.
- D. No Legal Bar. The execution and delivery of this Funding Agreement and the performance of its obligations hereunder by ACCD will not conflict with any provision of any Applicable Laws to which ACCD is subject or conflict with, or result in a breach of, or constitute a default under, any of the terms, conditions or provisions of any agreement or instrument to which ACCD is a party or by which it is bound.
- E. Litigation. There are no legal actions or proceedings pending or, to the knowledge of ACCD, threatened against ACCD which, if adversely determined, would materially and adversely affect the ability of ACCD to fulfill its obligations under this Funding Agreement.
- F. Knowledge. ACCD has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by ACCD under this Funding Agreement are in any way inaccurate, incomplete or misleading.

Section 14.02 By the CITY. The CITY hereby makes the following representations, warranties and covenants to ACCD as of the Effective Date:

- A. Existence. The CITY has been duly created under the laws of the State of Texas.
- B. Authorization. The CITY is duly and legally authorized to enter into this Funding Agreement and has complied with all laws, regulations and Governmental Rules to which it may be subject, and the undersigned representative has been duly authorized to act on behalf of and bind the CITY to the terms of this Funding Agreement. The CITY has all requisite power to perform all of its obligations under this Funding Agreement and the execution and performance of this Funding Agreement by the CITY does not require any consent or approval which has not

been obtained, including without limitation, the consent or approval of any Governmental Authority.

- C. Enforceable Obligations. Assuming due authorization, execution, and delivery by the Parties hereto, this Funding Agreement and all obligations of the CITY hereunder are enforceable against the CITY in accordance with their terms.
- D. Litigation. There are no pending legal actions or proceedings which, if adversely determined, would materially and adversely affect the ability of the CITY to fulfill its obligations under this Funding Agreement.
- E. Knowledge. The CITY has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by the CITY under this Funding Agreement are in any way inaccurate, incomplete or misleading.
- F. Liens or Encumbrances. There are no liens or encumbrances on the Building.
- G. DISCLAIMER BY THE CITY. ACCD ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS CONTAINED WITHIN THIS FUNDING AGREEMENT, NEITHER THE CITY NOR ANY OF ITS ELECTED OFFICIALS, EMPLOYEES, OR REPRESENTATIVES HAVE MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PROJECT, THE SUBJECT MATTER OF THIS FUNDING AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS FUNDING AGREEMENT. ACCD AGREES THAT NEITHER THE CITY NOR ANY OF ITS ELECTED OFFICIALS, EMPLOYEES, OR REPRESENTATIVES WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING (COLLECTIVELY, THE "DEVELOPMENT RISKS"):
 - (1) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN A CITY REPRESENTATIVE PURSUANT TO THIS FUNDING AGREEMENT.
 - (2) THE COMPLIANCE OF THE PROJECT, THE MASTER PLAN, OR ANY FEATURE THEREOF AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE.
 - (3) THE ACCURACY OR COMPLETENESS OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, SCHEDULES OR OTHER MATTERS RELATING TO THE PROJECT OR ANY IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED UNDER THE TERMS OF THIS FUNDING AGREEMENT.

IT IS UNDERSTOOD AND AGREED BY ACCD THAT IT HAS BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO ALL SUCH MATTERS.

Section 14.03 Reliance. The Parties agree and acknowledge that, in entering into this Funding Agreement:

- A. Each Party is expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of the other Party, without any obligation to investigate the accuracy or completeness thereof;
- B. The Parties may continue to rely thereon until this Funding Agreement is, or shall be, terminated according to its terms;
- C. Such representations, warranties and covenants are a material inducement to the Parties in making this Funding Agreement and agreeing to undertake and accept its terms; and
- D. The Parties would not be willing to do so in the absence of any of such representations, warranties and covenants.

Section 14.04 Additional Covenants.

- A. Payments. ACCD shall pay General Contractor, in accordance with Section 10.01, for services and materials provided by the General Contractor, architects, Contractors, subcontractors, suppliers and vendors.
- B. Enforcement. ACCD shall diligently enforce its rights, and seek remedies available to it, upon any default under the terms of the Construction Contract, and as necessary to preserve and protect its rights and interests in and to the Building.
- C. Return of Unused Funds to CITY. Upon Project Completion or Termination of the Funding Agreement, ACCD shall immediately return any unused funds, rebates, or credits to CITY.
- D. Waiver of Subrogation. With respect to any policies of insurance which may be required to be provided by ACCD in connection with this Funding Agreement or required under a Construction Contract or other agreement related hereto, ACCD waives and shall require that the General Contractor waive any subrogation rights against the CITY with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage).
- E. Waiver of Consequential Damages. ACCD waives all present and future claims for consequential damages against the CITY arising from or related to this Funding Agreement. The CITY waives all present and future claims for consequential damages against ACCD arising from, or related to, this Funding Agreement.

ARTICLE XV.
TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES

Section 15.01 Automatic Termination Events. The Parties acknowledge that certain obligations and requirements of this Funding Agreement are of fundamental importance to the Parties such that the breach thereof justifies and requires the automatic termination of this Funding Agreement and that no alternate remedy would appropriately protect the interests of the Parties. Each of the following is an Automatic Termination Event that, when it occurs, may, at the election of the Party that has not committed the Automatic Termination Event, result in the automatic termination of this Funding Agreement. The non-defaulting Party shall notify the defaulting Party in writing within five (5) Business Days of the non-defaulting Party becoming aware of the Automatic Termination Event that the non-defaulting Party has elected to enforce the automatic termination of this Funding Agreement. If the non-defaulting Party elects not to enforce the automatic termination of this Funding Agreement, but rather to treat the breach as an Event of Default, the defaulting Party shall be entitled to the cure process set out in Section 15.04 below after receipt of notice of the breach from the non-defaulting Party:

- A. If, at any time during the Term of this Funding Agreement, ACCD is not exempt from taxation under the Code;
- B. The Building is not used for the Veterans Outreach and Transition Center;
- C. The CITY Lease is terminated;
- D. The entry of a non-appealable ruling by a court of competent jurisdiction that the action of the CITY pursuant to this Funding Agreement is beyond the authority conferred upon the CITY by any applicable Governmental Rules and that the CITY did not have authority to enter into this Funding Agreement;
- E. Any legal proceeding contesting the validity of the Election, any matter affecting the ability of the CITY to fund the CITY Contribution, or the validity or enforceability of this Funding Agreement, which proceeding: (i) is concluded by a final non-appealable determination adverse to the CITY; or (ii) prevents the Construction Commencement Date to occur in accordance with this Funding Agreement; or
- F. Failure by the CITY to fund all or part of the CITY Contribution in accordance with the terms of this Funding Agreement.

Section 15.02 Remedies for Automatic Termination Events. If an Automatic Termination Event occurs, the non-defaulting Party may pursue all rights and remedies provided by law or in equity against the defaulting Party.

Section 15.03 Events of Default. Each of the following will be an Event of Default:

- A. The CITY or ACCD fails to perform or observe any of the material obligations, covenants or agreements to be performed or observed by such Party under this

Funding Agreement which failure continues for more than thirty (30) days following receipt of notice in writing of such failure to such Party.

- B. Any material representation or warranty of the CITY or ACCD is untrue when made or becomes untrue thereafter.
- C. Either Party submits a report, application, certificate or other information required under the terms of this Funding Agreement which contains any materially false or misleading statements.
- D. ACCD fails to achieve any of the Preconstruction Milestones within the time period required by this Funding Agreement.
- E. ACCD makes a general assignment for the benefit of creditors.
- F. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state thereof is filed by, or against, ACCD and is not dismissed, withdrawn or otherwise concluded without adjudication within seventy-five (75) days after being filed.
- G. ACCD admits in writing its inability to pay its debts when due.
- H. A bill in equity or other proceeding for the appointment of a receiver of ACCD or other custodian for ACCD'S business or assets is filed and consented to by ACCD.
- I. A receiver or other custodian (permanent or temporary) of ACCD's assets or property, or any part thereof, is appointed by any court of competent jurisdiction.
- J. Proceedings for a composition with creditors under any state or federal law have been instituted by or against ACCD.
- K. A final judgment representing a claim or charge against the assets of ACCD in an amount in excess of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) remains unsatisfied or of record for ninety (90) days or longer (unless a supersedeas or other appeal bond is filed).
- L. ACCD is dissolved.
- M. Execution is levied against ACCD's business or its property.
- N. Suit to foreclose any lien or mortgage against any property owned or held by ACCD is instituted against ACCD and not dismissed within thirty (30) days.
- O. ACCD shall cease to pursue diligently the construction of the Project for more than thirty (30) consecutive days for any cause other than by reason of (i) Force Majeure, or (ii) the CITY's issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the CITY

Contribution, and such cessation has the effect of delaying the Substantial Completion Date.

- P. ACCD fails to pay or cause payment to be made to the General Contractor, Project Architects, Contractors, subcontractors or other Persons engaged in the design and construction of the Project within a reasonable time after payment from the CITY.
- Q. The failure of ACCD to complete the entire Project by December 31, 2013, unless caused by the CITY's issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the CITY Contribution.

Section 15.04 Remedies for an Event of Default.

- A. If an Event of Default occurs, the non-defaulting Party shall give the defaulting Party notice of the breach. The breaching Party shall have thirty (30) days to cure the breach. After delivery of the required notice and expiration of any applicable cure period, any Party may pursue all rights and remedies provided by law or in equity. The rights and remedies provided in this Funding Agreement shall be in addition to, and cumulative of, all other rights and remedies available to a Party, and the pursuit of one (1) remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.
- B. In the event that ACCD commits an Event of Default, ACCD shall be required to return any portion of the CITY Contribution paid to ACCD for improvements to be made to the Project for which the improvements were either not made or are not in accordance with the Final Plans.
- C. In the event that ACCD commits an Event of Default, CITY, in its sole discretion, may withhold funds otherwise due as damages.
- D. Any failure of the CITY to exercise any right or remedy as provided in this Funding Agreement shall not be deemed a waiver by the CITY of any claim for actual damages (but not consequential damages) it may have by reason of an Event of Default.
- E. For an Event of Default under Section 15.03(Q), such default will also constitute a default under the CITY Lease even if not stated as such in the CITY Lease, and the CITY may declare a default under the CITY Lease as a result of such failure.

**ARTICLE XVI.
MEDIATION**

Section 16.01 Mediation. In the event of a dispute between the Parties to this Funding Agreement which cannot, within a reasonable time, be resolved, and does not result in an automatic termination at the election of the non-breaching Party, the Parties agree to submit the

disputed issue to non-binding mediation. The Parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within three (3) days after the mediation is initiated. The Parties shall share equally the costs of the mediation. If an Event of Default occurs, the Parties may elect to participate in mediation before, during or after the cure period.

ARTICLE XVII.
ASSIGNMENT

Section 17.01 The Parties shall not assign (partially or in the entirety) any rights or duties under this Funding Agreement without prior written consent of the other Party, such consent to not be unreasonably withheld; provided, however, that to the extent assignment is approved, the transfer of this Funding Agreement or any of the documents referenced herein shall confer all rights and duties with respect to the development of the Project.

ARTICLE XVIII.
FORCE MAJEURE EVENTS

Section 18.01 Definition. For purposes of this Funding Agreement, the term, Force Majeure, shall have the meaning set out in Exhibit A. A failure by any party in which ACCD owns an interest, either directly or indirectly, to act or fulfill its obligations, shall not be a Force Majeure.

Section 18.02 Mitigation. Each Party shall use commercially reasonable efforts to mitigate any delay in performance by such Party under this Funding Agreement caused by a Force Majeure Event.

ARTICLE XIX.
CAPACITY OF THE CITY

Section 19.01 Capacity of the CITY. Without in any way limiting or exercising the obligation, duties, covenants and agreements of the CITY as a Party to this Funding Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of the CITY'S required Governmental Functions shall not cause or constitute a default by the CITY under this Funding Agreement or any other Project document or give rise to any rights or claims for damages or injury against the CITY in its capacity as a Party to this Funding Agreement. ACCD's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against the CITY as a municipality and governmental entity.

Section 19.02 Capacity of Parties Acting on Behalf of the CITY. All references in this Funding Agreement to employees, agents, representatives, contractors and the like of the CITY shall refer only to such persons or entities acting on behalf of the CITY in its capacity as a Party to this Funding Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of the CITY'S required Governmental Functions.

Section 19.03 No Limitation on the CITY'S Governmental Functions. The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Funding

Agreement by the CITY (as a Party to this Funding Agreement) shall be binding upon, constitute a waiver by, or estop, the CITY from exercising in good faith any of its rights, powers or duties in its required Governmental Functions.

ARTICLE XX.
REPRESENTATIVES

Section 20.01 ACCD Representative. ACCD designates the Associate Vice-Chancellor for Facilities to be the ACCD Representative (the "ACCD Representative") with full authority to execute any and all instruments requiring ACCD's signature and to act on behalf of ACCD with respect to all matters arising out of this Funding Agreement. ACCD shall have the right, from time to time, to change the person who is ACCD Representative by giving the CITY written notice thereof. The ACCD Representative shall represent the interests of ACCD, be responsible for overseeing all aspects of design, construction and development of the Project, and work closely with the CITY Representative, on behalf of ACCD. Actions, decisions or determinations by the ACCD Representative on behalf of ACCD shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Funding Agreement, in which case, actions taken by ACCD Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the ACCD Representative shall be binding on ACCD, provided, however the ACCD Representative shall not have any right to modify, amend or terminate this Funding Agreement.

Section 20.02 The CITY Representative. The CITY designates the Director of Capital Improvements Management Services ("CIMS") to be the CITY Representative (the "CITY Representative"). The CITY shall have the right, from time to time, to change the person who is the CITY Representative by giving ACCD written notice thereof. The CITY Representative may delegate authority to a CITY employee or a consultant for purposes of inspecting the construction of the Project. With respect to any action, decision or determination which is to be taken or made by the CITY under this Funding Agreement, the CITY Representative may take such action or make such decision or determination or shall notify ACCD in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Actions, decisions or determinations by the CITY Representative on behalf of the CITY shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Funding Agreement, in which case, actions taken by the CITY Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the CITY Representative shall be binding on the CITY; provided, however, the CITY Representative shall not have any right to modify, amend or terminate this Funding Agreement. ACCD and any Person dealing with the CITY in connection with this Funding Agreement or any matter governed by this Funding Agreement may rely and shall be fully protected in relying upon the authority and capacity of the CITY Representative or any such designee to act for and bind the CITY in any such matter.

ARTICLE XXI.
SCHEDULE AND REPORTS

Section 21.01 Design and Construction. ACCD shall provide to the CITY for its information, the Schedule, as revised from time to time, for the permitting, design and construction of the Project. The Schedule shall: (i) include time for adverse weather conditions to the extent normally encountered in the San Antonio, Texas area and the impacts thereof; (ii) establish a date for Substantial Completion not later than the Scheduled Completion Date; and (iii) delineate all phases of the Project, allocate costs to each phase, and set forth projected dates for starting and completing each phase in sufficient detail to allow the CITY or its representative(s) to monitor progress of the Project. The Parties acknowledge and agree that notwithstanding any theoretical delay or theoretical extensions of time for completion as may be shown on any schedules or printouts, the Schedule shall be governed by this Funding Agreement and shall be extended only in accordance with the procedures set forth in this Funding Agreement. The phases of the Project to be addressed in the Schedule shall include, without limitation: (i) acquisition and approval of Permits; (ii) the design phases; and (iii) all construction phases. Dates set forth in this Funding Agreement shall be included in the Schedule and such dates may not be extended except as provided in this Funding Agreement.

Section 21.02 Progress Reports. Until the completion of the renovation of the entire Building, ACCD shall provide to the CITY Representative quarterly written progress reports. Such reports shall describe the status of the design and construction of the Project and include, but are not limited to: (i) actual versus estimated percentage completion for each component of the Project; (ii) any change in costs incurred in connection with the construction of the Project; (iii) performance against schedule; (iv) any change in the critical path and revisions to the Schedule as of the end of each reporting period and (v) the status of ACCD's fundraising efforts to complete the entire Project.

Section 21.03 Significant Event Reports. Should any Force Majeure or other situation, occurrence or event having a material impact on the Work be anticipated or occur, ACCD will prepare a written "Significant Event Report" (herein so called) detailing all available information and the steps being taken to correct the problem and forward the same to the CITY Representative within two (2) Business Days after ACCD's discovery of such delay, situation, occurrence or event. The CITY may at any time request a Significant Event Report on any event that in the CITY Representative's reasonable opinion falls under this category.

Section 21.04 Inspection Reports. ACCD shall require appropriate inspections, testing, and safety programs for the design and construction of the Project.

Section 21.05 Final Construction Report. Within ninety (90) days after Final Completion, ACCD shall deliver, or cause to be delivered, to the CITY Representative a final construction report, which report shall set forth the total costs incurred by ACCD in connection with the construction of the Project through Final Completion of the Project.

Section 21.06 Returns Required by Law. ACCD shall execute and file punctually when due all forms, reports and returns relating to the Project required by Applicable Law, including, without limitation, reports relating to the employment of personnel.

Section 21.07 Inspection Rights of the CITY. ACCD agrees that the CITY Representative, or his designee, shall have the right: (i) at all times during normal business hours of ACCD, the General Contractor or Contractors, as the case may be, to inspect the Work included in any Reimbursement Request for compliance with the Final Plans; and (ii) at all reasonable times upon not less than two (2) Business Days prior written notice to ACCD during construction hours to inspect the Project. The CITY Representative shall, at the option of ACCD, be accompanied by ACCD, or a representative, during such inspection. The CITY agrees to require the CITY Representative to comply with all applicable safety requirements and procedures. In addition, ACCD shall keep, for a period that is four (4) years after the termination of this Funding Agreement, the books and records to be maintained by ACCD pursuant to this Funding Agreement at its regular business office, which the CITY Representative, or his designee, may examine and/or audit (at the CITY'S expense) at all reasonable times upon reasonable notice to ACCD. ACCD further agrees to contractually require the foregoing in favor of the CITY as to the General Contractor and all Contractors, subcontractors, or other Persons retained by, or on behalf of, ACCD. The provisions of this Section 21.07 shall in no way limit, or otherwise relieve, ACCD from ACCD'S obligation to complete the Project in conformance with this Funding Agreement unless the CITY'S inspections or tours interfere with ACCD'S construction of the Project and then only to the extent that such acts continue after ACCD'S notice to the CITY of such interference. The CITY, through appropriate designees, further reserves the right to enter the Project during regular business hours to conduct fire, safety and health inspections or any other inspections by Governmental Authorities or to exercise the CITY'S normal police powers, provided that in exercising such powers: (i) the CITY shall use its best efforts not to unreasonably interfere with the operations of ACCD; and (ii) the CITY'S inspection rights shall not be deemed to limit in any way ACCD'S rights to contest the CITY'S findings with respect to such inspections or the exercise of such police powers.

**ARTICLE XXII.
CASUALTY**

Section 22.01 If, at any time during the Term, there is any Casualty to the Project, or any part thereof, then ACCD shall: (i) use all reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Project to a safe condition whether by repair or by demolition, removal of debris and screening from public view; and (ii) to the extent allowed by law and subject to the actual receipt of adequate Insurance Proceeds, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) to repair, restore, replace or rebuild the Project as nearly as practicable to a condition which is at least substantially equivalent to that existing immediately prior to such damage or destruction.

**ARTICLE XXIII.
NOTICES**

Section 23.01 Notices.

- A. The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Funding Agreement. However, any formal

ARTICLE XXV.
TIME

Section 25.01 Time is of the essence in all things pertaining to the performance of this Funding Agreement.

ARTICLE XXVI.
SEVERABILITY

Section 26.01 If any provision of this Funding Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of either Party hereunder are incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Funding Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that such offending provision be reformed to validly and legally meet such thwarted expectations, and that the remainder of this Funding Agreement will not be affected.

ARTICLE XXVII.
WAIVER

Section 27.01 Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Funding Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Funding Agreement.

ARTICLE XXVIII.
RESERVATION OF RIGHTS

Section 28.01 To the extent not inconsistent with this Funding Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

ARTICLE XXIX.
FURTHER DOCUMENTS

Section 29.01 The Parties agree that at any time after execution of this Funding Agreement, they will, upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Funding Agreement.

ARTICLE XXX.
INCORPORATION OF EXHIBITS AND OTHER DOCUMENTS BY REFERENCE

Section 30.01 All Exhibits and other documents attached to or referred to in this Funding Agreement are incorporated herein by reference for the purposes set forth in this Funding Agreement.

ARTICLE XXXI.
GOVERNING LAW; VENUE

Section 31.01 THIS FUNDING AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

ARTICLE XXXII.
ATTORNEYS' FEES

Section 32.01 If any Party to this Funding Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Funding Agreement and the other Party thereto places the enforcement of this Funding Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

ARTICLE XXXIII.
NO ORAL MODIFICATION

Section 33.01 Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Funding Agreement in whole or in part unless such agreement is in writing and signed by both Parties.

ARTICLE XXXIV.
NO PARTY DEEMED DRAFTER

Section 34.01 Each Party has thoroughly reviewed and revised this Funding Agreement (including each exhibit hereto) and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter hereof.

ARTICLE XXXV.
USE OF DEFINED TERMS

Section 35.01 Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Funding Agreement, or any Exhibits hereto, and any other instruments, documents and agreements, shall include this Funding Agreement, Exhibits and other instruments, documents and agreements as originally executed and as the same may from time to time be supplemented, modified or amended.

ARTICLE XXXVI.
MULTIPLE COUNTERPARTS

Section 36.01 This Funding Agreement may be executed in counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one (1) document.

ARTICLE XXXVII.
ENTIRE AGREEMENT

Section 37.01 This Funding Agreement, together with the Exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

ARTICLE XXXVIII.
TABLE OF CONTENTS; HEADINGS

Section 38.01 The table of contents and headings of the various articles, sections and other subdivisions of this Funding Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Funding Agreement.

ARTICLE XXXIX.
PARTIES IN INTEREST

Section 39.01 The terms of this Funding Agreement shall be binding upon, and for the benefit of, the Parties hereto and their successors and permitted assigns. Nothing in this Funding Agreement, whether express or implied, shall be construed to give any person (other than the Parties hereto and their successors and permitted assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Funding Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Funding Agreement.

ARTICLE XL.
NOTICES OF CHANGES IN FACT

Section 40.01 Promptly after either Party becomes aware of same, such Party will notify the other Party of:

- A. Any change in any material fact or circumstance represented or warranted by such Party in this Funding Agreement; and
- B. Any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Funding Agreement, specifying in each case, the nature thereof and what action the Party has taken and proposes to take with respect thereto.

ARTICLE XLI.
SURVIVING OBLIGATIONS

Section 41.01 Notwithstanding anything contained herein to the contrary, the obligations of ACCD set forth in the following Sections of this Funding Agreement shall survive the termination of this Funding Agreement for a period of seventy-five (75) years following Final Completion: Sections 4.04, 4.05, 12.01, 13.02, 14.05, and 21.07.

ARTICLE XLII.
PROHIBITED INTERESTS IN CONTRACT

Section 42.01. The Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a CITY officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a CITY contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Section 42.02. ACCD warrants and certifies as follows that ACCD and the members of its Board of Trustees, its officers, employees and agents are neither officers nor employees of the CITY.

Section 42.03. ACCD acknowledges that CITY's reliance on the above warranties and certifications is reasonable.

ARTICLE XLIII.

PUBLIC INFORMATION

ACCD acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

ARTICLE XLIV

NO THIRD-PARTY BENEFICIARIES

The provisions of this Funding Agreement are solely for the benefit of the signatory parties hereto, and no third parties shall be entitled to enforce the provisions hereof.

*[Remainder of this page intentionally left blank]
[signatures on next page]*

THEREFORE, IN WITNESS WHEREOF, the CITY and ACCD have executed this Funding Agreement as of this 11th day of January, 2011/₂.

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By: [Signature]
City Manager

**ALAMO COMMUNITY
COLLEGE DISTRICT,**
a Texas local governmental unit

By: [Signature]
Dr. Bruce Leslie, Chancellor

ATTEST:
[Signature]
City Clerk



ATTEST:

APPROVED AS TO FORM:

Nancy D Reyes for
City Attorney Michael Bernard

APPROVED AS TO FORM ONLY
[Signature] Ross Laughead
2011.12.14
09:49:43 -06'00'
Langley & Berack, Inc.

EXHIBIT A

DEFINITIONS

As used in this Funding Agreement, each of the following terms and phrases has the meaning as set forth in this Exhibit A, unless the context in which such term or phrase is used in this Funding Agreement clearly indicates otherwise.

"ACCD" means the Alamo Community College District, a Texas local governmental unit.

"ACCD Contribution" means charitable contributions, grants, and/or a bank loan or loans, that when added to the other sources of funding will provide an aggregate amount of funds to pay Project Costs as provided in the Capital Budget and fund the Operating Reserve. ACCD Contribution does not include the CITY Contribution.

"ACCD Representative" means the person so designated by resolution of the Board of Trustees of ACCD, or the replacement for such person identified by such Board of Trustees, with notice of the identity of the person initially designated to serve as ACCD Representative and each subsequent replacement to be given in writing to the CITY in accordance with this Funding Agreement.

"Affiliate" means a specified Person who: (i) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (ii) owns directly or indirectly thirty-five percent (35%) or more of the equity or voting interests of the specified Person; (iii) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (i) or (ii); or (iv) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

"Applicable Law" means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority or any board of underwriters (or other body exercising similar functions), or any recorded restrictive covenant or deed restriction applicable to the Project, including the Americans with Disabilities Act and all applicable zoning ordinances and building codes, flood disaster laws, health laws and environmental laws and regulations.

"Automatic Termination Event" means each occurrence described in Section 15.01.

"Business Day" means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Texas. Use of the word "day," as opposed to Business Day, means calendar day.

"Capital Budget" means the budgeted amount for all costs of the Project, which shall include line items for architectural, engineering, consulting, permitting, and legal fees, basic construction costs and fees, Project Costs (defined below), furniture, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management expenses, and construction budget contingencies. The Capital Budget will not include any additional improvements or costs resulting from any actions

or delays on the part of the CITY (other than the time periods for approvals provided herein), any costs for the lease of fixtures, furniture and equipment, or any costs of offsite infrastructure.

“Casualty” means damage, destruction or other property casualty to the Project resulting from a fire or other event of Force Majeure.

“Certificate of Commencement of Construction” means the sworn certificate of ACCD in the form attached as Exhibit B.

“Certificate of Substantial Completion” means the sworn certificate of ACCD that the Project is Substantially Complete, in the form attached as Exhibit C.

“Change Order” has the meaning set forth in Section 6.06(A).

“CITY” means the City of San Antonio, Texas, a home rule municipality under Article XI, Section 5, of the Texas Constitution primarily situated in Bexar County, Texas.

“CITY Lease” means the Lease Agreement between the City of San Antonio and ACCD covering the building and land on which the Project is located.

“CITY Contribution” means the funding of \$1,600,000.00 by the City under the terms of this Funding Agreement. In the event construction and/or renovation costs exceed the CITY Contribution, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the CITY Contribution. Under no terms will this Funding Agreement be construed to obligate ACCD to pay any funds for the Project.

“Code” means the Internal Revenue Code of 1986, as amended.

“Conceptual Design Documents” means drawings and other documents prepared by the Project Architect illustrating the scale and relationship of the Project components. The Conceptual Design Documents shall include a site plan, schematic drawings, and preliminary building plans, sections and elevations. At ACCD’s option, the Conceptual Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.

“Construction Commencement Date” means the date on which onsite construction activities commenced on the Project.

“Construction Contract” means a contract for Work, and services, and purchase orders for materials to be supplied for construction of the Project.

“Construction Documents” means the architectural drawings, specifications, and other documents, as amended from time to time pursuant to this Funding Agreement, setting forth the design of the Project and the requirements for its construction in sufficient detail to establish the costs for permitting and construction of the Project.

“Contractors” mean the contractors selected and engaged by ACCD to construct the Project.

“Cost Overruns” means the amount by which funds required to complete the development of the Project exceeds the Capital Budget.

“Design Drawings” mean the drawings and other documents based on the Conceptual Design Documents that illustrate and describe the refinement of the design of the Project to be constructed as part of the Project, establishing the scope, relationships, forms, size and appearance of the Project and the improvements to be constructed as part of the Project by means of plans, sections and elevations, including specifications that identify major materials and systems and establish in general their quality levels.

“Effective Date” means the date on which this Funding Agreement has been duly executed on behalf of the CITY and ACCD.

“Environmental Condition” means any Environmental Event that occurs, and any Recognized Environmental Condition that exists, on the Effective Date.

“Environmental Event” means: (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release of any kind of Hazardous Materials which may cause a threat or actual injury to human health, the environment, plant or animal life; (ii) the occurrence of any actions or proceedings pursuant to any Environmental Laws arising out of any of the foregoing; and (iii) any claims, demands, actions, causes of actions, remedial and/or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of an Environmental Proceeding.

“Environmental Laws” mean any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), CERCLA, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

“Environmental Proceeding” means:

- (i) Any notice of any investigation, response action, proceeding, whether executive, administrative or judicial, or litigation or litigation threatened in writing relating to Environmental Laws or other environmental matters

concerning property insofar as such investigation, response action, litigation, litigation threatened in writing or proceeding relates to such property; or

- (ii) Receipt of any notice from any Person of: (i) any violation or alleged violation of any Environmental Law relating to a property or any part thereof or any activity at the time conducted on any property; (ii) the commencement of any clean-up, abatement or control pursuant to or in accordance with any Environmental Law of any Hazardous Materials on or about any such property or any part thereof; or (iii) any violation of any Applicable Laws or harm to Person or property in each case with respect to worker safety at or in connection with such property or any part thereof.

“Event of Default” means those events described in Section 15.03 of this Funding Agreement.

“Final Completion” means, when used with respect to the Work to be performed in construction of the Project, the final completion of all aspects of such Work in accordance with all Applicable Laws and in accordance with the requirements for same contained in this Funding Agreement and the Construction Documents, including, but not limited to, the completion of the punch list type items referred to in the definition of the term “Substantial Completion.” Substantial Completion of such Work is a prerequisite to Final Completion of same.

“Final Plans” means the final plans and specifications for the construction and equipping of the Project which shall be compatible with the Capital Budget.

“Force Majeure” or **“Force Majeure Event”** means labor disputes, casualties (which are not the result of negligence or misconduct of a Party or their respective subcontractors, agents, or employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; acts of war or terrorism; act of military authority; sabotage; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by ACCD or its respective subcontractors, agents, or employees; or other delays due to causes beyond its or their control.

“Funding Agreement” means this Funding Agreement.

“General Contractor” means such general contractor selected by ACCD and approved by the CITY pursuant to this Funding Agreement with respect to the construction of the Project who shall be responsible for the supervision, coordination, and construction of the Project.

“Governmental Authority(ies)” means any applicable federal, state, county or municipal governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Project.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which a Governmental Authority is authorized or required to perform.

“Governmental Rules” mean any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“Hazardous Materials” mean: (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in an Applicable Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any Environmental Law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind; (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls; or (iii) any substance, emission or material determined to be hazardous or harmful.

“Master Plan” means the conceptual master plan for the Project to be prepared by ACCD and approved by the CITY.

“Milestones” means the obligations of ACCD described in Article III of this Funding Agreement.

“Operating Manifest” means a compendium of operating policies and procedures that reflects the uses of the Building for the Veterans Outreach and Transition Center.

“Parties” means, collectively, the CITY and ACCD (each, a “Party”).

“Permits” means all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, utility companies and insurance rating agencies which are required for the planning, design, construction, completion, use and occupancy of the Project.

“Person” means an individual, partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company or any other entity, the United States, or a federal, state, or political subdivision thereof or any agency or court of such state or subdivision.

“Plans and Specifications” mean the plans and specifications for the Project approved by the CITY pursuant to Section 5.01.

“Predevelopment Costs” mean forensic studies, administrative costs and initial operating expenses associated with the capital improvements (in an amount up to \$160,000.00), surveys, geotechnical, engineering, architectural, professional services, feasibility studies, financing application fees, capital improvements, and other costs incurred in the ordinary course of Project development. These costs are considered Soft Costs.

“Preliminary Capital Budget” means the preliminary budget attached hereto as Exhibit F for all costs of the Project, which may include architectural, engineering, consulting, permitting, and legal fees, basic construction costs and fees, Project Costs (defined below), furniture, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management expenses, and construction budget contingencies. The Capital Budget will not include any additional improvements or costs resulting from any actions or delays on the part of the CITY (other than the time periods for approvals provided herein), any costs for the lease of fixtures, furniture and equipment, or any costs of offsite infrastructure.

