

AN ORDINANCE 2008-06-19-0547

APPROVING THE TERMS AND CONDITIONS OF THE GRANT AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, BEXAR COUNTY AND THE BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION REGARDING MUNICIPAL AUDITORIUM AND THE SAN ANTONIO FIRE DEPARTMENT HEADQUARTERS BUILDING, INCLUDING THE CITY'S PAYMENT OF \$500,000.00 A YEAR FOR FIVE YEARS TO THE FOUNDATION.

* * * * *

WHEREAS, on February 14, 2008, City Council approved a Memorandum of Understanding with Bexar County and the Bexar County Performing Arts Center Foundation ("Foundation"), a non-profit corporation, which provided that the City would convey the Municipal Auditorium and the adjacent San Antonio Fire Department Headquarters Building to the Foundation for a new performing arts center campus ("Campus"), subject to Bexar County providing up to \$100,000,000.00 for the construction of the Campus and the Foundation maintaining a reserve fund of not less than \$10,000,000.00 for the support of the Campus; and

WHEREAS, on May 10, 2008, voters approved the extension of visitor taxes to fund the development of a performing arts center and other projects; and

WHEREAS, the City, County and Foundation have negotiated a Grant and Development Agreement ("Agreement") which provides that the Foundation will be responsible for the design, construction and operation of the Campus, the County will pay up to \$100,000,000.00 of the construction costs from the visitor tax revenues approved by voters, the City will contribute \$500,000.00 a year for five years to the Foundation to be deposited in the performing arts center's reserve fund and the City and County will each have ten days per year to use the facility for governmental purposes; and

WHEREAS, the City proposes to convey these City facilities using Texas Local Government Code Section 253.011 which allows a municipality to transfer title directly to a 501(c)(3) non-profit organization that agrees to use the property in a manner that primarily promotes a public purpose of the municipality; and

WHEREAS, the failure of the Foundation to use the property for the operation of a performing arts center will result in the property automatically reverting to the City; and

WHEREAS, in addition to this statutory automatic reverter, the Agreement provides that the property will revert to the City if the property ceases to be owned by a nonprofit organization, the Foundation fails to achieve the levels of funding required by the Agreement, efforts to construct the performing arts center are abandoned or the Agreement is terminated by Bexar County prior to the filing of the Certificate of Substantial Completion; and

WHEREAS, upon conveyance, the City will lease the Municipal Auditorium from the Foundation until sixty days prior to the beginning of construction on that tract and the San Antonio Fire Department Headquarters Building until the later of sixty days following notice that the construction on the main performance hall of the performing arts center will be substantially completed within twelve months or four years following the City's conveyance; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Grant and Development Agreement between the City, County and Foundation concerning the conveyance of Municipal Auditorium and the San Antonio Fire Department Headquarters Building, including the City's payment of \$500,000.00 per year for five years to the Foundation, are authorized and approved.

SECTION 2. The City Manager or her designee is authorized to execute the Grant and Development Agreement, the Deed Without Warranty conveying Municipal Auditorium and the San Antonio Fire Department Headquarters Building, the Lease Agreement for Municipal Auditorium and the San Antonio Fire Department Headquarters Building and any other documents approved by the City Attorney as are necessary to carry out the purpose of this Ordinance. A substantially final copy of the Agreement, with the Deed Without Warranty attached as Exhibit B and the Lease Agreement attached as Exhibit E, is attached to this Ordinance as Exhibit I.

SECTION 3. The payment of \$500,000.00 to the Bexar County Performing Arts Foundation will be identified and appropriated beginning in the Fiscal Year 2010 budget process.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. The conveyance of property owned by the City must be coordinated through the City's Finance Department to assure the removal of these assets from the City's financial records and to record the proper accounting transactions.

SECTION 6. This Ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 19th day of June, 2008.

ATTEST:


City Clerk


M A Y O R
PHIL HARDBERGER

APPROVED AS TO FORM:


City Attorney





Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 7

Name:	7
Date:	06/19/2008
Time:	02:12:56 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving the terms and conditions of the Grant and Development Agreement between the City of San Antonio, Bexar County and the Bexar County Performing Arts Center Foundation regarding Municipal Auditorium and the San Antonio Fire Department Headquarters Building, including the City's payment of \$500,000.00 a year for five years to the Foundation. [Penny Post oak Ferguson, Assistant City Manager; Michael J. Sawaya, Director, Convention, Sports and Entertainment Facilities]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x			x	
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					

Exhibit

I

GRANT AND DEVELOPMENT AGREEMENT

AMONG

CITY OF SAN ANTONIO, TEXAS,

BEXAR COUNTY, TEXAS,

AND

BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION

JUNE __, 2008

TABLE OF CONTENTS

ARTICLE 1.	RECITALS	4
ARTICLE 2.	INTRODUCTORY MATTERS; MILESTONES	6
	SECTION 2.01 TERM	6
	SECTION 2.02 MATTERS IN EXISTENCE ON THE EFFECTIVE DATE.....	7
	SECTION 2.03 MILESTONES.....	7
	SECTION 2.04 COUNTY CERTIFICATE OF TERMINATION	9
	SECTION 2.05 EXTENSIONS; NOTICE OF EXTENSIONS; COPIES	10
ARTICLE 3.	DEVELOPMENT OF THE PROJECT	10
	SECTION 3.01 GENERAL TERMS AND CONDITIONS	10
	SECTION 3.02 DESIGN AND CONSTRUCTION OBLIGATION.....	11
	SECTION 3.03 SERVICES TO BE PERFORMED BY FOUNDATION	11
	SECTION 3.04 AFFILIATE CONTRACTS.....	15
ARTICLE 4.	DESIGN OF THE PROJECT	16
	SECTION 4.01 PROJECT ARCHITECT	16
	SECTION 4.02 DEVELOPMENT	16
	SECTION 4.03 DESIGN STANDARDS	18
	SECTION 4.04 USE OF PLANS	18
	SECTION 4.05 REVIEW, APPROVALS AND OBJECTIONS	18
ARTICLE 5.	CONSTRUCTION OF THE PROJECT	21
	SECTION 5.01 GENERAL CONTRACTOR.....	21
	SECTION 5.02 CAPITAL BUDGET	22
	SECTION 5.03 COST SAVINGS	22
	SECTION 5.04 SUPERVISION OF CONSTRUCTION.....	23
	SECTION 5.05 CORRECTION OF WORK.....	24
	SECTION 5.06 FOUNDATION'S RIGHT TO MAKE CHANGES	25
	SECTION 5.07 CONSTRUCTION CHANGE ORDER PROCEDURE.....	25
	SECTION 5.08 SALES TAX.....	25
	SECTION 5.09 MECHANIC'S LIENS AND CLAIMS	25
	SECTION 5.10 INFRASTRUCTURE DEVELOPMENT.....	26
	SECTION 5.11 PERMITS.....	26
	SECTION 5.12 CAPITAL REPAIR FUND.....	26
ARTICLE 6.	THE PROJECT DISBURSEMENT FUND/MODIFICATIONS TO THE PROJECT BUDGET.....	27
	SECTION 6.01 THE PROJECT DISBURSEMENT FUND	27
	SECTION 6.02 DISBURSEMENTS FROM THE PROJECT DISBURSEMENT FUND	27
	SECTION 6.03 MODIFICATIONS TO THE CAPITAL BUDGET.....	27
	SECTION 6.04 DEVELOPMENT FEES.....	28
	SECTION 6.05 EFFECT OF APPROVALS.....	28
	SECTION 6.06 NON-DISCRIMINATION	28
ARTICLE 7.	FINANCING OF THE PROJECT.....	29
	SECTION 7.01 DETERMINATION OF FOUNDATION AND COUNTY CONTRIBUTION.....	29
	SECTION 7.02 FOUNDATION CONTRIBUTION.	30
	SECTION 7.03 COUNTY CONTRIBUTION.....	32

