LB
05/21/15
Item No. 19

AN ORDINANCE 2015-05-21-0437

FOR THE BLUE STAR ARTS COMPLEX CAPITAL EXPANSION MASTER PLAN, A 2012-17 BOND PROJECT LOCATED IN COUNCIL DISTRICT 1, AUTHORIZING THE EXECUTION OF A: 1) FUNDING AGREEMENT WITH CONTEMPORARY ART FOR SAN ANTONIO IN AN AMOUNT NOT TO EXCEED $250,000.00; 2) 20 YEAR SUBLEASE AND LEASEBACK OF AN 11,000 SQUARE FOOT FACILITY LOCATED AT 116 BLUE STAR AT THE RATE OF $1.00 PER YEAR.

* * * * *

WHEREAS, on May 12, 2012, San Antonio voters approved the 2012-2017 Bond Program, consisting of five propositions totaling $596 million, and as part of the Program, $250,000.00 in Library, Museum and Cultural Arts Improvements General Obligation Bond funds were approved for the capital expansion master plan at the Blue Star Arts Complex ("Project"); and

WHEREAS, subject to the sale of such bonds, the City shall provide up to $250,000.00 to Contemporary Art for San Antonio, d/b/a/ Blue Star Contemporary Art Center ("Blue Star") for use in accordance with the proposed Funding Agreement; and

WHEREAS, Blue Star currently leases the property located at 116 Blue Star, San Antonio, Texas, 78204, and the City proposes to enter into a twenty-year Sublease and Leaseback with Blue Star for the property to be improved through this Project at the rate of $1.00 per year; and

WHEREAS, the City Council finds that it is in the best interest of the City, its residents and visitors to authorize the execution of the Funding Agreement and the Sublease and Leaseback; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Funding Agreement with Blue Star for an amount not to exceed $250,000.00, subject to the availability of bond proceeds, and the twenty-year Sublease and Leaseback of the property located at 116 Blue Star, San Antonio, Texas, 78204, are authorized and approved. The City Manager, or her designee, is authorized to execute these Agreements, copies of which are attached to this Ordinance as **Exhibit I.**

SECTION 2. Payment in the amount not to exceed $250,000.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00403, Blue Star Arts Complex, is authorized to be encumbered and made payable to Contemporary Art for San Antonio, for building improvements. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 3. Funds generated by the Leaseback authorized by this Ordinance will be deposited into Fund 29028000, Internal Order 223000000251 and General Ledger 4407720.

SECTION 4. Funding for the Sublease authorized by this Ordinance is available in Fund 29028000, Cost Center 2340020004 and General Ledger 5206010, as part of the Fiscal Year 2015 Budget and future funding through the term of this Sublease is contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 5. Payment not to exceed the budgeted amount is authorized and shall be encumbered with a purchase order.

SECTION 6. 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 7. 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 21st day of May, 2015.

Ivy R. Taylor

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:	**19 (in consent vote: 5, 6, 7, 8, 9, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26)**
Date:	05/21/2015
Time:	09:57:15 AM
Vote Type:	Motion to Approve
Description:	An Ordinance for the Blue Star Arts Complex Capital Expansion Master Plan, a 2012-2017 Bond Program project located in Council District 1, authorizing the execution of a funding agreement with the Contemporary Art for San Antonio d/b/a Blue Star Contemporary Art Center in an amount not to exceed $250,000.00 to execute improvement related to the Blue Street Capital Expansion Master Plan; and authorizing the execution of a 20 year sublease and leaseback of an 11,000 square foot facility located at 116 Blue Star at a rate of $1.00 per year for the Capital Expansion Master Plan at the Blue Star Arts Complex. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Transportation & Capital Improvements]
Result:	Passed

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

EXHIBIT 1

STATE OF TEXAS §
§
COUNTY OF BEXAR § **FUNDING AGREEMENT**

This Agreement is hereby made and entered into by and between the City Of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Contemporary Art for San Antonio, a Texas nonprofit corporation, d/b/a/ Blue Star Contemporary Art Center (hereinafter referred to as "Grantee"), a Texas Non-profit Corporation, acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Library, Museum & Cultural Arts Improvements (Proposition 4 on the ballot); and

WHEREAS, among the Library, Museum & Cultural Arts Improvements projects approved is a project titled "Blue Star Arts Complex" (the "Project"); and

WHEREAS, the official brochure for the Bond Election described this Project as follows: "Blue Star Arts Complex LF: Leverage funding toward the Blue Star Arts Complex capital expansion master plan."; and

WHEREAS, the City is bound to comply with the terms and conditions contained in the official brochure as presented to the voters; and

WHEREAS, the City has identified Grantee as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, Grantee has a long term (20 year) lease of the property located at 116 Blue Star, San Antonio, TX 78204 (Real Property), attached and incorporated herein as **Exhibit A**, the proposed location of the Project; and

WHEREAS, City will simultaneously enter into a 20-year sublease and a leaseback with Grantee for said property ("Sublease and Leaseback") described more fully in **Exhibit B** attached and incorporated hereto; and

WHEREAS, the public benefit to be gained from the Project is the provision of cultural facilities available for the citizens of San Antonio, operated under non-profit regulations, operated under non-profit regulations as indicated in the Determination Letter from the Internal Revenue Service, attached and incorporated herein as **Exhibit C**

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

I. TERM

The term of this Agreement shall commence upon final execution of the Agreement and continue until (a) the expiration of 20 years from the Effective Date or (b) final repayment by the City of all bonds providing funding for this Funding Agreement, as those bonds may be financed from time to time, whichever occurs later; or, notwithstanding (a) or (b), termination of this Funding Agreement as otherwise provided in this Funding Agreement (the "Term"). The Term of this Funding Agreement shall coincide with the terms of Sublease and the Leaseback.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 The funding in this Funding Agreement is contingent upon the final execution of all documents in **Exhibit B**.

2.02 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the construction of the Project by August 31, 2016. The Project shall include the design/construction or construction of upgrades to the art museum at 116 Blue Star.

2.03 Current budget estimates of the Project are $250,000. A copy of the proposed budget for the Project is attached and incorporated herein as **Exhibit D**. The Bexar County Appraisal District value of the property described in Exhibit A is estimated at $218,425. Additionally, Grantee shall provide all necessary funding for the Project beyond the City's commitment contained herein and provide evidence to City that all Project funds have been secured prior to the receipt of any funding under this Agreement. In the event the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.

2.04 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Executive Director shall be Grantee designated representative responsible for the management of this Agreement.

2.05 The Director of the Transportation and Capital Improvements ("TCI") or his designee shall be responsible for the administration of this Agreement on behalf of City.

2.06 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.04 and 2.05 hereinabove.

2.07 Grantee shall provide to City their plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement, and upon approval Plans shall be attached and incorporated into this Agreement as **Exhibit E**. City's approval of the Plans does not release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written

approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

2.08 Grantee shall submit all future changes to the TCI Director or his designee for review and approval to ensure their compatibility with the Plans.