“Project” means, the completion of the renovation of the Building as set forth in Exhibit J. This scope does not include any items required to allow the Building to be utilized by any outside tenant, but does include the following:

“Project Architect” means an architectural firm selected by ACCD, which will be the primary architect for the Project and such other firm(s), if any, selected or to be selected by ACCD for the design and site planning of the Project, including any local design firms retained by the primary architect or ACCD on an as-needed basis.

“Project Completion Date” means the date of Final Completion of all the Work for the Project in accordance with the requirements of this Funding Agreement.

“Project Costs” means all of the expenses incurred and to be incurred and included in the Capital Budget, including, without limitation, those related to construction contractors, insurers, issuers of construction bonds, architects, engineers, and legal, financial, and other third party consultants associated with the development, design, planning, and construction of the Project incurred by ACCD.

“Project Plan” means the comprehensive plan for the development and construction of the Project describing the development phases, the target dates for completing each development phase, and the allocation of the Capital Budget to each development phase.

“Property” means the premises that are the subject of the Project and of the CITY Lease.

“Quality Standard” means the standard of quality for the design, construction and capabilities of the Building as approved by the CITY.

“Recognized Environmental Conditions” means the presence of any Hazardous Materials at, on, in or under the site of the Project.

“Review and Approval or Consent Rights” has the meaning set forth in Section 5.02 hereof.

“Schedule” means a schedule which was prepared by ACCD and approved by the CITY reflecting the agreed target dates for the completion of construction and Substantial Completion of the Project, and as further defined in Article XXI hereof.

“Scheduled Completion Date” means May 1, 2013.

“Soft Costs” mean expenses not directly attributable to construction costs.

“Substantial Completion” or **“Substantially Complete”** means the Work and improvements for the Project, in accordance with the Final Plans and all applicable Governmental Rules, are sufficiently complete that, subject only to minor punch-list type items: a certificate has been provided by the architect of such improvements to the effect that the improvements are “substantially completed.”

“Term” is defined in Article II of this Funding Agreement.

“Work” means all work to be performed on the Project.

EXHIBIT B

CERTIFICATE OF COMMENCEMENT OF CONSTRUCTION

DATE: _____, 201__

AFFIANT: _____

Unless defined herein, each capitalized term or phrase used in this Certificate of Commencement of Construction ("Certificate of Commencement of Construction") will have the meaning ascribed to such term or phrase in the Funding Agreement (the "Funding Agreement") dated _____, 201__, between Affiant and CITY OF SAN ANTONIO ("the CITY"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Commencement of Construction has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Commencement of Construction as its agent and representative and deliver it to the CITY in accordance with the terms of the Funding Agreement.

2. Description of Construction Obligations. Affiant entered into the Funding Agreement and agreed to commence construction of the Project, as therein provided, not later than the first day of the _____ month following the Effective Date of the Funding Agreement. The Construction Commencement Date has occurred, being _____, 201__.

3. Liability for False Statements. Affiant is aware that the CITY is relying upon the truth and accuracy of this Certificate of Commencement of Construction.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, _____, by _____

[seal]

Notary Public, State of Texas

EXHIBIT C

CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE: _____, 201__

AFFIANT: _____

Unless defined herein, each capitalized term or phrase used in this Certificate of Substantial Completion ("Certificate of Substantial Completion") will have the meaning ascribed to such term or phrase in the Funding Agreement (the "Funding Agreement") dated _____, 2011, between Affiant and CITY OF SAN ANTONIO ("the CITY"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Substantial Completion has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Substantial Completion as its agent and representative and deliver it to the CITY in accordance with the terms of the Funding Agreement.

2. Description of Construction Obligations. Affiant entered into the Funding Agreement and agreed to construct the Project, as therein provided. Construction of the Project commenced on _____, 201__. The Project was Substantially Complete on _____, 201__.

3. Liability for False Statements. Affiant is aware that the CITY is relying upon the truth and accuracy of this Certificate of Substantial Completion.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, _____, by _____.

[seal]

Notary Public, State of Texas

EXHIBIT D

INSURANCE REQUIREMENTS

1. ACCD must maintain throughout the term of this Funding Agreement, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A-(VII) or better by A.M. Best Company or otherwise acceptable to CITY, in the following types and amounts:

Type:	Amount:
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of CITY
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of CITY
3. Broad Form Commercial General Public Liability Insurance to include (but not be limited to) coverage for the following:	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad form property damages to include fire legal liability	Coverage for a minimum of 100% of the actual cash value of personal property; and replacement value of Project improvements and betterments to the Building.
(g) Host Liquor Liability, if alcoholic beverages are served on the Premises	
(h) Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises	

- | | |
|--|--|
| <p>4. Business Automobile Liability, including</p> <p>(a) Owned/Leased Automobiles</p> <p>(b) Non-Owned Automobiles</p> <p>(c) Hired Automobiles</p> | <p>Combined single limit for bodily injury, death, and property damage of \$300,000 per occurrence</p> |
| <p>5. Property Insurance for physical damage to the property of ACCD, including improvements and betterments</p> | <p>Coverage for replacement cost of Project improvements</p> |

2. Each insurance policy required by this Funding Agreement must contain the following clauses:

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

City Clerk, City of San Antonio
 City Hall/2nd Floor
 P. O. Box 839966
 San Antonio, Texas 78283-3966
 Attention: Risk Manager

and

Director
 Capital Improvements
 Management Services
 City of San Antonio
 P.O. Box 839966
 San Antonio, Texas 78283-3966

“The insurance provided by ACCD is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Funding Agreement, excepting policies for Workers’ Compensation and Employer’s Liability, must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Funding Agreement with the City of San Antonio. This policy cannot be invalidated as to City of San Antonio because of ACCD’s breach of representation, warranty, declaration, or condition of this policy.”

3. During the construction of the Project, ACCD must require general contractor to provide Builder’s Risk Insurance Coverage, Worker’s Compensation and Employer’s Liability

Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by CITY's Risk Manager. The policies likewise must be in amounts required by CITY's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. ACCD must require general contractor to maintain the insurance during the construction phase. ACCD or its contractors or subcontractors must further provide payment and performance bonds naming CITY as beneficiary. If the construction is minor, ACCD may request the requirements of this Section be waived, but a waiver may be granted only by CITY's Risk Manager. In deciding whether to waive, CITY's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of Council.

4. Within 30 days after the Commencement Date and promptly after CITY's later request, ACCD must, at its own expense, deliver certificates to CITY's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by CITY, ACCD must send CITY documentation acceptable to CITY that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. CITY may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If CITY does so and the changes would increase premiums, CITY will discuss the changes. If CITY still wants the changes after discussion, ACCD must make the changes and pay the cost thereof. CITY's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Funding Agreement.

5. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

6. Nothing in this Funding Agreement limits ACCD's liability for damages to persons or property resulting from ACCD's activities or the activities of ACCD's agents, employees, sublessees, or invitees.

7. CITY disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through ACCD. Claims resulting from assertions of tort liability or any obligation for which ACCD may be liable under any workers' compensation, unemployment compensation, disability benefits, or similar statutory scheme are the sole obligation of ACCD.

8. CITY will self-insure as it deems advisable. As a political subdivision of the State of Texas, CITY is subject to the Texas Tort Claims Act, and the obligations of CITY and the rights of persons claiming against CITY are subject to that Act.

9. Insurers shall have no right of recovery or subrogation against the CITY, it being the intention of the Parties that insurance policies so affected shall protect both Parties and be primary coverage for any and all losses covered by the above described insurance.

10. Performance Bonds and Payment Bonds. ACCD shall require that the General Contractor obtain and deliver Payment and Performance Bonds to the CITY's Purchasing Agent

and to the CITY not later than the 10th day after the General Contractor executes the Contract with ACCD. The penal sum of the Payment and Performance Bonds shall be equal to the CITY Contribution. The Performance and Payment Bonds shall remain in effect through the Final Completion of the Project. The CITY may, at its sole discretion, waive the requirement for the Performance Bond and/or the Payment Bond after receipt and review of the Contract entered into between ACCD and the General Contractor for construction of the Project.

EXHIBIT E

CONSTRUCTION CONTRACT REQUIREMENTS

1. The written agreements with the General Contractor for the construction of the Project (the "Contract Documents") shall require that the General Contractor visit the construction site during the Pre-Construction Period and be aware of all site conditions that are observable or determinable from testing results or other information furnished to General Contractor by ACCD and will comply with Section 6.03 of the Funding Agreement.

2. The Contract Documents shall require that all drawings, specifications, shop drawings, or other documents produced by the General Contractor, Project Architect or the subcontractors to construct the Project shall be the sole and exclusive property of ACCD and that all rights, including copyrights, in and to such documents shall be vested in ACCD.

3. The Contract Documents shall require the General Contractor to acknowledge that it has reviewed the Funding Agreement and, that as a result of such review, it has no present actual knowledge of any conflicts between the Funding Agreement and the Contract Documents.

4. The Contract Documents shall require that the General Contractor furnish a waiver of lien from the General Contractor and its major subcontractors as a condition of payment which, except for retainage withheld, shall cover the Work for which payment is requested and shall be conditioned only upon receipt of the payment requested.

5. The Contract Documents shall require that the General Contractor shall not enter into any subcontract with any Affiliate unless ACCD has approved such arrangement.

6. The Contract Documents will allow for the coordination/cooperation of the General Contractor regarding the CITY-related work, including inspections of the Project, pursuant to the Funding Agreement. The General Contractor shall afford access to the site and all areas of the work as may be reasonably necessary for the performance of such Work.

7. The Contract Documents shall require that the Contract Documents and ACCD's rights thereunder are assumable by the CITY upon the termination of the Funding Agreement. In the event of such termination, the CITY may, but shall not be obligated to, elect to assume the rights and obligations of ACCD under the Contract Documents. Such assumption shall be effective provided that notice thereof shall be furnished to the General Contractor within ten (10) Business Days of the termination of the Funding Agreement. In the event of a termination of the Funding Agreement, the CITY also shall have the option to elect to terminate the Contract Documents for convenience, without penalty to the CITY.

8. The Contract Documents shall require the General Contractor to ensure that any excavation is properly supported to avoid any and all damage to adjacent structures. The Contract Documents shall require the General Contractor be responsible for design and execution of acceptable trenching and shoring procedures, which are, at a minimum, in accordance with TEX. GOV'T CODE, Section 2166.303 and TEX. H. & S. CODE, Subchapter C, Sections 756.021, et seq.

9. The Contract Documents shall require the General Contractor to submit, for review, a comprehensive Quality Assurance/Quality Control program. This plan shall be in sufficient detail so as to allow ACCD to understand who, how, and when the General Contractor will undertake such pro-active measures.

10. The Contract Documents shall require the General Contractor to submit to ACCD, within sixty (60) days after Substantial Completion, a complete assignment of, and reference manual showing, all the warranties and guarantees provided by the General Contractor and subcontractors for the Project. Such warranties and guarantees shall have effective dates that begin no sooner than the date of acceptance by ACCD of the work product.

11. The Contract Documents shall require the General Contractor to prepare, at a minimum, a monthly progress report in a form, in sufficient detail, and of a character approved by ACCD, submitting three (3) copies to the CITY. The progress report shall specify for the items in the General Contractor's control, among other things, status of construction activities, an estimated percentage of completion, whether the Project is on schedule and budget, and if not, the reasons therefore, an analysis of contingency funds (used and unused), and the revised schedule, if any. The progress report shall also include photographs (aerial color until the roof is complete along with color interior progress shots) and status of compliance with applicable SBEDA programs.

12. The General Contractor shall prepare a complete submittal log that identifies all the submittals required by the Contract Documents. The submittal log shall, as a minimum, list the following items to be submitted:

Submittals required by technical specifications

Listing of subcontractors

Insurance certificates

Performance and payment bonds

Permits, fees and other items to be paid or obtained

Payment applications

Schedule of values

List of projects

Project closeout submittals

13. The Contract Documents shall require the General Contractor, and the subcontractors for each trade or division of the Work, under the direction of General Contractor, to keep a complete and accurate record of all changes or deviations from the Contract Documents. The General Contractor shall prepare or cause to be prepared legible and neat freehand drawings certifying the as-built conditions of the mechanical and electrical systems, and specifically defining the variations from requirements of the Contract Documents. All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of drawings, shop drawings and specifications shall be kept at the construction site for inspection of Project Architect and ACCD and shall be delivered to ACCD in good condition at the time of Final Completion.

14. The Contract Documents shall require the General Contractor to provide and maintain temporary barricades and fences that shall be sufficient height and completeness for security and safety purposes around the boundaries of the construction site. The General Contractor shall provide gates at locations where required for access to the enclosed area.

15. The Contract Documents shall require the General Contractor to keep the existing streets, sidewalks, and parking lots located adjacent to the construction site (as it is defined in the Master Plan) clear and free of debris and building materials, and, to the extent it is legally able to do so, to repair any damage caused by General Contractor or its subcontractors. The General Contractor will use its best efforts to control dust so that it does not disturb persons within the immediate vicinity of the construction site.

16. The Contract Documents shall require the General Contractor to acknowledge that the only obligations of the CITY are contained in the Funding Agreement and all payments by the CITY are limited to the CITY Contribution, as defined in the Funding Agreement. The Contract Documents shall require the General Contractor to look solely to ACCD for all payments, penalties and damages and to hold the CITY harmless from any and all claims, damages, losses and expenses of the General Contractor and its subcontractors arising under the construction documents between General Contractor and ACCD.

17. The Contract Documents shall require the General Contractor to fulfill the requirements of the Limited Sales, Excise, and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the General Contractor will accept an exemption certificate from ACCD. The Contract Documents shall require the General Contractor to pay any taxes otherwise assessed.

18. The Contract Documents shall require the General Contractor to obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project.

19. The Contract Documents shall require an indemnity provision in which, among other things, to the fullest extent permitted by law, the General Contractor indemnifies, defends and holds harmless ACCD, and its respective agents, consultants, representatives, and employees from and against all claims, damages, losses, and expenses, including but not limited to, attorney's fees and costs incurred in connection therewith, arising out of, or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (i) is attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and (ii) is caused in whole or in part by any willful or negligent act or omission of General Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by the negligent acts or omissions of one or more of the indemnified parties. The Construction Documents shall also include the CITY in each indemnity that is given to ACCD and shall name the CITY as an Additional Named Insured in each policy that covers ACCD.

20. The Contract Documents shall require that the General Contractor shall not permit a mechanic, contractor, materialman, artisan, or laborer lien to attach to the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of the Contract Documents, nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

21. The Contract Documents shall require the General Contractor to indemnify and hold ACCD and the CITY harmless from any liens, claims, security interest or encumbrances filed by the General Contractor, subcontractors, or anyone claiming by, through or under the General Contractor for items covered by payments made by the General Contractor.

22. The Contract Documents shall require that the General Contractor maintain adequate books, payrolls, and records satisfactory to ACCD in connection with any and all Work performed by or through the General Contractor hereunder and retain all such books, payrolls, and records (including data stored in computers) for a period of not less than four (4) years after completion of the Work. ACCD and the CITY, and their duly authorized representatives, shall be afforded reasonable and timely access to all of the General Contractor's books, records, correspondence and other data and information relating to the Contract Documents and the Work.

23. The Contract Documents shall require the General Contractor's contracts to contain the language required by Tex. Labor Code Section 401.011 and 28 TAC 110.110.

24. The Contract Documents shall require the General Contractor to furnish a performance bond and a payment bond meeting all statutory requirements of the State of Texas (including Chapter 53 of the Texas Property Code, Chapter 2253 of the Texas Government Code, and Art. 7.19-1 of the Texas Insurance Code), in form and substance satisfactory to ACCD. Each Bond shall be in a penal sum which is not less than the CITY Contribution. The bonds shall be executed by a responsible corporate surety acceptable to ACCD, holding a current certificate of authority from the United States Department of Treasury to issue bonds to the federal government ("Treasury Listed"), and duly licensed and authorized by the State of Texas to issue surety bonds in Texas. If the risk insured exceeds ten percent (10%) of the surety company's capital and surplus, the surety must reinsure such excess in a manner acceptable to ACCD. All bonds shall be accompanied by an executed Dual or Multiple Obligee Rider naming the CITY as an additional obligee.

25. The Construction Documents shall require that payments due and unpaid under the Contract Documents shall bear interest at a rate no greater than that provided in the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251.

26. The Construction Documents shall require the General Contractor to certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive, and taking into account the nature of the Project and the improvements being furnished. The General Contractor shall

provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

EXHIBIT F
PRELIMINARY CAPITAL BUDGET

EXHIBIT G

SBEDA Contract Compliance Language SBE Subcontracting Program

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, 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 & Procedures Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedures 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 & Procedures Manual. For purposes of this Exhibit, the ALAMO COMMUNITY COLLEGE DISTRICT is referred to herein as "CONTRACTOR".

B. 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).

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 the eligibility requirements set forth in SBEDA 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 toward 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.”

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 or its CONTRACTOR. For purposes of this Agreement, CONTRACTOR’s prime contractors or subcontractors are considered 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.

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.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the CONTRACTOR's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its Prime contractors and 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 Agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and/or Subcontractors/Suppliers in the performance of this 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.

C. 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 & Procedures 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 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 Agreement 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 contractors, Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions resulting from this Agreement 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 & Procedures Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its contractors and 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 contractors, 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 contractors, 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 Agreement, 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 Agreement 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 Agreement for a minimum of four years, or as required by state law, following the conclusion of this Agreement 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.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this Agreement. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification, and absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least _____% of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submits to CITY pursuant to this Agreement, and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR pursuant to this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount shall be attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the Agreement with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

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 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 CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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 this Agreement 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 Agreement 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 this Agreement 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 Agreement.

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).

EXHIBIT H

FORM OF PROJECT COST REIMBURSEMENT REQUEST

Requisition No. _____

REQUISITION FOR DISBURSEMENT OF DEVELOPMENT COSTS

1. All terms capitalized herein shall have the same meaning as in that certain Funding Agreement (the "Agreement") dated as of _____, 201__, between ALAMO COMMUNITY COLLEGE DISTRICT ("ACCD") and the City of San Antonio ("the CITY"). The sums requisitioned hereunder are for the payment of Project Costs of the Project. The expenditures for which money is requested hereby have been, or will be, made and properly recorded on the undersigned's books. ACCD shall keep its books and records relating to amounts for which it seeks reimbursement at its regular business office, which the CITY may examine and/or audit (at the CITY'S expense) at all reasonable times during normal business hours upon reasonable prior written notice to ACCD.

2. ACCD submits the following information for the following sums which are requisitioned for reimbursement:

Item No.	Budgetary Category	Contract Amount	Payee's Invoice No.	Name, Address of Payee	Purpose	Invoice Total	% Completion

[ADD ADDITIONAL SHEETS AS NEEDED]

3. This Requisition is for Project Costs which have not been the basis of a prior or contemporaneous Requisition, or if previously requested, were not paid by the CITY.

4. The work, material, and equipment or other property covered by this Requisition have been performed for, or delivered to, the Project.

5. Attached are copies of all invoices for which reimbursement is sought together with proof of payment therefore, if applicable.

6. The undersigned certifies that, with respect to all items covered by this Requisition, it has complied with the provisions of the Agreement. Submitted herewith are certificates or documents, if any, required to be submitted pursuant to the Agreement.

7. Attached hereto as Rider 1 are Affidavits and Partial Waivers of Lien executed by those consultants or contractors who could otherwise be entitled to a lien against the Project, if applicable.

- 8. Attached hereto as Rider 2 are AIA Forms G702 and G703.
- 9. The schedules and attachments to this Requisition are true and correct to the best of the undersigned's knowledge.

ALAMO COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

APPROVED:

CITY OF SAN ANTONIO

By: _____ [Department]

By: _____
Name: _____
Title: _____
Date: _____

RIDER 1 TO EXHIBIT H

AFFIDAVIT AND [PARTIAL] WAIVER OF LIEN¹

THE STATE OF TEXAS

THE COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared, _____, known to be the _____ of _____, a _____ (hereinafter called "General Contractor") and who, being duly sworn, upon his oath declares and, on behalf of the General Contractor, acknowledges as follows:

1. I am the duly authorized agent for the General Contractor who has authorized me to make this affidavit, to enter into the agreements and to grant the lien waivers herein set forth, in its behalf and as its act and deeds, and all of the recitations herein are true and correct.
2. General Contractor has supplied materials and performed labor in connection with the design of improvements upon the Project.
3. In consideration of and conditioned upon receipt of \$ _____, General Contractor hereby waives and releases any and all liens, rights, and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution and statutes of the State of Texas) owned, claimed, or held by General Contractor in and to the land and improvements constituting part of the Project, but only as they relate to the amounts paid hereunder or previously paid. All lien rights with respect to unpaid amounts are reserved.
4. General Contractor has paid all suppliers of material, sub-contractors, equipment lessors, and others furnishing materials, labor, or equipment with respect to the Work for which payment is requested on this Requisition and, to the best of General Contractor's knowledge, there is no claim pending or threatened by any such person with respect to Work described in Requisition No. _____.
5. General Contractor agrees to indemnify and hold ACCD, and CITY harmless from any and all liens and claims of suppliers of material, subcontractors, equipment lessors and any others furnishing materials, labor or equipment in connection with the development, design and construction of the Project as defined in the Funding Agreement between ACCD and the CITY.

¹ Only required to be submitted by consultants and contractors who could be entitled to a lien against the Project, such as surveyors.

EXECUTED this _____ day of _____, _____.

By: _____
Title: _____

SWORN TO AND SUBSCRIBED before me by the said _____, this
____ day of _____, 2011, to certify which witness my hand and seal of office.

Notary Public

(Printed Name of Notary)

My commission expires: _____

STATE OF TEXAS

§

COUNTY OF BEXAR

§

§

This instrument was acknowledged before me on this ____ day of _____,
201____, by _____, _____ of _____, a
_____ corporation, on behalf of said corporation.

Notary Public

(Printed Name of Notary)

My commission expires: _____

RIDER 2 TO EXHIBIT H

AIA G702 and G703 Forms

EXHIBIT I

ACCD'S BOARD OF TRUSTEES' APPROVING RESOLUTION

Discussion and Possible Action on Alamo Colleges' Participation on Behalf of St. Philip's College in the Interlocal Agreement with the City of San Antonio for a Joint Use Veterans Outreach and Transition Center

Presented to the ALAMO COLLEGES BOARD OF TRUSTEES on December 13, 2011.

MINUTE ORDER

"The Board of Trustees hereby approves the Alamo Colleges' participation on behalf of St. Philips College in the Interlocal Agreement with the City of San Antonio for oversight of the construction of a Joint Use Veterans Outreach and Transition Center ("Center") located at 1602 Dakota, San Antonio, Texas, in the neighborhood of St. Philip's College. Approval of operating the Center is contingent upon St. Philip's College obtaining grant funding."

PURPOSE

On October 25, 2011, the Alamo Colleges Board of Trustees approved the draft agreement. Administration has negotiated with the City of San Antonio the final agreement which is attached to this minute order. To authorize the Chancellor or his appointee to designate procedures, processes and fee structures that will facilitate relations with the City of San Antonio for a Joint Use Agreement to plan, design, renovate and operate a Veterans Outreach and Transition Center at the site of the former Good Samaritan Hospital at 1602 Dakota, San Antonio, Texas.

BACKGROUND

The City of San Antonio (COSA) will provide \$1,600,000 in funds to Alamo Colleges to renovate the former Good Samaritan Hospital, the first black hospital in San Antonio, Texas. COSA approved this agreement at the February 17, 2011 meeting of the City Council. COSA will retain ownership of the property, valued at approximately \$70,000-\$90,000. The \$1,600,000 funding from COSA will be administered by the Facilities Department, which will serve as the construction manager to ensure the renovation is done in accordance with District procedures. Once the renovation is complete, grant funding for operating costs is obtained, and the Center is operational, a total of 2,300 individuals will be served per year. St. Philip's College is seeking external funding to cover expected operational expenses over the next three years, and will continue working on grants that will sustain ongoing operations of the Center. The Center would operate with three staff and use external organizations to provide services in the center. The Center may offer Continuing Education and GED classes to the Community that would generate some contact reimbursement classes within our existing system. At minimum services will be provided under the following areas: Reference Services for Veterans and Family Members; Job Support that will consist of job training; and Transitional Services that may be required for veterans and family members. The terms for allocating these funds and our partnership agreement will be defined in a Memorandum of Agreement. COSA has reserved an additional \$400,000 for real estate acquisitions necessary to support this project.

IMPLICATIONS

- Financial:** Funding Source: COSA: \$1,600,000 for Construction costs
Operating costs covered by Grant (pending),
- Strategic Plan:** Goals I, IV and V
- Employee Services:** None
- ATTACHMENTS:** Agreements with COSA and Supporting Documents

John W. Strybos, Date
Associate Vice Chancellor for Facilities

Diane E. Snyder Date
Vice Chancellor for Finance and Administration

Dr. Bruce H. Leslie Date
Chancellor



ALAMO
COLLEGES

FUNDING AGREEMENT
BETWEEN
CITY OF SAN ANTONIO, TEXAS
AND THE
ALAMO COMMUNITY COLLEGE DISTRICT

December 13, 2011

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**FUNDING AGREEMENT BETWEEN
CITY OF SAN ANTONIO AND ALAMO COMMUNITY COLLEGE DISTRICT**

This **FUNDING AGREEMENT** ("Funding Agreement") is made and entered into as of the date set forth on the signature page below ("Effective Date") by and between the **CITY OF SAN ANTONIO**, a home rule municipality under Article XI, Section 5, of the Texas Constitution primarily situated in Bexar County, Texas, (the "CITY"), and **ALAMO COMMUNITY COLLEGE DISTRICT**, a Texas local government entity ("ACCD"). The CITY and ACCD shall collectively be referred to as the "Parties" and individually as a "Party".

DEFINITIONS AND INTERPRETATIONS. Each term or phrase used in this Funding Agreement in which the first letter of each word is capitalized has the meaning set forth in the attached Exhibit A, unless the context in which such term or phrase is used in this Funding Agreement clearly indicates otherwise.

RECITALS

WHEREAS, ACCD is willing to renovate the historic Good Samaritan Building located at 1602 Dakota Street, San Antonio, Texas 78203 (the "Building") for the operation of a Veterans Outreach program associated with St. Philip's College of ACCD;

WHEREAS, the Building is in the process of being acquired by the CITY, and upon acquisition of the Building by the CITY, ACCD will be granted possession of the Building under the terms of a separate Lease Agreement by and between ACCD and the CITY dated _____, 2011 ("CITY Lease") which allows ACCD to perform the renovations to the Building, and to operate the Veterans Outreach program at the Building;

WHEREAS, CITY has agreed to commit ONE MILLION SIX HUNDRED THOUSAND AND ZERO/HUNDRED DOLLARS (\$1,600,000.00) of funding to ACCD for the renovation of the Building for the proposed Veterans Outreach program;

WHEREAS, ACCD will obtain grants, loans, and charitable contributions to operate the Veterans Outreach program, and, if necessary, the Parties to this Agreement may amend this Agreement to take into account such additional financing; and

WHEREAS, this Agreement is designed to address the terms and conditions under which the CITY will provide funding to renovate the Building.

NOW, THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this Funding Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**ARTICLE I.
INTRODUCTORY MATTERS**

Section 1.01 Recitals. The recitals are hereby incorporated in the terms and provisions of this Funding Agreement and are fully binding on the Parties.

Section 1.02 Letter of Intent. Any letters of intent and all prior Funding Agreements, if any, are terminated, superseded and replaced by this Funding Agreement.

ARTICLE II.
TERM

Section 2.01 Term. The Term of this Funding Agreement will commence on the Effective Date and will terminate on the earliest of: (i) seven (7) years after the Project Completion Date; (ii) authorized termination for default; (iii) termination pursuant to Section 3.05(B); or (iv) termination of the CITY Lease, the terms of which are incorporated by reference herein for all purposes. If this Funding Agreement does not take effect or is terminated by mutual agreement of the Parties, or other event, the Parties shall promptly execute a document confirming the termination of this Funding Agreement, and such other documents as may be reasonable under the circumstances.

ARTICLE III.
MILESTONES

Section 3.01 Feasibility Milestones. By May 31, 2012 ACCD will prepare the Master Plan for the Building, the Schedule, the Operating Manifest, and Operating Budget and shall determine the Quality Standard and obtain the CITY's approval thereof.

Section 3.02 Commencement of Construction. The Construction Commencement Date shall occur not later than August 1, 2012, and ACCD shall provide the Certificate of Commencement of Construction to the CITY on or before such date. The Certificate of Commencement of Construction form is attached as Exhibit B hereto and incorporated herein for all purposes.

Section 3.03 Capital Budget. ACCD will prepare and the CITY will approve the Capital Budget for the Building.

Section 3.04 Substantial Completion. Subject to Force Majeure Events, as provided in Section 18.01, ACCD shall cause the Substantial Completion of the Project not later than the Scheduled Completion Date of April 1, 2013, and to evidence and confirm such Substantial Completion, ACCD shall deliver to the CITY a certificate of substantial completion for the Project in the form set forth in Exhibit C attached hereto and incorporated herein.

Section 3.05 Preconstruction Milestones. Not later than the date specified herein, or if no date is specified, not later than May 31, 2012:

- A. Completion of Final Plans. Not later than May 31, 2012, ACCD shall complete and submit to the CITY and obtain the CITY's approval of the Final Plans for the Project.
- B. Pre-Construction Consultation. Prior to awarding any Construction Contracts for the Project, ACCD shall cause the completion of a Phase 1 environmental analysis of the Property, shall submit the Plans and Specifications to the CITY's Historic Design and Review Commission (at the meeting of which CITY agrees to send representatives to appear in support of approving the Project substantially

as submitted), obtain preliminary CITY review of the Plans and Specifications, and solicit proposals from prospective General Contractors for the Project. ACCD shall thereafter, either prior to selecting a General Contractor or, at its election, thereafter but prior to the CITY issuing a building permit for the Project, meet with the CITY Representative to determine whether the Project as specified in the Plans and Specifications, as they may have been revised by interaction with the CITY, can reasonably be expected to be completed, including comprehensive completion bonding and a contingency reserve of approximately ten percent (10%) of the costs of the proposal of ACCD's intended General Contractor, without total Project Costs exceeding the amount of the CITY Contribution. If ACCD reasonably expects that the Project cannot be completed without total Project Costs exceeding the amount of the CITY Contribution, then unless the parties renegotiate the Plans and Specifications and the Capital Budget to reduce total Project Costs, or the City determines, in its absolute discretion, and subject to CITY Council approval, to increase the amount of the CITY Contribution, or both, with the result that anticipated total Project Costs will not exceed the amount of the CITY Contribution, then neither party shall be under any obligation to proceed further, nor will either party have any liability to the other by reason thereof or otherwise under this Funding Agreement.

- C. Construction Contracts. ACCD shall provide a copy of each of the Construction Contracts for all Work, services, and purchase orders for all materials to be supplied for construction of the Project to the CITY at least ten (10) Business Days following the execution of a Construction Contract or purchase order, with all Construction Contracts required to be furnished to the CITY on or before August 1, 2012.
- D. Operating Budget. ACCD shall provide the CITY with a final Operating Budget projecting the anticipated income and expenses on a five (5) year rolling budget. The Operating Budget shall demonstrate that ACCD can operate the Building on a fiscally sound basis.
- E. Operating Reserve. The Operating Budget will include an Operating Reserve to cover operating deficits. ACCD's Contribution will include the Operating Reserve.
- F. Development Plan. Not later than May 31, 2012, ACCD shall prepare and submit to the CITY the Development Plan for the Project.
- F. Completion of Preconstruction Milestones. ACCD shall not proceed with commencement of construction of the Project until all Preconstruction Milestones have been fully satisfied.

Section 3.06 Extensions. The CITY may extend the time for performance of any target date, scheduled date, Deadline or Milestone appearing anywhere in this Funding Agreement. All milestones and deadlines set forth in this Agreement shall be adjusted forward if CITY does not put ACCD in possession of the Property by January 9, 2012, or if the CITY's Historical Design

and Review Commission delays the Project by postponing a hearing, requiring a second hearing or requiring a substantial revision of the Plans and Specifications. Any such delay shall postpone all such milestones and deadlines by the amount of the delay.

ARTICLE IV.
DEVELOPMENT OF THE PROJECT

Section 4.01 Design and Construction Obligation.