SECTION 7.04 CITY CONTRIBUTION 34

ARTICLE 8. FUNDING THE PROJECT AND COUNTY RESPONSIBILITIES 34

SECTION 8.01 DEVELOPMENT COSTS 34

SECTION 8.02 ADDITIONAL OBLIGATIONS OF THE COUNTY 36

SECTION 8.03 ADDITIONAL COSTS RESULTING FROM CHANGES IN
APPLICABLE LAW 37

SECTION 8.04 LIMITATION OF FUNDING OBLIGATIONS 37

ARTICLE 9. CONVEYANCE AND LEASEBACK..... 38

SECTION 9.01 CONVEYANCE OF AUDITORIUM TRACT AND SAFD
TRACT 38

SECTION 9.02 LEASE OF AUDITORIUM TRACT AND SAFD TRACT 39

SECTION 9.03 EXPENSES OF OWNERSHIP 39

SECTION 9.04 TAXES..... 39

SECTION 9.05 RESTRICTIONS ON SALE..... 40

ARTICLE 10. NAMING RIGHTS..... 40

SECTION 10.01 SAFD BUILDING 40

SECTION 10.02 MUNICIPAL AUDITORIUM..... 40

SECTION 10.03 EXCEPTION TO APPROVAL REQUIREMENT 41

SECTION 10.04 NAMING PARAMETERS..... 41

ARTICLE 11. REPRESENTATIONS, WARRANTIES AND COVENANTS 42

SECTION 11.01 BY FOUNDATION..... 42

SECTION 11.02 BY COUNTY 43

SECTION 11.03 BY CITY..... 44

SECTION 11.04 DISCLAIMER BY CITY AND COUNTY 45

SECTION 11.05 RELIANCE..... 46

SECTION 11.06 ADDITIONAL COVENANTS OF FOUNDATION 46

ARTICLE 12. TERMINATION EVENTS, EVENTS OF DEFAULT, AND
REMEDIES..... 50

SECTION 12.01 AUTOMATIC TERMINATION EVENTS 50

SECTION 12.02 EVENTS OF DEFAULT 51

SECTION 12.03 REMEDIES FOR UNCURED EVENT OF DEFAULT
UNDER SECTION 12.02..... 54

SECTION 12.04 MEDIATION..... 54

ARTICLE 13. ASSIGNMENT..... 54

ARTICLE 14. FORCE MAJEURE EVENTS..... 55

SECTION 14.01 MITIGATION..... 55

SECTION 14.02 NOTICE..... 55

SECTION 14.03 EFFECT OF FORCE MAJEURE EVENT..... 55

ARTICLE 15. CAPACITY OF CITY 55

SECTION 15.01 CITY COUNCIL APPROVAL 55

SECTION 15.02 CAPACITY OF CITY AND COUNTY..... 56

SECTION 15.03 CAPACITY OF PARTIES ACTING ON BEHALF OF CITY
OR COUNTY 56

SECTION 15.04 NO LIMITATION ON CITY'S OR COUNTY'S
GOVERNMENTAL FUNCTIONS..... 56

ARTICLE 16. REPRESENTATIVES..... 57

SECTION 16.01	FOUNDATION REPRESENTATIVE.....	57
SECTION 16.02	THE COUNTY REPRESENTATIVE.....	57
ARTICLE 17.	SCHEDULE AND REPORTS	58
SECTION 17.01	DESIGN AND CONSTRUCTION	58
SECTION 17.02	PROGRESS REPORTS.....	59
SECTION 17.03	SIGNIFICANT EVENT REPORTS.....	59
SECTION 17.04	INSPECTION REPORTS.....	59
SECTION 17.05	FINAL CONSTRUCTION REPORT	59
SECTION 17.06	RETURNS REQUIRED BY LAW	60
SECTION 17.07	INSPECTION RIGHTS OF THE COUNTY	60
ARTICLE 18.	CASUALTY	61
SECTION 18.01	DAMAGE OR DESTRUCTION.....	61
ARTICLE 19.	MISCELLANEOUS PROVISIONS.....	61
SECTION 19.01	NOTICES.....	61
SECTION 19.02	BUSINESS DAYS.....	63
SECTION 19.03	TIME.....	63
SECTION 19.04	SEVERABILITY	63
SECTION 19.05	WAIVER.....	63
SECTION 19.06	RESERVATION OF RIGHTS	63
SECTION 19.07	FURTHER DOCUMENTS	63
SECTION 19.08	INCORPORATION OF EXHIBITS AND OTHER DOCUMENTS BY REFERENCE	64
SECTION 19.09	AUTHORITY FOR EXECUTION.....	64
SECTION 19.10	GOVERNING LAW; VENUE.....	64
SECTION 19.11	ATTORNEYS' FEES	64
SECTION 19.12	NO ORAL MODIFICATION.....	65
SECTION 19.13	NO PARTY DEEMED DRAFTER.....	65
SECTION 19.14	USE OF DEFINED TERMS	65
SECTION 19.15	MULTIPLE COUNTERPARTS	65
SECTION 19.16	ENTIRE AGREEMENT, AMENDMENT AND WAIVER, SURVIVAL	65
SECTION 19.17	TABLE OF CONTENTS; HEADINGS	66
SECTION 19.18	PARTIES IN INTEREST	66
SECTION 19.19	NOTICES OF CHANGES IN FACT	66

**GRANT AND DEVELOPMENT AGREEMENT AMONG
THE CITY OF SAN ANTONIO, TEXAS,
BEXAR COUNTY, TEXAS, AND
BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION**

This GRANT AND DEVELOPMENT AGREEMENT (this "**Development Agreement**") is made and entered into as of the date set forth on the signature page below by and among THE CITY OF SAN ANTONIO, TEXAS (the "**CITY**"), BEXAR COUNTY, TEXAS (the "**COUNTY**"), and BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION (the "**FOUNDATION**") as of the Effective Date (herein defined).

DEFINITIONS AND INTERPRETATIONS

Each term or phrase used in this Development Agreement in which the first letter of each word is capitalized has the meaning set forth in the attached Appendix 1, unless the context in which such term or phrase is used in this Development Agreement clearly indicates otherwise.

ARTICLE 1. RECITALS

A. CITY is a municipal corporation and home-rule municipality of the State of Texas, acting by and through its governing body, the City Council, pursuant to the City Ordinance.

B. CITY owns fee simple title in and to the Auditorium Tract and the SAFD Tract.

C. CITY, FOUNDATION and COUNTY concur that a new performing arts center is needed to serve performing and visual arts activities in San Antonio and Bexar County, including, but not limited to, musical, dance and theatrical performances, rehearsals, art exhibitions, arts education and similar activities, providing a nexus for arts education and outreach for the citizens of Bexar County and enhancing economic development in Bexar County, the neighborhoods surrounding the Auditorium Tract and the San Antonio River North Development.

D. FOUNDATION, a Texas non-profit corporation exempt from taxation under Section 501(c) (3) of the Code, has been formed for the purpose of developing, owning and operating a new performing arts center campus utilizing the Auditorium Tract and the SAFD Tract.

E. As authorized by majority vote of the electorate in a special election called by COUNTY, pursuant to Sections 334.103 and 334.252 of the Texas Local Government Code, and

held on May 10, 2008, COUNTY has agreed to provide to FOUNDATION a portion of the funding necessary to develop the Project and construct the Performing Arts Center through issuance and sale of the Bonds, subject to the terms of this Development Agreement.

F. The City Ordinance has authorized CITY'S conveyance of the Auditorium Tract and the SAFD Tract to FOUNDATION, subject to the terms of this Development Agreement.

G. The Parties entered into the Memorandum of Understanding which contemplates that the development of the Project will proceed as follows: (1) CITY will execute, acknowledge and deliver to FOUNDATION a deed conveying to FOUNDATION a determinable estate in and to the Auditorium Tract and SAFD Tract, with automatic reverter of title to CITY upon the conditional limitations set forth therein; (2) FOUNDATION will lease the Auditorium Tract and SAFD Tract to CITY until sixty (60) days prior to the date specified in a notice from FOUNDATION to CITY as the anticipated Construction Commencement Date, provided that at CITY'S election and subject to the terms of the Lease Agreement, the lease will remain in effect with respect to the SAFD Tract only until the date which is (i) four (4) years after the Conveyance Date or (ii) twelve (12) months prior to the date specified in a notice from FOUNDATION to CITY as the anticipated date of Substantial Completion of the main performance hall of the Performing Arts Center, whichever occurs later; (3) FOUNDATION shall obtain Pledges sufficient to fund the Foundation Contribution prior to the Construction Commencement Date; (4) COUNTY shall provide funding up to \$100,000,000 pursuant to a financing program to support the development of the Project and construction of the Performing Arts Center; and (6) CITY shall provide funding of \$2,500,000 to the Reserve Fund as hereinafter provided.

H. FOUNDATION has prepared, and CITY and COUNTY have approved, the Master Plan for the Campus, which reflects Veterans Memorial Plaza as an integrated part of the Campus and enhances Veterans Memorial Plaza by virtue of its proximity to the Campus, it being expressly understood that Veterans Memorial Plaza shall not be a part of the Campus or the Project.

I. The Performing Arts Center shall be designed, rehabilitated and constructed by FOUNDATION as provided in this Development Agreement to support the primary purpose of providing a home for performing arts activities in Bexar County, meeting the requirements of the

Quality Standard described herein and the definition of Performing Arts Center and all applicable building codes and ordinances.

J. Following Final Completion and subject to availability under FOUNDATION'S normal scheduling and booking procedures, CITY and COUNTY each shall be afforded the right to use the main performance hall within the Performing Arts Center for up to five (5) days each calendar year and to use other facilities within the Performing Arts Center for up to five (5) days each calendar year for governmental purposes without the requirement to pay rent to FOUNDATION, but each shall pay the amounts reasonably established by FOUNDATION to cover the operating costs associated with such usage. CITY and COUNTY's right to such use shall be subject to and in accordance with the following booking procedures: not earlier than July 1 of each calendar year ("Selection Start Date"), CITY and COUNTY may each select the day(s) for its use in the following calendar year, such selection(s) to be made from the open date(s) and time(s) during the applicable following year on which no event for an identified third party has been selected by FOUNDATION for the applicable venue, with the open dates and times to be determined on the date of each selection. Nothing herein will preclude CITY or COUNTY from selecting days on a date that is earlier than the Selection Start Date with the prior written approval of FOUNDATION, which approval may be withheld in FOUNDATION's sole discretion. For purposes hereof, "governmental purposes" means non-commercial, non-ticketed events sponsored by CITY or COUNTY for a public purpose and for which no payment is made by the invitees to attend other than directly to the CITY or COUNTY.

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

ARTICLE 2. INTRODUCTORY MATTERS; MILESTONES

Section 2.01 Term.

A. Commencement and Termination. The Term (herein so called) of this Development Agreement will commence upon the execution hereof by the Parties and will terminate on the date of Final Completion of the Performing Arts Center, unless terminated on an earlier date in accordance with this Development Agreement, except that the specific sections of

this Development Agreement set forth in Section 2.01B below shall survive termination following Final Completion as provided therein. If this Development Agreement does not take effect or is terminated by mutual agreement of the Parties or other event, the Parties shall promptly execute a document confirming the termination of this Development Agreement, and such other documents as may be reasonable under the circumstances.