2.09 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design or construction professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the TCI Director or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

2.10 Beginning on January 31, 2016, and on each succeeding January 31 throughout the term of the Agreement, Grantee shall provide to City an annual report ("Annual Report"). The Annual Report shall include the following:

2.10.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.

2.10.2 Evidence of insurance coverages, with City as additional insured, as outlined in Section 12 below.

2.10.3 Description of all maintenance activities, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

2.10.4 Following final completion of the improvements, City shall have the right to use the Premises for City activities and events for up to ten (10) days in any calendar year during the term of this Agreement ("City Days"). City's right to City Days shall be subject to the availability of the Premises based on Grantee's use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups. City shall be exempt from the payment to Grantee of any rent or fees for City Days. City shall use its best efforts to avoid any damage to the Premises, and any damage caused as a result of City's use shall be promptly repaired by City, at City's expense. During its use of City Days, City shall not be bound by any exclusivity contracts for concession sales entered into by Grantee with any concession suppliers.

2.11 Grantee hereby accepts full responsibility for the performance of all services and activities described in this Contract to complete the design and construction of the Project not later than August 31, 2016.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 Grantee agrees to procure all contracts under this agreement through open competitive contracting processes which are advertised to the public in an appropriate manner.

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

3.04 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS

A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the City funded portion of this agreement. Grantee agrees that its construction contractor performing work on the City funded portion of the Project 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.

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City will provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the Project, Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee shall require its construction contractor to collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as deemed necessary by City to confirm compliance with this Agreement.

C. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any wage violations, the Grantee shall cause its construction contractor to 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 the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258,

Texas Government Code shall not be construed to relieve the Grantee's contractor from its obligations 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.

3.05 ENVIRONMENTAL

Construction shall be in accordance with the all applicable local, state and federal environmental requirements including all applicable City construction and development regulations.

3.06 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

Grantee shall comply with the Small/Minority and Woman Owned Business Terms and Conditions in **Exhibit F** attached and incorporated hereto.

3.07 COMPLIANCE WITH BOND COVENANTS

Grantee shall not use, or permit the use of, City Funds, or earnings thereon, or any other amounts or any property, the acquisition, construction, or improvement of which is to be financed directly or indirectly with City Funds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest on the City's debt to be includable in the gross income of the bond owners for federal income tax purposes. In addition, purposes which are NOT permissible include, but are not limited to religious activities, and, restaurants, cafés, and retail stores.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees that the use described above will continue for the term of this Agreement.

4.02 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The Project improvements shall be used for art exhibit/gallery space and office space. Any improvements to office space made under this Agreement must be exclusively dedicated to the operations of the art exhibit/gallery space, incidental in overall size to the footprint of the entire Project and incidental in amount when compared to the Project's overall budget. The Project shall provide cultural facilities to the citizens of San Antonio and shall be open to the public during the entire term of the Sublease and Leaseback and the term of the Bonds issued in connection with this Agreement.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of $245,000, plus the sum of $5,000 that City shall retain for fiscal and project oversight, for total funding by City of $250,000.

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

5.03 Funding shall consist of reimbursements paid to Grantee for costs of construction of the Project, not to exceed $245,000, and $5,000 to be retained by the City. The City funding provided under this Funding Amendment may only be used for the portions of the Project which are dedicated to public use/public purpose. No City funds may be used for Grantee's internal office space that does not directly serve the art exhibition/gallery space improved by this Project or any other non-public aspects of the Project.

5.04 All funding provided by City shall come from available bond proceeds. City shall not be responsible for the payment of any eligible expenses until sufficient bond funds are available.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

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

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

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Projects. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four year period.

6.03 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this

Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIME*link*) or any other updated program used by City for this purpose. City shall pay approved invoices within 30 days of receipt from Grantee, subject to Section 5.04.

6.05 All requests for reimbursement shall be submitted through the COSA PRIME*link*. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIME*link* sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIME*link* and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.06 Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.07 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

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

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

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

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Project Management/Construction Management
- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design contract and amendments

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement, for the public purpose stated herein, and in compliance with all applicable City, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the projects
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by Grantee's General Contractor and shown on the approved Plans
- Advertising
- Construction of non-public aspects of the Project

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

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

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

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

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

IX. ACCESSIBILITY OF RECORDS

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

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

X. MONITORING AND EVALUATION

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

XI. INDEMNITY

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

11.02 The provisions of this Indemnity are solely for the benefit of the parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other

person or entity. Grantee shall advise the City in writing within 24 hours of any claim or demand against the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Grantee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this paragraph.

11.03 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Grantee shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Funding Agreement. If Grantee fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.04 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

11.05. Acceptance of the Plans by the City shall not constitute nor be deemed a release of the responsibility and liability of the Grantee, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the designs, drawings, Plans and Specifications or other documents prepared for the Project.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Transportation and Capital Improvements (TCI) Department, which shall be clearly labeled, "Blue Star Contemporary Art 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 will 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. 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 TCI

Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.03 Grantee's financial integrity is of interest to City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, 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 following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
* if applicable	

12.04 Grantee agrees to require, by written contract, that all contractors and subcontractors of Grantee working on the Project obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names Grantee and the City as additional insureds. Grantee shall provide the City with said certificate and endorsement prior to the commencement of any work by such contractor or subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or

circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

12.05 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 City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Contract Administrator
Transportation and Capital Improvements Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

- Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City.

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

12.12 Grantee shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. TERMINATION

13.01 City shall have the right to terminate this Funding Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Grantee has failed to comply with any term of this Funding Agreement with the City. City will provide Grantee with written notification as to the nature of the non-compliance, and give Grantee a 30 day period from the date of the City's written notification to cure any issue of non-compliance. Should Grantee fail to cure any default within this period of time, City may terminate this Funding Agreement immediately by providing written notice to Grantee, withhold further payments to Grantee and seek repayment of any and all funds disbursed by City.

13.02 In the event of termination of the Sublease for any reason, this Funding Agreement shall likewise terminate. Upon termination of this Funding Agreement for any reason, Grantee shall pay City the value of the bond debt that remains outstanding for the Project, as determined by City and its financial advisors, and any costs associated with the defeasance of said debt.

13.03 The Parties shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if Grantee defaults under the material terms of this Funding Agreement and fails to cure such default within the cure period set forth above subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which Grantee may be entitled.

XIV. NONDISCRIMINATION

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

XV. CONFLICT OF INTEREST

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

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

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

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

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

XVI. POLITICAL ACTIVITY

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

XVII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

17.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

XVIII. CONTRACTING

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

18.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XIX. CHANGES AND AMENDMENTS

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

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

XX. ASSIGNMENTS

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

XXI. SEVERABILITY OF PROVISIONS

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

XXII. NON-WAIVER OF PERFORMANCE

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

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

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

XXIII. ENTIRE AGREEMENT

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

23.02 INCORPORATION OF ATTACHMENTS. Each of the Attachments listed below is an essential part of the Funding Agreement, which governs the rights and duties of the Parties.