- A. Subject to the terms and conditions of this Funding Agreement, ACCD shall or shall cause a party under its control to: (i) undertake and assume responsibility, in accordance with this Funding Agreement, to obtain the permitting, design, and commencement of construction of all improvements comprising the Project in accordance with the Master Plan and Final Plans and the Construction Documents; and (ii) cause Substantial Completion of same to occur on or before the Scheduled Completion Date, as the same may be extended pursuant to the provisions of this Funding Agreement; and (iii) pay all costs and expenses only to the extent funded by the CITY Contribution in connection with the design and construction of the Project, including without limitation, the amounts owing to architectural, engineering or other design consultants engaged for the Project, and to the General Contractor, subcontractors, suppliers, consultants, legal consultants or other persons engaged for the Project for supervision, transportation, labor, materials or Permits or other matters in connection with the Project.
- B. ACCD shall or shall cause a party under its control to undertake the coordination and supervision of the Work of all Persons involved in the Project. ACCD will meet on a regular basis through Project Completion with the architectural, engineering and other design consultants, General Contractor and other Persons providing the design and construction services to assure the performance of the Work in accordance with the terms of this Funding Agreement and as otherwise specifically provided herein. ACCD shall provide to the CITY Representative, or his designee, written notice, preferably by means of a schedule, of all meetings in order that the CITY will have the opportunity to have a representative present at those meetings.
- C. The Work and services to be performed on the Project shall be conducted through written contracts or agreements with third parties and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Funding Agreement. Compliance by design professionals, contractors, subcontractors, and suppliers with the terms of this Funding Agreement shall be the responsibility of ACCD.

Section 4.02 Services to be Performed by or on behalf of ACCD.

- A. Subject in all instances to funding of the CITY Contribution, as provided in this Funding Agreement, ACCD shall cause the Project to be designed and constructed in an orderly, expeditious and efficient manner in accordance with the

Schedule and the Construction Documents. Without limiting ACCD'S obligations hereunder, ACCD shall or shall cause a party under its control to:

- (1) update the Schedule and provide the reports required by Article XXI within the time periods therein prescribed;
- (2) retain the services of architectural, engineering or other design consultants and coordinate the design of the Project as more specifically set forth in Article V hereof;
- (3) direct, coordinate, and supervise the preparation of all submissions necessary in connection with all Permits, with ACCD being responsible for obtaining and negotiating with, and acting as liaison to, the Governmental Authorities in obtaining all Permits. ACCD shall obtain and provide to the appropriate Governmental Authorities all drawings, documents, information, consents and such other items necessary to secure the Permits;
- (4) use good faith and commercially reasonable efforts to obtain the best price and quality of goods and services, including from Affiliates, in connection with the Construction Documents for construction of the Project;
- (5) negotiate, procure, and retain the services of a General Contractor, who shall, among other things, execute the construction of the Project;
- (6) investigate, hire, contract with, train, pay, supervise and, when necessary, discharge the personnel reasonably required to be employed or engaged by ACCD in order to properly complete the Project. Such personnel shall in every instance be deemed independent contractors, agents or employees, as the case may be, of ACCD and not of the CITY, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of ACCD. ACCD shall use reasonable efforts to ensure that all Persons used by ACCD on the Project including architectural, engineering or other design consultants, the General Contractor and any Contractor in the performance of the design and/or construction of the Project be qualified by training and experience to perform the tasks and services for which they are contractually obligated;
- (7) from, and after, the Effective Date of this Funding Agreement and ending on the Project Completion Date, procure and maintain, and require the General Contractor and other Persons performing construction services for the Project to procure and maintain, with responsible companies having an Alfred M. Best Company, Inc. rating of at least A- (or if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar rating under the rating system then in effect) and licensed to

do business in the State of Texas, the insurance coverage as set out in Exhibit D. Such insurance shall name the CITY as an additional named insured. Such insurance shall include waivers by the respective insurance carriers of any and all rights of subrogation against the CITY. ACCD shall provide the CITY with certificates evidencing such insurance prior to the Effective Date for those Persons that have been retained by ACCD and prior to any Person commencing Work on the Project for those Persons not under contract with ACCD on the Effective Date;

- (8) at all times prior to the Project Completion Date, use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Project, claim for damages relating to the design and/or construction of the Project, and material damage to, or destruction of, the Project (and the estimated cost of repair thereof), and prepare and file any and all reports required by any insurance carriers in connection therewith and provide copies thereof to the CITY;
- (9) provided that: (i) the CITY is obligated to make disbursements for amounts due and payable as costs and expenses of the Project; and (ii) the CITY approves the Work represented through such requisition requests as well as the back-up documentation required, ACCD shall cause such disbursements to be made regularly and punctually to the General Contractor and Persons pursuant to the requisition procedure established in Article X;
- (10) maintain at its regular business office for four (4) years following the termination of this Funding Agreement separate, true and complete books, the records, accounts, journals and files regarding the design and construction of the Project, including all design documents (including, without limitation, the Construction Documents), shop drawings, change orders, requisition requests, Permits, contracts, rental agreements and records, insurance policies, non-proprietary correspondence directly related to the Project, receipts, bills, vouchers and any audits obtained by ACCD, all of which shall be available for review and copying (at the CITY'S expense) by the CITY;
- (11) promptly furnish to the CITY, upon receipt by ACCD, copies of all legal notices received by ACCD affecting the Project, including, without limitation, notices from Governmental Authorities and all notices from any party claiming any default in any financing or payment obligation, and any other notice not of a routine nature;
- (12) promptly notify the CITY of any suit, proceeding or action that is initiated or threatened in connection with the Building or against ACCD or the CITY in connection with the Building that could result in: (i) a lien against the Project; (ii) a material delay or increase in the cost of construction of the Project; or (iii) a claim against the CITY;

- (13) provide the CITY, as soon as reasonably practicable but in no event later than sixty (60) days after the Project Completion Date, with an original and one (1) sepia print of "as-built" drawings substantially reflecting and depicting the Project, as constructed, and indicating the changes in, and deviations from, the Construction Documents and an electronic version thereof as such version exists following the Project Completion Date. The "as-built" drawings will be an assembled set prepared by the various Contractors suitable for use by the CITY;
- (14) cooperate with the CITY in causing specified goals for including local, small, and minority-owned business participation to be established in connection with the construction of the Project, as required by Article VIII below;
- (15) send written notice, preferably by means of a schedule, to the CITY Representative, or his designee, in order that a representative of the CITY may attend the regularly scheduled meetings discussing the progress of the design and construction of the Project with such meetings to occur no less often than two (2) meetings per calendar month, or more frequently as reasonably determined by the CITY; and
- (16) advise the CITY Representative with respect to any Environmental Condition known to ACCD and all requirements imposed by, and negotiations with, any Governmental Authority concerning any such Environmental Condition.

Section 4.03 Affiliate Contracts. ACCD shall have the right to enter into contracts or transact business with qualified (either themselves or through their agents, contractors and/or consultants) Affiliates of ACCD, provided such activities are on terms and conditions no more favorable to the Affiliate than would be available in an arms-length basis with independent third parties. Prior to entering into a contract, or series of contracts, with an aggregate value in excess of FIFTY THOUSAND DOLLARS (\$50,000.00) with an Affiliate of ACCD, ACCD shall provide the CITY with written notice that ACCD is planning to hire the Affiliate to perform the Work described in the notice and obtain the CITY'S written approval to hire the Affiliate.

Section 4.04 Operation of the Project. The Building will remain open to the public after the Work is completed. By May 31, 2012, ACCD shall develop an Operating Manifest and submit it to the CITY for approval. ACCD shall operate the Building according to the Operating Manifest.

Section 4.05 Completion of Project. By May 1, 2013, ACCD shall have completed the renovation of the entire Building according to the Master Plan and Quality Standard, but delay in completion shall not constitute a default until the date specified at Section 15.03Q hereof..

ARTICLE V.
DESIGN OF THE PROJECT

Section 5.01 Design of the Project.

- A. Master Plan. Within the times set forth in the Schedule, ACCD will deliver the Master Plan for the Building to the CITY for review and approval in accordance with Sections 5.01D and 5.02 hereof. The Master Plan for the Building may not be altered without the further approval of the CITY.
- B. Within the times set forth in the Schedule, Project Architect shall be directed by ACCD to prepare and deliver to the CITY, for review and approval in accordance with Sections 5.01(D) and 5.02 hereof, the Conceptual Design Documents and the Design Drawings (collectively described herein as the "Plans and Specifications"). The Plans and Specifications approved pursuant to Section 5.01(D) may not be changed without prior notice to, and the approval of, the CITY Representative if such change would: (i) materially affect the Plans and Specifications, or (ii) cause the Project to not meet the Quality Standard.
- C. Within the times set out in the Schedule referred to in Article XXI, the Project Architect shall be directed by ACCD to timely prepare and deliver the Construction Documents to the CITY, but in no event later than the date set forth in the Schedule, unless otherwise agreed to in writing by the CITY, for review and objection by the CITY in accordance with Section 5.01(D) hereof. The Construction Documents shall be based upon the approved Plans and Specifications.
- D. The Final Plans may not be altered without obtaining the prior written approval of the CITY which may not be unreasonably withheld. The CITY, by and through the CITY Representative, shall have the right to disapprove and object to the Construction Documents, or a portion thereof, but only to the extent that: (i) they deviate from the Plans and Specifications; (ii) there has been any new material element added to the Project which is inconsistent with the Quality Standard; or (iii) the Construction Documents fail to provide for the Project to be constructed to satisfy the Quality Standard. The CITY Representative shall notify ACCD in writing of the CITY'S approval or disapproval of the Plans and Specifications or its disapproval of, or objection to, the Construction Documents within fifteen (15) Business Days after receipt of such complete and correct copies of such documents and the written request for approval or disapproval from ACCD. In the event that the CITY Representative disapproves of all, or some portion, of the Plans and Specifications, or objects to the Construction Documents, the CITY Representative's written response shall contain, in reasonable detail, the reasons therefor and shall be furnished to ACCD within such fifteen (15) Business Day period. Further, in the event that the CITY Representative disapproves or objects, the CITY Representative shall meet on an expeditious basis with the ACCD Representative to resolve any items of dispute to the reasonable satisfaction of the Parties. The CITY Representative's failure to provide such written response

within the requested time shall be deemed to be approval on behalf of the CITY of such Plans and Specifications. To the extent that a portion of the Plans and Specifications have been deemed approved, such approval shall not be withdrawn and ACCD shall not be required to obtain re-approval of such portion deemed approved except to the extent that there is a subsequent change or clarification in the Plans and Specifications that materially changes the approved portion of the Plans and Specifications or makes them inconsistent with the subsequent changes. Any resubmission by ACCD of any proposed Plans and Specifications (or applicable portion thereof) that were disapproved or objected to by the CITY shall be approved or disapproved by the CITY, within five (5) Business Days after receipt of a complete resubmission which shall be approved or objected to in the same manner as an original submission under this Section.

- E. During the design process, ACCD shall establish, and update as necessary, the Schedule setting forth the dates for delivery of the various design documents.
- F. ACCD shall control the Project design process and all aspects of the design and specifications of the Project other than approval by the CITY of the Plans and Specifications and the objection right by the CITY of the Construction Documents as set forth in Section 5.01(D).

Section 5.02 Review, Approvals and Objections.

- A. Review, Approvals or Consent Rights. The provisions of this Section 5.02 shall be applicable with respect to all instances in which it is provided under this Funding Agreement that the CITY, or ACCD, exercises a review and approval or a consent right (a "Review and Approval or Consent Right"); provided, however, that if the provisions of this Section 5.02 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Funding Agreement providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Funding Agreement shall control. As used herein, the term "Review and Approval or Consent Rights" shall include, without limiting the generality of that term, all instances in which one Party (the "Submitting Party") is permitted or required to submit to the other Party (the "Reviewing Party") any document, notice or determination of the Submitting Party and with respect to which the Reviewing Party has a right or duty hereunder to review, comment, consent, approve, disapprove, object, dispute or challenge the submission or determination of the Submitting Party. Unless this Funding Agreement specifically provides that the Review and Approval or Consent Rights may be exercised in the sole or absolute discretion (or a similar standard) of the Reviewing Party, in connection with exercising its Review and Approval or Consent Rights under any provision of this Funding Agreement and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a commercially reasonable manner with regard to each and all of such Review and Approval or

Consent Rights and to not unreasonably withhold its approval of, or consent to, any submission.

- B. Standard for Review. The Submitting Party shall use reasonable efforts to cause any matter submitted to the Reviewing Party for which the Reviewing Party has Review and Approval or Consent Rights under this Funding Agreement to be submitted under cover of a request which: (i) contains the heading or caption "TIME SENSITIVE REQUEST FOR REVIEW/APPROVAL OR CONSENT" (or similar phrase); (ii) states the date of submission to the Reviewing Party by the Submitting Party (which date shall be presumed to be the Business Day following the date of dispatch by the Submitting Party if properly addressed and sent by same day messenger service or by Federal Express or other reliable overnight courier service for delivery on the morning of the next Business Day); (iii) states the date by which a response is required under the terms of this Funding Agreement; (iv) identifies the provision of this Funding Agreement pursuant to which such Review and Approval or Consent is sought; and (v) identifies (by document or drawing title, identifying number and revision date, or other clear description) all enclosures to such request with respect to which Review and Approval or consent is then being sought. The Reviewing Party shall review the same and shall promptly (but in any event within any applicable time period specified in this Funding Agreement) give the Submitting Party notice of the Reviewing Party's comments resulting from such review and, if the matter is one that requires approval or consent pursuant to the terms of this Funding Agreement, such approval, consent or disapproval, setting forth in detail the Reviewing Party's reasons for any disapproval. All submissions to the CITY shall be delivered to the CITY Representative unless otherwise directed in writing to ACCD by the CITY Representative.
- C. Deemed Approval or Consent. If no response from the Reviewing Party is delivered to the Submitting Party by the close of business on the date set out in the request following the complete submission of a particular matter (unless such longer period is approved by the Submitting Party, such approval to not unreasonably be withheld) and to which this Section 5.02 applies, such matters shall be deemed approved by the Reviewing Party.
- D. Disputes. The CITY and ACCD agree to attempt in good faith to resolve expeditiously any disputes concerning the approval of, or consent to, any matter submitted to either Party for approval or consent hereunder, but if any such dispute is not resolved between the Parties, such dispute shall be resolved in accordance with the provisions contained in Article XVI.
- E. Duties, Obligations and Responsibilities Not Affected. Approval or consent by the Reviewing Party of, or to, a matter submitted to such Party shall neither, unless specifically otherwise provided: (i) relieve the Submitting Party of its duties, obligations or responsibilities under this Funding Agreement with respect to the matter so submitted; nor (ii) shift the duties, obligations or responsibilities

of the Submitting Party with respect to the submitted matter to the Reviewing Party.

- F. No Implied Approval or Consent. Whenever used in this Funding Agreement, “approval”, “approve”, “approved”, “consent” or “consented” means with respect to any item or matter for which the approval or consent of the CITY or ACCD is required under the terms of this Funding Agreement, then the specific approval of, or consent to, or disapproval of, such item or matter by the CITY or ACCD shall be required, and shall not include any implied or imputed approval or disapproval except as permitted pursuant to Section 5.02(C).
- G. Prior Submissions. The Parties hereby acknowledge that submissions by, and between, the Parties prior to the execution of this Funding Agreement shall not constitute a submission of the Plans and Specifications by ACCD nor constitute approval of the Plans and Specifications by the CITY or any other matter requiring the approval of the CITY pursuant to this Funding Agreement.

Section 5.03 Design Standards. Notwithstanding anything herein to the contrary, the Construction Documents shall comply with the requirements of the Plans and Specifications and the Quality Standard.

Section 5.04 Use of Plans. Without the prior written consent of ACCD, the CITY shall not use the Construction Documents, Plans and Specifications, drawings, models, samples and the like produced or developed in connection with the design and construction of the Project for any purpose other than as contemplated by this Funding Agreement.

ARTICLE VI.

CONSTRUCTION OF THE PROJECT

Section 6.01 General Contractor.

- A. The General Contractor, and any replacement thereof, shall be selected by ACCD and ACCD shall negotiate and execute a Contract between ACCD and the General Contractor. ACCD shall provide a copy of such Contract, and any amendments thereto, to the CITY Representative as required in this Funding Agreement.
- B. ACCD shall contractually require and use all reasonable efforts to cause the General Contractor to diligently pursue and prosecute to Final Completion, in accordance with the Schedule and the Construction Documents, the construction of the Project and shall, subject to Force Majeure Events and adjustments permitted by the terms of this Funding Agreement (but not resulting from change orders), use all reasonable efforts to cause Substantial Completion to occur on or before the Scheduled Completion Date. ACCD shall execute the contract between ACCD and the General Contractor, which shall contain the Construction Contract Requirements as set forth in Exhibit E hereto. ACCD shall direct the General Contractor to prepare, negotiate and enter into bid packages or contracts to retain the services of the Contractor(s) and such other subcontractor(s) and

consultants as are necessary or desirable to perform the Work, as ACCD or the General Contractor shall determine. Upon the execution of such Contracts, ACCD shall provide copies thereof to the CITY. Except as otherwise provided herein, amounts owing under Contracts, including costs, fees and expenses of Contractors and/or subcontractor(s) retained by ACCD, or the General Contractor on behalf of ACCD, in connection with the construction of the Project, shall be the responsibility of ACCD and not of the CITY. ACCD shall require that the General Contractor, Contractor(s) and others performing the Work obtain the Permits and any bonds and insurance required by this Funding Agreement and the Contracts to be obtained by them and shall provide the CITY Representative with copies of such Permits and bonds and of the certificates evidencing such insurance coverage.

Section 6.02 Capital Budget.

- A. Attached hereto as Exhibit F is the Preliminary Capital Budget for the Project.
- B. No later than May 31, 2012, ACCD will deliver the final Capital Budget for the Project to the CITY for review and approval, which will be based upon the Master Plan.
- C. The Parties have agreed that any expenses of any nature on the Project will be the obligation of the CITY, subject to the amount of the CITY Contribution. The costs of any extended maintenance contracts are not included in the Capital Budget and are the obligation of ACCD under the CITY Lease.

Section 6.03 Supervision of Construction. ACCD shall construct, or cause the renovation of, the Building in accordance with the Development Plan, Capital Budget and Final Plans. ACCD shall contractually require the General Contractor to supervise and coordinate the construction of the Project so that the Project is constructed, equipped, and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Funding Agreement and the Construction Documents. Subject to the sufficiency of the CITY Contribution, ACCD shall be responsible for the payment of all costs and expenses incurred in connection with the construction of the Project. ACCD shall use all reasonable efforts to enforce substantial compliance with the terms of the Contracts with the Project Architects, General Contractor, Contractors, subcontractors and/or design professionals and require their performance substantially in accordance therewith. ACCD shall administer the Contracts for the design and construction of the Project and require that work be continuously and diligently performed to achieve Substantial Completion on or before the Scheduled Completion Date. Without limiting the foregoing, ACCD shall, or shall cause a party within its control to:

- A. coordinate the Work as it progresses and the inspections of the Project, review inspection reports, schedule and conduct preconstruction and construction meetings, implement courses of action when requirements of Contracts for the design or construction of the Project are not being fulfilled, and review and revise estimates of construction costs;

- B. negotiate or prepare bid packages for any portion of the Work necessary for the award of Contracts and other agreements as set forth herein, coordinate selections and procedures therefor, maintain harmonious labor relations, and encourage local and minority owned companies in order to comply with Section 8.02;
- C. review all applications for payment and supporting documentation prepared by Contractors and others performing Work or furnishing materials for the Project and provide ACCD with evidence of such payments;
- D. negotiate final payments and/or final settlements, without additional cost to the CITY in excess of the CITY Contribution, with all Parties involved in the construction of the Project. ACCD shall commence, defend and settle without additional cost to the CITY in excess of the CITY Contribution, such legal actions and proceedings concerning the design and construction of the Project as are necessary or required in the opinion of ACCD, and retain counsel in connection therewith, unless such legal actions and proceedings are a result of the CITY's actions;
- E. cause any known defects in the construction of the Project, or in the installation or operation of any equipment or fixtures thereon, to be corrected during construction and applicable warranty periods;
- F. hold regular job meetings with all job-site personnel, including Contractors and subcontractors and the Project Architect, as appropriate and necessary, during the construction of the Project to review the progress of development of the Project and completion of the Project;
- G. if construction of the Project does not progress in accordance with the dates required by the Schedule, as it may be adjusted pursuant to the terms of this Funding Agreement, or if it is unlikely that such dates will be met based on the progress of the Work, ACCD may, but is not required to, cause an acceleration of the Work by all available means including utilization of overtime, additional work crews, and alternate material suppliers;
- H. require the General Contractor to provide sufficient security during construction to protect all persons on the premises of the construction site from injury and to protect the Project grounds from vandalism or theft; and
- I. supervise and coordinate the completion of "punch list" items and warranty work following Substantial Completion.

Section 6.04 Correction of Work. If during construction, ACCD reasonably determines, or otherwise becomes aware, that construction is not proceeding in accordance with the Construction Documents, as they may be modified as permitted under this Funding Agreement, ACCD shall cause any such nonconforming Work to be re-executed by the Party responsible therefore at no expense to ACCD or the CITY. If, however, ACCD determines it to be inexpedient to require the correction of such Work, an equitable deduction under the applicable

Contract or other remedy mutually acceptable to the parties may be pursued, provided, however, that any such action shall not result in any material deviation from the Quality Standard.

Section 6.05 ACCD'S Right to Make Changes. ACCD shall have the right to issue or make changes to the Project. Notwithstanding the foregoing, the CITY shall have the right, in its sole discretion, to approve or disapprove any material changes or additions to, or modifications of, the Project that result in a material deviation from the Plans and Specifications or in the CITY'S reasonable determination cause the Project to fail to meet the Quality Standard.

Section 6.06 Construction Change Order Procedure.

- A. Pursuant to Section 6.05 above, ACCD may, at any time and from time to time, by a written Change Order request, or upon its own initiative, cause changes in the Project within the general scope of the construction required by this Funding Agreement. Such changes may include, but are not limited to, changes in the Construction Documents.
- B. No Change Order request shall adversely impact the Quality Standard, and the costs of any such Change Order request shall either: (i) be paid for by ACCD; or (ii) not result in any increase to the Capital Budget.
- C. ACCD shall have no obligation to implement any Change Order that may be requested by CITY, either formally or informally, that will cause total Project Costs to exceed the amount of the CITY Contribution. Changes to the Work after issuance of a building permit, other than Changes required by CITY inspectors or other CITY authorities with regulatory authority over buildings and construction issued after issuance of a building permit, also shall be considered Change Orders, and if such would have the effect of causing total Project Costs to exceed the amount of the CITY Contribution, then CITY will either grant a variance sufficient to avoid that effect or authorize additional CITY funding to enable sufficient correction that a Certificate of Occupancy may be issued. CITY agrees to set aside \$50,000 of funds separately allocated for real estate acquisition for the Project as a contingency reserve for Change Orders resulting from Changes required by CITY or CITY authorities with regulatory authority over buildings and construction issued after issuance of building permit.

Section 6.07 Sales Tax. The purchase of materials for the construction of the Project shall be structured, to the maximum extent permitted by law, to be exempt from all state and local sales and use taxes pursuant to Chapter 34 of the Texas Tax Code, and other Applicable Law.

Section 6.08 Mechanic's Liens and Claims.

- A. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") shall be filed against the interest of ACCD in the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by, or on behalf of, ACCD, or any of its agents or Contractors, ACCD shall cause the same to be satisfied or discharged of record, or effectively prevent

the enforcement or foreclosure thereof against the Project by injunction, payment, deposit, bond, order of court or otherwise.

ARTICLE VII.
MODIFICATIONS TO THE PROJECT BUDGET

Section 7.01 Modifications to the Capital Budget. Subject to the provision of Section 6.05 of this Funding Agreement, which provides that any material deviation to the Plans and Specifications or a material deviation from the Quality Standard require the approval of the CITY, ACCD shall have the right, from time to time, to reallocate budgeted amounts from one category to any other category of the Capital Budget (provided that any amounts in the Capital Budget representing construction or equipment costs may not be reallocated to any Soft Costs). Nothing in this Section 7.01 shall alter the obligation of ACCD to meet the Quality Standard for construction of the Project.

ARTICLE VIII.
NON-DISCRIMINATION AND SBEDA POLICY

ACCD shall comply with the CITY's Small Business Economic Development Advocacy Program (SBEDA) requirements set forth in the attached Exhibit G, and incorporated herein by reference, for the award of contracts, subcontracts and other opportunities in the design, construction and operation of the PROJECT.

Prior to spending any portion of the CITY-provided funds for the PROJECT, ACCD agrees to develop a comprehensive scope for the work within the PROJECT that will be financed with CITY funds. This scope will provide sufficient detail so that CITY staff can review the scope, determine availability and submit to the CITY's applicable Goal Setting Committee, which shall determine and apply the appropriate Affirmative Procurement Initiative and goal for contracts and subcontracts procured in whole or in part with funds provided by CITY. Once developed, this scope of work shall be submitted by ACCD to:

Ruben Flores, SBEDA Team
Capital Improvements Management Services
100 West Houston Street, Suite 1900
San Antonio, TX 78205

ACCD agrees to provide the scope to CITY within 60 days of ACCD's execution of this Agreement outlining in detail the use of funds provided by CITY. ACCD further agrees not to commence any work, except for architectural services which shall be specifically exempted from this requirement, that will be paid for with CITY funds until CITY staff forwards the Affirmative Procurement Initiative and goal applied by the Goal Setting Committee to ACCD, and ACCD has received approval of its Subcontractor/Supplier Utilization form, and any other documentation required pursuant to the SBEDA Program, from CITY's Small Business Office (SBO) of the Economic Development Department. Upon approval of this Subcontractor/Supplier Utilization form and any other documentation required by the SBO, this Agreement shall be amended thereby without further City Council action to incorporate the

Affirmative Procurement Initiative and goal applied by the Goal Setting Committee, as well as the approved Subcontractor/Supplier Utilization Plan.

ACCD's failure to comply with the SBEDA provisions of this Agreement shall be considered a default and the CITY will pursue all remedies available to it as provided in this Agreement and the SBEDA Ordinance.

ARTICLE IX.
FINANCING OF THE PROJECT

Funding for the development and completion of the Project shall be provided by ACCD and the CITY in accordance with the terms of this Funding Agreement.

Section 9.01 Financing Plan. The Project is expected to be funded from the CITY Contribution, as shown in the Capital Budget.

Section 9.02 The CITY Contribution. The CITY will obtain and secure up to ONE MILLION SIX HUNDRED THOUSAND AND ZERO/HUNDRED DOLLARS (\$1,600,000.00) for the Capital Budget, to be made when and in the amounts needed to fund the CITY Contribution, which will be funded through the issuance of certificates of obligation or from any other legally available funds of the CITY which the CITY decides to use. In the event construction and/or renovation costs exceed the CITY Contribution, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the CITY Contribution. Under no circumstances will this Agreement be construed to obligate ACCD to pay any funds for the Project.

Section 9.03 Financing Limitations. ACCD covenants and agrees not to permit the encumbrance, whether voluntary or involuntary, of the CITY Contribution, or any part thereof or interest therein, for any purpose whatsoever. The CITY Contribution may only be used to pay for capitalizable costs of the Project and may not be used to retire any outstanding debt incurred by ACCD, or to pay any working capital expenses shown in the Operating Budget.

Section 9.04 No program or activity fund from or through CITY, nor the personnel involved in the administration of the Project or activity, nor any of the funds received hereunder shall be involved, directly or indirectly, in the construction, operation or maintenance of such part of any facility as is used or will be used for sectarian instruction or activity or as a place of religious worship.

Section 9.05 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, 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.

ARTICLE X.
FUNDING THE PROJECT AND CITY RESPONSIBILITIES

Section 10.01 Development Costs.

- A. Any payment by the CITY for the Project (excluding the cost of the purchase of the building) shall reduce the balance of the CITY Contribution on a dollar-for-dollar basis.

- B. On the first day of the month following the execution of this Funding Agreement and ACCD'S incurrence of costs pertaining to the Project, and the first of each succeeding calendar month during the Term of this Funding Agreement, ACCD will submit a Project Costs payment request, including a Project Cost Reimbursement Request in the form of Exhibit H attached hereto ("Payment Request"), to the CITY Representative addressed to Director, Capital Improvements Management Services, P.O. Box 839966 San Antonio, Texas 78283. The CITY will promptly begin to process Payment Requests for services and Work performed, and materials provided, by the General Contractor, Contractors, subcontractors, suppliers, and vendors which have been approved, pertaining to the preceding payment period plus any unreimbursed amounts for prior payment periods. If there is a rejection of part of a Payment Request, the accepted portion of the Payment Request shall be processed as provided in this Article X and the rejected portion will be returned to ACCD within ten (10) Business Days from the date of submission to the CITY with a reasonably detailed explanation of the rejection. The CITY shall have the right, at the CITY'S option, to have a CITY employee or consultant inspect the Work completed which is set out in the Payment Request to ensure compliance with the Final Plans. The inspection shall not delay payment by the CITY unless such work does not comply with the Final Plans. If the CITY determines the Work, or any portion of the Work, set out in the Payment Request is not in compliance, the CITY shall advise ACCD in writing of the Work that is non-complaint and will conduct a follow-up inspection within five (5) Business Days after receiving written notice from ACCD that the Work is compliant with the Final Plans in order to confirm the Work represented by the Reimbursement Request is compliant.

- C. As soon as practicable, but in no event beyond the thirty (30) day period provided by Chapter 2251 of the Texas Government Code, the CITY will make payment of the Payment Requests through checks to ACCD. Payment Requests submitted by ACCD shall include: (i) an unconditional waiver or partial waiver as the case may be of liens from the General Contractor and a conditional waiver of liens, with the only condition being payment of the amount requisitioned from each Contractor, subcontractor, supplier or vendor providing Work or services on the Project; and (ii) an invoice for services rendered, or materials or supplies furnished, for all items for which payment is requested. Accompanying each new Payment Request shall be unconditional waivers of lien or partial waivers, as the case may be, of all subcontractors paid from the prior Payment Request. No waiver of lien

shall be required from entities that do not have the ability to place a lien on the Project. The CITY shall process ACCD's Payment Requests up to the maximum amount included in the Capital Budget; provided that the total aggregate amount reimbursed to ACCD by the CITY shall not exceed the CITY'S Contribution.

- D. ACCD agrees, and shall include in each Contract for design and construction of the Project, that the CITY, pursuant to Chapter 53 of the Texas Property Code, shall withhold payment in the amount of ten percent (10%) of each invoice that is otherwise due and payable under this Funding Agreement. All monies withheld under this provision will become due and payable thirty (30) days after Final Completion of the Project.

Section 10.02 Additional Obligations of the CITY. Without limiting the CITY'S obligations hereunder, and in addition to its obligations set forth elsewhere in this Funding Agreement, the CITY, acting through the CITY Representative, shall:

- A. promptly furnish to ACCD, upon receipt by the CITY, copies of all legal notices received by the CITY affecting the Project, including, without limitation, notices from Governmental Authorities, notices from any party claiming any default in any financing or payment obligation, and any other notice not of a routine nature;
- B. promptly notify ACCD of any suit, proceeding or action that is initiated or threatened in connection with the Project or against ACCD or the CITY; and
- C. cooperate with ACCD in all aspects of the development and construction of the Project and, except as expressly authorized by this Funding Agreement, not unreasonably hinder, delay or interfere with the development and construction of the Project.

Section 10.03 Additional Costs Resulting from Changes in Applicable Law. Any additional costs for construction of the Project resulting from a change in Applicable Law by any Governmental Authority shall be borne by the CITY; however, any such additional costs shall be approved by City Council.

Section 10.04 Limitation of Funding Obligations. Notwithstanding anything in this Funding Agreement to the contrary:

- A. Any and all amounts payable by the CITY under this Funding Agreement are payable solely from the CITY Contribution, and no claim for payment of any amount outside of the CITY Contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the CITY.
- B. The CITY shall have no obligation to pay any liens or encumbrances placed on the Building through financing obtained by ACCD.

ARTICLE XI.
MANAGEMENT AND OPERATION AND TAXES

Section 11.01 Expenses of Management and Operation. ACCD shall assume the risks of all costs of management and operation of the Building including maintenance, repair and replacement of the structural components, infrastructure improvements, and the operating systems, payment of insurance premiums for insurance maintained at levels necessary to replace all improvements, payment of utilities and other duties associated with the management and ownership of a first class Building.

Section 11.02 Taxes. The Parties contemplate that the Building will be exempt from payment of all ad valorem taxes and that costs of construction will be exempt from sales taxes. ACCD and the CITY shall work cooperatively to achieve tax exempt status for the Building.