B. Surviving Obligations. Notwithstanding anything contained herein to the contrary, the obligations of FOUNDATION set forth in the following Sections of this Development Agreement shall survive the termination of this Development Agreement for a period of seventy-five (75) years following Final Completion: Article 1, item J; Section 3.03 G and H; Section 5.12; Section 9.05; Section 11.06 (other than provisions concerning construction of the Performing Arts Center); Article 12; Article 13 and Article 18.

Section 2.02 Matters in Existence on the Effective Date.

As of the Effective Date, the following actions have been taken by the Parties:

A. Memorandum of Understanding. The Memorandum of Understanding is superseded and replaced by this Development Agreement.

B. Master Plan. FOUNDATION has submitted the Master Plan to CITY and COUNTY, in accordance with the Memorandum of Understanding, and CITY and COUNTY have approved the Master Plan. The Master Plan may not be amended without the further approval of CITY and COUNTY, which may not be unreasonably withheld, conditioned or delayed.

Section 2.03 Milestones.

The Parties agree as follows:

A. Commencement of Construction. Subject to Force Majeure Events, as provided in Section 14.03, the Construction Commencement Date shall occur not later than the first (1st) day of the forty-second (42nd) month following the Conveyance Date, and FOUNDATION shall provide the Certificate of Commencement of Construction to COUNTY and CITY on or before such date.

B. Preconstruction Development Milestones. Not later than the date specified herein, or if no date is specified, not later than the Construction Commencement Date:

(1) Forensic Study. Not later than December 31, 2008, the COUNTY shall fund for FOUNDATION and FOUNDATION shall provide to COUNTY a Forensic Study,

demonstrating to the COUNTY'S reasonable satisfaction that the existing improvements on the Auditorium Tract and SAFD Tract are sufficiently structurally sound for redevelopment within the maximum anticipated Capital Budget of \$100,000,000, plus the Foundation Contribution, less FOUNDATION'S funding requirements for the Reserve Fund contained in Section 7.02B herein (the "Maximum Cost").

(2) Capital Budgets. FOUNDATION shall prepare and submit a Preconstruction Costs budget to COUNTY prior to submitting any Payment/Reimbursement Request other than for payment of (i) the Forensic Study, and (ii) other Preconstruction Costs totaling not more than \$500,000.00 in the aggregate, and shall obtain COUNTY'S approval of the Preconstruction Costs budget for all costs in excess of such amounts, such approval not to be unreasonably withheld, conditioned or delayed. FOUNDATION shall prepare and submit the Capital Budget to COUNTY at least 60 days prior to the anticipated Construction Commencement Date, confirming that the Performing Arts Center can be constructed at a cost that does not exceed the Maximum Cost, and obtain COUNTY'S approval of the Capital Budget prior to the Construction Commencement Date.

(3) Construction Contract. FOUNDATION shall enter into the Construction Contract and provide copies thereof to CITY and COUNTY at least ten (10) Business Days prior to the Construction Commencement Date.

(4) Development of Operating Manifest. FOUNDATION shall adopt the Operating Manifest which must be compatible with the Final Plans, the Operating Budget and the Capital Budget, and deliver copies to CITY and COUNTY.

C. Preconstruction Financial Milestones. Not later than the date specified herein, or if no date is specified, not later than the Construction Commencement Date, FOUNDATION shall accomplish the following financial milestones which are essential to the development of the Project:

(1) Completion of Operating Budget. FOUNDATION shall prepare and submit the Operating Budget to COUNTY at least 60 days prior to the anticipated Construction Commencement Date.

(2) Pledges. Prior to the Construction Commencement Date, FOUNDATION shall have received Pledges in an aggregate amount sufficient to enable FOUNDATION to either collateralize loan(s) and/or an irrevocable letter of credit in the amount of the Foundation

Contribution so that it may fund the Foundation Contribution as and when the same is required pursuant to the Capital Budget, and shall have provided evidence thereof to the CITY and COUNTY prior to the date which is forty-one (41) months after the Conveyance Date. Upon the expiration of the forty-one (41) month time period, as the same may be extended in this Development Agreement, the CITY or COUNTY may file in the Public Records a Preconstruction Termination Notice, if FOUNDATION has not provided the evidence thereof to the CITY and COUNTY, as required by this Section 2.03C(2).

D. Preconstruction Funding. Beginning on June 30, 2009, FOUNDATION shall commence and thereafter continue funding of its proportionate share of the Preconstruction Costs and any disproportionate payments, as described in Section 7.01A(2) hereof.

E. Certificate. FOUNDATION shall provide to COUNTY and CITY a certificate of its completion of all Pre-Construction Development Milestones and all Pre-Construction Financial Milestones set forth in this Section 2.03.

F. Construction Notice. FOUNDATION shall provide the Construction Notice only after all Preconstruction Development Milestones and Preconstruction Financial Milestones have been fully satisfied.

G. Substantial Completion. Subject to Force Majeure Events, as provided in Section 14.03, FOUNDATION shall cause the Substantial Completion of the Performing Arts Center not later than the first (1st) day of the seventy-eighth (78th) month following the Conveyance Date and, to evidence and confirm such Substantial Completion, FOUNDATION shall execute, deliver to CITY and file for record in the Public Records the Substantial Completion Certificate.

Section 2.04 COUNTY Certificate of Termination.

COUNTY shall deliver promptly to CITY the County Certificate of Termination in the event that COUNTY has elected to refuse to contribute further funding to FOUNDATION due to:

(a) FOUNDATION'S failure to perform or achieve each of the Preconstruction Development Milestones;

(b) FOUNDATION'S failure to perform or achieve each of the Preconstruction Financial Milestones; or

(c) The occurrence of any other fact or circumstance that entitles COUNTY not to commence or continue funding of the County Contribution, pursuant to this Development Agreement.

Section 2.05 Extensions; Notice of Extensions; Copies.

COUNTY, without the approval of CITY, may extend the time for performance of any Preconstruction Development Milestone and Preconstruction Financial Milestone, or, with the approval of CITY, any other deadline set forth in Section 2.03. COUNTY shall promptly notify CITY of any such extension, the reasons for granting such extension and the substituted time for performance. COUNTY shall promptly deliver to CITY a copy of all documents provided to COUNTY in satisfaction of the Milestones.

ARTICLE 3. DEVELOPMENT OF THE PROJECT

Section 3.01 General Terms and Conditions.

Subject to the terms and conditions of this Development Agreement and of the other agreements to be entered into pursuant to this Development Agreement, FOUNDATION agrees to cause the Project to be developed and the Performing Arts Center to be constructed subject to the following terms and conditions:

A. Master Plan. The Master Plan may not be altered without obtaining the further approval of CITY and COUNTY, which may not be unreasonably withheld, conditioned or delayed.

B. Veterans Memorial Plaza. Although Veterans Memorial Plaza is not part of the Campus, FOUNDATION shall use commercially reasonable efforts to coordinate its development of the Project and construction of the Performing Arts Center with capital improvements to be made by the CITY to Veterans Memorial Plaza, but the same shall not obligate FOUNDATION to accelerate, delay or otherwise modify its scheduled construction to the extent that it could impair FOUNDATION'S ability to meet any Milestones set forth in Section 2.03 or otherwise adversely affect the Project in the sole opinion of FOUNDATION.

C. Compliance. The Project shall comply with the City Code and all other Applicable Laws. Without limiting the generality of the foregoing sentence, the Project shall reflect the guidelines and achieve the goals of the CITY'S Public Art and Design Enhancement Program of the Capital Improvement Management Service Department.

D. Parking. Prior to the Construction Commencement Date, CITY and COUNTY will assist FOUNDATION in identifying available controlled parking sufficient for the Performing Arts Center.

Section 3.02 Design and Construction Obligation.

A. Subject to the other terms and conditions of this Development Agreement, FOUNDATION (i) shall undertake and assume responsibility in accordance with this Development Agreement to cause and obtain the permitting, design, and construction of all improvements comprising the Project in accordance with the Master Plan and Final Plans and the Construction Documents, to cause Substantial Completion of the same to occur on or before the Project Completion Date, as the same may be extended pursuant to the provisions of this Development Agreement, and to equip the Project in accordance with the Final Plans; and (ii) shall pay all costs, expenses and expenditures in excess of the County Contribution in connection with the design and construction of the Project, including without limitation, the amounts owing to the Project Architect, and/or other architectural, engineering or other design consultants engaged by FOUNDATION, and to the General Contractor, Contractors, or other contractors, subcontractors, suppliers, consultants, legal consultants or otherwise engaged by FOUNDATION for supervision, transportation, labor, materials or Permits or other matters in connection with the Project above the County Contribution.

B. FOUNDATION shall undertake, coordinate and supervise the permitting, design and construction of the Project, and shall coordinate the work of all Persons involved therein. FOUNDATION shall meet with the Project Architect, Contractors, General Contractor and other Persons providing design or construction services on a regular basis as is necessary in FOUNDATION'S sole judgment to assure the performance of the Work in accordance with the terms of this Development Agreement and otherwise as specifically provided herein. To the extent FOUNDATION has, obtains, or retains rights under any Contract pertaining to the Project, FOUNDATION will exercise such rights in accordance with this Development Agreement.

Section 3.03 Services to be Performed by FOUNDATION.