Exhibit A – Grantee's Original Lease
Exhibit B – Sublease and Leaseback
Exhibit C – Determination Letter from the Internal Revenue Service
Exhibit D – Proposed Project Budget
Exhibit E – Plans
Exhibit F – SBEDA Terms and Conditions

XXIV. NOTICES

24.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Director Transportation & Capital Improvements
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
San Antonio, Texas 78283-3966

GRANTEE: Executive Director
Blue Star Contemporary Art Museum
116 Blue Star
San Antonio, TX 78204

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXV. PARTIES BOUND

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

XXVI. RELATIONSHIP OF PARTIES

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

XXVII. TEXAS LAW TO APPLY

27.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXVIII. GENDER

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

XXIX. CAPTIONS

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

XXX. LEGAL AUTHORITY

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

29.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

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

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
City Manager

BLUE STAR CONTEMPORARY ART CENTER

By: _____
Mary Heathcott
Executive Director

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A

Grantee's Original Lease

Exhibit B

Sublease and Leaseback

Sublease Agreement
(Blue Star Contemporary Art Center)

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Authorizing Ordinance:

Sublessee: City of San Antonio, a Texas municipal corporation

Sublessee's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Sublessor: Contemporary Art for San Antonio, a Texas nonprofit corporation, d/b/a/ Blue Star Arts Complex

Sublessor's Address: 116 Blue Star, San Antonio, Texas 78204

Premises: The first floor of the building located at 116 Blue Star, San Antonio, Bexar County, Texas, consisting of approximately 11,000 square feet of interior floor space as depicted on **Exhibit A**, and being the same space Sublessor leases from Berltex Real Estate Holdings, Inc. under the Underlying Lease.

Permitted Use: All uses permitted by the Underlying Lease

Lease Commencement Date:	The effective date of the Authorizing Ordinance.
Term:	Until the earlier of (a) expiration of 20 years from the Lease Commencement Date; (b) termination of the Funding Agreement; or (c) earlier termination as provided herein
Rent:	$100 total for the entire Term
Funding Agreement:	Agreement of even date herewith between Sublessor and City of San Antonio for capital improvement funding for Contemporary Art for San Antonio pursuant to the Authorizing Ordinance.
Leaseback:	A sub-lease executed contemporaneously with this Sublease whereby Contemporary Art for San Antonio leases back the Premises from the City of San Antonio.
Underlying Lease:	Lease Agreement dated July 1, 2015 whereby Sublessor leases the Premises from Berltex Real Estate Holdings, Inc.

Background:

The Premises are situated on Lot 21, New City Block A-14, Blue Star Subdivision, according to the map or plat thereof recorded at Volume 9526, Page 141, real property records of Bexar County, Texas.

Sublessee wishes to provide funding to Sublessor for improvements to the Premises.

Sublessee's funds are derived from the sale of municipal bonds, and the bond covenants require that Sublessee have an interest in the property to be improved with the bond funds.

It is the opinion of legal counsel representing Sublessee in connection with the bonds that the leasehold interest to be acquired by Sublessee under this Sublease is a sufficient real estate interest in the Premises to comply with the bond covenants.

Sublessor is the Tenant under the Underlying Lease.

Sublessor and Sublessee are contemporaneously entering into the Funding Agreement, this Sublease, the Lease Assignment, and the Leaseback.

The Premises for the Sublease and the Leaseback are the same as for the Underlying Lease.

The durations of the Sublease and the Leaseback coincide.

At the expiration of both leases, neither the Sublease nor the Leaseback will be an encumbrance on the fee title to the Premises.

Rights and Obligations:

1. Demise of Premises.

Sublessor leases the Premises to Sublessee, and Sublessee leases the Premises back to Sublessor under the terms of the Leaseback.

2. Lease Term.

The Term is as stated above. Notwithstanding the foregoing, this Agreement (and the Leaseback) shall terminate immediately upon termination of the Underlying Lease.

3. Rent.

Sublessor acknowledges receipt in full of all Rent due for the Term in the form of an offset against rent due on the Leaseback.

4. Taxes.

Taxes are Sublessor's responsibility and are to be handled according to the Underlying Lease.

5. Utilities.

Utilities are Sublessor's responsibility in accordance with the Underlying Lease.

6. Use of Premises.

Sublessor may use the Premises only for the Permitted Uses, unless the Landlord of the Underlying Lease otherwise consents in writing. Sublessor must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

7. Funding Agreement.

Sublessor must comply with the Funding Agreement in all its operations on the Premises, including but not limited to construction on the Premises.

8. Encumbrance of Leasehold Estate.

8.01. Sublessee may encumber its leasehold interest without obtaining Sublessor' s consent, but no such encumbrance is or can be a lien on Sublessor' s leasehold. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions, covenants, and obligations of this Sublease, the Underlying Lease and to all of Sublessor's rights under the Leaseback. References in this Sublease to "Lender" refer to any person to whom Sublessee has encumbered its leasehold interest.

8.02. At any time after execution and recordation in Bexar County, Texas, of any mortgage or deed of trust encumbering Sublessee's leasehold interest, Lender shall notify Sublessor in writing that the mortgage or deed of trust has been given. On Lender's request, Sublessor will deliver duplicate notices under this Sublease to Lender at an address or agent it specifies.

8.03. Sublessee and Sublessor will neither modify nor terminate this Sublease by mutual consent without Lender's written consent, except as may be required by the terms of the bonds providing funding under the Funding Agreement.

8.04. Lender may do any act required of Sublessor to prevent forfeiture of Sublessor's leasehold interest. All such acts are as effective to prevent a forfeiture of Sublessor's rights under this Sublease as if done by Sublessor.

8.05. Lender may realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or equity or by the security documents. In so doing, it may transfer, convey, or assign Sublessee's title to the leasehold estate created by this Sublease to any purchaser at a foreclosure sale. Lender also may acquire and succeed to Sublessee's interest under this lease by virtue of a foreclosure sale. Lender will not be or become liable to Sublessor as an assignee of this Sublease or otherwise, unless it assumes such liability in writing. No assumption by Lender may be inferred from or result (1) from foreclosure or other similar proceedings or (2) from other action or remedy provided for by the mortgage, deed of trust, or other security instrument, or (3) from a conveyance from Sublessee under which the buyer at foreclosure or grantee acquires Sublessee's rights and interest under this Sublease. Any buyer at a foreclosure sale, including Lender, becomes obligated to Sublessor as the Sublessee under the Sublease.

8.06. Nothing in this Article 8 waives any provisions of the Underlying Lease regarding encumbrance of the leasehold created by the Underlying Lease. The consent of the Underlying Lease landlord to this Leaseback is not ipso facto consent to an encumbrance of the Underlying Lease leasehold.