ARTICLE XII.

[intentionally deleted]

ARTICLE XIII.
NAMING RIGHTS AND CITY PLAQUE

Section 13.01 ACCD is not allowed to sell naming rights to the building and shall obtain the CITY'S approval prior to changing the name of the Building.

Section 13.02 The CITY reserves the right to provide a plaque to ACCD recognizing the support of the CITY for the Project. The CITY shall provide a list of locations in the Building which would be suitable to place the plaque and ACCD shall select the location for the plaque from the CITY'S list.

Section 13.03 ACCD is required to publicly acknowledge that the Project is supported by CITY as direct by the CITY Representative. ACCD may share information regarding monies provided by the CITY as a part of its fund-raising efforts; however, no portion of the CITY Contribution may be used for fund-raising costs.

ARTICLE XIV.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 14.01 By ACCD. ACCD hereby makes the following representations, warranties and covenants to the CITY as of the Effective Date:

- A. Existence. ACCD is a public junior college district and a Texas local governmental unit, and will remain as such throughout the Term of this Agreement.
- B. Authorization. ACCD is duly and legally authorized to enter into this Funding Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its existence and authority to act, and the undersigned

representative is authorized to act on behalf of and bind ACCD to the terms of this Funding Agreement. ACCD has provided to the CITY, on or prior to the Effective Date, a certified copy of a resolution of its Board of Trustees authorizing ACCD's execution of this Funding Agreement through the undersigned representative. ACCD has all requisite power to perform all of its obligations under this Funding Agreement. The execution of this Funding Agreement by ACCD does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority. A copy of the Resolution by ACCD's Board of Trustees as set out herein is attached as Exhibit J hereto and incorporated herein for all purposes.

- C. Enforceable Obligations. Assuming due authorization, execution, and delivery by the Parties hereto, this Funding Agreement, all documents executed by ACCD, pursuant hereto, and all obligations of ACCD hereunder are enforceable against ACCD in accordance with their terms.
- D. No Legal Bar. The execution and delivery of this Funding Agreement and the performance of its obligations hereunder by ACCD will not conflict with any provision of any Applicable Laws to which ACCD is subject or conflict with, or result in a breach of, or constitute a default under, any of the terms, conditions or provisions of any agreement or instrument to which ACCD is a party or by which it is bound.
- E. Litigation. There are no legal actions or proceedings pending or, to the knowledge of ACCD, threatened against ACCD which, if adversely determined, would materially and adversely affect the ability of ACCD to fulfill its obligations under this Funding Agreement.
- F. Knowledge. ACCD has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by ACCD under this Funding Agreement are in any way inaccurate, incomplete or misleading.

Section 14.02 By the CITY. The CITY hereby makes the following representations, warranties and covenants to ACCD as of the Effective Date:

- A. Existence. The CITY has been duly created under the laws of the State of Texas.
- B. Authorization. The CITY is duly and legally authorized to enter into this Funding Agreement and has complied with all laws, regulations and Governmental Rules to which it may be subject, and the undersigned representative has been duly authorized to act on behalf of and bind the CITY to the terms of this Funding Agreement. The CITY has all requisite power to perform all of its obligations under this Funding Agreement and the execution and performance of this Funding Agreement by the CITY does not require any consent or approval which has not

been obtained, including without limitation, the consent or approval of any Governmental Authority.

- C. Enforceable Obligations. Assuming due authorization, execution, and delivery by the Parties hereto, this Funding Agreement and all obligations of the CITY hereunder are enforceable against the CITY in accordance with their terms.
- D. Litigation. There are no pending legal actions or proceedings which, if adversely determined, would materially and adversely affect the ability of the CITY to fulfill its obligations under this Funding Agreement.
- E. Knowledge. The CITY has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by the CITY under this Funding Agreement are in any way inaccurate, incomplete or misleading.
- F. Liens or Encumbrances. There are no liens or encumbrances on the Building.
- G. DISCLAIMER BY THE CITY. ACCD ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS CONTAINED WITHIN THIS FUNDING AGREEMENT, NEITHER THE CITY NOR ANY OF ITS ELECTED OFFICIALS, EMPLOYEES, OR REPRESENTATIVES HAVE MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PROJECT, THE SUBJECT MATTER OF THIS FUNDING AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS FUNDING AGREEMENT. ACCD AGREES THAT NEITHER THE CITY NOR ANY OF ITS ELECTED OFFICIALS, EMPLOYEES, OR REPRESENTATIVES WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING (COLLECTIVELY, THE "DEVELOPMENT RISKS"):
 - (1) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN A CITY REPRESENTATIVE PURSUANT TO THIS FUNDING AGREEMENT.
 - (2) THE COMPLIANCE OF THE PROJECT, THE MASTER PLAN, OR ANY FEATURE THEREOF AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE.
 - (3) THE ACCURACY OR COMPLETENESS OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, SCHEDULES OR OTHER MATTERS RELATING TO THE PROJECT OR ANY IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED UNDER THE TERMS OF THIS FUNDING AGREEMENT.

IT IS UNDERSTOOD AND AGREED BY ACCD THAT IT HAS BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO ALL SUCH MATTERS.

Section 14.03 Reliance. The Parties agree and acknowledge that, in entering into this Funding Agreement:

- A. Each Party is expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of the other Party, without any obligation to investigate the accuracy or completeness thereof;
- B. The Parties may continue to rely thereon until this Funding Agreement is, or shall be, terminated according to its terms;
- C. Such representations, warranties and covenants are a material inducement to the Parties in making this Funding Agreement and agreeing to undertake and accept its terms; and
- D. The Parties would not be willing to do so in the absence of any of such representations, warranties and covenants.

Section 14.04 Additional Covenants.

- A. Payments. ACCD shall pay General Contractor, in accordance with Section 10.01, for services and materials provided by the General Contractor, architects, Contractors, subcontractors, suppliers and vendors.
- B. Enforcement. ACCD shall diligently enforce its rights, and seek remedies available to it, upon any default under the terms of the Construction Contract, and as necessary to preserve and protect its rights and interests in and to the Building.
- C. Return of Unused Funds to CITY. Upon Project Completion or Termination of the Funding Agreement, ACCD shall immediately return any unused funds, rebates, or credits to CITY.
- D. Waiver of Subrogation. With respect to any policies of insurance which may be required to be provided by ACCD in connection with this Funding Agreement or required under a Construction Contract or other agreement related hereto, ACCD waives and shall require that the General Contractor waive any subrogation rights against the CITY with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage).
- E. Waiver of Consequential Damages. ACCD waives all present and future claims for consequential damages against the CITY arising from or related to this Funding Agreement. The CITY waives all present and future claims for consequential damages against ACCD arising from, or related to, this Funding Agreement.

ARTICLE XV.
TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES

Section 15.01 Automatic Termination Events. The Parties acknowledge that certain obligations and requirements of this Funding Agreement are of fundamental importance to the Parties such that the breach thereof justifies and requires the automatic termination of this Funding Agreement and that no alternate remedy would appropriately protect the interests of the Parties. Each of the following is an Automatic Termination Event that, when it occurs, may, at the election of the Party that has not committed the Automatic Termination Event, result in the automatic termination of this Funding Agreement. The non-defaulting Party shall notify the defaulting Party in writing within five (5) Business Days of the non-defaulting Party becoming aware of the Automatic Termination Event that the non-defaulting Party has elected to enforce the automatic termination of this Funding Agreement. If the non-defaulting Party elects not to enforce the automatic termination of this Funding Agreement, but rather to treat the breach as an Event of Default, the defaulting Party shall be entitled to the cure process set out in Section 15.04 below after receipt of notice of the breach from the non-defaulting Party:

- A. If, at any time during the Term of this Funding Agreement, ACCD is not exempt from taxation under the Code;
- B. The Building is not used for the Veterans Outreach and Transition Center;
- C. The CITY Lease is terminated;
- D. The entry of a non-appealable ruling by a court of competent jurisdiction that the action of the CITY pursuant to this Funding Agreement is beyond the authority conferred upon the CITY by any applicable Governmental Rules and that the CITY did not have authority to enter into this Funding Agreement;
- E. Any legal proceeding contesting the validity of the Election, any matter affecting the ability of the CITY to fund the CITY Contribution, or the validity or enforceability of this Funding Agreement, which proceeding: (i) is concluded by a final non-appealable determination adverse to the CITY; or (ii) prevents the Construction Commencement Date to occur in accordance with this Funding Agreement; or
- F. Failure by the CITY to fund all or part of the CITY Contribution in accordance with the terms of this Funding Agreement.

Section 15.02 Remedies for Automatic Termination Events. If an Automatic Termination Event occurs, the non-defaulting Party may pursue all rights and remedies provided by law or in equity against the defaulting Party.

Section 15.03 Events of Default. Each of the following will be an Event of Default:

- A. The CITY or ACCD fails to perform or observe any of the material obligations, covenants or agreements to be performed or observed by such Party under this

Funding Agreement which failure continues for more than thirty (30) days following receipt of notice in writing of such failure to such Party.

- B. Any material representation or warranty of the CITY or ACCD is untrue when made or becomes untrue thereafter.
- C. Either Party submits a report, application, certificate or other information required under the terms of this Funding Agreement which contains any materially false or misleading statements.
- D. ACCD fails to achieve any of the Preconstruction Milestones within the time period required by this Funding Agreement.
- E. ACCD makes a general assignment for the benefit of creditors.
- F. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state thereof is filed by, or against, ACCD and is not dismissed, withdrawn or otherwise concluded without adjudication within seventy-five (75) days after being filed.
- G. ACCD admits in writing its inability to pay its debts when due.
- H. A bill in equity or other proceeding for the appointment of a receiver of ACCD or other custodian for ACCD'S business or assets is filed and consented to by ACCD.
- I. A receiver or other custodian (permanent or temporary) of ACCD's assets or property, or any part thereof, is appointed by any court of competent jurisdiction.
- J. Proceedings for a composition with creditors under any state or federal law have been instituted by or against ACCD.
- K. A final judgment representing a claim or charge against the assets of ACCD in an amount in excess of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) remains unsatisfied or of record for ninety (90) days or longer (unless a supersedeas or other appeal bond is filed).
- L. ACCD is dissolved.
- M. Execution is levied against ACCD's business or its property.
- N. Suit to foreclose any lien or mortgage against any property owned or held by ACCD is instituted against ACCD and not dismissed within thirty (30) days.
- O. ACCD shall cease to pursue diligently the construction of the Project for more than thirty (30) consecutive days for any cause other than by reason of (i) Force Majeure, or (ii) the CITY's issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the CITY

Contribution, and such cessation has the effect of delaying the Substantial Completion Date.

- P. ACCD fails to pay or cause payment to be made to the General Contractor, Project Architects, Contractors, subcontractors or other Persons engaged in the design and construction of the Project within a reasonable time after payment from the CITY.
- Q. The failure of ACCD to complete the entire Project by December 31, 2013, unless caused by the CITY's issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the CITY Contribution.

Section 15.04 Remedies for an Event of Default.

- A. If an Event of Default occurs, the non-defaulting Party shall give the defaulting Party notice of the breach. The breaching Party shall have thirty (30) days to cure the breach. After delivery of the required notice and expiration of any applicable cure period, any Party may pursue all rights and remedies provided by law or in equity. The rights and remedies provided in this Funding Agreement shall be in addition to, and cumulative of, all other rights and remedies available to a Party, and the pursuit of one (1) remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.
- B. In the event that ACCD commits an Event of Default, ACCD shall be required to return any portion of the CITY Contribution paid to ACCD for improvements to be made to the Project for which the improvements were either not made or are not in accordance with the Final Plans.
- C. In the event that ACCD commits an Event of Default, CITY, in its sole discretion, may withhold funds otherwise due as damages.
- D. Any failure of the CITY to exercise any right or remedy as provided in this Funding Agreement shall not be deemed a waiver by the CITY of any claim for actual damages (but not consequential damages) it may have by reason of an Event of Default.
- E. For an Event of Default under Section 15.03(Q), such default will also constitute a default under the CITY Lease even if not stated as such in the CITY Lease, and the CITY may declare a default under the CITY Lease as a result of such failure.

**ARTICLE XVI.
MEDIATION**

Section 16.01 Mediation. In the event of a dispute between the Parties to this Funding Agreement which cannot, within a reasonable time, be resolved, and does not result in an automatic termination at the election of the non-breaching Party, the Parties agree to submit the

disputed issue to non-binding mediation. The Parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within three (3) days after the mediation is initiated. The Parties shall share equally the costs of the mediation. If an Event of Default occurs, the Parties may elect to participate in mediation before, during or after the cure period.

ARTICLE XVII.
ASSIGNMENT

Section 17.01 The Parties shall not assign (partially or in the entirety) any rights or duties under this Funding Agreement without prior written consent of the other Party, such consent to not be unreasonably withheld; provided, however, that to the extent assignment is approved, the transfer of this Funding Agreement or any of the documents referenced herein shall confer all rights and duties with respect to the development of the Project.

ARTICLE XVIII.
FORCE MAJEURE EVENTS

Section 18.01 Definition. For purposes of this Funding Agreement, the term, Force Majeure, shall have the meaning set out in Exhibit A. A failure by any party in which ACCD owns an interest, either directly or indirectly, to act or fulfill its obligations, shall not be a Force Majeure.

Section 18.02 Mitigation. Each Party shall use commercially reasonable efforts to mitigate any delay in performance by such Party under this Funding Agreement caused by a Force Majeure Event.

ARTICLE XIX.
CAPACITY OF THE CITY

Section 19.01 Capacity of the CITY. Without in any way limiting or exercising the obligation, duties, covenants and agreements of the CITY as a Party to this Funding Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of the CITY'S required Governmental Functions shall not cause or constitute a default by the CITY under this Funding Agreement or any other Project document or give rise to any rights or claims for damages or injury against the CITY in its capacity as a Party to this Funding Agreement. ACCD's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against the CITY as a municipality and governmental entity.

Section 19.02 Capacity of Parties Acting on Behalf of the CITY. All references in this Funding Agreement to employees, agents, representatives, contractors and the like of the CITY shall refer only to such persons or entities acting on behalf of the CITY in its capacity as a Party to this Funding Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of the CITY'S required Governmental Functions.

Section 19.03 No Limitation on the CITY'S Governmental Functions. The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Funding

Agreement by the CITY (as a Party to this Funding Agreement) shall be binding upon, constitute a waiver by, or estop, the CITY from exercising in good faith any of its rights, powers or duties in its required Governmental Functions.

ARTICLE XX.
REPRESENTATIVES

Section 20.01 ACCD Representative. ACCD designates the Associate Vice-Chancellor for Facilities to be the ACCD Representative (the "ACCD Representative") with full authority to execute any and all instruments requiring ACCD's signature and to act on behalf of ACCD with respect to all matters arising out of this Funding Agreement. ACCD shall have the right, from time to time, to change the person who is ACCD Representative by giving the CITY written notice thereof. The ACCD Representative shall represent the interests of ACCD, be responsible for overseeing all aspects of design, construction and development of the Project, and work closely with the CITY Representative, on behalf of ACCD. Actions, decisions or determinations by the ACCD Representative on behalf of ACCD shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Funding Agreement, in which case, actions taken by ACCD Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the ACCD Representative shall be binding on ACCD, provided, however the ACCD Representative shall not have any right to modify, amend or terminate this Funding Agreement.

Section 20.02 The CITY Representative. The CITY designates the Director of Capital Improvements Management Services ("CIMS") to be the CITY Representative (the "CITY Representative"). The CITY shall have the right, from time to time, to change the person who is the CITY Representative by giving ACCD written notice thereof. The CITY Representative may delegate authority to a CITY employee or a consultant for purposes of inspecting the construction of the Project. With respect to any action, decision or determination which is to be taken or made by the CITY under this Funding Agreement, the CITY Representative may take such action or make such decision or determination or shall notify ACCD in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Actions, decisions or determinations by the CITY Representative on behalf of the CITY shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Funding Agreement, in which case, actions taken by the CITY Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the CITY Representative shall be binding on the CITY; provided, however, the CITY Representative shall not have any right to modify, amend or terminate this Funding Agreement. ACCD and any Person dealing with the CITY in connection with this Funding Agreement or any matter governed by this Funding Agreement may rely and shall be fully protected in relying upon the authority and capacity of the CITY Representative or any such designee to act for and bind the CITY in any such matter.

ARTICLE XXI.
SCHEDULE AND REPORTS

Section 21.01 Design and Construction. ACCD shall provide to the CITY for its information, the Schedule, as revised from time to time, for the permitting, design and construction of the Project. The Schedule shall: (i) include time for adverse weather conditions to the extent normally encountered in the San Antonio, Texas area and the impacts thereof; (ii) establish a date for Substantial Completion not later than the Scheduled Completion Date; and (iii) delineate all phases of the Project, allocate costs to each phase, and set forth projected dates for starting and completing each phase in sufficient detail to allow the CITY or its representative(s) to monitor progress of the Project. The Parties acknowledge and agree that notwithstanding any theoretical delay or theoretical extensions of time for completion as may be shown on any schedules or printouts, the Schedule shall be governed by this Funding Agreement and shall be extended only in accordance with the procedures set forth in this Funding Agreement. The phases of the Project to be addressed in the Schedule shall include, without limitation: (i) acquisition and approval of Permits; (ii) the design phases; and (iii) all construction phases. Dates set forth in this Funding Agreement shall be included in the Schedule and such dates may not be extended except as provided in this Funding Agreement.

Section 21.02 Progress Reports. Until the completion of the renovation of the entire Building, ACCD shall provide to the CITY Representative quarterly written progress reports. Such reports shall describe the status of the design and construction of the Project and include, but are not limited to: (i) actual versus estimated percentage completion for each component of the Project; (ii) any change in costs incurred in connection with the construction of the Project; (iii) performance against schedule; (iv) any change in the critical path and revisions to the Schedule as of the end of each reporting period and (v) the status of ACCD's fundraising efforts to complete the entire Project.

Section 21.03 Significant Event Reports. Should any Force Majeure or other situation, occurrence or event having a material impact on the Work be anticipated or occur, ACCD will prepare a written "Significant Event Report" (herein so called) detailing all available information and the steps being taken to correct the problem and forward the same to the CITY Representative within two (2) Business Days after ACCD's discovery of such delay, situation, occurrence or event. The CITY may at any time request a Significant Event Report on any event that in the CITY Representative's reasonable opinion falls under this category.

Section 21.04 Inspection Reports. ACCD shall require appropriate inspections, testing, and safety programs for the design and construction of the Project.

Section 21.05 Final Construction Report. Within ninety (90) days after Final Completion, ACCD shall deliver, or cause to be delivered, to the CITY Representative a final construction report, which report shall set forth the total costs incurred by ACCD in connection with the construction of the Project through Final Completion of the Project.

Section 21.06 Returns Required by Law. ACCD shall execute and file punctually when due all forms, reports and returns relating to the Project required by Applicable Law, including, without limitation, reports relating to the employment of personnel.

Section 21.07 Inspection Rights of the CITY. ACCD agrees that the CITY Representative, or his designee, shall have the right: (i) at all times during normal business hours of ACCD, the General Contractor or Contractors, as the case may be, to inspect the Work included in any Reimbursement Request for compliance with the Final Plans; and (ii) at all reasonable times upon not less than two (2) Business Days prior written notice to ACCD during construction hours to inspect the Project. The CITY Representative shall, at the option of ACCD, be accompanied by ACCD, or a representative, during such inspection. The CITY agrees to require the CITY Representative to comply with all applicable safety requirements and procedures. In addition, ACCD shall keep, for a period that is four (4) years after the termination of this Funding Agreement, the books and records to be maintained by ACCD pursuant to this Funding Agreement at its regular business office, which the CITY Representative, or his designee, may examine and/or audit (at the CITY'S expense) at all reasonable times upon reasonable notice to ACCD. ACCD further agrees to contractually require the foregoing in favor of the CITY as to the General Contractor and all Contractors, subcontractors, or other Persons retained by, or on behalf of, ACCD. The provisions of this Section 21.07 shall in no way limit, or otherwise relieve, ACCD from ACCD'S obligation to complete the Project in conformance with this Funding Agreement unless the CITY'S inspections or tours interfere with ACCD'S construction of the Project and then only to the extent that such acts continue after ACCD'S notice to the CITY of such interference. The CITY, through appropriate designees, further reserves the right to enter the Project during regular business hours to conduct fire, safety and health inspections or any other inspections by Governmental Authorities or to exercise the CITY'S normal police powers, provided that in exercising such powers: (i) the CITY shall use its best efforts not to unreasonably interfere with the operations of ACCD; and (ii) the CITY'S inspection rights shall not be deemed to limit in any way ACCD'S rights to contest the CITY'S findings with respect to such inspections or the exercise of such police powers.

ARTICLE XXII.
CASUALTY

Section 22.01 If, at any time during the Term, there is any Casualty to the Project, or any part thereof, then ACCD shall: (i) use all reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Project to a safe condition whether by repair or by demolition, removal of debris and screening from public view; and (ii) to the extent allowed by law and subject to the actual receipt of adequate Insurance Proceeds, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) to repair, restore, replace or rebuild the Project as nearly as practicable to a condition which is at least substantially equivalent to that existing immediately prior to such damage or destruction.

ARTICLE XXIII.
NOTICES

Section 23.01 Notices.

- A. The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Funding Agreement. However, any formal

ARTICLE XXV.
TIME

Section 25.01 Time is of the essence in all things pertaining to the performance of this Funding Agreement.

ARTICLE XXVI.
SEVERABILITY

Section 26.01 If any provision of this Funding Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of either Party hereunder are incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Funding Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that such offending provision be reformed to validly and legally meet such thwarted expectations, and that the remainder of this Funding Agreement will not be affected.

ARTICLE XXVII.
WAIVER

Section 27.01 Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Funding Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Funding Agreement.

ARTICLE XXVIII.
RESERVATION OF RIGHTS

Section 28.01 To the extent not inconsistent with this Funding Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

ARTICLE XXIX.
FURTHER DOCUMENTS

Section 29.01 The Parties agree that at any time after execution of this Funding Agreement, they will, upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Funding Agreement.

ARTICLE XXX.
INCORPORATION OF EXHIBITS AND OTHER DOCUMENTS BY REFERENCE

Section 30.01 All Exhibits and other documents attached to or referred to in this Funding Agreement are incorporated herein by reference for the purposes set forth in this Funding Agreement.

ARTICLE XXXI.
GOVERNING LAW; VENUE

Section 31.01 THIS FUNDING AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

ARTICLE XXXII.
ATTORNEYS' FEES

Section 32.01 If any Party to this Funding Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Funding Agreement and the other Party thereto places the enforcement of this Funding Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

ARTICLE XXXIII.
NO ORAL MODIFICATION

Section 33.01 Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Funding Agreement in whole or in part unless such agreement is in writing and signed by both Parties.

ARTICLE XXXIV.
NO PARTY DEEMED DRAFTER

Section 34.01 Each Party has thoroughly reviewed and revised this Funding Agreement (including each exhibit hereto) and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter hereof.

ARTICLE XXXV.
USE OF DEFINED TERMS

Section 35.01 Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Funding Agreement, or any Exhibits hereto, and any other instruments, documents and agreements, shall include this Funding Agreement, Exhibits and other instruments, documents and agreements as originally executed and as the same may from time to time be supplemented, modified or amended.

ARTICLE XXXVI.
MULTIPLE COUNTERPARTS

Section 36.01 This Funding Agreement may be executed in counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one (1) document.

ARTICLE XXXVII.
ENTIRE AGREEMENT

Section 37.01 This Funding Agreement, together with the Exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

ARTICLE XXXVIII.
TABLE OF CONTENTS; HEADINGS

Section 38.01 The table of contents and headings of the various articles, sections and other subdivisions of this Funding Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Funding Agreement.

ARTICLE XXXIX.
PARTIES IN INTEREST

Section 39.01 The terms of this Funding Agreement shall be binding upon, and for the benefit of, the Parties hereto and their successors and permitted assigns. Nothing in this Funding Agreement, whether express or implied, shall be construed to give any person (other than the Parties hereto and their successors and permitted assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Funding Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Funding Agreement.

ARTICLE XL.
NOTICES OF CHANGES IN FACT

Section 40.01 Promptly after either Party becomes aware of same, such Party will notify the other Party of:

- A. Any change in any material fact or circumstance represented or warranted by such Party in this Funding Agreement; and
- B. Any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Funding Agreement, specifying in each case, the nature thereof and what action the Party has taken and proposes to take with respect thereto.

ARTICLE XLI.
SURVIVING OBLIGATIONS

Section 41.01 Notwithstanding anything contained herein to the contrary, the obligations of ACCD set forth in the following Sections of this Funding Agreement shall survive the termination of this Funding Agreement for a period of seventy-five (75) years following Final Completion: Sections 4.04, 4.05, 12.01, 13.02, 14.05, and 21.07.

ARTICLE XLII.
PROHIBITED INTERESTS IN CONTRACT

Section 42.01. The Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a CITY officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a CITY contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Section 42.02. ACCD warrants and certifies as follows that ACCD and the members of its Board of Trustees, its officers, employees and agents are neither officers nor employees of the CITY.

Section 42.03. ACCD acknowledges that CITY’s reliance on the above warranties and certifications is reasonable.

ARTICLE XLIII.

PUBLIC INFORMATION

ACCD acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

ARTICLE XLIV

NO THIRD-PARTY BENEFICIARIES

The provisions of this Funding Agreement are solely for the benefit of the signatory parties hereto, and no third parties shall be entitled to enforce the provisions hereof.

*[Remainder of this page intentionally left blank]
[signatures on next page]*

THEREFORE, IN WITNESS WHEREOF, the CITY and ACCD have executed this Funding Agreement as of this _____ day of _____, 2011.

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

**ALAMO COMMUNITY
COLLEGE DISTRICT,**
a Texas local governmental unit

By: _____
City Manager

By: _____
Dr. Bruce Leslie, Chancellor

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

DEFINITIONS

As used in this Funding Agreement, each of the following terms and phrases has the meaning as set forth in this Exhibit A, unless the context in which such term or phrase is used in this Funding Agreement clearly indicates otherwise.

“ACCD” means the Alamo Community College District, a Texas local governmental unit.

“ACCD Contribution” means charitable contributions, grants, and/or a bank loan or loans, that when added to the other sources of funding will provide an aggregate amount of funds to pay Project Costs as provided in the Capital Budget and fund the Operating Reserve. ACCD Contribution does not include the CITY Contribution.

“ACCD Representative” means the person so designated by resolution of the Board of Trustees of ACCD, or the replacement for such person identified by such Board of Trustees, with notice of the identity of the person initially designated to serve as ACCD Representative and each subsequent replacement to be given in writing to the CITY in accordance with this Funding Agreement.

“Affiliate” means a specified Person who: (i) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (ii) owns directly or indirectly thirty-five percent (35%) or more of the equity or voting interests of the specified Person; (iii) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (i) or (ii); or (iv) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

“Applicable Law” means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority or any board of underwriters (or other body exercising similar functions), or any recorded restrictive covenant or deed restriction applicable to the Project, including the Americans with Disabilities Act and all applicable zoning ordinances and building codes, flood disaster laws, health laws and environmental laws and regulations.

“Automatic Termination Event” means each occurrence described in Section 15.01.

“Business Day” means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Texas. Use of the word “day,” as opposed to Business Day, means calendar day.

“Capital Budget” means the budgeted amount for all costs of the Project, which shall include line items for architectural, engineering, consulting, permitting, and legal fees, basic construction costs and fees, Project Costs (defined below), furniture, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management expenses, and construction budget contingencies. The Capital Budget will not include any additional improvements or costs resulting from any actions

or delays on the part of the CITY (other than the time periods for approvals provided herein), any costs for the lease of fixtures, furniture and equipment, or any costs of offsite infrastructure.

“Casualty” means damage, destruction or other property casualty to the Project resulting from a fire or other event of Force Majeure.

“Certificate of Commencement of Construction” means the sworn certificate of ACCD in the form attached as Exhibit B.

“Certificate of Substantial Completion” means the sworn certificate of ACCD that the Project is Substantially Complete, in the form attached as Exhibit C.

“Change Order” has the meaning set forth in Section 6.06(A).

“CITY” means the City of San Antonio, Texas, a home rule municipality under Article XI, Section 5, of the Texas Constitution primarily situated in Bexar County, Texas.

“CITY Lease” means the Lease Agreement between the City of San Antonio and ACCD covering the building and land on which the Project is located.

“CITY Contribution” means the funding of \$1,600,000.00 by the City under the terms of this Funding Agreement. In the event construction and/or renovation costs exceed the CITY Contribution, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the CITY Contribution. Under no terms will this Funding Agreement be construed to obligate ACCD to pay any funds for the Project.

“Code” means the Internal Revenue Code of 1986, as amended.

“Conceptual Design Documents” means drawings and other documents prepared by the Project Architect illustrating the scale and relationship of the Project components. The Conceptual Design Documents shall include a site plan, schematic drawings, and preliminary building plans, sections and elevations. At ACCD’s option, the Conceptual Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.

“Construction Commencement Date” means the date on which onsite construction activities commenced on the Project.

“Construction Contract” means a contract for Work, and services, and purchase orders for materials to be supplied for construction of the Project.

“Construction Documents” means the architectural drawings, specifications, and other documents, as amended from time to time pursuant to this Funding Agreement, setting forth the design of the Project and the requirements for its construction in sufficient detail to establish the costs for permitting and construction of the Project.

“Contractors” mean the contractors selected and engaged by ACCD to construct the Project.

“Cost Overruns” means the amount by which funds required to complete the development of the Project exceeds the Capital Budget.

“Design Drawings” mean the drawings and other documents based on the Conceptual Design Documents that illustrate and describe the refinement of the design of the Project to be constructed as part of the Project, establishing the scope, relationships, forms, size and appearance of the Project and the improvements to be constructed as part of the Project by means of plans, sections and elevations, including specifications that identify major materials and systems and establish in general their quality levels.

“Effective Date” means the date on which this Funding Agreement has been duly executed on behalf of the CITY and ACCD.

“Environmental Condition” means any Environmental Event that occurs, and any Recognized Environmental Condition that exists, on the Effective Date.

“Environmental Event” means: (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release of any kind of Hazardous Materials which may cause a threat or actual injury to human health, the environment, plant or animal life; (ii) the occurrence of any actions or proceedings pursuant to any Environmental Laws arising out of any of the foregoing; and (iii) any claims, demands, actions, causes of actions, remedial and/or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of an Environmental Proceeding.

“Environmental Laws” mean any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), CERCLA, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

“Environmental Proceeding” means:

- (i) Any notice of any investigation, response action, proceeding, whether executive, administrative or judicial, or litigation or litigation threatened in writing relating to Environmental Laws or other environmental matters

concerning property insofar as such investigation, response action, litigation, litigation threatened in writing or proceeding relates to such property; or

- (ii) Receipt of any notice from any Person of: (i) any violation or alleged violation of any Environmental Law relating to a property or any part thereof or any activity at the time conducted on any property; (ii) the commencement of any clean-up, abatement or control pursuant to or in accordance with any Environmental Law of any Hazardous Materials on or about any such property or any part thereof; or (iii) any violation of any Applicable Laws or harm to Person or property in each case with respect to worker safety at or in connection with such property or any part thereof.

“Event of Default” means those events described in Section 15.03 of this Funding Agreement.

“Final Completion” means, when used with respect to the Work to be performed in construction of the Project, the final completion of all aspects of such Work in accordance with all Applicable Laws and in accordance with the requirements for same contained in this Funding Agreement and the Construction Documents, including, but not limited to, the completion of the punch list type items referred to in the definition of the term “Substantial Completion.” Substantial Completion of such Work is a prerequisite to Final Completion of same.

“Final Plans” means the final plans and specifications for the construction and equipping of the Project which shall be compatible with the Capital Budget.

“Force Majeure” or **“Force Majeure Event”** means labor disputes, casualties (which are not the result of negligence or misconduct of a Party or their respective subcontractors, agents, or employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; acts of war or terrorism; act of military authority; sabotage; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by ACCD or its respective subcontractors, agents, or employees; or other delays due to causes beyond its or their control.

“Funding Agreement” means this Funding Agreement.

“General Contractor” means such general contractor selected by ACCD and approved by the CITY pursuant to this Funding Agreement with respect to the construction of the Project who shall be responsible for the supervision, coordination, and construction of the Project.

“Governmental Authority(ies)” means any applicable federal, state, county or municipal governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Project.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which a Governmental Authority is authorized or required to perform.