Subject in all instances to funding of the County Contribution, as provided in this Development Agreement, FOUNDATION shall cause the Project to be designed and constructed in an orderly, expeditious and efficient manner in accordance with the Applicable Laws, the

Schedule and the Construction Documents. Without limiting FOUNDATION'S obligations hereunder, FOUNDATION shall:

A. provide the Schedule and reports required by Article 17 hereof within the time periods therein prescribed;

B. retain the services of the Project Architect and consultants and coordinate the design of the Project as more specifically set forth in Article 4 hereof;

C. direct, coordinate and supervise the preparation of all submissions necessary under Applicable Law in connection with the Permits to be obtained by FOUNDATION, and negotiate with and act as liaison to the Governmental Authorities in connection with obtaining such Permits;

D. use good faith, commercially reasonable efforts to obtain the best price and quality of goods and services, including from Affiliates, in connection with the Construction Documents for construction of the Project, and cause the construction services to be performed;

E. negotiate, procure and retain the services of the General Contractor, who shall, among other things, execute the construction of the Project, or, in the case of a construction manager, manage, supervise and direct construction activities related to the Work;

F. investigate, hire, contract with, train, pay, supervise and, when necessary, discharge the personnel reasonably required to be employed or engaged by FOUNDATION in order to properly complete the Project. Such personnel shall in every instance be deemed independent contractors, agents or employees, as the case may be, of FOUNDATION and not of the COUNTY, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of FOUNDATION. All salaries, wages, commissions and other compensation or expense of personnel employed by FOUNDATION hereunder, including so-called fringe benefits, medical and health insurance, pension plans, social security, taxes, workers' compensation insurance and all other expenses of FOUNDATION are and shall be the responsibility of and paid by FOUNDATION. FOUNDATION shall use reasonable efforts to cause all personnel used by FOUNDATION, the Project Architect, the General Contractor and any Contractor in the performance of the design and/or construction of the Project to be qualified by training and experience to perform their assigned tasks;

G. from and after the Construction Commencement Date as to each of the Auditorium Tract and the SAFD Tract, respectively, procure and maintain, and require the General Contractor, Project Architect, Contractors and other Persons performing design and construction of the Project to procure and maintain, with responsible companies having an Alfred M. Best Company, Inc. rating of at least A- (or if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar rating under the rating system then in effect) and licensed to do business in the State of Texas, insurance coverage as set forth in Exhibit "G". Such insurance shall in any event name the CITY and the COUNTY as additional named insureds, as their interests may appear. Such insurance shall include waivers by the respective insurance carriers of any and all rights of subrogation against FOUNDATION, the CITY, or the COUNTY, and FOUNDATION shall promptly provide the COUNTY and the CITY with certificates evidencing such insurance. Notwithstanding the foregoing, in the event that a proposed insurance policy does not permit the COUNTY and the CITY to be an additional named insured, then the policy will be acceptable to the COUNTY if the COUNTY is included as an additional insured and the parties hereto mutually agree to the rights of the COUNTY being an additional insured under such policy;

H. all insurance policies required to be obtained and maintained by the COUNTY and FOUNDATION pursuant to the terms of this Development Agreement shall provide that neither FOUNDATION, the CITY nor the COUNTY shall be liable to the other Parties or to any insurance company (by way of subrogation or otherwise) insuring any other Party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence (whether ordinary or gross) of such Party, its agents or employees, to the extent any such loss or damage is actually covered by insurance benefitting the Party suffering such loss or damage. The provisions of this Section 3.03H are not intended to limit the claims of any Party to the face amount or coverage of insurance policies herein provided for or to evidence a waiver by a Party of any claim for damages in excess of the face amount or coverage of any such insurance policies. Neither the issuance of any insurance policy required under this Development Agreement, nor the minimum limits specified herein with respect to a Party's insurance coverage, shall be deemed to limit or restrict in any way a Party's liability arising under or out of this Development Agreement. Notwithstanding the foregoing, the failure of a

Party to obtain or maintain any insurance policy required hereunder shall be a defense for the other Parties to any claim asserted by the Party against either of the other Parties by reason of any loss sustained by the Party that would have been covered by any such required policy.

I. at all times prior to the Project Completion Date, use its reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Project, claim for damages relating to the design and/or construction of the Project, and material damage to or destruction of the Project (and the estimated cost of repair thereof), and prepare and file any and all reports required by any insurance carriers in connection therewith and provide copies thereof to the COUNTY and the CITY;

J. provided that (x) the COUNTY is obligated to make and has authorized disbursements for amounts due and payable as costs and expenses of the Project from the Project Disbursement Fund, (y) the disbursement procedures are reasonably acceptable to FOUNDATION, and (z) the COUNTY acknowledges the requisition requests, FOUNDATION shall cause such disbursements to be made regularly and punctually to the Contractor and the Persons pursuant to the requisition procedure established for the Project Disbursement Fund;

K. maintain at its regular business office separate, true and complete books, records, accounts, journals and files regarding the design and construction of the Project, containing Contracts, agreements, all design documents (including, without limitation, the Construction Documents), shop drawings, change orders, applications for payment, Permits, rental agreements and records, insurance policies, non-proprietary correspondence directly related to the Project, receipts, bills, vouchers and any audits obtained by FOUNDATION;

L. at all times prior to the Project Completion Date, take such action as may be necessary to comply with any and all Applicable Laws, to the extent that such Applicable Laws are susceptible of being complied with by FOUNDATION or Persons under its control;

M. promptly furnish to the COUNTY, upon receipt by FOUNDATION, copies of all legal notices received by FOUNDATION affecting the Project, including, without limitation, notices from Governmental Authorities and all notices from any Party claiming any default in any financing or payment obligation, and any other notice not of a routine nature;

N. promptly notify the COUNTY and the CITY of any suit, proceeding or action that is initiated or threatened in connection with the Project or against FOUNDATION or the COUNTY in connection with the Project that could result in (i) a lien against the Project, (ii) a

material delay or increase in cost of construction of the Project or (iii) a claim against the CITY or the COUNTY;

O. provide the COUNTY, as soon as reasonably practicable but in no event later than sixty (60) days after the Project Completion Date, with an original and one (1) sepia print of as-built drawings substantially reflecting and depicting the Project as constructed and indicating the changes in and deviations from the Construction Documents and an electronic version thereof as such version exists following the Project Completion Date. The as-built drawings will be an assembled set prepared by the various Contractors, suitable for use by the COUNTY;

P. cooperate with the COUNTY in causing specified goals for including local, small, and minority-owned business participation in connection with the construction of the Project, as required by Section 6.06B below;

Q. cooperate with the COUNTY so that the County Representative will be kept apprised of the progress of the design and construction of the Project at regular scheduled meetings occurring as reasonably determined by FOUNDATION and the COUNTY; and permit the County Representative to attend for informational purposes the regularly scheduled Project status meetings of FOUNDATION, Project Architect and Contractor(s);

R. advise the County Representative and the City Representative with respect to any Environmental Conditions known to FOUNDATION and all requirements imposed by, and negotiations with, any Governmental Authority concerning any such Environmental Condition.

In lieu of performing such obligations itself in this Section 3.03, FOUNDATION may cause one or more of such obligations to be performed by another Person, but which in no event shall relieve FOUNDATION of such obligations.

Section 3.04 Affiliate Contracts.

FOUNDATION shall have the right to enter into contracts or transact business with qualified (either themselves or through their agents, contractors and/or consultants) Affiliates of FOUNDATION, provided such activities are on terms and conditions no less favorable than would be available on an arms-length basis with independent third parties. Upon entering into a contract or series of contracts with an aggregated value in excess of \$250,000 with an Affiliate of FOUNDATION, then FOUNDATION shall promptly provide the COUNTY notice of such contract.

ARTICLE 4. DESIGN OF THE PROJECT

Section 4.01 Project Architect.

FOUNDATION shall select the Project Architect using a process substantially similar to the following: FOUNDATION shall hire an expert in the field of architecture, such as a dean or former dean of a recognized school of architecture (the "Architectural Consultant") to assist FOUNDATION in developing a list of qualified architects or architectural firms; FOUNDATION will invite each of the identified architects or architectural firms to submit proposals to FOUNDATION; FOUNDATION will narrow the list of qualified architectural firms to a list of three (3) or more qualified architects, and then interview those potential architects or architectural firms and review their submitted proposals; FOUNDATION will then select the Project Architect from the architects that are interviewed; and FOUNDATION shall negotiate and execute the contract between FOUNDATION and the Project Architect. FOUNDATION will continue consultation with the Architectural Consultant throughout this selection process. Any replacement of the Project Architect shall be selected by FOUNDATION and shall be an architect who is qualified and experienced in the design of facilities that are similar in nature and size as the Project. FOUNDATION shall provide a copy of such contract and all amendments thereto to the COUNTY.

Section 4.02 Development.

A. Within the times set forth in the Schedule, FOUNDATION shall cause the Project Architect to prepare and deliver to the COUNTY for its review and approval, which shall not be unreasonably withheld, delayed or conditioned, the Conceptual Design Documents and the Design Drawings (collectively described herein as the "Plans and Specifications"). The COUNTY'S review and approval of the Plans and Specifications shall be limited to confirming the conformity and compliance of the Plans and Specifications with the Quality Standard. The COUNTY may not disapprove the Plans and Specifications if the Plans and Specifications substantially conform to and comply with the Quality Standard. In the event that the COUNTY disapproves the Plans and Specifications, as permitted hereby, it shall specifically state in its notice of disapproval the reason for its disapproval. FOUNDATION shall cause the Project Architect to deliver to the COUNTY copies of the individual draft Plans and Specifications

documents/drawings, as they are in the reasonable determination of FOUNDATION, materially completed by the Project Architect. The Plans and Specifications approved pursuant to this Section may not be materially changed or altered without prior notice to COUNTY and the approval of the County Representative if such change would cause the Project to not conform or comply with the Quality Standard.