9. Repairs, Maintenance, and Restoration.

Repairs, maintenance, and restoration are Sublessor's responsibility and are to be handled according to the Underlying Lease.

10. Mechanic's Liens.

Sublessee must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Sublessor's leasehold interest (excluding any leasehold mortgage).

11. Condemnation.

Condemnation is handled according to the Underlying Lease. Sublessee has no interest in any award.

12. Insurance.

Insurance is Sublessor's responsibility and will be handled according to the Underlying Lease. Sublessee has no insurance-related obligations hereunder.

13. Assignment and Subletting.

Sublessee may not assign or sublet the Premises except with the consent of both Sublessor and the Underlying Lease landlord. Notwithstanding the foregoing, the Parties agree that the Leaseback shall be expressly permitted by this Sublease.

14. Default and Remedies.

14.01. If Sublessee defaults in performing any obligation arising out of this Sublease and does not correct the default within 30 days after receipt of written notice from Sublessor, Sublessor may terminate this Sublease. Lease termination does not entitle Sublessee to a refund of any part of the prepaid rent. If Sublessor defaults in performing any obligation arising out of this Sublease and does not correct the default within 30 days after receipt of written notice from Sublessee, Sublessee shall give written notice to the landlord of the Underlying Lease.

14.02. Despite any other provision of the Leaseback or this Sublease, the landlord of the Underlying Lease may, but need not, cure any default of Sublessor under this Sublease.

15. Indemnification.

15.01. These definitions apply to the indemnity provisions of this Sublease:

15.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of

a. Responsibilities allocated to Sublessor by this Sublease;

b. All claims by the landlord of the Underlying Lease;

c. All claims associated with Sublessor's occupancy of the Premises, whether the claim pertains to Sublessor's occupancy under the Underlying Lease or under this Sublease.

This indemnity does not cover claims arising out of Sublessee's sole negligence.

15.01.02. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

15.01.03. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

15.01.04. "Indemnitor" means Sublessor.

15.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

15.03. If one or more Indemnitees are finally adjudged to be solely liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending

or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

15.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

15.05. Indemnitor must promptly advise the Sublessee in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the Sublessee is an Indemnitee as to a particular Indemnified Claim, the Sublessee may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

15.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

15.07. Indemnitor may not settle any Indemnified Claim without the consent of the Sublessee, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Sublessor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The Sublessee's withholding its consent as allowed in the preceding sentence does not release or impair its obligations of this indemnity paragraph. Even if the Sublessee is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give Sublessee at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by landlord of the Underlying Lease.

15.08. Nothing in this Sublease waives governmental immunity or other defenses of Indemnitees under applicable law.

15.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

16. Miscellaneous.

16.01. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws of The State of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

16.02. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

16.03. 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.

16.04. *Relationship of Agreements and Persons With Interests In the Premises.*

16.04.01. **This Written Sublease, Together With the Funding Agreement and the Leaseback, 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.**

16.04.02. This Sublease benefits only the parties hereto and their successors and permitted assigns, subject only to the rights, if any, of the landlord of the Underlying Lease to assume Sublessor's obligations. There are no other third party beneficiaries.

16.04.03. Without limiting the generality of the foregoing, Sublessee has no express or implied obligations arising out of the Underlying Lease, whether to Sublessor or to the landlord of the Underlying Lease. Further, Sublessee has no express or implied obligations to the landlord of the Underlying Lease arising out of this Sublease or the Leaseback. Nothing in this Sublease alters or impairs Sublessor's obligations under the Underlying Lease, except this Sublease and the Leaseback are not breaches of the Underlying Lease.

16.05. This Sublease may not be changed orally but only by a written amendment, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the

modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

16.06. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three (3) 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 hereunder.

16.07. Paragraph captions in this Sublease are for ease of reference only and do not affect the interpretation hereof.

16.08. This Sublease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Sublease, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

16.09. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Sublease.

17. Public Information.

Parties acknowledge that this Sublease is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

18. Appropriations.

All obligations of the Sublessee under this Sublease are subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this Sublease, the Sublessee may terminate this Sublease and have no further liability.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

Sublessee ***Sublessor***

City of San Antonio, a Texas municipal corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

Contemporary Art for San Antonio, a Texas non-profit corporation

By: MHeathcott

Printed Name: MARY HEATHCOTT

Title: EXECUTIVE DIRECTOR

Date: 5/18/15

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Berltex Real Estate Holdings, Inc. executes this Sublease for the sole purpose of consenting to Sublessee's and Sublessor's entering into this Sublease, despite any contrary provisions of Texas law or the Underlying Lease. This consent waives only Article 8 of the Underlying Lease and only as to this Sublease.

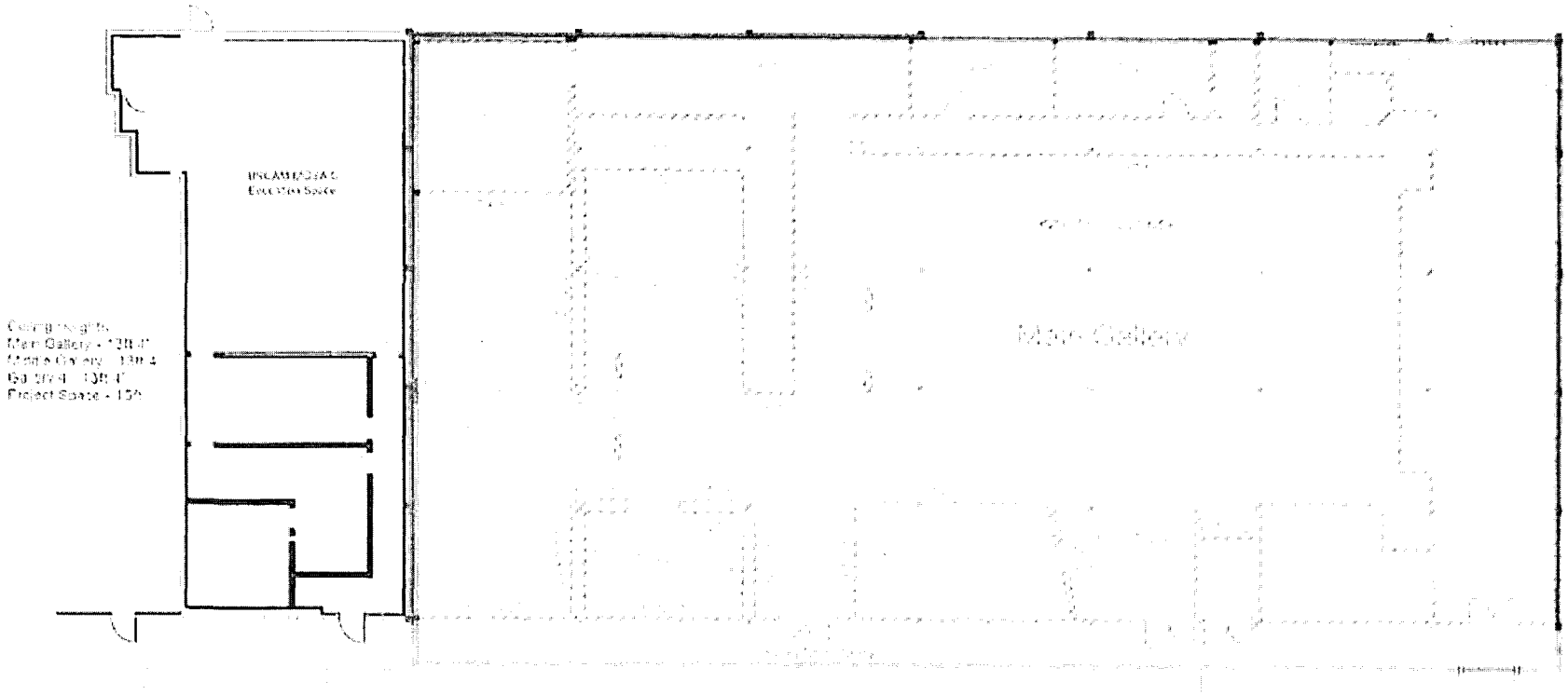
Berltex Real Estate Holdings, Inc., a Texas corporation