“Governmental Rules” mean any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“Hazardous Materials” mean: (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in an Applicable Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any Environmental Law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind; (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls; or (iii) any substance, emission or material determined to be hazardous or harmful.

“Master Plan” means the conceptual master plan for the Project to be prepared by ACCD and approved by the CITY.

“Milestones” means the obligations of ACCD described in Article III of this Funding Agreement.

“Operating Manifest” means a compendium of operating policies and procedures that reflects the uses of the Building for the Veterans Outreach and Transition Center.

“Parties” means, collectively, the CITY and ACCD (each, a “Party”).

“Permits” means all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, utility companies and insurance rating agencies which are required for the planning, design, construction, completion, use and occupancy of the Project.

“Person” means an individual, partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company or any other entity, the United States, or a federal, state, or political subdivision thereof or any agency or court of such state or subdivision.

“Plans and Specifications” mean the plans and specifications for the Project approved by the CITY pursuant to Section 5.01.

“Predevelopment Costs” mean forensic studies, administrative costs and initial operating expenses associated with the capital improvements (in an amount up to \$160,000.00), surveys, geotechnical, engineering, architectural, professional services, feasibility studies, financing application fees, capital improvements, and other costs incurred in the ordinary course of Project development. These costs are considered Soft Costs.

“Preliminary Capital Budget” means the preliminary budget attached hereto as Exhibit F for all costs of the Project, which may include architectural, engineering, consulting, permitting, and legal fees, basic construction costs and fees, Project Costs (defined below), furniture, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management expenses, and construction budget contingencies. The Capital Budget will not include any additional improvements or costs resulting from any actions or delays on the part of the CITY (other than the time periods for approvals provided herein), any costs for the lease of fixtures, furniture and equipment, or any costs of offsite infrastructure.

“Project” means, the completion of the renovation of the Building as set forth in Exhibit J. This scope does not include any items required to allow the Building to be utilized by any outside tenant, but does include the following:

“Project Architect” means an architectural firm selected by ACCD, which will be the primary architect for the Project and such other firm(s), if any, selected or to be selected by ACCD for the design and site planning of the Project, including any local design firms retained by the primary architect or ACCD on an as-needed basis.

“Project Completion Date” means the date of Final Completion of all the Work for the Project in accordance with the requirements of this Funding Agreement.

“Project Costs” means all of the expenses incurred and to be incurred and included in the Capital Budget, including, without limitation, those related to construction contractors, insurers, issuers of construction bonds, architects, engineers, and legal, financial, and other third party consultants associated with the development, design, planning, and construction of the Project incurred by ACCD.

“Project Plan” means the comprehensive plan for the development and construction of the Project describing the development phases, the target dates for completing each development phase, and the allocation of the Capital Budget to each development phase.

“Property” means the premises that are the subject of the Project and of the CITY Lease.

“Quality Standard” means the standard of quality for the design, construction and capabilities of the Building as approved by the CITY.

“Recognized Environmental Conditions” means the presence of any Hazardous Materials at, on, in or under the site of the Project.

“Review and Approval or Consent Rights” has the meaning set forth in Section 5.02 hereof.

“Schedule” means a schedule which was prepared by ACCD and approved by the CITY reflecting the agreed target dates for the completion of construction and Substantial Completion of the Project, and as further defined in Article XXI hereof.

“Scheduled Completion Date” means May 1, 2013.

“Soft Costs” mean expenses not directly attributable to construction costs.

“Substantial Completion” or **“Substantially Complete”** means the Work and improvements for the Project, in accordance with the Final Plans and all applicable Governmental Rules, are sufficiently complete that, subject only to minor punch-list type items: a certificate has been provided by the architect of such improvements to the effect that the improvements are “substantially completed.”

“Term” is defined in Article II of this Funding Agreement.

“Work” means all work to be performed on the Project.

EXHIBIT B

CERTIFICATE OF COMMENCEMENT OF CONSTRUCTION

DATE: _____, 201__

AFFIANT: _____

Unless defined herein, each capitalized term or phrase used in this Certificate of Commencement of Construction ("Certificate of Commencement of Construction") will have the meaning ascribed to such term or phrase in the Funding Agreement (the "Funding Agreement") dated _____, 201__, between Affiant and CITY OF SAN ANTONIO ("the CITY"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Commencement of Construction has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Commencement of Construction as its agent and representative and deliver it to the CITY in accordance with the terms of the Funding Agreement.

2. Description of Construction Obligations. Affiant entered into the Funding Agreement and agreed to commence construction of the Project, as therein provided, not later than the first day of the _____ month following the Effective Date of the Funding Agreement. The Construction Commencement Date has occurred, being _____, 201__.

3. Liability for False Statements. Affiant is aware that the CITY is relying upon the truth and accuracy of this Certificate of Commencement of Construction.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, _____, by _____.

[seal]

Notary Public, State of Texas

EXHIBIT C

CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE: _____, 201__

AFFIANT: _____

Unless defined herein, each capitalized term or phrase used in this Certificate of Substantial Completion ("Certificate of Substantial Completion") will have the meaning ascribed to such term or phrase in the Funding Agreement (the "Funding Agreement") dated _____, 2011, between Affiant and CITY OF SAN ANTONIO ("the CITY"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Substantial Completion has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Substantial Completion as its agent and representative and deliver it to the CITY in accordance with the terms of the Funding Agreement.
2. Description of Construction Obligations. Affiant entered into the Funding Agreement and agreed to construct the Project, as therein provided. Construction of the Project commenced on _____, 201__. The Project was Substantially Complete on _____, 201__.
3. Liability for False Statements. Affiant is aware that the CITY is relying upon the truth and accuracy of this Certificate of Substantial Completion.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, _____, by _____.

[seal]

Notary Public, State of Texas

EXHIBIT D

INSURANCE REQUIREMENTS

1. ACCD must maintain throughout the term of this Funding Agreement, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A-(VII) or better by A.M. Best Company or otherwise acceptable to CITY, in the following types and amounts:

Type:	Amount:
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of CITY
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of CITY
3. Broad Form Commercial General Public Liability Insurance to include (but not be limited to) coverage for the following:	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad form property damages to include fire legal liability	Coverage for a minimum of 100% of the actual cash value of personal property; and replacement value of Project improvements and betterments to the Building.
(g) Host Liquor Liability, if alcoholic beverages are served on the Premises	
(h) Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises	

4. Business Automobile Liability, including

Combined single limit for bodily injury, death, and property damage of \$300,000 per occurrence

- (a) Owned/Leased Automobiles
- (b) Non-Owned Automobiles
- (c) Hired Automobiles

5. Property Insurance for physical damage to the property of ACCD, including improvements and betterments

Coverage for replacement cost of Project improvements

2. Each insurance policy required by this Funding Agreement must contain the following clauses:

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days’ prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

Director
Capital Improvements
Management Services
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

“The insurance provided by ACCD is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Funding Agreement, excepting policies for Workers’ Compensation and Employer’s Liability, must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Funding Agreement with the City of San Antonio. This policy cannot be invalidated as to City of San Antonio because of ACCD’s breach of representation, warranty, declaration, or condition of this policy.”

3. During the construction of the Project, ACCD must require general contractor to provide Builder’s Risk Insurance Coverage, Worker’s Compensation and Employer’s Liability

Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by CITY's Risk Manager. The policies likewise must be in amounts required by CITY's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. ACCD must require general contractor to maintain the insurance during the construction phase. ACCD or its contractors or subcontractors must further provide payment and performance bonds naming CITY as beneficiary. If the construction is minor, ACCD may request the requirements of this Section be waived, but a waiver may be granted only by CITY's Risk Manager. In deciding whether to waive, CITY's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of Council.

4. Within 30 days after the Commencement Date and promptly after CITY's later request, ACCD must, at its own expense, deliver certificates to CITY's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by CITY, ACCD must send CITY documentation acceptable to CITY that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. CITY may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If CITY does so and the changes would increase premiums, CITY will discuss the changes. If CITY still wants the changes after discussion, ACCD must make the changes and pay the cost thereof. CITY's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Funding Agreement.

5. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

6. Nothing in this Funding Agreement limits ACCD's liability for damages to persons or property resulting from ACCD's activities or the activities of ACCD's agents, employees, sublessees, or invitees.

7. CITY disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through ACCD. Claims resulting from assertions of tort liability or any obligation for which ACCD may be liable under any workers' compensation, unemployment compensation, disability benefits, or similar statutory scheme are the sole obligation of ACCD.

8. CITY will self-insure as it deems advisable. As a political subdivision of the State of Texas, CITY is subject to the Texas Tort Claims Act, and the obligations of CITY and the rights of persons claiming against CITY are subject to that Act.

9. Insurers shall have no right of recovery or subrogation against the CITY, it being the intention of the Parties that insurance policies so affected shall protect both Parties and be primary coverage for any and all losses covered by the above described insurance.

10. **Performance Bonds and Payment Bonds.** ACCD shall require that the General Contractor obtain and deliver Payment and Performance Bonds to the CITY's Purchasing Agent

and to the CITY not later than the 10th day after the General Contractor executes the Contract with ACCD. The penal sum of the Payment and Performance Bonds shall be equal to the CITY Contribution. The Performance and Payment Bonds shall remain in effect through the Final Completion of the Project. The CITY may, at its sole discretion, waive the requirement for the Performance Bond and/or the Payment Bond after receipt and review of the Contract entered into between ACCD and the General Contractor for construction of the Project.

EXHIBIT E

CONSTRUCTION CONTRACT REQUIREMENTS

1. The written agreements with the General Contractor for the construction of the Project (the "Contract Documents") shall require that the General Contractor visit the construction site during the Pre-Construction Period and be aware of all site conditions that are observable or determinable from testing results or other information furnished to General Contractor by ACCD and will comply with Section 6.03 of the Funding Agreement.

2. The Contract Documents shall require that all drawings, specifications, shop drawings, or other documents produced by the General Contractor, Project Architect or the subcontractors to construct the Project shall be the sole and exclusive property of ACCD and that all rights, including copyrights, in and to such documents shall be vested in ACCD.

3. The Contract Documents shall require the General Contractor to acknowledge that it has reviewed the Funding Agreement and, that as a result of such review, it has no present actual knowledge of any conflicts between the Funding Agreement and the Contract Documents.

4. The Contract Documents shall require that the General Contractor furnish a waiver of lien from the General Contractor and its major subcontractors as a condition of payment which, except for retainage withheld, shall cover the Work for which payment is requested and shall be conditioned only upon receipt of the payment requested.

5. The Contract Documents shall require that the General Contractor shall not enter into any subcontract with any Affiliate unless ACCD has approved such arrangement.

6. The Contract Documents will allow for the coordination/cooperation of the General Contractor regarding the CITY-related work, including inspections of the Project, pursuant to the Funding Agreement. The General Contractor shall afford access to the site and all areas of the work as may be reasonably necessary for the performance of such Work.

7. The Contract Documents shall require that the Contract Documents and ACCD's rights thereunder are assumable by the CITY upon the termination of the Funding Agreement. In the event of such termination, the CITY may, but shall not be obligated to, elect to assume the rights and obligations of ACCD under the Contract Documents. Such assumption shall be effective provided that notice thereof shall be furnished to the General Contractor within ten (10) Business Days of the termination of the Funding Agreement. In the event of a termination of the Funding Agreement, the CITY also shall have the option to elect to terminate the Contract Documents for convenience, without penalty to the CITY.

8. The Contract Documents shall require the General Contractor to ensure that any excavation is properly supported to avoid any and all damage to adjacent structures. The Contract Documents shall require the General Contractor be responsible for design and execution of acceptable trenching and shoring procedures, which are, at a minimum, in accordance with TEX. GOV'T CODE, Section 2166.303 and TEX. H. & S. CODE, Subchapter C, Sections 756.021, et seq.

9. The Contract Documents shall require the General Contractor to submit, for review, a comprehensive Quality Assurance/Quality Control program. This plan shall be in sufficient detail so as to allow ACCD to understand who, how, and when the General Contractor will undertake such pro-active measures.

10. The Contract Documents shall require the General Contractor to submit to ACCD, within sixty (60) days after Substantial Completion, a complete assignment of, and reference manual showing, all the warranties and guarantees provided by the General Contractor and subcontractors for the Project. Such warranties and guarantees shall have effective dates that begin no sooner than the date of acceptance by ACCD of the work product.

11. The Contract Documents shall require the General Contractor to prepare, at a minimum, a monthly progress report in a form, in sufficient detail, and of a character approved by ACCD, submitting three (3) copies to the CITY. The progress report shall specify for the items in the General Contractor's control, among other things, status of construction activities, an estimated percentage of completion, whether the Project is on schedule and budget, and if not, the reasons therefore, an analysis of contingency funds (used and unused), and the revised schedule, if any. The progress report shall also include photographs (aerial color until the roof is complete along with color interior progress shots) and status of compliance with applicable SBEDA programs.

12. The General Contractor shall prepare a complete submittal log that identifies all the submittals required by the Contract Documents. The submittal log shall, as a minimum, list the following items to be submitted:

Submittals required by technical specifications

Listing of subcontractors

Insurance certificates

Performance and payment bonds

Permits, fees and other items to be paid or obtained

Payment applications

Schedule of values

List of projects

Project closeout submittals

13. The Contract Documents shall require the General Contractor, and the subcontractors for each trade or division of the Work, under the direction of General Contractor, to keep a complete and accurate record of all changes or deviations from the Contract Documents. The General Contractor shall prepare or cause to be prepared legible and neat freehand drawings certifying the as-built conditions of the mechanical and electrical systems, and specifically defining the variations from requirements of the Contract Documents. All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of drawings, shop drawings and specifications shall be kept at the construction site for inspection of Project Architect and ACCD and shall be delivered to ACCD in good condition at the time of Final Completion.

14. The Contract Documents shall require the General Contractor to provide and maintain temporary barricades and fences that shall be sufficient height and completeness for security and safety purposes around the boundaries of the construction site. The General Contractor shall provide gates at locations where required for access to the enclosed area.

15. The Contract Documents shall require the General Contractor to keep the existing streets, sidewalks, and parking lots located adjacent to the construction site (as it is defined in the Master Plan) clear and free of debris and building materials, and, to the extent it is legally able to do so, to repair any damage caused by General Contractor or its subcontractors. The General Contractor will use its best efforts to control dust so that it does not disturb persons within the immediate vicinity of the construction site.

16. The Contract Documents shall require the General Contractor to acknowledge that the only obligations of the CITY are contained in the Funding Agreement and all payments by the CITY are limited to the CITY Contribution, as defined in the Funding Agreement. The Contract Documents shall require the General Contractor to look solely to ACCD for all payments, penalties and damages and to hold the CITY harmless from any and all claims, damages, losses and expenses of the General Contractor and its subcontractors arising under the construction documents between General Contractor and ACCD.

17. The Contract Documents shall require the General Contractor to fulfill the requirements of the Limited Sales, Excise, and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the General Contractor will accept an exemption certificate from ACCD. The Contract Documents shall require the General Contractor to pay any taxes otherwise assessed.

18. The Contract Documents shall require the General Contractor to obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project.

19. The Contract Documents shall require an indemnity provision in which, among other things, to the fullest extent permitted by law, the General Contractor indemnifies, defends and holds harmless ACCD, and its respective agents, consultants, representatives, and employees from and against all claims, damages, losses, and expenses, including but not limited to, attorney's fees and costs incurred in connection therewith, arising out of, or resulting from the performance of the Work, provided that any such claim, damage, loss or expense: (i) is attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and (ii) is caused in whole or in part by any willful or negligent act or omission of General Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by the negligent acts or omissions of one or more of the indemnified parties. The Construction Documents shall also include the CITY in each indemnity that is given to ACCD and shall name the CITY as an Additional Named Insured in each policy that covers ACCD.

20. The Contract Documents shall require that the General Contractor shall not permit a mechanic, contractor, materialman, artisan, or laborer lien to attach to the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of the Contract Documents, nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

21. The Contract Documents shall require the General Contractor to indemnify and hold ACCD and the CITY harmless from any liens, claims, security interest or encumbrances filed by the General Contractor, subcontractors, or anyone claiming by, through or under the General Contractor for items covered by payments made by the General Contractor.

22. The Contract Documents shall require that the General Contractor maintain adequate books, payrolls, and records satisfactory to ACCD in connection with any and all Work performed by or through the General Contractor hereunder and retain all such books, payrolls, and records (including data stored in computers) for a period of not less than four (4) years after completion of the Work. ACCD and the CITY, and their duly authorized representatives, shall be afforded reasonable and timely access to all of the General Contractor's books, records, correspondence and other data and information relating to the Contract Documents and the Work.

23. The Contract Documents shall require the General Contractor's contracts to contain the language required by Tex. Labor Code Section 401.011 and 28 TAC 110.110.

24. The Contract Documents shall require the General Contractor to furnish a performance bond and a payment bond meeting all statutory requirements of the State of Texas (including Chapter 53 of the Texas Property Code, Chapter 2253 of the Texas Government Code, and Art. 7.19-1 of the Texas Insurance Code), in form and substance satisfactory to ACCD. Each Bond shall be in a penal sum which is not less than the CITY Contribution. The bonds shall be executed by a responsible corporate surety acceptable to ACCD, holding a current certificate of authority from the United States Department of Treasury to issue bonds to the federal government ("Treasury Listed"), and duly licensed and authorized by the State of Texas to issue surety bonds in Texas. If the risk insured exceeds ten percent (10%) of the surety company's capital and surplus, the surety must reinsure such excess in a manner acceptable to ACCD. All bonds shall be accompanied by an executed Dual or Multiple Obligee Rider naming the CITY as an additional obligee.

25. The Construction Documents shall require that payments due and unpaid under the Contract Documents shall bear interest at a rate no greater than that provided in the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251.

26. The Construction Documents shall require the General Contractor to certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive, and taking into account the nature of the Project and the improvements being furnished. The General Contractor shall

provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

EXHIBIT F
PRELIMINARY CAPITAL BUDGET

EXHIBIT G

SBEDA Contract Compliance Language SBE Subcontracting Program

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, 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 & Procedures Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedures 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 & Procedures Manual. For purposes of this Exhibit, the ALAMO COMMUNITY COLLEGE DISTRICT is referred to herein as "CONTRACTOR".

B. 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).

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 the eligibility requirements set forth in SBEDA 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 toward 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.”

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 or its CONTRACTOR. For purposes of this Agreement, CONTRACTOR’s prime contractors or subcontractors are considered 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.

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.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the CONTRACTOR's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its Prime contractors and 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 Agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and/or Subcontractors/Suppliers in the performance of this 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.

C. 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 & Procedures 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 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 Agreement 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 contractors, Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions resulting from this Agreement 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 & Procedures Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its contractors and 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 contractors, 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 contractors, 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 Agreement, 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 Agreement 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 Agreement for a minimum of four years, or as required by state law, following the conclusion of this Agreement 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.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this Agreement. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification, and absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least _____% of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submits to CITY pursuant to this Agreement, and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR pursuant to this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount shall be attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the Agreement with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

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 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 CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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 this Agreement 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 Agreement 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 this Agreement 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 Agreement.

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).

EXHIBIT H

FORM OF PROJECT COST REIMBURSEMENT REQUEST

Requisition No. _____

REQUISITION FOR DISBURSEMENT OF DEVELOPMENT COSTS

1. All terms capitalized herein shall have the same meaning as in that certain Funding Agreement (the "Agreement") dated as of _____, 201__, between ALAMO COMMUNITY COLLEGE DISTRICT ("ACCD") and the City of San Antonio ("the CITY"). The sums requisitioned hereunder are for the payment of Project Costs of the Project. The expenditures for which money is requested hereby have been, or will be, made and properly recorded on the undersigned's books. ACCD shall keep its books and records relating to amounts for which it seeks reimbursement at its regular business office, which the CITY may examine and/or audit (at the CITY'S expense) at all reasonable times during normal business hours upon reasonable prior written notice to ACCD.

2. ACCD submits the following information for the following sums which are requisitioned for reimbursement:

Item No.	Budgetary Category	Contract Amount	Payee's Invoice No.	Name, Address of Payee	Purpose	Invoice Total	% Completion

[ADD ADDITIONAL SHEETS AS NEEDED]

3. This Requisition is for Project Costs which have not been the basis of a prior or contemporaneous Requisition, or if previously requested, were not paid by the CITY.

4. The work, material, and equipment or other property covered by this Requisition have been performed for, or delivered to, the Project.

5. Attached are copies of all invoices for which reimbursement is sought together with proof of payment therefore, if applicable.

6. The undersigned certifies that, with respect to all items covered by this Requisition, it has complied with the provisions of the Agreement. Submitted herewith are certificates or documents, if any, required to be submitted pursuant to the Agreement.

7. Attached hereto as Rider 1 are Affidavits and Partial Waivers of Lien executed by those consultants or contractors who could otherwise be entitled to a lien against the Project, if applicable.

8. Attached hereto as Rider 2 are AIA Forms G702 and G703.

9. The schedules and attachments to this Requisition are true and correct to the best of the undersigned's knowledge.

ALAMO COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

APPROVED:

CITY OF SAN ANTONIO

By: _____ [Department]

By: _____
Name: _____
Title: _____
Date: _____

RIDER 1 TO EXHIBIT H

AFFIDAVIT AND [PARTIAL] WAIVER OF LIEN¹

THE STATE OF TEXAS

THE COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared, _____, known to be the _____ of _____, a _____ (hereinafter called "General Contractor") and who, being duly sworn, upon his oath declares and, on behalf of the General Contractor, acknowledges as follows:

1. I am the duly authorized agent for the General Contractor who has authorized me to make this affidavit, to enter into the agreements and to grant the lien waivers herein set forth, in its behalf and as its act and deeds, and all of the recitations herein are true and correct.
2. General Contractor has supplied materials and performed labor in connection with the design of improvements upon the Project.
3. In consideration of and conditioned upon receipt of \$ _____, General Contractor hereby waives and releases any and all liens, rights, and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution and statutes of the State of Texas) owned, claimed, or held by General Contractor in and to the land and improvements constituting part of the Project, but only as they relate to the amounts paid hereunder or previously paid. All lien rights with respect to unpaid amounts are reserved.
4. General Contractor has paid all suppliers of material, sub-contractors, equipment lessors, and others furnishing materials, labor, or equipment with respect to the Work for which payment is requested on this Requisition and, to the best of General Contractor's knowledge, there is no claim pending or threatened by any such person with respect to Work described in Requisition No. _____.
5. General Contractor agrees to indemnify and hold ACCD, and CITY harmless from any and all liens and claims of suppliers of material, subcontractors, equipment lessors and any others furnishing materials, labor or equipment in connection with the development, design and construction of the Project as defined in the Funding Agreement between ACCD and the CITY.

¹ Only required to be submitted by consultants and contractors who could be entitled to a lien against the Project, such as surveyors.

EXECUTED this _____ day of _____, _____.

By: _____

Title: _____

SWORN TO AND SUBSCRIBED before me by the said _____, this
____ day of _____, 2011, to certify which witness my hand and seal of office.

Notary Public

(Printed Name of Notary)

My commission expires: _____

STATE OF TEXAS

§

COUNTY OF BEXAR

§

§

This instrument was acknowledged before me on this ____ day of _____,
201 __, by _____, _____ of _____, a
_____ corporation, on behalf of said corporation.

Notary Public

(Printed Name of Notary)

My commission expires: _____

RIDER 2 TO EXHIBIT H
AIA G702 and G703 Forms

EXHIBIT I

ACCD'S BOARD OF TRUSTEES' APPROVING RESOLUTION

EXHIBIT J
PROJECT DESCRIPTION

Lease
Good Samaritan – 1602 Dakota St.

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Exhibit B	Veterans Outreach and Transition Center Program – Scope of Work
Exhibit C	Funding Agreement
Exhibit D	Tenant’s Master Plan (Fund Raising)
Exhibit E	Construction Escrow Agreement

1. Basic Information, Definitions.

Authorizing Ordinance: _____

Landlord: City of San Antonio

Landlord’s Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Assistant Director for Real Estate, CIMS Department)

Tenant: Alamo Colleges

Tenant’s Address: 201 West Sheridan
San Antonio, Texas 78240-1429

Premises: Structure and lot at 1602 Dakota Street, San Antonio, Texas 78203 (all of the foregoing shall be the “Premises”, as more particularly described in the attached **Exhibit A**).

Permitted Use: Immediate use of Premises for interior demolition and construction of improvements to building for eventual use as Veteran’s Outreach and Transition Center program to be operated by St. Philip’s College of Alamo Colleges, which program is more specifically described in the attached **Exhibit B**. Tenant may change the Permitted Use of the Premises from a Veteran’s Outreach and Transition Center program only with the written approval of Landlord.

Commencement Date: The later of the effective date of the Authorizing Ordinance or the later of the signatures of the representatives of Landlord and Tenant on this Lease; however, the Parties understand and agree that Landlord will not be able to deliver possession of the Premises until Landlord completes acquisition of the Premises from the current owner.

Initial Term: 25 Years

Base Rent: \$1 annually

Address for Payment of Rent: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Finance Department)

Common Areas: *None.*

Operating Expenses: Tenant is responsible for all operating expenses of the Premises at its sole cost and expense.

Funding Agreement This Lease is subject to Funding Agreement dated _____, 201__, by and between Landlord and Tenant, attached hereto as **Exhibit C**.

2. Grant, Landlord's Reservations.

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

3. Rent.

3.01. The term "Rent" includes all sums due to Landlord under this lease, whether Base Rent, Additional Rent, reimbursement for repairing damages caused by Tenant, or otherwise, no matter how denominated.

3.02. Tenant must pay all Rent in the amounts described in this section in advance on the first day of each year or within 10 days thereafter without penalty. If Tenant is delinquent in paying an amount for more than 10 days after the due date of any annual payment, Tenant must pay to Landlord upon demand a late charge equal to \$50. Interest and late charges are in addition to all Landlord's other rights and remedies.

3.03. If Landlord receives prepaid rent from or for the account of Tenant, Landlord must apply the prepaid rent according to Tenant's directions.

3.04. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant must not abate Rent for any reason.

4. Term, Termination, Renewal Terms.

The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

Provided an event of default does not then exist as to any material matter under this Lease, and subject to City Council approval, Tenant may request five (5) successive Renewal Terms of five (5) years each. Tenant shall provide not less than one hundred eighty (180) days' written request prior to the expiration of the Initial Term or Renewal Term as applicable, for renewal of this Lease. The first Renewal Term shall commence at midnight on the date on which the Initial

Term ends and each successive Renewal Term shall commence at midnight on the date on which the immediately preceding Renewal Term ended.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use after Tenant's Work is performed. Tenant shall comply with all construction requirements set forth in the Funding Agreement (Exhibit C).

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises; and (c) any rules and regulations for the Premises adopted by Landlord.

5.03. Obtain and pay for all utility services.

5.04. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.05. Repair, replace, and maintain the Premises at Tenant's sole cost and expense, including, but not limited to the interior and exterior of the Premises, roof, foundation, structural soundness of the exterior walls, doors, corridors, windows, window frames, plate glass, HVAC, wiring, interior and exterior plumbing, plumbing fixtures, plumbing lines and plumbing connections, all interior and exterior electrical fixtures, lamps, and/or bulbs, wiring and connections, awnings, overhangs, and sidewalks, and all other structures, systems, or equipment services the Premises.

5.06. After Casualty Loss not terminating the lease, rebuild the interior partitions, ceilings, wiring, light fixtures, and plumbing.

5.07. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

5.08. Pay all operating expenses, be solely responsible for any and all day-to-day cleaning and janitorial services for the Premises, and be solely responsible for all operations of the Premises.

5.09. Pay any and all taxes as due for the Premises, in accordance with Section 35, Taxes.

6. Fund Raising/Financial Management

6.1 Tenant agrees to:

- (1) Work to raise funds for the implementation of Tenant's fund raising Master Plan (Exhibit D) for the operation, maintenance and repair of the Premises for the Veterans Outreach and Transition Center program Scope of Work (Exhibit B).
- (2) Provide to Landlord's Director semi-annual fund raising progress reports and an annual progress report. The semi-annual reports shall be due within ten (10) days after the end of each six-month period preceding and following the end of each Tenant fiscal year, and the annual progress reports shall be due within ninety (90) days after the end of each Tenant fiscal year during the Initial Term and Renewal Term of this Lease. All such reports must reflect Tenant's fund raising efforts and income statement for the Veterans Outreach and Transition Center program, including total earned income, operating expenses for maintenance and repairs for the Premises, and costs of the Veterans Outreach and Transition Center program for the previous six (6) months, and for Tenant's fiscal year. In addition to the financial reporting, every six (6) months, Tenant shall provide to Landlord a report on the progress of the Veterans Outreach and Transition Center program, to include the number of staff on duty, the hours worked for each staff member, the number of clients who requested assistance, the number of clients served, and the accomplishments achieved by the program during each such six month interval.

6.2 Review and/or Audit. Landlord shall have the right to review all documents in Tenant's possession or control that support the information in the reports provided to Landlord in accordance with this Section 6 and that are necessary for Landlord to verify that Tenant is in substantial compliance with the terms of this Section 6. The following shall apply to any review or audit under this Section 6:

6.2.1 Tenant agrees to provide the documents and information on a timely basis to Landlord (or its designee) at the location or locations in Bexar County, Texas requested by Landlord, following not less than thirty (30) days' written notice from Landlord to Tenant. All such applicable books, records and supporting documentation shall be preserved by Tenant for four (4) years after the period to which such documents relate or until all reviews and/or audits, if any, relating to those documents are complete and any and all findings have been fully resolved, and any litigation shall be finally resolved, whichever is the greater period of time.

6.2.2 Landlord and Tenant agree to coordinate the review and/or audit of information to minimize any adverse impact on the operations of the Premises and to minimize the costs related thereto.

6.2.3 Landlord may designate a certified public accountant, or any employee or agent of Landlord to conduct the review and/or audit under this Subsection

6.2. Subject to applicable Law, Landlord shall maintain, and shall cause its designees to maintain, any information in strict confidence and shall not use the information for any purpose other than as set forth in this Section 6. Landlord shall be responsible for failure of its designee to comply with the provisions of this Sub-subsection 6.2.3.

6.2.4 Should Landlord elect to retain an independent accounting firm to review and/or audit the information provided by Tenant, such services shall be paid by Landlord unless payable by Tenant in accordance with the following sentence. If such accounting firm determines that the records provided by Tenant misstate either the amounts collected or the amounts disbursed by more than ten percent (10%) of the aggregate amount collected or disbursed in any Tenant fiscal year, the services of such accounting firm will be paid by Tenant.

6.2.5 Landlord may not initiate an audit more often than once in any Tenant fiscal year.

6.2.6 The provisions of Sub-subsection 6.2.5 shall survive any termination of this Lease.

7. Naming Rights.

Naming rights for the Premises or any portions thereof must be approved in accordance with all applicable requirements and processes set out in the Unified Development Code.

[Sections 8 and 9 intentionally omitted]

10. Tenant Construction of Improvements.

10.1 **GENERAL CONDITIONS:** Tenant improvements to be constructed shall be performed in accordance with the requirements of Exhibit C, Funding Agreement. Failure to comply with the Funding Agreement shall be grounds for default and/or termination of the Lease in accordance with Section 26, Default, Remedies for Default.

11. Fixtures and Personal Property/Signs.

11.1 Any trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property of Tenant installed but not permanently affixed to the Premises shall remain the property of Tenant, and Landlord agrees that, during the term of the Lease, Tenant shall have the right, at any time, and from time to time, to remove any and all of its trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property which it may have stored or installed in the Premises, including but not limited to, counters, booths, shelving, mirrors, and other movable personal property. Tenant, at its expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures,

equipment, signs, furniture, furnishings, floor covering and other personal property, and upon expiration or earlier termination of this Lease, for any reason, shall leave the Premises in the same condition as the condition on the date of completion of Tenant's Work, or better in a good neat and clean condition, free of debris and broom clean condition, except for reasonable wear and tear and casualty. All trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property installed in or attached to the Premises by Tenant must be new or, if used, then in good, serviceable and attractive condition when so installed or attached. If Tenant does not remove said trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property promptly upon the termination of this Lease, Landlord may effect such removal and make any repairs necessitated thereby. The cost, therefore, shall be immediately due and payable from Tenant hereunder. Tenant agrees that any such trade fixtures, equipment, signs, etc., not removed within forty-five (45) days after the termination of this Lease shall become Landlord's property without the necessity of legal action on Landlord's part, and may be disposed of by Landlord at a private or public sale without notice and with no liability whatsoever by Landlord to Tenant. Further, Tenant will repair any damage caused by such removal and make any repairs necessitated thereby.