B. FOUNDATION shall cause the Project Architect to timely prepare and deliver the Construction Documents to the COUNTY. The Construction Documents shall be based upon the Plans and Specifications.

C. The COUNTY, by and through the County Representative, shall have the right to review and comment on the Construction Documents (or the applicable portion thereof) but only to the extent that (i) they deviate from the Plans and Specifications, (ii) the deviation is inconsistent with the Quality Standard, or (iii) the Construction Documents fail to provide for the Project to be constructed to satisfy the Quality Standard. FOUNDATION will use commercially reasonable efforts to address any such comments.

D. The County Representative, shall notify FOUNDATION in writing of any objections to the Plans and Specifications or comments on the Construction Documents within fifteen (15) Business Days after receipt of such complete and correct copies of such documents. In the event that the County Representative provides objections to all or some portion of the Plans and Specifications or comments on all or some portion of the Construction Documents, the County Representative's written response shall contain, in reasonable detail, the reasons therefor and shall be furnished to FOUNDATION within such fifteen (15) Business Day period. Further, in the event that the County Representative disapproves, objects or comments, as applicable, because of a failure to meet the Quality Standard, it shall meet on an expeditious basis with FOUNDATION to resolve any items of dispute to the reasonable satisfaction of the Parties. The County Representative's failure to provide such written response within the required time shall be deemed an approval on behalf of the COUNTY of such Plans and Specifications. To the extent that a portion of the Plans and Specifications have been deemed approved, such approval may not be withdrawn and FOUNDATION shall not be required to obtain re-approval of such portion deemed approved except to the extent that there is a subsequent change or clarification that materially and adversely impacts the Project's compliance with the Quality Standard. Any resubmission by FOUNDATION of any proposed Plans and Specifications (or applicable portion

thereof) that was disapproved or objected to by the COUNTY shall be approved or disapproved by the COUNTY, within five (5) Business Days after receipt of a complete resubmission which shall be approved or objected to in the same manner as an original submission under Section 4.02A.

E. During the design process, FOUNDATION shall establish, and update as necessary, the Schedule setting forth the dates for delivery of the various design documents.

F. FOUNDATION shall retain control of the Project design process and all aspects of the design and specifications of the Project other than the right of the County Representative to review and approve the Plans and Specifications for compliance with and conformity to the Quality Standard, as set forth in Section 4.02A.

Section 4.03 Design Standards.

Notwithstanding anything herein to the contrary, the Construction Documents shall reasonably comply with the requirements of the Plans and Specifications.

Section 4.04 Use of Plans.

Without the prior written consent of FOUNDATION, the COUNTY shall not use the construction documents, plans, specifications, drawings, models, samples and the like produced or developed in connection with the design and construction of the Project for any commercial purpose other than as contemplated by this Development Agreement.

Section 4.05 Review, Approvals and Objections.

A. Review, Approvals or Consent Rights. The provisions of this Section 4.05 shall be applicable with respect to all instances in which it is provided under this Development Agreement that the COUNTY, or FOUNDATION exercises Review and Approval or Consent Rights; provided, however, that if the provisions of this Section 4.05 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Development Agreement providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Development Agreement shall control. As used herein, the term “**Review and Approval or Consent Rights**” shall include, without limiting the generality of that term, all instances in which one Party (the “**Submitting Party**”) is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the

Submitting Party and with respect to which the other Party or its representative (the “**Reviewing Party**”) has a right or duty hereunder to review, comment, consent, approve, disapprove, object, dispute or challenge the submission or determination of the Submitting Party. Unless this Development Agreement specifically provides that the Review and Approval or Consent Rights may be exercised in the sole or absolute discretion (or a similar standard) of the Reviewing Party, in connection with exercising its Review and Approval or Consent Rights under any provision of this Development Agreement and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a commercially reasonable manner with regard to each and all of such Review and Approval or Consent Rights and to not unreasonably withhold, condition or delay its approval of or consent to any submission.

B. Standard for Review. The Submitting Party shall use reasonable efforts to cause any matter submitted to the Reviewing Party by the Submitting Party and with respect to which the Reviewing Party has Review and Approval or Consent Rights under this Development Agreement to be submitted under cover of a request which (i) contains the heading or caption “TIME SENSITIVE REQUEST FOR REVIEW/APPROVAL OR CONSENT” (or similar phrase), (ii) states the date of submission to the Reviewing Party by the Submitting Party (which date shall be presumed to be the Business Day following the date of dispatch by the Submitting Party if properly addressed and sent by same day messenger service or by Federal Express or other reliable overnight courier service for delivery on the morning of the next Business Day), (iii) states the date by which a response is required under the terms of this Development Agreement, (iv) identifies the provision of this Development Agreement pursuant to which such Review and Approval or Consent is sought, and (v) identifies (by document or drawing title, identifying number and revision date, or other clear description) all enclosures to such request with respect to which Review and Approval or consent is then being sought. The Reviewing Party shall review the same and shall promptly (but in any event within any applicable time period specified in this Development Agreement) give the Submitting Party notice of the Reviewing Party’s comments resulting from such review and, if the matter is one that requires approval or consent pursuant to the terms of this Development Agreement, such approval, consent or disapproval, setting forth in detail the Reviewing Party’s reasons for any disapproval.

All submissions to the COUNTY shall be delivered to the County Visitors Tax Project Office unless otherwise directed in writing to FOUNDATION by the County Representative.

C. Deemed Approval or Consent. If no response from the Reviewing Party is delivered to the Submitting Party within fifteen (15) Business Days after the complete submission of a particular matter (unless such longer period is approved by the Submitting Party, such approval to not unreasonably be withheld) and to which this Section 4.05 applies, such matters shall be deemed approved or consented to, as applicable, by the Reviewing Party; provided, however, that any matter with respect to which a period for approval, consent, disapproval, dispute or challenge of less than fifteen (15) Business Days upon the submission thereof is provided for in this Development Agreement shall be deemed to have been approved by the Reviewing Party pursuant to this Section 4.05 if the Reviewing Party shall have failed to respond to the Submitting Party with respect to such matter within the shorter period for review and response provided elsewhere in this Development Agreement.

D. Disputes. The COUNTY and FOUNDATION agree to attempt in good faith to resolve expeditiously any disputes concerning the approval of or consent to any matter submitted to either Party for approval or consent hereunder.

E. Duties, Obligations and Responsibilities Not Affected. Approval or consent by the Reviewing Party of or to a matter submitted to such Party shall neither, unless specifically otherwise provided, (i) relieve the Submitting Party of its duties, obligations or responsibilities under this Development Agreement with respect to the matter so submitted, nor (ii) shift the duties, obligations or responsibilities of the Submitting Party with respect to the submitted matter to the Reviewing Party.

F. No Implied Approval or Consent. Whenever used in this Development Agreement, “approval”, “approve”, “approved”, “consent” or “consented” means with respect to any item or matter for which the approval or consent of the COUNTY or FOUNDATION is required under the terms of this Development Agreement, then the specific approval of or consent to such item or matter by the COUNTY or FOUNDATION shall be required, and shall not include any implied or imputed approval or consent except as permitted pursuant to Section 4.05C.

G. Prior Submissions. The Parties hereby acknowledge that the communications or submissions by and among the Parties prior to the execution of this Development Agreement

shall not constitute a submission of the Plans and Specifications by FOUNDATION nor constitute approval of the Plans and Specifications by the COUNTY or any other matter requiring the approval of the COUNTY pursuant to this Development Agreement.

ARTICLE 5. CONSTRUCTION OF THE PROJECT

Section 5.01 General Contractor.

The General Contractor, and any replacement thereof, shall be selected by FOUNDATION and shall be qualified and experienced in the construction of facilities that are similar in nature and size as the Project. FOUNDATION shall select the General Contractor using a process substantially similar to the following: FOUNDATION shall hire an expert in the field of construction management (the "**Project Manager**") that is experienced in the selection and management of a general contractor for construction of facilities that are similar in nature and size as the Project; FOUNDATION shall consult with the Project Manager to generate a list of qualified general contractors, and will then work with the Project Manager to narrow the list of qualified general contractors to three (3) or more qualified general contractors; FOUNDATION will invite each of these general contractors to submit proposals to FOUNDATION, interview those potential General Contractors and review their submitted proposals; and FOUNDATION will then select the General Contractor from the general contractors so interviewed. FOUNDATION will continue to consult with Project Manager throughout this selection process. FOUNDATION shall negotiate and execute the contract between FOUNDATION and the General Contractor. Any replacement of the General Contractor shall be selected by FOUNDATION and shall be a contractor who is qualified and experienced in the construction of facilities that are similar in nature and size as the Project. FOUNDATION shall provide a copy of such contract and all amendments thereto to the COUNTY.

FOUNDATION shall cause the General Contractor to diligently pursue and prosecute to Final Completion, in accordance with the Schedule and the Construction Documents, the construction of the Project and shall, subject to Force Majeure Events and adjustments permitted by the terms of this Development Agreement (but not resulting from change orders), cause Substantial Completion to occur on or before the Scheduled Completion Date. Subject to Article 18 and Article 14 hereof, in the event of a Casualty, the obligations of FOUNDATION as

set forth in the preceding sentence shall apply regardless of the amount of insurance proceeds, provided, however that the design of the Project may be modified to take into account the insurance proceeds that are available. FOUNDATION shall negotiate and execute the Construction Contract between FOUNDATION and the General Contractor, which form of contract shall be in the form FOUNDATION deems appropriate, in its sole and absolute discretion, but shall in any event conform to the construction contract provisions in Exhibit "I". FOUNDATION shall provide a copy of such Construction Contract and all amendments thereto to the COUNTY and CITY. FOUNDATION shall or shall cause the General Contractor to prepare, negotiate and enter into bid packages or agreements or otherwise retain the services of the Contractors and such other contractor(s) and/or subcontractor(s) as are necessary or desirable to perform the Work, as FOUNDATION or the General Contractor shall determine. Upon the execution of such Contracts and agreements, FOUNDATION shall provide copies thereof to the County Representative. Except as otherwise provided herein, amounts owing under Contracts and other such agreements, including costs, fees and expenses of Contractors and other contractor(s) and/or sub contractor(s) retained by FOUNDATION or the General Contractor on behalf of FOUNDATION in connection with the construction of the Project, shall be the responsibility of FOUNDATION and not of the COUNTY. FOUNDATION shall require that the Contractors and others performing the Work obtain the Permits and any bonds and insurance required by this Development Agreement and the Contracts to be obtained by them and shall provide the COUNTY and CITY with copies of such Permits and bonds and of the certificates evidencing such insurance coverage.