By:_____

Printed Name:_____

Title:_____

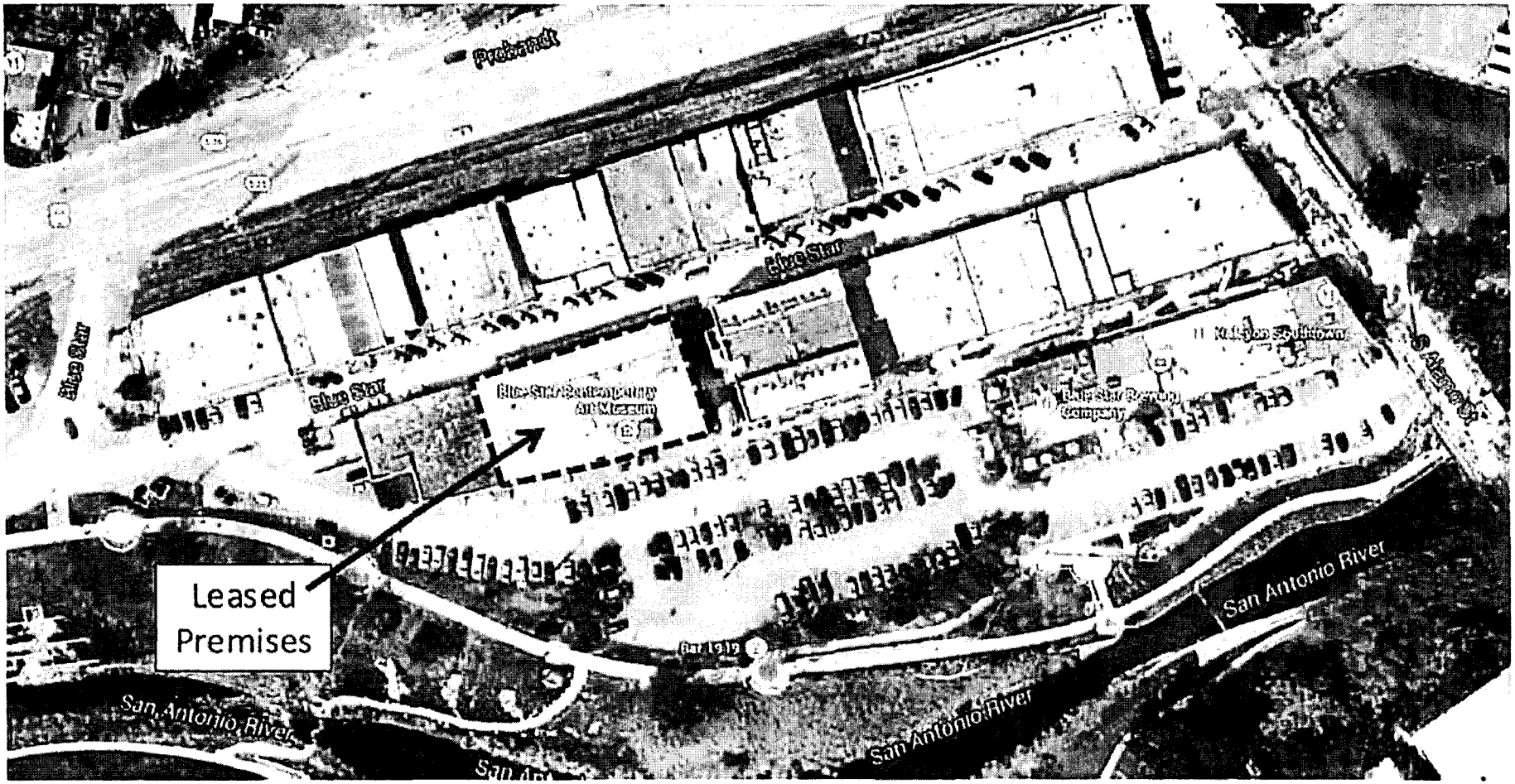
Date:_____



116 Blue Star
San Antonio, TX 78204
First Floor

BLUE STAR CONTEMPORARY ART MUSEUM (BSCAM) FLOOR PLAN

Exhibit A


Leased Premises
Blue Star
Blue Star
Blue Star
San Antonio River
San Antonio River
San Antonio River

Leaseback Agreement
(Blue Star Contemporary Art Center)

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Authorizing Ordinance:

Leaseback Landlord: City of San Antonio, a Texas municipal corporation

Leaseback Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Leaseback Tenant: Contemporary Art for San Antonio, a Texas nonprofit corporation, d/b/a/ Blue Star Arts Complex

Leaseback Tenant's Address: 116 Blue Star, San Antonio, Texas 78204

Premises: The first floor of the building located at 116 Blue Star, San Antonio, Bexar County, Texas, consisting of approximately 11,000 square feet of interior floor space as depicted on **Exhibit A**, and being the same

	space Leaseback Tenant leases from Berltex Real Estate Holdings, Inc. under the Underlying Lease.
Permitted Use:	All uses permitted by the Underlying Lease and Sublease.
Lease Commencement Date:	The effective date of the Authorizing Ordinance.
Term:	Until the earlier of (a) expiration of 20 years from the Lease Commencement Date; or (b) termination as provided herein.
Rent:	$100 total for the entire Term
Funding Agreement:	Agreement of even date herewith between Leaseback Tenant and Leaseback Landlord for funding Contemporary Art for San Antonio pursuant to the Authorizing Ordinance.
Sublease:	A sublease agreement executed contemporaneously with this Leaseback whereby Contemporary Art for San Antonio subleases the Premises to the City of San Antonio.
Underlying Lease:	Lease Agreement dated July 1, 2015 whereby Leaseback Tenant leases the Premises from Berltex Real Estate Holdings, Inc.