11.2 Tenant will be solely responsible for all costs associated with the permits, approvals, manufacture, installation and on-going maintenance of any and all signage. Tenant further agrees to obtain all necessary permits and comply with such sign design criteria and sign review procedures as may be established and amended from time to time by Landlord's duly authorized authority, including, but not limited to, securing any approval required by Landlord's Historic and Design Review Commission and the Department of Development Services.

11.3 No sign shall be placed on the improvements or Premises by Tenant or its sub-tenants, licensees or other parties who are acting by and through any authority from Tenant which will in any manner cause material structural damage or injury to the Premises or injury to any persons on or about the Premises.

11.4 Whenever Tenant's signage is repaired, removed or replaced, Tenant agrees to restore the area(s) where such signage existed to its original condition or better, and to match the surface of the existing building.

[Section 12 intentionally omitted]

13. Tenant's Negative Promises.

Tenant promises that it will not:

13.01. Use the Premises for any purpose other than the Permitted Use and the Veterans Outreach and Transition Center program as set forth in the Scope of Work (Exhibit B).

13.02. Create a nuisance.

13.03. Permit waste.

13.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

13.05. Fail to provide Landlord with reasonable access to the Premises.

13.06. Alter the Premises except in accordance with Section 10, Tenant Construction of Improvements, and the Funding Agreement, Exhibit C, or, in any event, without the Landlord's written consent and approval of any such alterations.

13.07. Allow a lien to be placed on the Premises.

14. Landlord's Affirmative Promises.

Landlord promises that it will:

14.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

14.02. Obey all applicable laws with respect to Landlord's operation of the Common Areas.

15. Landlord's Negative Promise.

Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

16. Alterations.

Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the date of completion of Tenant's Work, normal wear excepted.

17. Insurance.

17.01. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas, rated A-(VII) or better by A.M. Best Company or otherwise

acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Workers' Compensation	Statutory, with a waiver of subrogation in favor of Landlord
2. Employers' Liability	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of Landlord
3. Broad Form Commercial General Public Liability Insurance to include (but not be limited to) coverage for the following:	For bodily injury, death, and property damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad form property damages to include fire legal liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability, if alcoholic beverages are served on the Premises	
(h) Liquor Legal Liability Insurance if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability, including	Combined single limit for bodily injury, death, and property damage of \$300,000 per occurrence
(a) Owned/Leased Automobiles	
(b) Non-Owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to the property of Tenant, including improvements and betterments	Coverage for replacement cost of Tenant's improvements

17.02. Each insurance policy required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

Department of Building & Equipment
Services
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Landlord because of Tenant's breach of representation, warranty, declaration, or condition of this policy."

17.03. During the construction of Tenant's Work, Tenant must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of Council. In the event of any conflict between the terms of this Lease pertaining to Tenant's Work and the insurance provisions of the Funding Agreement between the parties, the terms of the Funding Agreement shall prevail.

17.04. Within 30 days after the Commencement Date and promptly after Landlord's later request, Tenant must, at its own expense, deliver certificates to Landlord's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by

the insurance company. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof. Landlord's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

17.05. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

17.06. Nothing in this Lease limits Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

17.07. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

17.08. Landlord will self-insure as it deems advisable. As a political subdivision of the State of Texas, Landlord is subject to the Texas Tort Claims Act, and the obligations of Landlord and the rights of persons claiming against Landlord are subject to that Act.

18. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

19. Environmental Matters.

19.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

19.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

19.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

19.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

19.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

19.06. Tenant must to immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

19.07. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than one such inspection in any 12-month period.

19.08. If Tenant breaches any of its representations, warranties or covenants contained within this Article 19, then Tenant, at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises, unless otherwise approved by the CITY and as allowed by the Texas Commission on Environmental Quality, and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain or remove pollutants.

20. Landlord's Municipal Powers.

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

21. Prohibited Interests in Contracts.

21.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

21.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

21.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

22. Casualty/Total or Partial Destruction.

Definitions:

"Casualty" means a complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected, or unusual nature affecting any part of the Premises (whether or not covered by a policy of insurance).

"Casualty Loss" means any damage or loss caused directly or indirectly by a Casualty.

"Casualty Loss Insurance" means insurance maintained by Landlord or on its behalf which is intended to provide proceeds in the event of a Casualty to the Premises or any portion thereof.

"Casualty Notice" means a written notice to be delivered by Landlord to Tenant in accordance with this Section 22 following a Casualty.

"Construction Escrow Agreement" means the Construction Escrow Agreement in the form attached as Exhibit E.

"Consulting Architect" means an architect registered by the Texas Board of Architectural Examiners who is a member of the American Institute of Architects and is experienced in the restoration or rehabilitation of historic structures.

"Execution Date" means the later date on which this Lease has been signed by Landlord or by Tenant.

"Extended Restoration Period" means the extension of the Restoration Period for up to thirty-six (36) months.

"Force Majeure Event" means and refers to any event or circumstance that is beyond the commercially reasonable control of such party (excluding the unavailability of funds to the party that has the obligation to perform) and does not result from the fault or negligence of such party, including but not limited to a Casualty, strike, lockout, Laws enacted or amended after the Effective Date, war, civil commotion, riot or insurrection, act of God, generally applicable shortage of labor or materials, and act of the public enemy or terrorists.

"Insurance Proceeds" means the amount of the proceeds available under the Casualty Loss Insurance, if any.

"Insurance Proceeds Notice" means written notice of the amount of Insurance Proceeds.

"Other Restoration Proceeds" means additional funds beyond Insurance Proceeds which may be obtained by Tenant through fund-raising activities or other sources for the Restoration Work.

"Plans and Specifications" means the plans and specifications for Restoration Work approved by Tenant and Landlord following the process described in this Section 22.

"Pledges" means cash and/or irrevocable commitments to donate funds.

"Restoration Costs" means the projected cost of the Restoration Work including (without limitation) contingency, professional, engineering, and other soft costs, as determined in accordance with this Section 22.

"Restoration Notice" means the written notice to Landlord of Tenant's election to proceed to undertake the Restoration Work.

"Restoration Period" means the projected time period required for the Restoration Work as determined in accordance with this Section 22.

"Restoration Work" means the work to restore, repair and/or replace the improvements damaged or destroyed in connection with a Casualty (including, without limitation, any and all furniture, fixtures and equipment).

"Scope of Work" means the determination of the nature and extent of the Restoration Work as determined in accordance with this Section 22.

"Substantial Completion" for purposes of this Section 22 means completion of the Restoration Work in accordance with the Plans and Specifications and approved amendments and change orders to such an extent that the Premises can be used or occupied by Tenant for the Permitted Uses.

22.1 Claim Settlement. In the event of a Casualty, Tenant shall give prompt written notice thereof to Landlord. Landlord shall take all actions reasonably and prudently necessary to promptly present claims in accordance with the requirements of the Casualty Loss Insurance. Landlord shall take all actions reasonably and prudently necessary to obtain the maximum recovery provided under the Casualty Loss Insurance and will provide Tenant with regularly updated information concerning the status of such claim or claims. Landlord will have the sole responsibility and authority to settle, compromise, litigate, mediate, appeal or otherwise resolve any and all matters related to a Casualty or the Casualty Loss Insurance, but Tenant may participate in any meetings or conferences with insurers to negotiate the settlement or resolution of any disputed claim.

22.2 Casualty Notice. Within one hundred eighty (180) days after the date of a Casualty, Tenant will deliver to Landlord a Casualty Notice setting forth the following information:

22.2.1 Tenant's estimate of the Scope of Work;

22.2.2 Tenant's estimate of the Restoration Costs;

22.2.3 Tenant's estimate of the Restoration Period; and

22.2.4 Tenant's architect retained for the restoration project.

22.3 Landlord's Dispute of Casualty Notice. If Landlord objects to any of the information contained in the Casualty Notice, it shall respond in writing to Tenant within sixty (60) days after receipt of the Casualty Notice, specifying in detail the information to which Landlord objects. If Landlord and Tenant are unable to resolve such objection within thirty (30) days after Landlord has timely submitted such objection, the objection shall be resolved by the Consulting Architect, as follows:

22.3.1 Selection of Consulting Architect. Tenant shall identify its selection of the architect to serve as the Consulting Architect in the Casualty Notice. If Landlord has not objected to Tenant's designation of the Consulting Architect in the Casualty Notice within thirty (30) days after receipt of the Casualty Notice, the architect identified in the Casualty Notice will be the Consulting Architect. If Landlord has objected and if Landlord and Tenant are unable to agree upon a Consulting Architect, the architect named in the Casualty Notice and the City Architect shall mutually select the Consulting Architect, who shall be retained by Landlord and Tenant for the purposes of this Section 22. The time frame for Landlord's response to the Casualty Notice will be extended by that period of time that elapses from the date of Landlord's objection to Tenant's designation of the architect to serve Consulting Architect until the Consulting Architect has been selected in accordance with this Subsection 22.3.1. The fees and expenses of the Consulting Architect and each architect retained by Landlord and Tenant will be included in the Restoration Costs.

22.3.2 Determination of Scope of Work. The estimated Scope of Work set forth in the Casualty Notice and the Landlord's objection to the estimated Scope of Work, if any, will be submitted to the Consulting Architect, who shall make a final determination of the estimated Scope of Work for the purposes of this Section 22. For the purposes of reaching its determination the Consulting Architect may retain those additional consultants it may determine necessary or useful for the purpose of reaching its determination. The cost of any such additional consultants shall also be a Restoration Cost.

22.3.3 Determination of Restoration Costs. The estimated Restoration Costs set forth in the Casualty Notice and the Landlord's objection to the estimated Restoration Costs, if any, will be submitted to the Consulting Architect, who shall make a final determination of the estimated Restoration Cost for the purposes of this Section 22. For the purposes of reaching its determination the Consulting Architect may retain those additional consultants it may determine necessary or useful for the purpose of reaching its determination. The cost of any such additional consultants shall also be a Restoration Cost.

22.3.4 Determination of Restoration Period. The estimated Restoration Period set forth in the Casualty Notice and the Landlord's objection to the estimated Restoration

Period, if any, will be submitted to the Consulting Architect, who shall make a final determination of the estimated Restoration Period for the purposes of this Section 22. For the purposes of reaching its determination the Consulting Architect may retain those additional consultants it may determine necessary or useful for the purpose of reaching its determination. The cost of any such additional consultants shall also be a Restoration Cost.

22.4 Amendments to Casualty Notice. The Casualty Notice will be deemed amended by the determinations set forth in the preceding Section 22.3 and, as amended, deemed approved by Landlord and Tenant. Any subsequent amendments to the contents of the Casualty Notice which are of a material nature shall require the prior, written approval of both Tenant and Landlord, such approval not to be unreasonably withheld.

22.5 Election by Tenant. Within ninety (90) days following the *later* of (i) Tenant's receipt of the Insurance Proceeds Notice, or (ii) the final determination of the estimated Scope of Work, estimated Restoration Cost and estimated Restoration Period, as set out above, Tenant shall provide to Landlord either (A) written notice of Tenant's election to terminate this Lease or (B) the Restoration Notice. If Tenant fails to timely provide either notice to Landlord, Tenant will be deemed to have delivered the Restoration Notice.

22.6 Election to Restore Premises. If Tenant provides the Restoration Notice:

22.6.1 Plans and Specifications. Tenant shall cause the Restoration Work to be carried out, in all material respects, in accordance with the Plans and Specifications, as described below.

22.6.2 Restoration Work Funded by Insurance Proceeds. To the extent reasonably practical the Restoration Work shall be carried out by Tenant and, to the extent reasonably possible, shall be marshaled in a manner which coordinates with the terms of the Casualty Loss Insurance. Landlord agrees to use its best efforts to arrange with the Casualty Loss Insurance carrier to coordinate the Restoration Work in a manner which optimizes the recovery of insurance proceeds. Subject to a Force Majeure Event or any delay caused by the act or omission of Landlord in the exercise of any approval rights granted to Landlord under the terms of this Lease, Tenant agrees to use reasonable business efforts to cause the Restoration Work to be carried out within the time frame set out in the estimated Restoration Period.

22.6.3 Restoration Work Not Funded by Insurance Proceeds. As to any portion of the Restoration Work for which Insurance Proceeds are not available, the Restoration Period will be extended for the Extended Restoration Period to permit Tenant to undertake fund-raising for the Restoration Costs that exceed the available Insurance Proceeds. Tenant shall provide to Landlord in writing, prior to the commencement of the Restoration Work, the Fund-Raising Targets.

22.6.4 Extension of Extended Restoration Period. The Extended Restoration Period will not be subject to further extension unless, after the Execution Date, Landlord increases Landlord's self-insured portion of Casualty Losses by more than \$250,000.00. In that event, Landlord and Tenant agree that the Extended Restoration Period will be increased by an additional twelve (12) months if necessary for additional fund-raising activities by Tenant.

22.7 Submittal of Plans and Specifications **Error! Bookmark not defined.** Separate and apart from any approvals which may be required to be obtained from the City, in the exercise of its municipal authority, prior to submitting any plans to obtain a building permit, Tenant shall submit all proposed plans and specifications for the Restoration Work to Landlord for review and approval, which approval will not be unreasonably withheld or delayed. In the event Landlord fails to raise any objection to the proposed plans and specifications within thirty (30) days following their submission to the Landlord, the proposed plans and specifications shall be deemed approved. If a dispute exists between the Landlord and Tenant as to how to resolve any objections raised by Landlord to the proposed plans and specifications, the dispute shall be resolved following the same procedures set out in Section 22.3 above. Landlord's prior, written approval shall be required for any material modification, alteration or amendment of any Plans and Specifications.

22.8 Submittal of Construction Contracts. Before entering into any contract for the Reconstruction Work, including (without limitation) architectural, engineering, construction and consulting contracts, Tenant shall submit such contract to Landlord for its review and comment. Final approval of any such contract shall remain with Tenant.

22.9 Escrow of Insurance Proceeds. If Tenant has provided the Restoration Notice to Landlord, then Landlord shall deposit the Insurance Proceeds, as the Insurance Proceeds are made available to Landlord, into a segregated construction escrow account to be disbursed by Escrow Agent in accordance with the terms and conditions of the Construction Escrow Agreement (Exhibit E).

22.10 Progress Reports. Tenant acknowledges the importance to Landlord of receiving current information concerning the Restoration Work. Tenant shall provide to Landlord a monthly Progress Report which:

22.10.1 describes the major aspects of the Restoration Work then being performed, the progress of the Restoration Work (quality/quantity), any revision to the scheduling of the Restoration Work;

22.10.2 updates the governmental permit status of the Restoration Work and inspection approvals;

22.10.3 provides an analysis of any deviation from the estimated Restoration Period and identifies any anticipated amended to the Restoration Period;

22.10.4 provides an analysis of any deviation from the estimated Restoration Costs and identifies any anticipated amended to the Restoration Costs; and

22.10.5 identifies the quantity of Pledges received by Tenant and calculates the current difference between (1) the sum of the Insurance Proceeds and Pledges and (2) the estimated Restoration Costs.

22.11 Abatement During Restoration. All obligations of Landlord and Tenant under the terms of this Lease which are inconsistent with the damaged state of the improvements shall be abated from the date of such casualty occurrence until the restoration and rebuilding of the Premises to Substantial Completion. During any such abatement, reasonable operating expenses necessary to maintain the Premises shall be shared between Landlord and Tenant on an equitable basis, taking into consideration their respective interests and obligations relating to the Premises.

22.12 Delivery of Information. In the event of a Casualty, each of Landlord and Tenant agree to promptly deliver to the other any and all information it has or may receive concerning the Casualty, including, without limitation, its causation, the Casualty Loss and the availability of any insurance proceeds. Without limiting the generality of the foregoing, Landlord will provide to Tenant the Insurance Proceeds Notice.

22.13 Restoration Work and Standards. To the extent reasonably possible and to the extent of (i) the Insurance Proceeds and/or (ii) Other Restoration Proceeds, the parties agree that the Restoration Work shall be undertaken with due regard to the historic nature of the improvements. If the Premises sustains a Casualty Loss that is adjusted or otherwise evaluated by Landlord's Department of Risk Management or other professional analysts retained by Landlord as a total loss with only minimal remaining value of the improvements, the manner of Restoration, if any, will be determined by Landlord with due regard to the highest and best use for the Premises, the surrounding improvements and such additional factors as Landlord may deem relevant in the exercise of its sole discretion.

22.14 Pre-Construction Milestones. To assure Landlord that Tenant's efforts to restore the Casualty will result in commencement of construction in a timely manner to comply with the requirements of the Casualty Loss Insurance in undertaking the Restoration Work described in the Casualty Loss Notice, Tenant shall provide to Landlord the following:

22.14.1 within three (3) months following approval of the Plans and Specifications by Landlord and all governing agencies, evidence of Tenant's receipt of competitive bids of contractors based upon the Plans and Specifications; and

22.14.2 within six (6) months following approval of the Plans and Specifications by Landlord and all governing agencies, executed copies of the approved construction contracts necessary to complete such Restoration Work.

If Tenant fails to timely perform any of the foregoing obligations, Landlord may, at its option, provide notice to Tenant that Landlord will assume the responsibility for the Restoration Work,

including any Restoration Work not funded by Insurance Proceeds. Upon receipt of such notice, Tenant shall immediately provide to Landlord any and all materials in Tenant's possession or subject to Tenant's control concerning the Restoration Work and assign its rights under all construction contracts to Landlord. Upon such assignment and surrender of all such materials to Landlord, Tenant will have no further obligation to manage or control the Restoration Work but agrees to cooperate with Landlord's efforts to effect the Restoration Work.

22.15 Required Commencement of Work. If, prior to the completion of the Pre-Construction Milestones described in Section 22.14 above, the Restoration Work must be commenced in a manner which satisfies the requirements of the Casualty Loss Insurance regarding commencement of construction, Landlord and Tenant will cooperate with each other to cause such Restoration Work to commence. If such Restoration Work has commenced to the extent necessary to avoid the loss of Insurance Proceeds before the completion of the Pre-Construction Milestones described in Section 22.14 above, Landlord may not assume responsibility for the Restoration Work in accordance with Section 22.14.

22.16 Advance of Funds. Restoration Costs expended by either Landlord or Tenant before Insurance Proceeds are paid under the Casualty Loss Insurance shall be reimbursed to Landlord or Tenant, as applicable, from the Insurance Proceeds as soon as the Insurance Proceeds are made available.

23. Condemnation/Substantial or Partial Taking.

23.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

23.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

23.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

24. Holdover.

If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (a) Tenant is a tenant at sufferance and (b) the Base Rent is \$5,000 a month.

[Section 25 intentionally omitted].

26. Default, Remedies for Default.

26.01. *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

26.01.01. Tenant fails to comply with any material term, provision or covenant of this Lease, including, but not limited to, the Funding Agreement, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant or any guarantor of this Lease is false or misleading in any material respect when given to Landlord.

26.01.02. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord.

26.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 60 days after the levy thereof.

26.01.04. Tenant or any guarantor of the Lease files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

26.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

26.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises.

26.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 60 days of its filing.

26.01.08. The business operated by Tenant is closed for without the consent of Landlord for a period of more than 90 consecutive days.

26.01.09 This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

26.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord has the option to pursue any one or more of the following:

26.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

26.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.

26.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

26.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease;

(ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord;

(iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours; and

(iv) Tenant shall be obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

26.03. *Repossession and Alteration of Locks.* Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Subject to the provisions of Section 26.10, Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (a) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices; and (b) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

26.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

26.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

26.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent,

(a) the costs of removing and storing Tenant's or any other occupant's property; and (b) all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

26.07. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

26.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

26.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

26.10. *Rights Respecting Personal Property.* Tenant shall be entitled to collect its personal property remaining at the premises after any termination of this Lease or any repossession of the Premises by Landlord.

26.11. *Delinquent Rents and Other Sums.* Any amounts owing hereunder not paid within five days after they are due bear interest at the rate permitted by the Texas Local Government Code, the interest to accrue from the due date of the payment until received by Landlord. Similarly, if Landlord pays any obligations allocated to Tenant under this Lease, those amounts, if not repaid within five days of Landlord's demand, bear interest at the above applicable rate from the date of Landlord's advance until received by Landlord. In addition to the interest due on delinquent rents and other sums hereunder, if Tenant fails to make any payment when due, and such failure to pay continues for a period of five days (without any notice), then Tenant must pay, in addition to the amount due and owing, a late charge of 10% of such amount due and owing. The late payment charge is liquidated damages for Landlord's

administrative inconvenience in dealing with late payments. The damages suffered by Landlord in case of a late payment are not capable of being ascertained precisely, but the foregoing charge is a reasonable and good faith estimate by the parties of the extent of the damage, which is reasonably certain to occur. Receipt of the late payment charge does not void the occurrence of an event of default or eliminate any of Landlord's remedies therefor.

26.12. *Cumulative Remedies.* Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law (except to the extent that applicable law may have been validly waived by any of the terms of this Lease), including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

27. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

27.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant.

27.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Premises suitable for the prospective tenant's use is (or soon will be) available.

27.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Premises, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Premises.

27.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of the Premises;
- (ii) adversely affect the reputation of the Premises; or

(iii) be incompatible with other users of the Premises.

27.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner.

27.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or

(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

28. Re-Leasing Expenses.

Tenant shall not be responsible for any re-leasing expenses of Landlord, including, without limitation, any modifications to the Premises to accommodate any successor tenant.

29. Tenant's Bankruptcy.

In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

29.01. "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

(i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

29.02. "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an

additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

29.03. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

29.04. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

29.05. If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

29.06. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer; and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than twenty (20) days after Tenant's receipt of the proposal, but in no event later than ten (10) days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice.

29.07. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

30. Warranty Disclaimer.

30.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

30.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, **as-is**.

31. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term only after reasonable notice to Tenant and opportunity for Tenant to retrieve such property.

32. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability. All obligations of ACCD under this instrument are subject to the discretion of its Board of Trustees whether to appropriate funding for any given year of a term. If the ACCD Board of Trustees fails to appropriate money for this Lease in an annual ACCD Budget, ACCD may terminate this Lease and have no further liability.

33. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent.

34. Dispute Resolution.

34.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

34.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

34.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

34.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

34.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic; and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

34.06. Mediator fees must be borne equally.

34.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

35. Taxes.

35.01. Tenant shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and Local taxes and fees, which are now or may hereafter be levied upon the Premises, or upon Tenant, or upon the business conducted on the Premises, or upon any of Tenant's property used in connection therewith or upon Tenant's leasehold interest or upon Landlord's fee interest; and Tenant shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by Tenant. If real property taxes are assessed against Landlord's fee simple interest or Tenant's leasehold interest, then Tenant agrees to pay such taxes.

35.02. Tenant shall pay all ad valorem taxes, general and special assessments or other similar items relating to its personal property situated on the Premises in a timely manner and before the final due date for such taxes. Landlord shall pay all ad valorem taxes, general and special assessments or other similar charges relating to its personal property (if any) situated on the Premises in a timely manner and before the final due date for such taxes.

35.03. In the event any taxes or other impositions may be payable in instalments, Tenant shall have the right to pay the same as such instalments fall due.

35.04. All of the above notwithstanding, Tenant, as to taxes owed, shall have the right, at its own costs and expense, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed. If required by law, Tenant may take any such action in the name of Landlord, provided, however, that Tenant shall fully indemnify and save Landlord harmless from all loss, cost, damage and expenses incurred by, or to be incurred by, Landlord as a result thereof, and further provided that Tenant shall, at Landlord's request, escrow or post a bond for the full amount of the tax claimed pending such proceeding. Any tax being subject to a valid contest, in accordance with the terms of this Lease, shall in no event be deemed to be due and payable for the purpose of Tenant's obligation under the terms of this Lease, only.

35.05. Notwithstanding the foregoing provisions of this Article 35, the parties acknowledge that both Landlord and Tenant are tax-exempt Texas local government entities.

36. Miscellaneous.

36.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

36.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

36.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

36.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.** This Lease is related to Exhibit C, Funding Agreement, for renovation of the Premises between the parties of approximately even date herewith, and should a conflict arise between their respective provisions, the provisions of the Funding Agreement shall prevail for so long as the Funding Agreement has not terminated.

36.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. The City Manager or an authorized designee may approve and sign amendments to this Lease provided they do not relate to appropriation of funds or renewal of Terms.

36.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

36.07. *Notices.* Notices must be in writing and by receipted hand delivery or by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete upon written receipt or three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not

defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

36.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

36.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

36.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

36.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

36.12. *Administrative Actions and Agreements.* The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

36.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this lease states numbers more than one way and there is a conflict, the lowest number controls.

36.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

36.15. *Binding Date.* This agreement is binding on the parties on the later of (A) the effective date of the Authorizing Ordinance or (B) the later of the signatures of the two parties.

36.16 *Termination of Funding Agreement.* Should the Funding Agreement, Exhibit C, be terminated pursuant to the provisions of 3.05(B) thereof, then either party may terminate this Lease without either party being liable to the other by reason thereof.

37. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

*[remainder of page intentionally blank]
[signatures on next page]*

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Tenant:

Alamo Colleges,
a political subdivision of the State of
Texas, acting through its Board of
Trustees

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A

Legal Description of Premises:

Lot 1, Block 8, New City Block 1508, in the City of San Antonio, Bexar County, Texas, commonly known as 1602 Dakota Street, San Antonio, Bexar County, Texas 78203

Exhibit B

Veterans Outreach and Transition Center Program – Scope of Work

Exhibit C

Funding Agreement

Exhibit D

Tenant's Master Plan (Fund Raising) – to be provided by Tenant

Exhibit E

Construction Escrow Agreement

Discussion and Possible Action on Alamo Colleges' Participation on Behalf of St. Philip's College in Interlocal Agreement with the City of San Antonio for a Joint Use Veterans Outreach and Transition Center

Presented to the BUILDING, GROUNDS, SITE SELECTION COMMITTEE on March 8, 2011 and forwarded for recommended approval to the ALAMO COLLEGES BOARD OF TRUSTEES on March 22, 2011.

MINUTE ORDER

"The Board of Trustees hereby approves the Alamo Colleges' participation on behalf of St. Philip's College in the Interlocal Agreement with the City of San Antonio for oversight of the construction of a Joint Use Veterans Outreach and Transition Center ("Center") located at 1602 Dakota, San Antonio, Texas, in the neighborhood of St. Philip's College. Approval of operating the Center is contingent upon St. Philip's College obtaining grant funding."

PURPOSE

To authorize the Chancellor or his appointee to designate procedures, processes and fee structures that will facilitate relations with the City of San Antonio for a Joint Use Agreement to plan, design, renovate and operate a Veterans Outreach and Transition Center at the site of the former Good Samaritan Hospital at 1602 Dakota, San Antonio, Texas.

BACKGROUND

The City of San Antonio (COSA) will provide \$2,000,000 in funds to Alamo Colleges to renovate the former Good Samaritan Hospital, the first black hospital in San Antonio, Texas. COSA approved this agreement at the February 17, 2011 meeting of the City Council. COSA will retain ownership of the property, valued at approximately \$70,000-\$90,000. The \$2,000,000 funding from COSA will be administered by the Facilities Department, which will serve as the construction manager to ensure the renovation is done in accordance with District procedures. Once the renovation is complete, grant funding for operating costs is obtained, and the Center is operational, a total of 2,300 individuals will be served per year. St. Philip's College is seeking external funding in the amount of \$800,000 to cover expected operational expenses over the next three years, and will continue working on grants that will sustain ongoing operations of the Center. The Center would operate with three staff and use external organizations to provide services in the center. The Center may offer Continuing Education and GED classes to the Community that would generate some contact reimbursement classes within our existing system. At minimum services will be provided under the following areas: Reference Services for Veterans and Family Members; Job Support that will consist of job training; and Transitional Services that may be required for veterans and family members. This project will not proceed until funds have been identified for the operation of this facility. The program may terminate and the building be returned to the City of San Antonio if ongoing funding cannot be maintained.

IMPLICATIONS

Financial: Funding Source: COSA: \$2,000,000 for Construction costs
Operating costs covered by Grant (pending),
Strategic Plan: Goals I, IV and V
Employee Services: None
ATTACHMENTS: Sustainability Plan, City Council Voting Results

John W. Strybos, Date
Associate Vice Chancellor for Facilities

Diane E. Snyder Date
Vice Chancellor for Finance and Administration

Dr. Bruce H. Leslie Date
Chancellor



St. Philip's College

Veterans Outreach & Transition Center

This is a sustainability plan that will be used to support the efforts of the St. Philip's College Veterans Outreach & Transition Center currently being proposed that will be using external funding opportunities as its method of operations in securing funds for the Center. This sustainability plan is a good faith effort on the part of St. Phillip's College to show that every effort will be made to sustain the activities of the Veterans Outreach & Transition Center as an on-going service that is consistent with the requirements of any funding source that allocates funds for this type project. This is a project that will further support the efforts of the Alamo Colleges being a military friendly organization in Military City USA.

STEP ONE – VISION

St. Philip's College in partnership with the City of San Antonio will be working to renovate the old Good Samaritan Hospital which was the first Black Hospital in San Antonio which is located at the following address: 1602 Dakota. Once the building is renovated it will be used as a Veterans Outreach & Transition Center providing services to veterans in the Bexar County San Antonio, Texas Region. At minimum services will be provided under the following areas:

- Reference Services for Veterans and Family Members
- Job Support that will consist of job training
- Transitional Services that may be required for veterans and family members

This is a project that will eliminate slums or blight in the area along with providing historic preservation for San Antonio's eastside community. This is project that will meet other community development needs that have a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs. This proposed project will provide services that will benefit low and moderate income persons and households.

This joint use project will take an underutilized historic building and renovate it to address code compliance issues, Americans with Disabilities Act (ADA) access issues, and other items associated with the renovation of a historic structure. Budget impacts on the facilities operations and maintenance budgets for the renovated facility will be minimized through the use of energy efficient design and construction and the close proximity (less than 1 mile) from the SPC main campus.

STEP TWO – EVALUATE CURRENT FINANCIAL IMPACT

Since the City of San Antonio will be providing \$2,000,000 in funding for the renovation and acquisition of the land there will be no financial impact on the Alamo Colleges operational budget. The City of San Antonio will also be acquiring the property for the proposed project.

St. Philip's College is currently working on an \$800,000 three year grant application for operational funds to support the operations of the Center. During the operation of the grant other external funding opportunities will become a priority for the operations of Center activities and services. Using external funds would not require St. Philip's College to use institutional funds to support the operations of the Veterans Outreach & Transition Center.

STEP THREE – SET GOALS & OBJECTIVES

It the goal of the Veterans Outreach & Transition Center to provide services to veterans and their family members in need of services. Once the renovation is complete and the Center is operational a total of 2,300 individuals will be served per year. It is the intent of St. Philip's College to seek external funding for the continuation of the services being offered in the center to be provided beyond the three year HUD HBCU funding period. The Center would operation with three staff and using external organizations to provide services in the center. Classes in the area of Continuing Education and GED can be offered to the Community that would generate some contact reimbursement classes within our existing system.

STEP FOUR – CONTINUATION OF EFFORT PLAN

In order for the project to continue beyond the initial funding period, it will require St. Philip's College to seek funding in the amount of \$235,000 per year for the program to continue. This cost would cover staff funded under the project along utility costs and supplies for the program.



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 20
Council Meeting Date: 2/17/2011
RFCA Tracking No: R-7452

DEPARTMENT: Center City Development Office **DEPARTMENT HEAD:** Pat DiGiovanni

COUNCIL DISTRICT(S) IMPACTED:
Council District 2

SUBJECT:
Acquisition of the Good Samaritan property

SUMMARY:
An ordinance authorizing the acquisition of the Good Samaritan property.

BACKGROUND INFORMATION:

The Good Samaritan Hospital property on the 1600 block of Dakota Street was originally built as the home of the Corinth Baptist Church in approximately 1915. It was later converted in the 1940's as a hospital for African-Americans in response to segregation and the need for services for the City's Black residents. The property has fallen into disrepair over the course of time. The building is approximately 12,000 square feet and sits on just over 5,000 square feet of land.

In 2010, the City appropriated \$2,000,000.00 in Certificates of Obligation for a workforce development and training center to serve the Eastside community. This facility would provide career training and educational services for those preparing to go into the workforce. The City has been seeking a suitable site for this initiative since the time the appropriation was authorized by Council.

The City and St. Philip's College have held discussions related to the development of a Veteran's Outreach and Training Center (VOTC) that would provide assistance in the transition from military to civilian life. The College serves over 1,000 veterans per semester and has identified the need for a fully sanctioned veterans' resource center. At this time, there are no such centers on any campus of higher learning in South Texas.