Section 5.02 Capital Budget.

FOUNDATION will submit the Capital Budget, which will be based upon the Plans and Specifications and shall not exceed the Maximum Costs, to the COUNTY for its review and approval, which may not be unreasonably withheld, conditioned or delayed. The costs of any extended maintenance contracts extending beyond the commercially reasonable warranty period for such item shall not be included in the Capital Budget without the approval of the COUNTY (for example, if the commercially reasonable warranty period for the roof is twenty (20) years and FOUNDATION pays a premium to extend the warranty to thirty (30) years, such premium shall not be included in the Capital Budget).

Section 5.03 Cost Savings.

In the event that the final cost of developing and constructing the Project is less than One Hundred Million Dollars (\$100,000,000), such difference shall reduce the County Contribution.

Section 5.04 Supervision of Construction.

FOUNDATION shall construct or cause the construction of the Performing Arts Center in accordance with the Development Plan, Capital Budget, Final Plans and Construction Contract. The Construction Contract shall require the contractor to provide a written guarantee of the construction of the Performing Arts Center, in form and content acceptable to FOUNDATION. FOUNDATION shall cause the General Contractor to supervise and coordinate the construction of the Project so that the Project is constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Development Agreement and the Construction Documents. Except for the County Contribution, FOUNDATION shall be responsible for the payment of all costs and expenses incurred in connection with the construction of the Project. FOUNDATION shall use commercially reasonable efforts to enforce substantial compliance with the terms of the agreements with the Project Architect, General Contractor, Contractors and other contractors, subcontractors and/or design professionals and require their performance substantially in accordance therewith. FOUNDATION shall administer the contracts for the design and construction of the Project and use commercially reasonable efforts to require that work be continuously and diligently performed to achieve Substantial Completion on or before the Scheduled Completion Date, subject to Force Majeure Events. Without limiting the foregoing, FOUNDATION shall or shall cause the General Contractor to:

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

B. negotiate or prepare bid packages for any portion of the Work necessary for the award of Contracts and other agreements as set forth herein, coordinate selections and procedures therefor, maintain harmonious labor relations, and encourage local and minority owned companies;

C. review all applications for payment and supporting documentation prepared by Contractors and others performing work or furnishing materials for the Project and provide FOUNDATION with evidence of such payments;

D. negotiate final payments and/or final settlements without additional cost to the COUNTY in excess of the County Contribution with all parties involved in the construction of the Project. FOUNDATION shall commence, defend and settle without additional cost to the COUNTY in excess of the County Contribution such legal actions and proceedings concerning the design and construction of the Project as are necessary or required in the opinion of FOUNDATION and retain counsel in connection therewith;

E. cause any known defects in the construction of the Project or in the installation or operation of any equipment or fixtures therein to be corrected during construction and applicable warranty periods;

F. hold regular job meetings with all job-site personnel, including contractors and subcontractors and the Project Architect, as appropriate and necessary, during the construction of the Project to review the progress of development of the Project and completion of the Project;

G. advise the COUNTY of any delays or anticipated delays in meeting the Schedule and of the actual dates on which the various stages and construction indicated on the Schedule are started and completed;

H. if construction of the Project does not progress in accordance with the dates required by the Schedule, as it may be adjusted pursuant to the terms of this Development Agreement, or if it is unlikely that such dates will be met based on the then progress of the Work, FOUNDATION may, but is not required to, cause an acceleration of the Work by all available means including utilization of overtime, additional work crews and alternate material suppliers;

I. supervise and coordinate the completion of "punch list" items and warranty work following Substantial Completion.

Section 5.05 Correction of Work.

If during construction, FOUNDATION reasonably determines or otherwise becomes aware that construction is not proceeding in accordance with the Construction Documents as they may be modified as permitted under this Development Agreement, FOUNDATION shall cause any such nonconforming work to be re-executed by the party responsible therefor at no expense to the COUNTY, without adjustment to the Project Budget or Schedule. If, however,

FOUNDATION determines it to be inexpedient to require the correction of such Work, an equitable deduction under the applicable Contract or other remedy acceptable to FOUNDATION may be pursued, provided, however, that any such action shall not result in any material deviation from the Quality Standard. To the extent the Project Architect determines the same to be reasonably necessary, consistent with sound construction and practices, FOUNDATION will engage the services of independent testing agencies to verify construction compliance with the contract specifications and drawings and to monitor the General Contractor's quality control program.

Section 5.06 FOUNDATION'S Right to Make Changes.

FOUNDATION shall have the right to issue or make changes to the Project, provided that any such changes conform to the Quality Standard, FOUNDATION shall submit to COUNTY a copy of the Plans and Specifications for any material changes in order for COUNTY to approve the conformity of such changes with the Quality Standard, as provided in Section 4.02.

Section 5.07 Construction Change Order Procedure.

A. FOUNDATION may, at any time and from time to time, upon its own initiative, cause changes in the Project within the general scope of the construction required by this Development Agreement, provided that they conform to the Quality Standard. Such changes may include, but are not limited to, changes in the Construction Documents. FOUNDATION shall provide the County Representative with written notice of and a copy of the change order prior to its execution by FOUNDATION in order for COUNTY to confirm its conformity to the Quality Standard.

B. The costs of any such changes shall either (i) be paid for by FOUNDATION, or (ii) not result in any increase to the Capital Budget.

Section 5.08 Sales Tax.

The purchase of materials for the construction of the Project shall be structured, to the maximum extent permitted by law, to be exempt from all state and local sales and use taxes pursuant to Chapter 334, the Texas Tax Code, and other Applicable Law. COUNTY agrees to cooperate with FOUNDATION as may be reasonably necessary to accomplish this result.

Section 5.09 Mechanic's Liens and Claims.

In order to protect against any liens being filed against the Project, FOUNDATION shall require the General Contractor to provide the Payment Bond and Performance Bond. Notwithstanding the forgoing, if any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") shall be filed against the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by or on behalf of FOUNDATION, or any of its agents or contractors, FOUNDATION shall, at its sole cost and expense, cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure thereof against the Project by injunction, payment, deposit, bond, order of court or otherwise.

Section 5.10 Infrastructure Development.

All development fees for the Project required by the City Code or under other agreements between FOUNDATION and CITY and/or San Antonio Water System related to the Project shall be included as part of the Capital Budget and paid out of the Project Disbursement Fund.

Section 5.11 Permits.

CITY and COUNTY, as applicable, shall cooperate, in its usual and customary manner, with FOUNDATION and its contractors in connection with any required platting or replatting of the Auditorium Tract or the SAFD Tract, street closures, the issuance of all building permit applications, plans of development, easements, requests for certificates of occupancy, and such other documents as may be reasonably required by FOUNDATION to obtain building permits, licenses, approvals, certificates and other permits and authorization as may be necessary for the development, construction and operation of the Campus. At FOUNDATION'S request, CITY shall designate and assign a qualified representative to work on a part-time basis with FOUNDATION to facilitate the processing of all such applications, plans, easements, permits and documents.

Section 5.12 Capital Repair Fund.

Upon Substantial Completion of the Campus, or at such earlier date as it may desire, FOUNDATION shall establish the Capital Repair Fund and deposit into such Capital Repair Fund all net Revenues remaining after payment of all usual and customary operating expenses of the Campus and after funding any contingency reserve funds that FOUNDATION determines to be reasonable. The Capital Repair Fund will be a funding source for the maintenance, repair,

refurbishment and replacement of the Campus, including (without limitation) all furniture, fixtures and equipment used in connection with the operation of the Campus. FOUNDATION shall maintain complete books and records reflecting the sources and uses of the Capital Repair Fund, including (but not limited to) the manner in which FOUNDATION has allocated Revenues to the Capital Repair Fund. CITY and COUNTY (acting individually or in concert), or its or their designated representative(s), shall have the right to examine, inspect and audit such records as necessary to determine FOUNDATION'S compliance with the requirements hereof in the same manner and upon the same terms as CITY and COUNTY may examine, inspect and audit the Reserve Fund pursuant to Section 7.02D of this Development Agreement.

ARTICLE 6. THE PROJECT DISBURSEMENT FUND/MODIFICATIONS TO THE PROJECT BUDGET

Section 6.01 The Project Disbursement Fund.

The COUNTY and FOUNDATION shall establish a Project Disbursement Fund with the Disbursing Agent as a fund separate and apart from any other funds of the COUNTY and FOUNDATION. Unless expressly provided otherwise in this Development Agreement, the County Contribution and the Foundation Contribution shall be deposited into the Project Disbursement Fund, from time to time, and in the amounts and in advance of the time necessary to pay their respective portion of the costs of the Project.

Section 6.02 Disbursements from the Project Disbursement Fund.