Background:

The Premises is situated on Lot 21, New City Block A-14, Blue Star Subdivision, according to the map or plat thereof recorded at Volume 9526, Page 141, real property records of Bexar County, Texas.

Leaseback Landlord wishes to provide funding to Leaseback Tenant for improvements to the Premises.

Leaseback Landlord's funds are derived from the sale of municipal bonds, and the bond covenants require that Leaseback Landlord have a real estate interest in the property to be improved with the bond funds.

It is the opinion of legal counsel representing Leaseback Landlord in connection with the bonds that the leasehold interest to be acquired by Leaseback Landlord under the Sublease is a sufficient ownership interest in the Premises to comply with the bond covenants.

Leaseback Tenant is the Tenant under the Underlying Lease.

Leaseback Tenant and Leaseback Landlord are contemporaneously entering into the Funding Agreement, the Sublease, and this Leaseback.

The Premises for the Sublease and the Leaseback are the same as for the Underlying Lease.

The durations of the Underlying Lease, Sublease and the Leaseback coincide.

At the expiration of both leases, neither the Sublease nor the Leaseback will be an encumbrance on the fee title to the Premises.

Rights and Obligations:

1. Demise of Premises.

Leaseback Tenant leases the Premises back from Leaseback Landlord, and Leaseback Landlord leases the Premises back to Leaseback Tenant under the terms of this Leaseback Agreement (this "Leaseback"). Leaseback Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them.

2. Lease Term.

The Term is as stated above.

3. Rent.

Leaseback Landlord acknowledges receipt in full of all Rent due for the Term in the form of an offset against rent due as provided in the Sublease.

4. Taxes.

Taxes are Leaseback Tenant's responsibility and are to be handled according to the Underlying Lease.

5. Utilities.

Utilities are Leaseback Tenant's responsibility in accordance with the Underlying Lease.

6. Use of Premises.

Leaseback Tenant may use the Premises only for the Permitted Use, unless the landlord of the Underlying Lease otherwise consents in writing. Leaseback Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

7. Funding Agreement.

Leaseback Tenant must comply with the Funding Agreement in all its operations on the Premises, including but not limited to construction on the Premises.

8. Encumbrance of Leasehold Estate.

8.01. Leaseback Tenant may encumber its leasehold interest without obtaining Leaseback Landlord's consent, but no such encumbrance is or can be a lien on Leaseback Landlord's leasehold. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions; covenants, and obligations of this Leaseback and to all Leaseback Landlord's rights under the Sublease. References in this Leaseback to "Lender" refer to any person to whom Leaseback Tenant has encumbered its leasehold interest.

8.02. At any time after execution and recordation in Bexar County, Texas, of any mortgage or deed of trust encumbering Leaseback Tenant's leasehold interest, Lender may notify Leaseback Landlord in writing that the mortgage or deed of trust has been given. On Lender's request, Leaseback Landlord will deliver duplicate notices under this Leaseback to Lender at an address or agent it specifies.

8.03. Leaseback Landlord and Leaseback Tenant will neither modify nor terminate this Leaseback by mutual consent without Lender's written consent, except as may be required by the terms of the bonds providing funding under the Funding Agreement.

8.04. Lender may do any act required of Leaseback Tenant to prevent forfeiture of Leaseback Tenant's leasehold interest. All such acts are as effective to prevent a forfeiture of Leaseback Tenant's rights under this Leaseback as if done by Leaseback Tenant.

8.05. Lender may realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or equity or by the security documents. In so doing, it may transfer, convey, or assign Leaseback Tenant's title to the leasehold estate created by this Leaseback to any purchaser at a foreclosure sale. Lender also may acquire and succeed to Leaseback Tenant's interest under this Leaseback by virtue of a foreclosure sale. Lender will not be or become liable to Leaseback Landlord as

an assignee of this Leaseback or otherwise, unless it assumes such liability in writing. No assumption by Lender may be inferred from or result (1) from foreclosure or other similar proceedings or (2) from other action or remedy provided for by the mortgage, deed of trust, or other security instrument, or (3) from a conveyance from Leaseback Tenant under which the buyer at foreclosure or grantee acquires Leaseback Tenant's rights and interest under this Leaseback. Any buyer at a foreclosure sale, including Lender, becomes obligated to Leaseback Landlord as the Leaseback Tenant under the Leaseback.

8.06. Nothing in this Article 8 waives any provisions of the Underlying Lease regarding encumbrance of the leasehold created by the Underlying Lease. The consent of the Underlying Lease landlord to this Leaseback is not ipso facto consent to an encumbrance of the Underlying Lease leasehold.

9. Repairs, Maintenance, and Restoration.

Repairs, maintenance, and restoration are Leaseback Tenant's responsibility and are to be handled according to the Underlying Lease.

10. Mechanic's Liens.

Leaseback Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Leaseback Tenant's leasehold interest (excluding any leasehold mortgage).

11. Condemnation.

Condemnation is handled according to the Underlying Lease. Leaseback Landlord has no interest in any award.

12. Insurance.

Insurance is Leaseback Tenant's responsibility and is subject to the Underlying Lease and Funding Agreement. Leaseback Landlord has no insurance-related obligations.

13. Assignment and Subletting.

Leaseback Tenant may not assign or sublet the Premises except with the consent of both Leaseback Landlord and the Underlying Lease landlord.

14. Default and Remedies.

14.01. If Leaseback Tenant defaults in performing any obligation arising out of this Leaseback and does not correct the default within 30 days after receipt of written notice to Leaseback Tenant, Leaseback Landlord may terminate this Leaseback. Lease termination does not entitle Leaseback Tenant to a refund of any part of the prepaid rent.

14.02. Despite any other provision of this Leaseback or the Sublease, the landlord of the Underlying Lease may, but need not, cure any default of Leaseback Tenant under this Leaseback.

15. Indemnification.

15.01. These definitions apply to the indemnity provisions of this Contract:

15.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of

a. Responsibilities allocated to Leaseback Tenant by this Leaseback;

b. All claims by the landlord of the Underlying Lease;

c. All claims associated with Leaseback Tenant's occupancy of the Premises, whether the claim pertains to Leaseback Tenant's occupancy under the Underlying Lease or under this Leaseback.

This indemnity does not cover claims arising out of Leaseback Landlord's sole negligence.

15.01.02. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

15.01.03. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

15.01.04. "Indemnitor" means Leaseback Tenant.