Recognizing the opportunity to partner with St. Philip's College in this important workforce development initiative, the City proposes to authorize funds from the \$2,000,000.00 allocation for the purpose of acquiring the Good Samaritan property. The City would restore the property, thereby allowing the VOTC program to take place largely in the Good Samaritan building.

ISSUE:
Currently the property owner is a Chapter 13 Debtor. The City is seeking to acquire through

negotiation, dedication, or condemnation of the Good Samaritan property. During the negotiation period, the City and St. Philip's College will continue to develop the working agreement for the VOTC. Additionally, the City will review program needs and identify any additional properties that may be required for acquisition. The City will also work to develop cost estimates for the renovation of the building. The City will have the right to terminate the negotiations at any time. Should the City decide to acquire the Good Samaritan property it shall negotiate a sale price in accordance with the fair market value as determined by the City and the property owner.

ALTERNATIVES:

Denial of the ordinance will prevent the City from being able to develop working terms with St. Philip's. The Seller may dispose of the property to another entity and the City would be required to seek other property alternatives.

FISCAL IMPACT:

The proposed acquisition amount of up to \$80,000.00 is proposed to be issued from the FY 2010 \$2,000,000.00 workforce development and training center allocation.

RECOMMENDATION:

Staff recommends approval of the ordinance. Authorization will allow the City to secure the property while developing the VOTC in conjunction with St. Philip's College. Additionally, the redevelopment of this historically important building would enhance and improve the immediate area.

ATTACHMENT(S):

File Description	File Name
Voting Results	

APPROVED FOR COUNCIL CONSIDERATION:

Pat DiGiovanni Deputy City Manager



Agenda Voting Results - 20

Name:	20						
Date:	02/17/2011						
Time:	09:33:59 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the acquisition of the Good Samaritan property, located on the 1600 block of Dakota Street in Council District 2. [Pat DiGiovanni, Deputy City Manager / Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x			x	
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				



Minutes
Alamo Community College District
Regular Board Meeting
George E. Killen Community Education & Service Center
201 W. Sheridan
San Antonio, Texas
March 22, 2011

1. CALL TO ORDER

Chair Gary Beitzel called the meeting to order at 6:57 PM. and announced that a quorum of board members was present.

2. ROLL CALL

The following trustees were present:

District 1	Joe V. Alderete Jr.
District 2	Denver McClendon
District 3	Anna U. Bustamante, Secretary
District 4	Marcelo S. Casillas, Asst. Secretary
District 5	Roberto Zárate
District 6	Dr. Gene Sprague
District 7	Blakely Latham Fernandez
District 8	Gary Beitzel, Chair
District 9	James Rindfuss, Vice Chair

Presiding Administrator: Dr. Bruce H. Leslie, Chancellor

3. CERTIFICATION AND POSTING OF NOTICE

Chair Beitzel announced that the notice of the Regular Board Meeting had been duly posted at the District Office Building (Houston St.), Northeast Lakeview College, Northwest Vista College, San Antonio College, St. Philip's College and at Southwest Campus, Palo Alto College, and the ACCD George E. Killen Community Education & Service Center fulfilling the requirement of the statutes as set forth.

4. INVOCATION

Antonio (Tony) Villanueva
Assistant Professor of Psychology, Palo Alto College

5. PLEDGE OF ALLEGIANCE

6. MEMORIALS

March 2011

Regular Board Meeting

NAME	YEARS OF SERVICE	CAMPUS	DEMISE DATE
Arnulfo Z. Martinez Retired	August 22, 1977 – May 12, 1990	Instructor Air Conditioning Department SPC	February 12, 2011
Margaret A. Forbes Retired	September 1, 1962 – December 21, 1979	Instructor Physical Education SAC	December 18, 2010

7. CEREMONIALS

A. In Recognition of City Councilman Philip Cortez for Assistance to Palo Alto College

[Pulled]

8. RECOGNITION OF SPECIAL GUESTS, FACULTY AND STAFF

A. Student of the Month (March 2011)
Raquel Hernandez, Palo Alto College

[!\[\]\(cb4d764e0ec82dbfbfa949089dcfe813_img.jpg\) Student of the Month - Raquel Hernandez](#)

B. District-Wide Employee of the Month (March 2011)
Melissa Monroe-Young, Public Information Officer, Northwest Vista College

[!\[\]\(12e903e70f9b2a3a21d12c3fee713baa_img.jpg\) DWEOM - Melissa Monroe-Young March 22, 2011](#)

C. Emeritus Status

Margaret Munro, Professor Emeritus, Sociology Department, San Antonio College

[!\[\]\(caa44b2aa1d568a73e4e3561e8bf95fd_img.jpg\) Margaret Munro, Professor Emeritus, Sociology Department, SAC](#)

9. CITIZENS TO BE HEARD (REGISTRATION: 5:00 - 5:55 P.M.)

CITIZENS TO BE HEARD							
ALAMO COLLEGES							
REGULAR BOARD MEETING							
Meeting Date: March 22, 2011				Meeting Time: 6:00 P.M.			
BEFORE signing up for <i>Citizens to be Heard</i> , please be sure to review the Citizens to be Heard Policies & Procedures.							
Please clearly PRINT your information below. Please keep in mind that, out of respect for others who also wish to speak, and in accordance with Board policy, each person speaking on <u>his or her own behalf</u> should speak for no longer than THREE minutes. Speakers representing an organization should speak for no longer than FIVE minutes.							
	NAME	Are you an Alamo Colleges Student or Employee?	Agency/Organization Affiliation	Agenda Item # or Topic	Subject Matter	In Favor?	Opposed?
1	Tom Kuykendall	Yes	SAC Library		FACULTY STATUS		
2	Renata Gibson	Yes	NVC Library		Adjunct Pay Equity		
3	Celita DeArmond	Yes	SAC		Courage to Teach		
4	Sandra Hood	No			Librarians		
5	Raquel Hernandez	Yes	Pac		Transcripts		
6							
7							
8							
9							
10							
11							
12							
13							

10. CHAIRMAN'S REPORT

- A. Discussion and Possible Action on Travel Reimbursement for Trustee Zárate's Participation in the Regional Education Summit/White House Summit at Lone Star Community College in Houston, Texas on March 9, 2011.
On a motion by Trustee Alderete, seconded by Trustee Dr. Sprague, with Trustee Zárate having recused himself from the vote, the Board of Trustees adopted the following minute order:
[Minute Order on Zárate Travel Reimbursement](#)

11. CHANCELLOR'S REPORT

- A. Monthly Report on Alamo Colleges Regional Centers
[Regional Centers Report - March 2011](#)
- B. Presentation on Operating Budget Projections for FY 2012-2013 Biennium
[Operating Budget Projections for FY 2012-2013 Biennium](#)
- C. Internal Audit Department Monthly Activity Report for February 2011
[Internal Audit Department Monthly Activity Report for Feb 2011](#)
- D. Monthly Clery Act Activity Report
[DPS Monthly Clery Act Activity Report for February 2011](#)
- E. State Legislative Update
[State Legislative Update](#)

12. CORRECTION AND APPROVAL OF MINUTES

- A. Discussion and Possible Action on Minutes of the Regular Board Meeting on February 22, 2011
On a motion by Trustee Zárate, seconded by Trustee Dr. Sprague, with Trustee Fernandez abstaining, the Board of Trustees voted to adopt the following minute order:
[Minute Order: Minutes of the Regular Board Meeting on February 22, 2011](#)
[RBM Minutes 02 22 2011](#)

13. PROGRAM HIGHLIGHTS

- A. Honorably Serving our Veterans
Presented by Dr. Robert Garza, Dean of Student Affairs, PAC
[Presentation on Honorable Serving our Veterans](#)

14. EXECUTIVE SESSION

NO EXECUTIVE SESSION

- A. Pursuant to §551.071, Tex. Gov't. Code, the Board may consult with the College District's attorneys to seek their advice about a matter in which the duty of the attorneys to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts.

Pursuant to §551.071, Tex. Gov't. Code, the Board may consult with the College District's attorneys about pending or threatened litigation or settlement offers related to claims filed by the following individuals: Elsa Anaya, Rebecca DeLeon, Thomas Brown, Stephen Babb, Jude Manzo and Rayford Richardson, and Project Quest.

Pursuant to § 551.072, Tex. Gov't. Code, the Board may deliberate the purchase, exchange, lease or value of real property.

Pursuant to §551.074, Tex. Gov't. Code, the Board may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee(s).

Any action on these matters will be taken in Open Session

15. RECONVENE OPEN MEETING

NO EXECUTIVE SESSION

- A. Discussion and Possible Action on items discussed in Executive Session.

[No Action Taken]

16. AUDIT, BUDGET AND FINANCE

- A. Discussion and Possible Action on Fees for Assessment Tests (THEA and Accuplacer) at Alamo Colleges
On a motion by Trustee Zárate, seconded by Trustee Alderete, and by unanimous vote of the Board of Trustees, the following minute order was adopted:
[Fees for Assessment Tests \(THEA and Accuplacer\) at Alamo Colleges](#)

17. FACILITIES

- A. Discussion and Possible Action on St. Philip's College Capital Improvement Program Construction Manager at Risk Skanska USA (RFP No. 06C-121) Cost Savings

On a motion by Trustee Alderete, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute order was adopted:

[Minute Order on SPC Capital Improvement Program at Risk Skanska USA](#)

- B. Discussion and Possible Action on Alamo Colleges' Participation on Behalf of St. Philip's College in Interlocal Agreement with the City of San Antonio for a Joint Use Veterans Outreach and Transition Center

On a motion by Trustee Alderete, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute order was adopted:

[Participation in Interlocal Agreement with the City of San Antonio](#)

[Attachment on Sustainability Plan](#)

[Attachment on City Council Voting Results](#)

- C. Discussion and Possible Action on the Site Work, Utilities and Installation of the First Responders Academy Multi-Purpose Training Facility at San Antonio College (Von Ormy Campus)

On a motion by Trustee Alderete, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute order was adopted:

[Site Work, Utilities & Installation of Multi-Purpose Training Facility at SAC](#)

[First Responders Academy Multi-Purpose Training Campus Map](#)

18. LEGAL AFFAIRS

- A. Discussion and Possible Action Regarding the Purchase of "Consultant Services for Re-Districting Plan" for Alamo Colleges (RFP no. 11A-014)

On a motion by Trustee Dr. Sprague, seconded by Trustee Rindfuss, and by majority vote of the Board of Trustees, the following minute order was adopted:

["Consultant Services for Re-Districting Plan" for Alamo Colleges \(RFP No. 11A-014\)](#)

19. POLICY

- A. Discussion and Possible Action on Policies B.4.1 – Board Officers

On a motion by Trustee McClendon, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute order was adopted:

[Minute Order on Policy B.4.1 - Board Officers](#)

[Attachment on Policy B.4.1 Proposed](#)

B. Discussion and Possible Action on Policy B.6.1 - Board Committees

On a motion by Trustee McClendon, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute order was adopted:

[Minute Order on Policy B.6.1 - Board Committees](#)

[Attachment on B.6.1 Proposed](#)

20. **PERSONNEL**

A. Discussion and Possible Action on Granting of Emeritus Status for Margaret Munro, Professor Emeritus, Sociology Department, San Antonio College

On a motion by Trustee McClendon, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute order was adopted:

[Minute Order on Granting of Emeritus Status on Margaret A Munro](#)

[Attachment: Resolution on Margaret A. Munro](#)

21. **CONSENT AGENDA**

A. Discussion and Possible Action on Approval of the Consent Agenda Items of the Regular Board Meeting on March 22, 2011

On a motion by Trustee McClendon, seconded by Trustee Dr. Sprague, and by unanimous vote of the Board of Trustees, the following minute orders were adopted: 21.A, 21A.1.)a., b., c., d., 2.)a., & b.

[Consent Agenda Items March 22 2011](#)

1) **FISCAL AFFAIRS**

a. Discussion and Possible Action on the Monthly Grants and Contracts Report

[Monthly Grants and Contracts Report](#)

b. Discussion and Possible Action on Approval of Monthly Report on Cooperative Purchases in Excess of \$50,000

[Approval of Monthly Report on Cooperative Purchases in Excess of \\$50k](#)

c. Discussion and Possible Action on the Monthly Construction Reports Through January 31, 2011

[Monthly Construction Reports through January 31, 2011](#)

d. Discussion and Possible Action on the Monthly Financial Reports Through January 31, 2011

[Monthly Financial Reports through January 31, 2011](#)

2) INSTITUTIONAL ADVANCEMENT

- a. Discussion and Possible Action on Acceptance of Private Gifts to the Alamo Colleges Foundation and Alamo Colleges
 - [Private Gifts to Alamo Colleges Foundation & Alamo Colleges](#)

- b. Discussion and Possible Action on Annual Decision Regarding the State Employee Charitable Contribution Program
 - [Annual Decision: State Employee Charitable Contribution Program](#)

22. SETTING OF NEXT MEETING DATE

- A. Regular Meeting of the Alamo Colleges Board of Trustees is scheduled for **Tuesday, April 19, 2011**, at the George E. Killen Community and Education Service Center, 101 Community Meeting Room, 201 West Sheridan, San Antonio, Texas

23. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:51 P.M.

Approved for submission to the Board:



Dr. Bruce H. Leslie
Chancellor



Felix Garza Medina III
Assistant for Special Projects

EXHIBIT J
PROJECT DESCRIPTION

EXHIBIT J

PROJECT DESCRIPTION

ACCD shall renovate the historic Good Samaritan Building located at 1602 Dakota Street, San Antonio, Texas 78203 (the "Building") for operation as a Veterans Outreach and Transition Center ("VOTC"), including remediation of the Building, demolition of the interior of the Building as necessary per the Plans and Specifications, including demolition of City-owned structures at 1604 Dakota and 1610 Dakota for access to the Building and construction site for construction activities at the Building; and construction of surface parking lots for operation of the VOTC on the following lots: 1520 Dakota, 120 Connelly, 208 Connelly, 1604 Dakota, and 1610 Dakota.

City of San Antonio

Center City Development Office

Interdepartmental Correspondence Sheet

TO: Carlos Contreras, Assistant City Manager

FROM: Lori Houston, Director, Center City Development Office

SUBJECT: Funding Agreement and Lease Amendments with ACCD for the Good Samaritan / VOTC Project

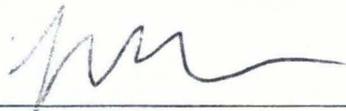
DATE: February 19, 2013

Attached for your signature are the Amendments to Funding Agreement and to the Lease for the Good Samaritan / Veterans Outreach and Transition Center project with Alamo Community College District. The Amendments were authorized by City Council on February 14, 2013 pursuant to Ordinance 2013-02-14-0112.

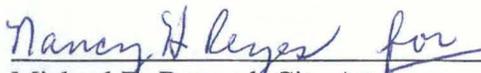
The Amendment to the Funding Agreement is to provide additional funding to ACCD to complete the renovation of the former Good Samaritan Hospital building in the amount of \$1,167,679.00 for a total funding agreement of \$2,767,679.00. Funds for this amendment are available from the FY 2013 General Fund Inner City Incentive budget in the amount of \$167,679.00 and from previously approved Housing and Urban Development (HUD) Section 108 funds allocated for Eastside Redevelopment Projects in City Council District 2 in the amount of \$1,000,000.00. The Amendment to the Lease is to include five surrounding lots, which the City either has acquired or is in the final processes of acquiring, with the leased premises at the Good Samaritan Hospital building and lot at 1602 Dakota. The additional lots will be for immediate use for construction staging and demolition, and once construction is completed, for parking access to the VOTC. The original Funding Agreement, Lease, and real estate acquisitions were authorized by Ordinances 2011-12-15-1022, 2011-12-15-1023, 2011-12-15-1024.

Once the building is renovated, St. Philip's College will operate their Veterans Outreach and Transition Center from the location, providing services to veterans in the region.

Please call me at 207-2210, if you have any questions or require additional information.



Lori Houston, Director
Center City Development Office



Michael D. Bernard, City Attorney
City Attorney's Office

First Amendment to Funding Agreement

Good Samaritan/Veteran's Outreach Transition Center - 1602 Dakota Street

This First Amendment to Funding Agreement is entered into between Alamo Community College District ("ACCD") and the City of San Antonio ("CITY"), to be effective as of the last date signed below, which amendment is being entered into by the parties in consideration of additional funding to be provided by the City to Alamo Community College District for the Project.

1. Identifying Information.

Authorizing Ordinance: 2013-02-14-0112

Grantee: Alamo Community College District, a political subdivision of the State of Texas, acting by and through its Board of Trustees

Grantee's Address: 201 West Sheridan
San Antonio, Texas 78240-1429

Funding Agreement: Funding Agreement – Good Samaritan – 1602 Dakota Street,
January 11, 2012

**Ordinance Authorizing
Original Funding
Agreement:** 2011-12-15-1023

2. Defined Terms.

All terms defined in the Funding Agreement and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Funding Agreement.

3. Amendments to Funding Agreement, Article III, Milestones.

Article III, Milestones is amended to read as follows:

Section 3.01 Feasibility Milestones. By July 31, 2013, ACCD will prepare the Master Plan for the Building, the Schedule, the Operating Manifest, and Operating Budget and shall determine the Quality Standard and obtain the CITY's approval thereof.

Section 3.02 Commencement of Construction. The Construction Commencement Date shall occur not later than September 3, 2013, and ACCD shall provide the Certificate of Commencement of Construction to the CITY on or before such date. The Certificate of

Commencement of Construction form is attached as Exhibit B hereto and incorporated herein for all purposes.

Section 3.03 Capital Budget. ACCD will prepare and the CITY will approve the Capital Budget for the Building.

Section 3.04 Substantial Completion. Subject to Force Majeure Events, as provided in Section 18.01, ACCD shall cause the Substantial Completion of the Project not later than the Scheduled Completion Date of August 29, 2014, and to evidence and confirm such Substantial Completion, ACCD shall deliver to the CITY a certificate of substantial completion for the Project in the form set forth in Exhibit C attached hereto and incorporated herein.

Section 3.05 Preconstruction Milestones. Not later than the date specified herein, or if no date is specified, not later than September 3, 2013:

- A. Completion of Final Plans. Not later than February 28, 2013, ACCD shall complete and submit to the CITY and obtain the CITY's approval of the Final Plans for the Project.

- B. Pre-Construction Consultation. Prior to awarding any Construction Contracts for the Project, ACCD shall cause the completion of a Phase 1 environmental analysis of the Property, shall submit the Plans and Specifications to the CITY's Historic Design and Review Commission (at the meeting of which CITY agrees to send representatives to appear in support of approving the Project substantially as submitted), obtain preliminary CITY review of the Plans and Specifications, and solicit proposals from prospective General Contractors for the Project. ACCD shall thereafter, either prior to selecting a General Contractor or, at its election, thereafter but prior to the CITY issuing a building permit for the Project, meet with the CITY Representative to determine whether the Project as specified in the Plans and Specifications, as they may have been revised by interaction with the CITY, can reasonably be expected to be completed, including comprehensive completion bonding and a contingency reserve of approximately ten percent (10%) of the costs of the proposal of ACCD's intended General Contractor, without total Project Costs exceeding the amount of the CITY Contribution. If ACCD reasonably expects that the Project cannot be completed without total Project Costs exceeding the amount of the CITY Contribution, then unless the parties renegotiate the Plans and Specifications and the Capital Budget to reduce total Project Costs, or the City determines, in its absolute discretion, and subject to CITY Council approval, to increase the amount of the CITY Contribution, or both, with the result that anticipated total Project Costs will not exceed the amount of the CITY Contribution, then neither party shall be under any obligation to proceed further, nor will either party have any liability to the other by reason thereof or otherwise under this Funding Agreement.

- C. Construction Contracts. ACCD shall provide a copy of each of the Construction Contracts for all Work, services, and purchase orders for all materials to be supplied for construction of the Project to the CITY at least ten (10) Business Days following the execution of a Construction Contract or purchase order, with all Construction Contracts required to be furnished to the CITY on or before September 3, 2013.
- D. Operating Budget. ACCD shall provide the CITY with a final Operating Budget projecting the anticipated income and expenses on a five (5) year rolling budget. The Operating Budget shall demonstrate that ACCD can operate the Building on a fiscally sound basis.
- E. Operating Reserve. The Operating Budget will include an Operating Reserve to cover operating deficits. ACCD's Contribution will include the Operating Reserve.
- F. Development Plan. Not later than September 3, 2013, ACCD shall prepare and submit to the CITY the Development Plan for the Project.
- G. Completion of Preconstruction Milestones. ACCD shall not proceed with commencement of construction of the Project until all Preconstruction Milestones have been fully satisfied.

Section 3.06 Extensions. The CITY may extend the time for performance of any target date, scheduled date, Deadline or Milestone appearing anywhere in this Funding Agreement. All milestones and deadlines set forth in this Agreement shall be adjusted forward if CITY does not put ACCD in possession of the Property by September 3, 2013, or if the CITY's Historical Design and Review Commission delays the Project by postponing a hearing, requiring a second hearing or requiring a substantial revision of the Plans and Specifications. Any such delay shall postpone all such milestones and deadlines by the amount of the delay.

4. Amendments to Funding Agreement, Article IV, Development of the Project.

Sections 4.04 and 4.05 of Article IV, Development of the Project, are amended to read as follows:

Section 4.04 Operation of the Project. The Building will remain open to the public after the Work is completed. By August 29, 2014, ACCD shall develop an Operating Manifest and submit it to the CITY for approval. ACCD shall operate the Building according to the Operating Manifest.

Section 4.05 Completion of Project. By August 29, 2014, ACCD shall have completed the renovation of the entire Building according to the Master Plan and Quality Standard, but delay in completion shall not constitute a default until the date specified at Section 15.03Q hereof.

5. Amendments to Funding Agreement, Article VI, Construction of the Project.

Section 6.02.B of Article VI, Construction of the Project, is amended to read as follows:

Section 6.02 Capital Budget.

- A. Attached hereto as Exhibit F is the Preliminary Capital Budget for the Project.
- B. No later than September 3, 2013, ACCD will deliver the final Capital Budget for the Project to the CITY for review and approval, which will be based upon the Master Plan.
- C. The Parties have agreed that any expenses of any nature on the Project will be the obligation of the CITY, subject to the amount of the CITY Contribution. The costs of any extended maintenance contracts are not included in the Capital Budget and are the obligation of ACCD under the CITY Lease.

5. Amendments to Funding Agreement, Article IX, Financing of the Project.

Section 9.02 of Article IX, Financing of the Project, is amended to read as follows:

Section 9.02 The CITY Contribution. The CITY will obtain and secure up to TWO MILLION SEVEN HUNDRED SIXTY-SEVEN THOUSAND, SIX HUNDRED SEVENTY-NINE AND ZERO/HUNDRED DOLLARS (\$2,767,679.00) for the Capital Budget, to be made when and in the amounts needed to fund the CITY Contribution, which will be funded through the issuance of certificates of obligation or from any other legally available funds of the CITY which the CITY decides to use. In the event construction and/or renovation costs exceed the CITY Contribution, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the CITY Contribution. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023, then CITY shall add said funds to the CITY Contribution. Under no circumstances will this Agreement be construed to obligate ACCD to pay any funds for the Project.

6. Amendments to Funding Agreement, Article XV, Termination Events, Events of Default, and Remedies.

Section 15.03.Q of Article XV, Termination Events, Events of Default, and Remedies, is amended to read as follows:

Section 15.03 Events of Default. Each of the following will be an Event of Default: ...

- Q. The failure of ACCD to complete the entire Project by August 29, 2014, unless caused by the CITY's issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the CITY Contribution.

7. Amendments to Exhibit A, Definitions.

The definitions of "CITY Contribution" and "Scheduled Completion Date" are amended to read as follows:

"CITY Contribution" means the funding of \$2,767,679.00 by the City under the terms of this Funding Agreement. In the event construction and/or renovation costs exceed the CITY Contribution, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the CITY Contribution. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023, then CITY shall add said funds to the CITY Contribution. Under no terms will this Funding Agreement be construed to obligate ACCD to pay any funds for the Project.

"Scheduled Completion Date" means August 29, 2014.

8. No Default.

Neither party is in default under the Funding Agreement and neither party is aware of a cause of action against the other arising out of or relating to the period before the effective date of this amendment.

9. Same Terms and Conditions.

This amendment is a fully integrated expression of the changes the parties intend to make to the Funding Agreement. The parties acknowledge that, except as expressly set forth in this amendment, the Funding Agreement remains in full force and effect according to its terms, and the parties reaffirm the obligations thereof. Both parties are bound thereby. Neither party is in default under the Funding Agreement as amended. There have been no amendments or other modifications to the Funding Agreement except as expressly described in this amendment.

10. Public Information.

The parties acknowledge that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City of San Antonio, a Texas municipal corporation

Signature: *Carlos J. Contreras*

Printed Name: CARLOS J. CONTRERAS

Title: Assistant City Manager

Date: 2/20/13

Alamo Colleges, a political subdivision of the State of Texas, acting by and through its Board of Trustees

Signature: *John W. Strybos*

Printed Name: John W. Strybos

Title: Associate Vice Chancellor of Facilities & Construction Mgt

Date: 2/14/2013

Attest:

Leticia Vard
City Clerk



Approved as to Form:

Nancy D. Reyes for Michael Bernard
City Attorney

First Amendment to Lease Agreement

Good Samaritan/Veteran's Outreach Transition Center - 1602 Dakota Street

This First Amendment to Lease Agreement is entered into between Tenant and the City of San Antonio (Landlord), to be effective as of the last date signed below.

1. Identifying Information.

Authorizing Ordinance: 2013-~~22-14-0112~~

Tenant: Alamo Colleges, a political subdivision of the State of Texas, acting by and through its Board of Trustees

Tenant's Address: 201 West Sheridan
San Antonio, Texas 78240-1429

Lease: Lease – Good Samaritan – 1602 Dakota Street, December 15, 2011

Ordinance Authorizing Original Lease: 2011-12-15-1024

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease.

3. Amendments to Defined Terms.

The following Defined Terms in the Lease are amended to read as follows:

Premises: Structure and lot at 1602 Dakota Street, San Antonio, Texas 78203; and
1520 Dakota Street, NCB 1509, Lot 12, Blk 9;
1604 Dakota Street, NCB 1508, Blk 8, Lot 2A;
1610 Dakota Street, NCB 1508, Blk 8, Lot 3A;
208 Connelly Street, NCB 1508, Blk 8, Lot 7A;
120 Connelly Street, NCB 1495, Blk 3, Lot 15 (all of the foregoing shall be the "Premises", as more particularly described in the attached **Exhibit A**).

Permitted Use: Immediate use of Premises at 1602 Dakota Street for interior demolition and construction of improvements to building for eventual use as Veteran's Outreach and Transition Center program to be operated by St. Philip's

College of Alamo Colleges, which program is more specifically described in the attached **Exhibit B**. Immediate use of 1520 Dakota Street, 1604 Dakota Street, 1610 Dakota Street, 208 Connelly Street, and 120 Connelly Street for construction staging and related activities for renovations to 1602 Dakota Street, including demolition of City-owned structures at 1604 Dakota and 1610 Dakota for access to the structure and construction site at 1602 Dakota Street, and for eventual use as parking for staff, students, faculty, visitors, and public access to the Veteran's Outreach and Transition Center program.

4. Exhibit A.

Exhibit A is revised as attached hereto.

5. No Default.

Neither Landlord nor Tenant is in default under the Lease and neither party is aware of a cause of action against the other arising out of or relating to the period before the date of Landlord's signature on this amendment.

6. Same Terms and Conditions.

This amendment is a fully integrated expression of the changes the parties intend to make to the Lease, as previously amended. The parties acknowledge that, except as expressly set forth in this amendment, the Lease as previously amended remains in full force and effect according to its terms, and the parties reaffirm the obligations thereof. Both Landlord and Tenant are bound thereby. Neither party is in default under the Lease as amended. There have been no amendments or other modifications to the Lease except as expressly described in this amendment.

7. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

[Signature page follows]

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord

Tenant

City of San Antonio, a Texas municipal corporation

Alamo Colleges, a political subdivision of the State of Texas, acting by and through its Board of Trustees

Signature: *Carlos J. Contreras*

Signature: *John W. Strybos*

Printed Name: CARLOS J. CONTRERAS

Printed Name: John W. Strybos

Title: Assistant City Manager

Title: Associate Vice Chancellor of Facilities

Date: 2/20/13

Date: 2/11/2013

Attest:

Linn Vial
City Clerk



Approved as to Form:

Nancy Reyes for Michael Bernard
City Attorney

Exhibit A

Legal Description of Premises:

Lot 1, Block 8, New City Block 1508, in the City of San Antonio, Bexar County, Texas, commonly known as 1602 Dakota Street, San Antonio, Bexar County, Texas 78203;

1520 Dakota Street, NCB 1509, Lot 12, Blk 9;

1604 Dakota Street, NCB 1508, Blk 8, Lot 2A;

1610 Dakota Street, NCB 1508, Blk 8, Lot 3A;

208 Connelly Street, NCB 1508, Blk 8, Lot 7A;

120 Connelly Street, NCB 1495, Blk 3, Lot 15.

STATE OF TEXAS § **SECOND AMENDMENT TO FUNDING**
 § **AGREEMENT BETWEEN THE CITY OF**
COUNTY OF BEXAR § **SAN ANTONIO AND ACCD**

SECOND AMENDMENT TO FUNDING AGREEMENT

A **FUNDING AGREEMENT** (the “Agreement”) was made by and between the **CITY OF SAN ANTONIO, TEXAS** (the “City”), a Texas Municipal Corporation, acting through its City Manager pursuant to Ordinance No. 2011-12-15-1023 passed and approved by the City Council on the 15th day of December, 2011, **ALAMO COMMUNITY COLLEGE DISTRICT** (the “ACCD”), a political subdivision of the State of Texas, acting through its Board of Trustees on the 23rd day of August, 2010, and whom together may be referred to as the “Parties.” A First Amendment to the Funding Agreement was entered in by City acting through its City Manager pursuant to Ordinance No. 2013-02-14-0112 passed and approved by City Council on the 14th day of February, 2013.

NOW THE FOLLOWING SECOND AMENDMENT TO THE Agreement is made by and between the City, acting through its City Manager pursuant to Ordinance No. 2016-__-__-__ passed and approved by the City Council on _____ 2016, the ACCD, acting through its Board of Trustees on October 27, 2015.

RECITALS

WHEREAS, ACCD is willing to renovate the historic Good Samaritan Building located at 1602 Dakota Street, San Antonio, Texas 78203 (the “Building”) for the operation of a veterans Outreach program associated with St. Phillip’s College of ACCD (“Project”); and

WHEREAS, City, and ACCD entered into a Funding Agreement (the “Agreement”) authorized by City of San Antonio Ordinance No. 2011-12-15-1023, passed and approved on December 15, 2013, and a first amendment authorized by City of San Antonio Ordinance No. 2013-02-14-0112, passed and approved on February 14, 2013 and attached hereto as EXHIBIT A; and

WHEREAS, the City and ACCD seek to amend the Funding Agreement to account for changes in funding and project milestones; and

WHEREAS, prior to this **SECOND AMENDMENT**, the Agreement was in full effect and, subject to the terms of this **SECOND AMENDMENT**, all parties were in compliance with all terms and conditions of the Agreement; and

WHEREAS, the Parties, now seek to amend the terms and conditions of the Agreement as stated in this Second Amendment and affirm that all other provisions of the Agreement remain in full force and effect; and

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in the Agreement, the City, and the ACCD hereby agree to amend the Agreement as follows except as herein modified or amended, the recitals, provisions, conditions and terms of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the date hereof;:

AMENDMENT

1. Amendment. The Parties hereby mutually agree to amend the Funding Agreement as follows:

(A) Under “RECITALS” the Agreement is amended by deleting the third WHEREAS lines and substituting the following in its place respectively:

“**WHEREAS**, the City has agreed to commit up to but not to exceed Six Million Twenty Thousand Four Hundred and Twenty-Six Dollars (\$6,020,426.00), divided as follows: 1) Two Million Dollars (\$2,000,000.00) in City Fiscal Year 2010 Certificate of Obligation funds; 2) One Million Dollars (\$1,000,000.00) in Section 108 Funds; 3) Five Hundred Thousand Dollars (\$500,000.00) in City Fiscal Year 2016 Certificate of Obligation funds; 4) Five Hundred Thousand Dollars (\$500,000.00) in Greehey Family Foundation Grant funds; 5) Four Hundred and Seventy Thousand Four Hundred and Twenty-Six Dollars (\$470,426.00) in ICIF funds; 6) Six Hundred Thousand Dollars (\$600,000.00) in the form of a HUD grant to be funded under the terms and conditions of a separate agreement with SAHA (expected to be funded by SAHA/HUD, but nevertheless hereinafter committed by City); and 7) Nine Hundred Fifty Thousand Dollars (\$950,000.00) in Inner City Number Eleven TIRZ Funds under the terms and conditions of a separate agreement.”