The money on deposit in the Project Disbursement Fund shall be deposited into and disbursed by the Disbursing Agent to FOUNDATION (or on its behalf) to pay the costs of the Project upon receipt of a properly completed Payment/Reimbursement Request submitted by FOUNDATION, all pursuant to the procedures outlined in this Development Agreement. Reimbursements or payments for the Development Costs shall be made no sooner than as provided in Section 8.01 hereof, and only if the conditions thereto set forth in this Development Agreement have been satisfied, and shall be disbursed only for the cost of construction work in place, disbursements for stored materials, if any, retainages, and any other costs, expenses and fees paid or payable by FOUNDATION for costs reflected in the Capital Budget or otherwise permitted under this Development Agreement.

Section 6.03 Modifications to the Capital Budget.

FOUNDATION shall have the right, from time to time, subject to the provision of Section 4.02 of this Development Agreement which provides that any material deviation from the Plans and Specifications requires COUNTY'S review and approval for compliance with and conformity to the Quality Standard, to reallocate budgeted amounts from one category to any other category of the Capital Budget. Nothing in this Section 6.03 shall alter the obligation of FOUNDATION to meet the Quality Standard for construction of the Project.

Section 6.04 Development Fees.

FOUNDATION shall pay CITY all application, review and filing fees applicable to the Project and all other fees assessed with respect to the Project at the times and in the amounts set forth in the City Code.

Section 6.05 Effect of Approvals.

CITY'S approval of the Master Plan or other approvals referenced in or required under the terms of this Development Agreement are limited to the purposes of this Development Agreement and do not reflect any commitment, approval, representation, warranty or obligation with respect to the sufficiency, accuracy, completeness or integrity of any matters so approved by CITY, all of which are expressly disclaimed by CITY. Each approval required of CITY under the terms of this Development Agreement is in addition to the usual and customary approvals required for construction or development under City Code.

Section 6.06 Non-Discrimination.

With respect to the development, design, construction and operation of the Campus:

A. Non-Discrimination. Neither FOUNDATION nor any person or entity engaged by FOUNDATION as a contractor, consultant or supplier shall discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability.

B. Adherence to SMWBE Policy. FOUNDATION shall use commercially reasonable efforts to comply with Administrative Policy No. 8, Small, Minority, and Women-Owned Business Enterprise (SMWBE) Program for the Procurement of all County Offices, Departments, Funded Entities and Facilities in the areas of Commodities, Equipment,

Professional Services, Maintenance and Construction, adopted by Bexar County August 24, 2004, as described in Exhibit "H", in the awarding of contracts, subcontracts and other opportunities in the design, construction and operation of the Campus.

ARTICLE 7. FINANCING OF THE PROJECT

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

Section 7.01 Determination of Foundation and County Contribution.

A. Notwithstanding the contents of the Capital Budget or any other provision of this Development Agreement, the Foundation Contribution and County Contribution will be determined as follows:

(1) Until June 30, 2009, COUNTY will deposit in the Project Disbursement fund and the Disbursing Agent shall pay to FOUNDATION (or on its behalf) from the Project Disbursement Fund amounts equal to one hundred percent (100%) of the Preconstruction Costs incurred by FOUNDATION before such date.

(2) Subject to Subsection (3) below, beginning June 30, 2009, FOUNDATION shall deposit in the Project Disbursement Fund an amount sufficient to pay all Preconstruction Costs without contribution by COUNTY until FOUNDATION has funded an amount equal to eighteen percent (18%) of the cumulative Preconstruction Costs funded by FOUNDATION and COUNTY prior to June 30, 2009, including those costs funded by FOUNDATION prior to the Effective Date, and thereafter, COUNTY will deposit in the Project Disbursement Fund eighty-two percent (82%) of the Preconstruction Costs and FOUNDATION will deposit into the Project Disbursement Fund an amount sufficient to fund the remaining eighteen percent (18%) of the Preconstruction Costs. All amounts so deposited into the Project Disbursement Fund shall be paid by the Disbursing Agent as provided in Section 8.01D of this Development Agreement in payment of Preconstruction Costs.

(3) Upon approval of the Capital Budget, the funding percentages of COUNTY and FOUNDATION will be adjusted as follows:

(a) If the Capital Budget is less than or equal to \$100,000,000, COUNTY will fund 100% of the Capital Budget;

(b) If the Capital Budget is greater than \$100,000,000, COUNTY will fund out of the Project Disbursement Fund a percentage of each approved Payment/Reimbursement Request equal to \$100,000,000 divided by the total Capital Budget and FOUNDATION shall fund out of the Project Disbursement Fund the balance; and

B. At such time as the Final Funding Percentage required to be funded by FOUNDATION and COUNTY has been determined, if either FOUNDATION or COUNTY previously shall have paid less or more than its Final Funding Percentage of the Preconstruction Costs, the Final Funding Percentages of the Parties will be adjusted until the required Final Funding Percentage of the Preconstruction Costs is achieved for each such Party.

Section 7.02 Foundation Contribution.

A. Amount. Subject to Section 7.02F below, FOUNDATION shall fully fund to the Project Disbursement Fund the Foundation Contribution and the Cost Overruns, if any, when and in the amounts needed to fund the Foundation Contribution under the Capital Budget. From and after the Effective Date, FOUNDATION shall provide to CITY and COUNTY periodic reports (not less often than semi-annually) reflecting the status of FOUNDATION'S fund-raising.

B. Reserve Fund Deposit. Not later than the Construction Commencement Date, FOUNDATION shall create the Reserve Fund and shall contribute to the Reserve Fund:

(1) If the total Capital Budget is equal to or less than \$100,000,000, \$20,000,000; or

(2) If the total Capital Budget exceeds \$100,000,000, but is less than \$120,000,000, the greater of (i) \$10,000,000, or (ii) the difference between \$120,000,000 and the amount of the Capital Budget; or

(3) If the total Capital Budget equals or exceeds \$120,000,000, \$10,000,000.

C. Uses of the Reserve Fund. The Reserve Fund may be utilized by FOUNDATION solely for:

(1) Expense shortfalls due to Cost Overruns provided that expenditures for Cost Overruns shall not cause the balance of the Reserve Fund to be less than \$10,000,000;

(2) To provide funding for the expenses of operating and maintaining the Campus to the extent that Revenues are insufficient for such purpose; and

(3) To provide funding for repair and restoration of the Campus to the extent that Revenues and the Capital Repair Fund are insufficient for such purpose.

D. Reserve Fund Audit. FOUNDATION shall maintain complete books and records reflecting its use of the Reserve Fund. CITY and COUNTY (acting individually or in concert), and its or their authorized representative(s), may examine, inspect and audit such records as necessary to determine FOUNDATION'S compliance with the terms of this Development Agreement. Such examinations, inspections and audits shall be made during normal business hours at the offices of FOUNDATION, upon not less than three (3) business days' prior notice to all Parties. Any Party may copy all or part of such books and records and may retain such copies. The cost and expense of such examinations, inspections and audits will be the sole responsibility of the Party conducting the same; provided, however, if an audit reflects that FOUNDATION has expended more than three percent (3%) of the Reserve Fund in a manner not authorized by this Development Agreement, the reasonable cost and expense of the audit will be borne by FOUNDATION.

E. Financing Limitations. Notwithstanding anything to the contrary that may be set forth in this Development Agreement, any third party financing obtained by FOUNDATION to secure funding for the Foundation Contribution or Cost Overruns, if any, shall not be secured by the Auditorium Tract, the SAFD Tract, the Performing Arts Center, the County Contribution, the City Contribution and any guarantee, obligation or agreement of CITY or COUNTY. FOUNDATION covenants and agrees not to permit the encumbrance, whether voluntary or involuntary, of the Auditorium Tract, the SAFD Tract, the Performing Arts Center, the County Contribution or the City Contribution, or any part thereof or interest therein, for any purpose whatsoever. Notwithstanding the forgoing, the Parties agree that, as a condition to making a loan to FOUNDATION, as permitted hereby, any third-party lender may require reasonable assurances from the COUNTY and the CITY with respect to their satisfaction of their respective funding obligations under this Development Agreement and the COUNTY and CITY agree to provide, to the extent permitted under Applicable Law, such reasonable assurances as may be so requested provided that the same does not increase their respective obligations or liabilities under this Development Agreement.

F. Cost Contingency. Notwithstanding anything contained herein to the contrary, if prior to the Construction Commencement Date and after completion of the Construction Documents and bidding of the Construction Contract, either (i) it is determined that the Capital Budget for the Auditorium Tract exceeds, or is likely to exceed, \$122,000,000.00, or (ii)

COUNTY and FOUNDATION are unable to agree on a Capital Budget for the Auditorium Tract consistent with the Quality Standard that does not exceed \$122,000,000.00, and in either event FOUNDATION, after exercising good faith and reasonable efforts, determines that it is unable to pay the costs in excess of \$122,000,000.00, FOUNDATION may terminate this Agreement by written notice to CITY and COUNTY and conveyance and delivery to the COUNTY of any studies, drawings or test results which were paid for as Preconstruction Costs, the Plans and Specifications, the Construction Documents, and all other assignable contracts which could assist the COUNTY in constructing or causing the construction of the Campus; whereupon FOUNDATION shall have no further obligation to fund additional sums pursuant to this Development Agreement and the CITY or the COUNTY may file in the Public Records a Preconstruction Termination Notice in the same manner set forth in Section 2.03C(2) above or upon a written request from the CITY to FOUNDATION within 60 days of receipt of such notice from FOUNDATION, FOUNDATION shall convey the Auditorium Tract and SAFD Tract and the balance of the Reserve Fund, if any, to a nonprofit organization identified by COUNTY and approved by CITY, which nonprofit organization shall assume the rights and obligations of the FOUNDATION under this Agreement in all respects, provided that the COUNTY may, at any time thereafter, modify the Quality Standard and Plans and Specifications as COUNTY deems appropriate to enable the Performing Arts Center to be constructed for the County Contribution. Consistent with Section 7.04 below, under no circumstances shall CITY be obligated to build the Performing Arts Center, to construct the Performing Arts Center, or pay any sums to construct or operate the Performing Arts Center other than as provided in Section 7.04 below.