15.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

15.03. If one or more Indemnitees are finally adjudged to be solely liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

15.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

15.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by the City of San Antonio. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

15.06. In addition to the indemnity required under this Leaseback, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

15.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give the City of San Antonio at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

15.08. Nothing in this Leaseback waives governmental immunity or other defenses of Indemnitees under applicable law.

15.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

16. Miscellaneous.

16.01. This Leaseback is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Leaseback And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws of The State of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

16.02. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

16.03. This Leaseback 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.

16.04. *Relationship of Agreements and Persons With Interests In the Premises.*

16.04.01. **This Written Leaseback, Together With the Funding Agreement and the Sublease, 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.**

16.04.02. This Leaseback benefits only the parties hereto and their successors and permitted assigns, subject only to the rights, if any, of the landlord of the Underlying Lease to assume Leaseback Tenant's obligations. There are no other third party beneficiaries.

16.04.03. Intentionally deleted.

16.05. This Leaseback may not be changed orally but only by a written amendment, signed by both parties. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any

other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

16.06. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three (3) 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 hereunder.

16.07. Paragraph captions in this Leaseback are for ease of reference only and do not affect the interpretation hereof.

16.08. This Leaseback may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Leaseback, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

16.09. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Leaseback.

17. Public Information.

Parties acknowledge that this Leaseback is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

18. Appropriations.

All monetary obligations of the Leaseback Landlord under this Leaseback, if any, are subject to the discretion of City Council whether to appropriate funding.

19. Nondiscrimination.

Leaseback Tenant and its agents, employees, and all others under Leaseback Tenant's control, must refrain from discriminating against any individual or group on account of race, color, sex, age, religion, national origin, handicap, or familial status, in employment practices or in the use of or admission to the Premises. Leaseback Tenant acknowledges such discrimination is prohibited.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

Leaseback Landlord	*Leaseback Tenant*
City of San Antonio, a Texas municipal corporation	**Contemporary Art for San Antonio**, a Texas non-profit corporation
By:_____	By: MEHeathcott
Printed Name:_____	Printed Name: MARY HEATHCOTT
Title:_____	Title: EXECUTIVE DIRECTOR
Date:_____	Date: 5/18/15

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Berltex Real Estate Holdings, Inc. executes this Leaseback for the sole purpose of consenting to Leaseback Landlord's and Leaseback Tenant's entering into this Leaseback, despite any contrary provisions of Texas law or the Underlying Lease or Sublease. This consent waives only Article 8 of the Underlying Lease, and applicable sections of the Sublease only as to this Leaseback.

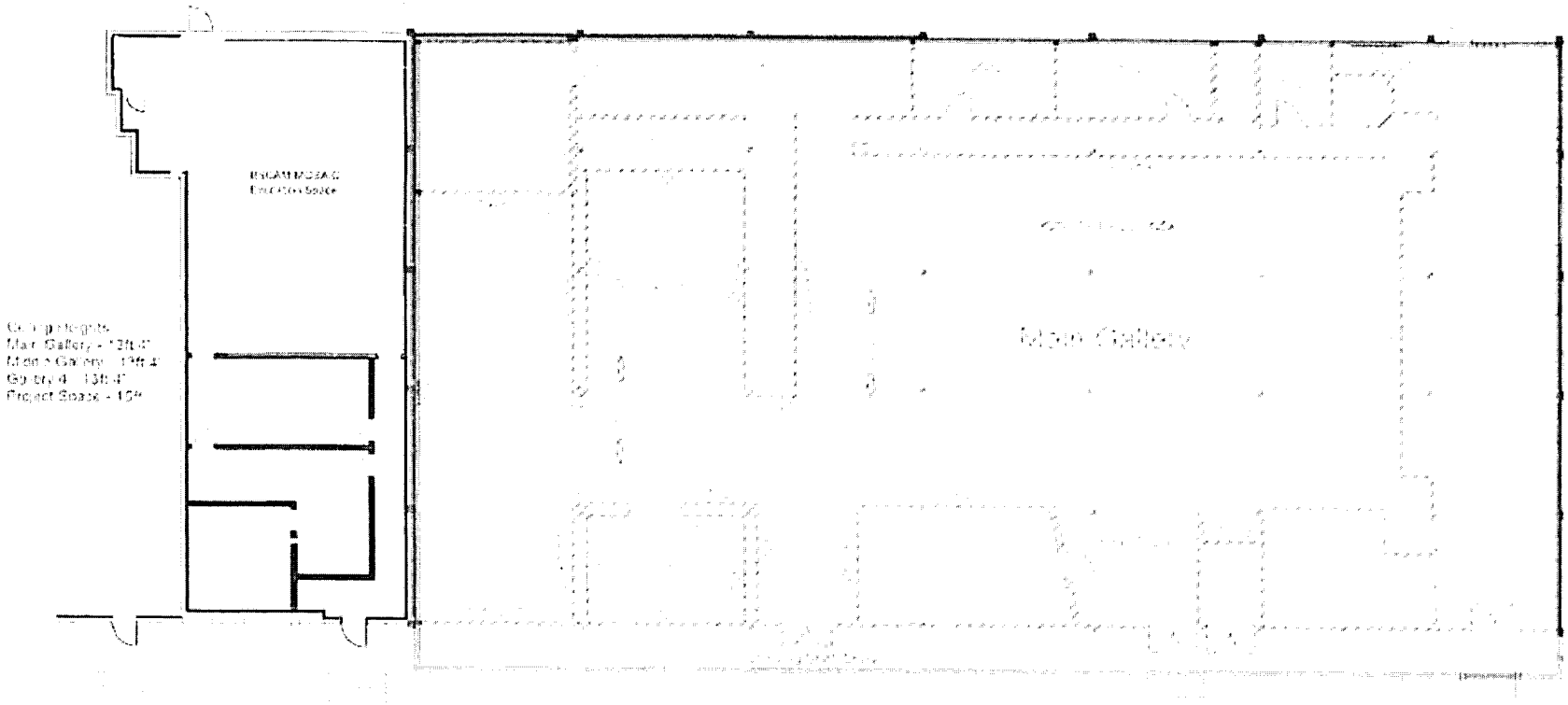
Berltex Real Estate Holdings, Inc., a Texas corporation