(B) Under “RECITALS” the Agreement is amended by adding a sixth, seventh, eighth, ninth, tenth and eleventh WHEREAS lines as follows:

“**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and within the TIRZ; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, CITY created such a program for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, part of this Agreement shall be a Chapter 380 Economic Development Program Grant in the amount of Four Hundred and Seventy Thousand Four Hundred and Twenty-Six Dollars and Zero Cents (\$470,426.00) in Inner City Incentive Funds (“ICIF”); and”

WHEREAS, the CITY and ACCD have negotiated a triparty agreement with the San Antonio Housing Authority (“SAHA”) providing for the application of Six Hundred Thousand Dollars (\$600,000.00) in United States Department of Housing and Urban Development (“HUD”) Promise Zone funds to the Project (“SAHA/HUD Funding”), which agreement awaits final approval by the governing bodies of CITY, ACCD, SAHA and HUD; and

WHEREAS, the CITY has obtained City Council approval for the application of up to an additional Six Hundred Thousand Dollars (\$600,000.00) in ICIF funds for the Project, but only in substitution for any failure of application of SAHA/HUD funding of Six Hundred Thousand Dollars (\$600,000.00) hereinabove referenced (“Contingent Funding Authorization”); and

WHEREAS, the CITY has proposed, and obtained TIRZ Board of Directors approval for, the application of Nine Hundred Fifty Thousand Dollars (\$950,000.00) in funding from the Inner City TIRZ Number Eleven fund to reimburse ACCD under the terms and conditions of a separate agreement for eligible Project costs (“TIRZ #11 Funding”); and

(C) Under “ARTICLE III”, the Agreement is amended by deleting Section 3.01, 3.02, 3.04, and 3.05 and replacing it with the following respectively:

“Section 3.01 Feasibility Milestones. By April 1, 2016, ACCD will prepare the Development Plan for the Building, the Schedule, the Operating Manifest, and Operating Budget and shall determine the Quality Standard and obtain the CITY’s approval thereof.”

“Section 3.02 Commencement of Construction. The Construction Commencement Date shall occur not later than April 1, 2016, and ACCD shall provide the Certificate of Commencement of Construction to the CITY on or before such date. The Certificate of Commencement of Construction form is attached as Exhibit B hereto and incorporated herein for all purposes.

“Section 3.04 Substantial Completion. Subject to Force Majeure Events, as provided in Section 18.01, ACCD shall cause the Substantial Completion of the Project not later than the Scheduled Completion Date of February 18, 2018, and to evidence and confirm such Substantial Completion, ACCD shall deliver to the CITY a certificate of substantial completion for the Project in the form set forth in Exhibit C attached hereto and incorporated herein.”

“Section 3.05 Preconstruction Milestones. Not later than the date specified herein, or if no date is specified, not later than April 1, 2016”:

- A. Completion of Final Plans. Not later than April 1, 2016, ACCD shall complete and submit to the CITY and obtain the CITY's approval of the Final Plans for the Project.
- B. Pre-Construction Consultation. Prior to awarding any Construction Contracts for the Project, ACCD shall cause the completion of a Phase 1 environmental analysis of the Property, shall submit the Plans and Specifications to the CITY's Historic Design and Review Commission (at the meeting of which CITY agrees to send representatives to appear in support of approving the Project substantially as submitted), obtain preliminary CITY review of the Plans and Specifications, and solicit proposals from prospective General Contractors for the Project. ACCD shall thereafter, either prior to selecting a General Contractor or, at its election, thereafter but prior to the CITY issuing a building permit for the Project, meet with the CITY Representative to determine whether the Project as specified in the Plans and Specifications, as they may have been revised by interaction with the CITY, can reasonably be expected to be completed, including comprehensive completion bonding and a contingency reserve of approximately ten percent (10%) of the costs of the proposal of ACCD's intended General Contractor, without total Project Costs exceeding the amount of the Available Project Funds. If ACCD reasonably expects that the Project cannot be completed without total Project Costs exceeding the amount of the Available Project Funds, then unless the parties renegotiate the Plans and Specifications and the Capital Budget to reduce total Project Costs, or the City determines, in its absolute discretion, and subject to CITY Council approval, to increase the amount of the CITY Contribution, or both, with the result that anticipated total Project Costs will not exceed the amount of the Available Project Funds, then neither party shall be under any obligation to proceed further, nor will either party have any liability to the other by reason thereof or otherwise under this Funding Agreement.
- C. Construction Contracts. ACCD shall provide a copy of each of the Construction Contracts for all Work, services, and purchase orders for all materials to be supplied for construction of the Project to the CITY at least ten (10) Business Days following the execution of a Construction Contract or purchase order, with all Construction Contracts required to be furnished to the CITY on or before April 1, 2016.
- D. Operating Budget. ACCD shall provide the CITY with a final Operating Budget projecting the anticipated income and expenses on a five (5) year rolling budget. The Operating Budget shall demonstrate that ACCD can operate the Building on a fiscally sound basis.
- E. Operating Reserve. The Operating Budget will include an Operating Reserve to cover operating deficits. ACCD's Contribution will include the Operating Reserve.

F. Development Plan. Not later than *April 1, 2016*, ACCD shall prepare and submit to the CITY a Development Plan for the Project.

G. Completion of Preconstruction Milestones. ACCD shall not proceed with commencement of construction of the Project until all Preconstruction Milestones have been fully satisfied.”

“**Section 3.06 Extensions**. The CITY may extend the time for performance of any target date, scheduled date, Deadline or Milestone appearing anywhere in this Funding Agreement. All milestones and deadlines set forth in this Agreement shall be adjusted forward if the CITY’s Historical Design and Review Commission delays the Project by postponing a hearing, requiring a second hearing or requiring a substantial revision of the Plans and Specifications. Any such delay shall postpone all such milestones and deadlines by the amount of the delay.”

(D) Under “**ARTICLE IV**”, the Agreement is amended by deleting Section 4.04 and 4.05, and replacing it with the following respectively:

“**Section 4.04 Operation of the Project**. The Building will remain open to the public after the Work is completed. ACCD shall operate the Building according to the Operating Manifest.”

“**Section 4.05 Completion of Project**. By *February 18, 2018*, ACCD shall have completed the renovation of the entire Building according to the Development Plan and Quality Standard, but delay in completion shall not constitute a default until the date specified at Section 15.03Q hereof”.

(E) Under “**ARTICLE VI CONSTRUCTION OF THE PROJECT**”, the Agreement is amended by deleting Section 6.02 Capital Budget, Subsection B.

(F) Under “**ARTICLE VIII NONDISCRIMINATION AND SBEDA POLICY**”, the Agreement is amended by deleting all of Article VIII including Exhibit G and replacing it with the following:

ARTICLE VIII NONDISCRIMINATION AND SECTARIAN ACTIVITY

ACCD shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with public funds. Further no portion of the funds received shall be used in support of any sectarian or religious activity.”

(G) Under “ARTICLE IX” FINANCING OF THE PROJECT, the Agreement is amended by deleting Section 9.02, and replacing it with the following:

“Section 9.02 The CITY Contribution. The CITY will obtain and secure at least Five MILLION SEVENTY THOUSAND FOUR HUNDRED AND TWENTY-SIX DOLLARS (\$5,070,426.00) for the Capital Budget, to be made when and in the amounts needed to fund the CITY Contribution, which will be funded through the issuance of certificates of obligation or from any other legally available funds of the CITY which the CITY decides to use. In the event construction and/or renovation costs exceed the Available Project Funds, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the Available Project Funds. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023, then CITY shall add said funds to the CITY Contribution. Under no circumstances will this Agreement be construed to obligate ACCD to pay any funds for the Project with the exception of the ACCD-Sourced Funding as defined herein.”

(H) Under “ARTICLE XV”, TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES, the Agreement is amended by deleting subsection 15.03Q, and replacing it with the following:

“Q. The failure of ACCD to complete the entire Project by February 18, 2018, unless caused by the CITY’s issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the Available Project Funds.”

(I) Under “Exhibit A” DEFINITIONS, the Agreement is amended by deleting the definition of “CITY Contribution” and Scheduled Completion Date, and replacing it with the following respectively:

“CITY Contribution” means the funding of up at least \$5,070,426.00 by the City under the terms of this Funding Agreement. In the event construction and/or renovation costs exceed the Available Project Funds, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the Available Project Funds. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023,

then CITY shall add said funds to the CITY Contribution. CITY agrees to apply all or such portion of the Contingent Funding Authorization as may be required to substitute for the SAHA/HUD Funding should that funding fail to attain final approval by the U.S. Department of Housing and Urban Development. Should SAHA/HUD Funding be approved, then the CITY is under no obligation to utilize the Contingent Funding as a funding source under this Agreement. This Funding Agreement shall not be construed to obligate ACCD to pay any of its own funds for the Project with the exception of the ACCD-Sourced Funding as defined herein.

“Scheduled Completion Date” means February 18, 2018.”

(J) Under “Exhibit A” DEFINITIONS, the Agreement is amended by adding the following new definitions:

“ACCD-Sourced Funding” means Project funding sourced through ACCD but not deriving from ACCD’s own funds, which as of the date of this Second Amendment consists of One Million, Twenty-Seven Thousand, Five Hundred Dollars (\$1,027,500) in legislative appropriations and private grants received by ACCD for the Project.

“Available Project Funds” means the total of the CITY Contribution, the ACCD-Sourced Funding and that portion of the TIRZ #11 Funding reasonably anticipated to be payable no later than thirty (30) days after the date of substantial completion of the Project.

“TIRZ #11 Funding” means Nine Hundred Fifty Thousand Dollars (\$950,000.00) in funding from the Inner City TIRZ Number Eleven fund to reimburse ACCD under the terms and conditions of a separate agreement for eligible Project costs.

2. **Effective Date.** This Second Amendment shall be effective upon the later of the date of the passage of a duly authorized minute order by the Board of Trustees of the Alamo Community College District and the date of passage of a duly authorized ordinance of the City Council of the City of San Antonio authorizing this Second Amendment, which shall be attached hereto and made a part of this Second Amendment.
3. **No Default.** Neither party is in default under the Funding Agreement and neither party is aware of a cause of action against the other arising out of or relating to the period before the effective date of this Second Amendment.
4. **No Other Changes.** Except as specifically set forth in this Second Amendment, all of the terms and conditions of the Funding Agreement, as amended by the First Amendment thereto, shall remain the same and are hereby ratified and confirmed. The Funding Agreement, as amended by the

First Amendment thereto, shall continue in full force and effect, and with this Second Amendment shall be read and construed as one instrument. Nothing therein contained shall be interpreted to waive the City's funding obligations to ACCD should funding of ACCD from any component identified hereunder not become available on a timely basis.

5. Choice of Law. This Second Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

6. Counterparts. This Second Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Third Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures on next page.

IN WITNESS HEREOF, the parties hereto have executed in triplicate originals.

**CITY OF SAN ANTONIO,
a Texas municipal corporation**

**ALAMO COMMUNITY
COLLEGE DISTRICT:**

Sheryl L. Sculley
City Manager or designee

Dr. Bruce Leslie
Chancellor

Date: _____

Date: _____

ATTEST:

ATTEST: (If Necessary)

Leticia Vacek
City Clerk
Date: _____

Name: _____
Title: _____
Date: _____

APPROVED AS TO FINANCIAL CONTENT BY ALAMO COMMUNITY COLLEGE
ACCD:

Date: _____

Date: _____

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney
Date: _____

EXHIBIT B

Project Status Report



**CITY OF SAN ANTONIO
DEPARTMENT OF PLANNING
& COMMUNITY DEVELOPMENT**

Quarterly Report for Construction-Related Project

Veterans Outreach and Transition Center Redevelopment

(Due to the City of San Antonio's CCDO and DPCD in accordance with Agreed Due Date Terms)

Reporting Quarter and Year: **Jan 1, 2015 - Mar 31, 2016**

<u>Funding Source</u>	<u>Account Number</u>	<u>Planned Amount</u>	<u>Actual Amount</u>
HUD 108	TBD	\$ 1,000,000	\$
TX Earmark	N/A	1,000,000	
TIRZ #11	TBD	950,000	
COSA Certs of Obligation	TBD	2,500,000	
COSA Greehey Grant	TBD	500,000	
COSA ICIF	TBD	470,426	
SAHA CHOICE	TBD	600,000	
Citibank	N/A	15,000	
SA Conservation Society	N/A	12,500	
St. Philips FFE	N/A	450,000	
Total		\$ 7,497,926	\$

Project Information

Project Manager:	John W. Strybos
Project Name:	Veterans Outreach and Transition Center
Project Number:	15C-020
WBS Element:	
Type of Contract:	Multiple City and SAHA Agreements
Pre-Bid Meeting:	July 7, 2015
Pre-Construction Meeting:	TBD
Council Award Date:	10/27/2015; 2/18/16

Timeline

Design Start Date:
Design Completion Date:
Design % Completed:
Construction Start Date:
Construction Completion Date:
Construction % Completed:

General Contractor Information

Company Name:	SpawGlass Contractors Inc.
Contact Person:	Chuck Calvin
Address:	9931 Corporate Dr
City, State, Zip:	Selma, TX 78154-1250
Phone:	210-651-9000
E-mail:	n/a

Section 3 Employee Hiring

Total # of New Hires to Date:
Section 3 New Hires To Date:

Narrative: Describe any delays, issues, or progress on this project.

Blank area for narrative text.

EXHIBIT C

Prevailing Wage Rates

TX150016 MOD 0 LAST MODIFICATION TX16

****THIS WAGE DETERMINATION WAS ACTIVE AS OF THE END OF YEAR****

General Decision Number: TX150016 01/02/2015

Superseded General Decision Number: TX20140016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClellon and Williamson Counties) and HIGHWAY Construction Projects

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER		
Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	
Work Zone Barricade		
Servicer.....	\$ 11.85	

PAINTER (Structures).....\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....\$ 12.69
Asphalt Distributor.....\$ 15.55
Asphalt Paving Machine.....\$ 14.36
Boom Truck.....\$ 18.36
Broom or Sweeper.....\$ 11.04
Concrete Pavement
Finishing Machine.....\$ 15.48
Crane, Hydraulic 80 tons
or less.....\$ 18.36
Crane, Lattice Boom 80
tons or less.....\$ 15.87
Crane, Lattice Boom over
80 tons.....\$ 19.38
Crawler Tractor.....\$ 15.67
Directional Drilling
Locator.....\$ 11.67
Directional Drilling
Operator.....\$ 17.24
Excavator 50,000 lbs or
Less.....\$ 12.88
Excavator over 50,000 lbs...\$ 17.71
Foundation Drill, Truck
Mounted.....\$ 16.93
Front End Loader, 3 CY or
Less.....\$ 13.04
Front End Loader, Over 3 CY.\$ 13.21
Loader/Backhoe.....\$ 14.12
Mechanic.....\$ 17.10
Milling Machine.....\$ 14.18
Motor Grader, Fine Grade...\$ 18.51
Motor Grader, Rough.....\$ 14.63
Pavement Marking Machine...\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88
Roller, Asphalt.....\$ 12.78
Roller, Other.....\$ 10.50
Scraper.....\$ 12.27
Spreader Box.....\$ 14.04
Trenching Machine, Heavy...\$ 18.48

Servicer.....\$ 14.51

Steel Worker

Reinforcing.....\$ 14.00
Structural.....\$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole
Worker.....\$ 16.00

TRUCK DRIVER

Lowboy-Float.....\$ 15.66
Off Road Hauler.....\$ 11.88
Single Axle.....\$ 11.79
Single or Tandem Axle Dump
Truck.....\$ 11.68
Tandem Axle Tractor w/Semi

Trailer.....\$ 12.81

WELDER.....\$ 15.97

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed
in dotted lines beginning with characters other than "SU" or
"UAVG" denotes that the union classification and rate were
prevailing for that classification in the survey. Example:
PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of
the union which prevailed in the survey for this
classification, which in this example would be Plumbers. 0198
indicates the local union number or district council number
where applicable, i.e., Plumbers Local 0198. The next number,
005 in the example, is an internal number used in processing
the wage determination. 07/01/2014 is the effective date of the
most current negotiated rate, which in this example is July 1,
2014.

Union prevailing wage rates are updated to reflect all rate
changes in the collective bargaining agreement (CBA) governing
this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that
no one rate prevailed for this classification in the survey and
the published rate is derived by computing a weighted average
rate based on all the rates reported in the survey for that
classification. As this weighted average rate includes all
rates reported in the survey, it may include both union and
non-union rates. Example: SULA2012-007 5/13/2014. SU indicates
the rates are survey rates based on a weighted average
calculation of rates and are not majority rates. LA indicates

the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an

interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISION

□

EXHIBIT D

Contract Progress Payment Request Form & Requirements



CITY OF SAN ANTONIO Contract Progress Payment Request (CPPR) Form and Requirements

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- **All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections**
- **Copies of the payment and performance bond in accordance with executed Development Agreement**
- **Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to: Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.*)**
- **Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes.**

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

*** All invoice Payments must be accompanied by:**

- **Receipt or Cancelled Check**
- **Must Reference the Project**

*** Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.**

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ		Period covered by this invoice: 12/02---8/03			
Invoice#: One (1)		Phase(s) covered by this invoice: Phases 1, 2, & 3			
	A	B	C	D	E
Section	Activity	Maximum Allowable from Final Finance Plan	Invoices Amount	Prior Requests	**Balance
1	Construction Management	44,200	40,624	0	3,576
2	Contingency	192,500	199,215	0	-6,715
3	Driveway Approach	20,000	22,972	0	-2,972
4	Engineering Survey	50,050	50,000	0	50
5	Formation Fees	150,150	200,000	0	-49,850
6	Gas	144,375	100,000	0	44,375
7	Green Belt/Green Space	26,950	21,000	0	5,950
8	Infrastructure Cost	61,600	60,000	0	1,600
9	Legal Fees	10,000	11,500	0	-1,500
10	Organizational Cost	20,800	35,000	0	-14,200
11	Official Traffic Control Device	15,000	10,000	0	5,000
12	Parking Facilities	30,000	28,250	0	1,750
13	Project Cost	86,163	86,100	0	63
14	Public Schools	10,000	11,000	0	-1,000
15	Recreational Park Area	105,942	105,940	0	2
16	Regional Storm Water Improvements	73,344	73,444	0	-100
17	Relocation Cost	40,747	55,474	0	-14,727
18	Sanitary Sewer	35,000	65,000	0	-30,000
19	Sidewalks	47,500	67,587	0	-20,087
20	Streetscape Planting	20,000	20,000	0	0
21	Street Lights	25,000	25,105	0	-105
22	Water	19,500	19,500	0	0
	TOTAL	1,286,321	1,365,211	0	-78,890

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

- Receipt or Cancelled Check
- Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION: I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.	Signature of Certifying Financial Official	Signature of Certifying Engineer
	_____	_____
	Typed or printed Name and Title	Typed or printed Name & Title
	John Doe, CPA	John Smith, Engineer
	DATE: _____	DATE: _____

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice#:	Phase(s) covered by this invoice:

Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
	TOTAL				

Financing Cost does not accrue interest
 **The Balance Column is used for Tracking purposes only
 All Invoice Payments must be accompanied by:
 Receipt or Cancelled Check
 Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION: I certify, that to the best of my knowledge and belief, the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.	Signature of Certifying Financial Official _____ Typed or printed Name and Title: _____ Signature: _____ DATE: _____	Signature of Certifying Engineer _____ Typed or printed Name & Title: _____ Signature: _____ DATE: _____
--	---	---

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02--8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 1	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Site Work						
Dirt Movers Inc.	00451364		1520	10,000		Ck# 2140
Dirt Movers Inc.	145246		1555	22,000		Ck# 2141
Dirt Movers Inc.	783581		1600	2,500		Ck# 2142
Dirt Movers Inc.	891771		1680	1,124		Ck# 2142
Dirt Movers Inc.	157863146		1685	5,000		Ck# 2144
Total		44,200		40,624	3,576	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

Section 1	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Site Work						
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02--8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
NAD Contractors	00451364		2020	\$165,000		Ck# 2523
Total		\$192,500		\$165,000	\$27,500	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02--8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Fast City Contractors	3574216		123	\$10,000		Ck# 8989
			456	\$4,500		Ck# 8989
			789	\$5,500		Ck# 8989
Total		\$20,000		\$20,000	\$0.00	

Reimbursement for TIRZ Expenses

Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02--8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

EXHIBIT E

City of San Antonio's Discretionary Contracts Disclosure Form



City of San Antonio Contracts Disclosure Form

Office of the
City Clerk

Please fill out this form online, print completed form and submit with proposal to originating department. All questions must be answered.

For details on use of this form, see [Section 2-59 through 2-61](#) of the City's Ethics Code.

*This is a New Submission or Correction or Update to previous submission.

1. Name of person submitting this disclosure form.

First: _____ M.I. _____ Last: _____ Suffix: _____

2. Contract information.

a) Contract or project name: _____

b) Originating department: _____

3. Name of individual(s) or entity(ies) seeking a contract with the city (i.e. parties to the contract).

4. List any individual(s) or entity(ies) that is a partner, parent, joint venture, or subsidiary entity(ies) of the individual or entity listed in Question 3.

Not applicable. Contracting party(ies) does not have partner, parent, joint venture, or subsidiary entities.

Names of partner, parent, joint venture or subsidiary entities, and all the board members, executive committee members, and officers of each entity:

5. List any individuals or entities that will be subcontractors on this contract.

Not applicable. No subcontractors will be retained for this contract.

Subcontractors may be retained, but have not been selected at the time of this submission.

List of subcontractors, including the name of the owner(s), and business name:

6. List any attorneys, lobbyists, or consultants retained by any individuals listed in Questions 3, 4, or 5 to assist in seeking this contract.

Not applicable. No attorneys, lobbyists, or consultants have been retained to assist in seeking this contract.

List of attorneys, lobbyists, or consultants retained to assist in seeking this contract:



City of San Antonio Contracts Disclosure Form

**Office of the
City Clerk**

7. Disclosure of political contributions.

List any campaign or officeholder contributions made by the following individuals in the past 24 months totaling more than \$100 to any current member of City Council, former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections:

- a) any individual seeking contract with the city (Question 3)
- b) any owner or officer of entity seeking contract with the city (Question 3)
- c) any individual or owner or officer of an entity listed above as a partner, parent, or subsidiary business (Question 4)
- d) any subcontractor or owner/officer of subcontracting entity retained for the contract (Question 5)
- e) the spouse of any individual listed in response to (a) through (d) above
- f) any attorney, lobbyist, or consultant retained to assist in seeking contract (Question 6)

Not applicable. No campaign or officeholder contributions have been made in preceding 24 months by these individuals.

List of contributions:

Updates on Contributions Required

Information regarding contributions must be updated by submission of a revised form from the date of the submission of this form, up through the time City Council takes action on the contract identified in response to Question 2 and continuing for 30 calendar days after the contract has been awarded.

Notice Regarding Contribution Prohibitions for "High-Profile" Contracts

Under Section 2-309 of the Municipal Campaign Finance Code, the following listed individuals are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded:

- a) Legal signatory of a high-profile contract
- b) Any individual seeking a high-profile contract
- c) Any owner or officer of an entity seeking a high-profile contract
- d) The spouse of any of individual listed in response to (a) through (c) above
- e) Any attorney, lobbyist, or consultant retained to assist in seeking a high-profile contract

Penalty. A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the contribution "black-out" period, which is the 10th business day after a solicitation has been released until 30 calendar days after the contract has been awarded.

8. Disclosure of conflict of interest.

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under Sections 2-43 or 2-44 of the City Ethics Code for any City Council member or board/commission member that has not or will not be raised by these city officials?

I am not aware of any conflict(s) of interest issues under Section 2-43 or 2-44 of the City Ethics Code for members of City Council or a city board/commission.

I am aware of the following conflict(s) of interest:



City of San Antonio Contracts Disclosure Form

Office of the
City Clerk

9. Prohibited Interest in Contracts.

Currently, or within the past twelve (12) months, have you, your spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity served on a City board or commission?

Currently, or within the past twelve (12) months, has an owner, partner or employee of a business entity in which you, your spouse, parent, child own 10% or more of the voting stock or shares, or 10% or more of the fair market value served on a City board or commission?

Currently, or within the past twelve (12) months, has an owner, partner, or employee of a business entity who owns 10% or more of the voting stock or shares, or 10% or more of the fair market value, that will be a subcontractor for this contract, served on a City board or commission?

No

Yes

Notice Regarding Prohibited Interest in Contracts.

Please be aware, the City's Charter and Ethics Code prohibits members of certain more-than-advisory boards and commissions, as well as their close family members and any businesses they or their families hold a 10% or greater ownership interest from obtaining a contract with the City during their board or commission service. The prohibition extends to subcontracts on City contracts, and would also apply to parent, subsidiary or partner businesses owned by the member of the board or commission and their family. Please see [Section 141 of the City Charter](#) and [Section 2-52 of the City Ethics Code \(Prohibited Interests in Contracts\)](#) for complete information.

Former members of certain more-than-advisory boards and commissions, their family members and the businesses they own will continue to be prohibited from obtaining any discretionary contracts for one year after leaving City service. Please see [Section 2-58 of the City Ethics Code \(Prohibited Interest in Discretionary Contracts\)](#) for complete information.

Please note that any contract in place at the time the applicant becomes a City officer may remain in effect, but cannot be amended, extended, modified, or changed in any manner during the officer's City service on the more-than-advisory board.

If you have any questions, please contact the Office of the City Attorney to request to speak with a member of the Ethics staff: (210) 207-8940.

Acknowledgements

*1. Updates Required

I understand that this form must be updated by submission of a revised form if there is any change in the information before the discretionary contract, housing and retail development incentive, or the purchase, sale, or lease of real estate to or from the City is the subject of action by the City Council, and no later than 5 business days after any change has occurred, whichever comes first. This includes information about political contributions made after the initial submission and up until 30 calendar days after contract has been awarded.

*2. No Contact with City Officials or Staff during Contract Evaluation

I understand that a person or entity who seeks or applies for a city contract or any other person acting on behalf of that person or entity is prohibited from contacting city officials and employees regarding the contract after a Request for Proposal (RFP), Request for Qualification (RFQ), or other solicitation has been released.

This no-contact provision shall conclude when the contract is posted as a City Council agenda item. If contact is required with city officials or employees, the contact will take place in accordance with procedures incorporated into the solicitation documents. Violation of this prohibited contacts provision set out in [Section 2-61 of the City Ethics Code](#) by respondents or their agents may lead to disqualification of their offer from consideration.

* = Required fields



City of San Antonio Contracts Disclosure Form

Office of the
City Clerk

***3. Contribution Prohibitions for "High-Profile" Contracts**

- This is not a high-profile contract.
- This is a high-profile contract.

***4. Conflict of Interest Questionnaire (CIQ)**

Chapter 176 of the Local Government Code requires all contractors and vendors to submit a Conflict of Interest Questionnaire Form (CIQ) to the Office of the City Clerk, even if contract is not designated as "High Profile".

- I acknowledge that I have been advised of the requirement to file a CIQ form under Chapter 176 of the Local Government Code.

Oath

- I swear or affirm that the statements contained in this Contracts Disclosure Form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

Your Name: _____ Title: _____

Company Name or DBA: _____ Date: 02/23/2016

Please fill this form out online, print completed form and submit with proposal to originating department. All questions must be answered.

If necessary to mail, send to:
Purchasing
P.O. Box 839966
San Antonio, Texas 78283-3966

CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT



City Council Agenda Item #15
Good Samaritan
Veterans Outreach and Transition Center

John Jacks, Interim Director
March 3, 2016

Agreement

- Approval of an Agreement with the Inner City TIRZ for \$950,000
- Approval of the acceptance of \$500,000 from the Greehey Family Foundation
- Approval of the 2nd amendment to the Funding Agreement with Alamo Colleges in the amount of \$5,070,426 for construction of the Veterans Outreach and Transition Center.
- Approval of a Tri-Party between the City, ACCD and SAHA for \$600,000



CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT
& OPERATIONS DEPARTMENT

Project Sources and Uses

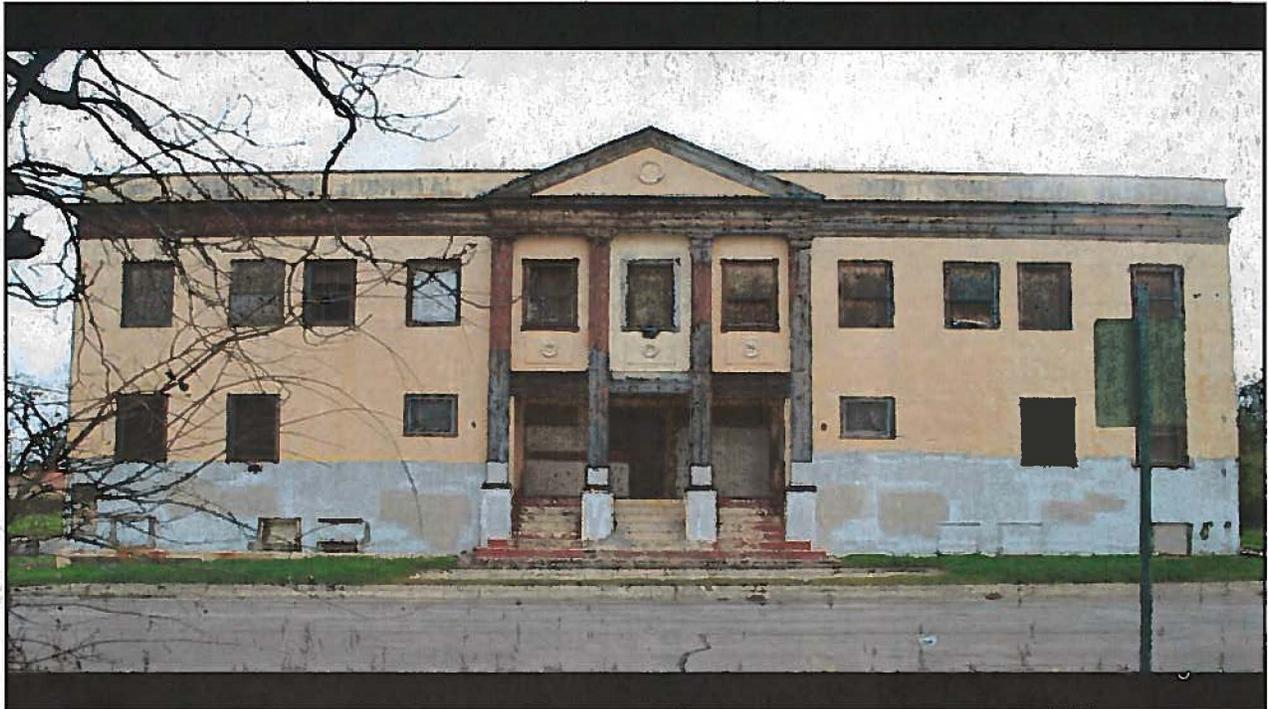
Project Uses	Amount
Pre-Construction cost	\$791,926
Construction cost	5,440,000
Contingency	816,000
FF&E	450,000
Total	\$7,497,926

Sources of Funds	Amount
COSA FY 2010 C of O's	\$2,000,000
COSA Section 108	1,000,000
TX Appropriation	1,000,000
COSA Inner City TIRZ	950,000
HUD Choice Grant (SAHA)	600,000
Greehey Family Foundation	500,000
COSA FY 2016 C of O's	500,000
COSA Inner City Incentive Fund	470,426
St. Philips (FFE)	450,000
Citibank	15,000
SA Conservation Society	12,500
*Total	7,497,926



CITY OF SAN ANTONIO
 CENTER CITY DEVELOPMENT
 & OPERATIONS DEPARTMENT







Recommendation

- Inner City TIRZ agreement
- 2nd amendment to the Funding Agreement with Alamo Colleges
- Tri-Party between the City, ACCD and SAHA
- Acceptance of grant from the Greehey Family Foundation



CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT & OPERATIONS DEPARTMENT



City Council Agenda Item #15
Good Samaritan
Veterans Outreach and Transition Center

John Jacks, Interim Director
March 3, 2016