By:_____

Printed Name:_____

Title:_____

Date:_____



BLUE STAR CONTEMPORARY ART MUSEUM (BSCAM) FLOOR PLAN

116 Blue Star
San Antonio, TX 78204
First Floor

Exhibit A

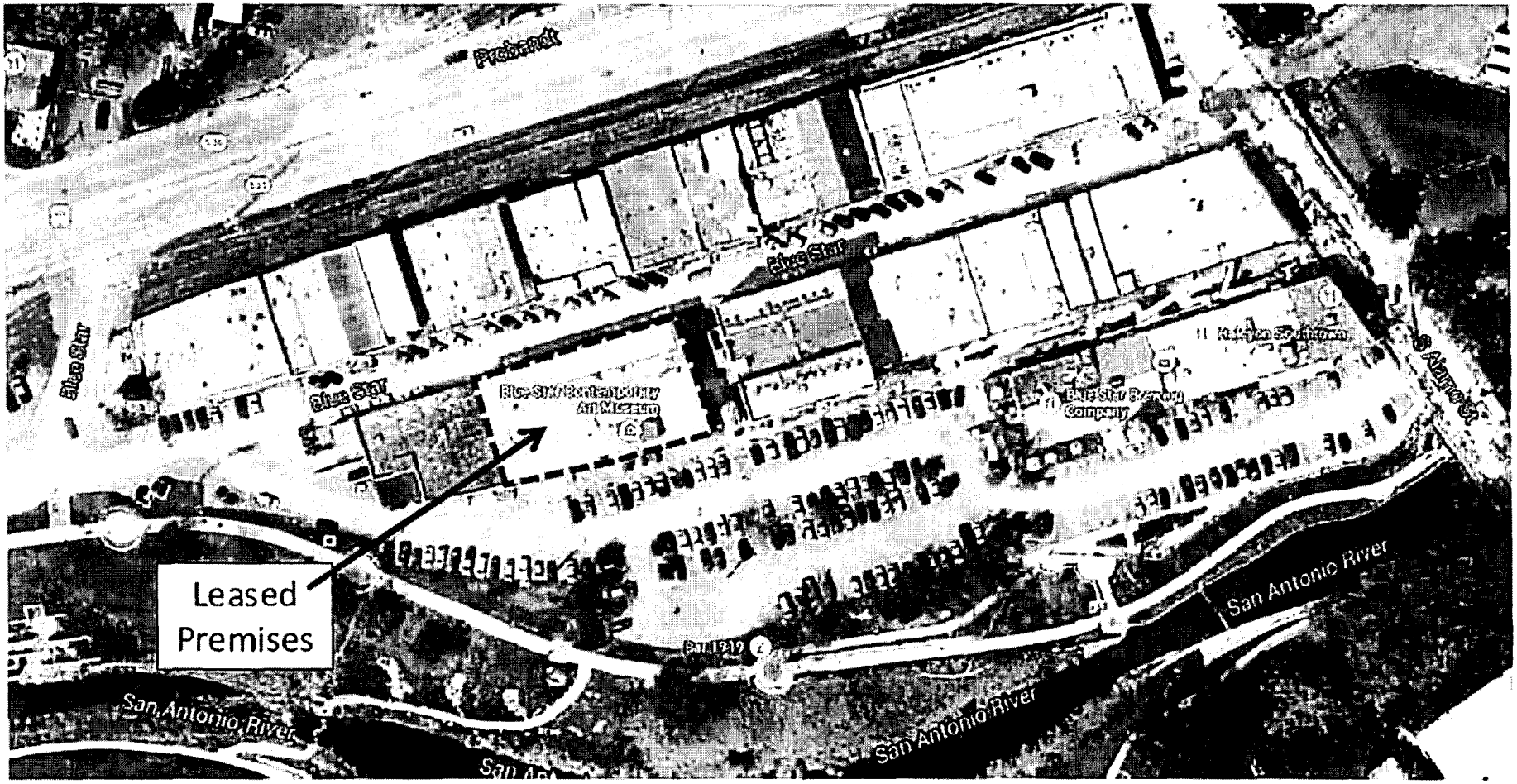

Leased Premises
Blue Star
Blue Star
Blue Star
Blue Star Contemporary Art Museum
Blue Star Brewing Company
Alamo St
San Antonio River
San Antonio River
San Antonio River

EXHIBIT C - 501c
IRS DETERMINATION LETTER

District Director

1100 COMMERCE STREET
DALLAS, TX 75242-0000

Date: MAY 19 1989

Employer Identification Number:
74-2419615
Contact Person:
EO TECHNICAL ASSISTOR
Contact Telephone Number:
(214) 767-3526

CONTEMPORARY ART FOR SAN ANTONIO
300 AUGUST ST
SAN ANTONIO, TX 78205

Addendum Applies:
N/A

Dear Applicant:

Based on the information you recently submitted, we have classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Internal Revenue Code because you are an organization described in section 509(a)(1). Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect.

This classification is based on the assumption that your operations will continue as you have stated. If your sources of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status and foundation status.

This supersedes our letter dated December 20, 1988.

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Gary O. Booth

Gary O. Booth
District Director

Exhibit D

Proposed Project Budget

Facilities Scope of Work
City Bond 2012-17

PROJECT NAME	PROJECT DETAIL	PROJECT MANAGER	ESTIMATED DATE OF COMPLETION	ESTIMATED COST
Exit doors	Push lock mechanisms for 4 public doors; master key	Poteet Architects/DADO Group	Dec-15	$1,447.00
Fire suppression system	Sprinkler system, alarm	Poteet Architects/DADO Group	Aug-16	$32,500.00
Admin offices	Subfloor repairs; remove old wiring; repair and repaint walls	Poteet Architects/DADO Group	Aug-16	$31,453.00
HVAC	Upgrade/replace HVAC systems in exhibition spaces	Poteet Architects/DADO Group	Aug-16	$31,620.00
Art storage	Climate control art storage, extend walls floor to ceiling	Poteet Architects/DADO Group	Aug-16	$10,850.00
Security system	Rekey entries for master key system; video surveillance	Poteet Architects/DADO Group	Aug-16	$11,405.00
Public facilities	Rehang bathroom doors; MOSAIC bathroom remodel	Poteet Architects/DADO Group	Aug-16	$29,512.00
Visitor relations	Welcome desk; merchandising area for lobby; signage upgrades	Poteet Architects/DADO Group	Aug-16	$44,053.00
Lighting and electrical	Upgrade lighting and electrical system	Poteet Architects/DADO Group/Earnest McNeal	Aug-16	$31,620.00
Workshop	Ventilation system for construction/studio area, floor to ceiling walls	Poteet Architects/DADO Group	Aug-16	$10,540.00
Contingency				$10,000.00
Contract fees				$5,000.00
			TOTAL	**$250,000.00**

Exhibit E

Plans

To be attached upon completion and approval

Exhibit F

SBEDA

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through a fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the S/M/WBE subcontracting goal shall render its response NON-RESPONSIVE.

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

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request form (available at http://www.sanantonio.gov/SBO/Forms.aspx)* with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the $50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

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

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

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

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

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

CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

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

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

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

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and

Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking,

monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

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

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

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

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

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and,

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

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

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

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

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

reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

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

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

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

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

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative (API) to this contract. 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:

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **twenty percent (20%)** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San

Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby 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 M/WBE 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 contract 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 M/WBE subcontracting goals, 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.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 20% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of February 2015, African-American owned firms represent approximately 2.75% of available subcontractors, Hispanic-American firms represent approximately 16.47%, Asian-American firms represent approximately 1.17%, Native American firms represent approximately 0.27%, and Women-owned firms represent approximately 4.74% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company

from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of contract;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

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