Section 7.03 County Contribution.

The COUNTY will obtain and secure up to One Hundred Million Dollars (\$100,000,000) for its portion of the Capital Budget, to be paid to the Project Disbursement Fund when and in the amounts needed to fund the County Contribution, but not upon a schedule faster than provided below, which may be funded from a combination of net proceeds of tax-exempt bonds and taxable bonds (collectively, the "**Bonds**"), plus any earnings thereon or from a hotel occupancy tax not to exceed one and three-fourths percent (1.75%), a short term vehicle rental tax not to exceed five percent (5.00%), or from any other legally available funds of the COUNTY which the COUNTY decides to use. The Bonds shall have terms and provisions as

determined by the COUNTY in its sole discretion. The Bonds will have an initial maturity date no longer than thirty (30) years after the Project Completion Date and will be in such amounts and be re-paid as determined by the COUNTY. The County Contribution will be dependent upon (i) no material adverse change in the COUNTY'S bonding capacity, (ii) the COUNTY'S ability to sell the anticipated \$415,000,000 of Bonds funded from the Visitors' Tax upon terms reasonably acceptable to the COUNTY, and (iii) except for those funds to be paid by the COUNTY prior to June 30, 2009, FOUNDATION having received Pledges sufficient to fund the Foundation Contribution in accordance with Section 2.03C(2) and having made the Reserve Fund deposit in accordance with Section 7.02B hereof. Notwithstanding anything in this Development Agreement to the contrary, the County's Contribution will not exceed \$100,000,000 (exclusive of costs of issuance and financing costs not included in the Capital Budget). COUNTY shall cause the issuance of Bonds in such amount to provide total net proceeds of \$4,300,000 to FOUNDATION by September 30, 2008. Thereafter, COUNTY shall cause the issuance of Bonds providing total net proceeds of:

- (1) In calendar year 2009, \$5,500,000
- (2) In calendar year 2010, \$18,900,000;
- (3) In calendar year 2011, \$34,900,000;
- (4) In calendar year 2012, \$35,200,000; and
- (5) In calendar year 2013, \$1,200,000.

B. Funding Conditions. COUNTY'S agreement to provide the County Contribution or any part thereof (other than the funding to be provided by COUNTY for costs to be incurred pursuant to this Development Agreement prior to the Construction Commencement Date) is subject to the following conditions:

- (1) A Forensic Study has been received by COUNTY demonstrating to the COUNTY'S reasonable satisfaction that the existing improvements on the Auditorium Tract and SAFD Tract are sufficiently structurally sound for the Project;
- (2) The Capital Budget has been received and approved by COUNTY;
- (3) The Operating Budget has been received by COUNTY;
- (4) The Construction Contract has been received by COUNTY;
- (5) The Development Plan has been received by COUNTY;

(6) FOUNDATION has provided evidence reasonably acceptable to COUNTY of FOUNDATION'S ability to provide the Foundation Contribution; and

(7) No Automatic Termination Event has occurred and no Event of Default has occurred and is continuing at the time of any funding required to be provided by COUNTY pursuant to this Development Agreement.

Section 7.04 City Contribution.

Subject to CITY'S receipt of the Certificate of Commencement of Construction, and provided no Automatic Termination Event and no Event of Default has occurred and is continuing, CITY will contribute \$500,000 annually to the Reserve Fund, for a total contribution of \$2,500,000. The City Contribution will commence, payable in the five (5) annual installments, on or before December 31 of the first (1st) fiscal year of CITY following the date on which CITY delivers possessions of the Auditorium Tract to FOUNDATION. Subject only to its financial obligations under the Lease Agreement, CITY shall not be required to fund additional sums to construct or operate the Performing Arts Center.

ARTICLE 8. FUNDING THE PROJECT AND COUNTY RESPONSIBILITIES

Section 8.01 Development Costs.

A. The Development Costs shall be included in the Capital Budget.

B. Any payment by the COUNTY of the Development Costs (except for any costs incurred by the COUNTY in connection with the issuance of the Bonds) to any party (including reimbursements to the COUNTY for Development Costs) pursuant to a Payment/Reimbursement Request as provided herein, shall reduce the County Contribution of \$100,000,000 million on a dollar for dollar basis.

C. On the first day of the calendar month following the Effective Date, and the first of each succeeding calendar month during the Development Period, FOUNDATION will submit a Development Costs payment request ("Payment/Reimbursement Request"), including a Development Cost Payment/Reimbursement Request in the form of Exhibit "J" attached hereto, to Mike Sculley at the County Community Venues Project Office, 100 Dolorosa, Suite 101 San Antonio, Texas 78205 (the "County Community Venues Project Office") and to Tommy Tompkins, the County Auditor, 224 Dwyer Avenue, San Antonio, Texas 78204 (the "County

Auditor”) with a copy to all Parties and the Disbursing Agent. Any such submission may contain reference to information available for inspection by the COUNTY at the Foundation Office. The COUNTY will promptly review the Payment/Reimbursement Request, and if all or part of the Payment/Reimbursement Request is approved, the COUNTY shall forward the Payment/Reimbursement Request to the Disbursing Agent and all Parties, indicating its approval or the portion thereof that has been approved. If there is a rejection of all or part of the Payment/Reimbursement Request, the accepted portion of the payment or reimbursement request shall be processed as provided in this Development Agreement and the rejected portion will be returned to Disbursing Agent and all Parties within ten (10) Business Days from the date of submission by the County Community Venues Project Office and within thirty (30) days by the County Auditor, from the date of submission, respectively, with a reasonable and detailed explanation of the rejection; provided, however, it shall not be reasonable for the COUNTY to reject a submission based solely upon insufficient information if such information was specifically made available to the COUNTY for its review at the Foundation Office as permitted above. If a submission from FOUNDATION relies upon information located at the Foundation Office then the thirty (30) day period for accepting or rejecting the submission by the County Auditor as provided herein above shall not begin until such information is made available at the Foundation Office and the COUNTY is notified of such availability. The ten (10) day time period for accepting or rejecting the submission by the County Community Venues Project Office referred to above shall not apply to information located at the Foundation Office.

D. Upon approval of the Payment/Reimbursement Request or any portion thereof, the Disbursing Agent shall pay from the Project Disbursement Fund to the Contractors or, at the election of FOUNDATION (from time-to-time as it may direct), jointly to both the Contractor(s) and FOUNDATION (or on its behalf) the amounts approved in the Payment/Reimbursement Request.

E. As soon as practicable, but in no event beyond the thirty (30) day period provided by Chapter 2251, Government Code, the COUNTY will pay to the Project Disbursement Fund the COUNTY’S portion of the approved Payment/Reimbursement Request. Payment requests submitted for payment or reimbursement of Development Costs paid for or incurred by FOUNDATION, or the COUNTY (other than direct expenses relating to the Foundation Office or the County Community Venues Project Office) shall include (i) an unconditional waiver or

partial waiver as the case may be of liens for the general contractor and a conditional waiver of liens, with the only condition being payment of the amount requisitioned, for each subcontractor or other appropriate evidence of full payment indicating the party has fully paid for all items invoiced for which reimbursement is requested, and (ii) an invoice for services rendered for all items invoiced for which payment is requested. Accompanying each new requisition shall be unconditional waivers of lien or partial waivers as the case may be of all subcontractors paid from the prior requisition. No waiver of lien shall be required from parties who do not have the ability to place a lien on the Project, and because the Construction Contract is to be bonded, it is not anticipated that lien waivers will be required in most, if not all instances. The COUNTY shall process FOUNDATION'S payment or reimbursement requests up to the maximum amount of Development Costs included in the Capital Budget; provided, that the total aggregate amount reimbursed to FOUNDATION shall not exceed the COUNTY'S Final Funding Percentage of the payment or reimbursement requests which have been submitted for reimbursement and approved by the COUNTY.

F. If project venue funds collected pursuant to Chapter 334 to date are not adequate to fully reimburse the parties, any residual amounts owed will carry over to succeeding months (but will not accrue interest prior to the first requisition following the issuance of a new series of Bonds), the prorated amount to include current and residual amounts due. Any Development Costs outstanding at the time of issuance of a new series of Bonds will be paid from the Project Disbursement Fund within ten (10) Business Days of such issuance.

G. Any expenses incurred by the parties related to the May 10, 2008 referendum shall not constitute Development Costs or be included in the Capital Budget.

H. Notwithstanding the above, if the Parties' obligations hereunder are terminated, COUNTY shall be responsible for the payment of any unreimbursed Development Costs incurred as of the date of such termination, other than Development Costs previously paid by FOUNDATION and not yet reimbursed as provided herein, which unreimbursed sums previously paid by FOUNDATION shall remain the obligation of FOUNDATION.

Section 8.02 Additional Obligations of the COUNTY.

Without limiting the COUNTY'S obligations hereunder, and in addition to its obligations set forth elsewhere in this Development Agreement, the COUNTY, acting through the County Representative, shall:

A. promptly furnish to FOUNDATION and CITY, upon receipt by the COUNTY, copies of all legal notices received by the COUNTY affecting the Project, including, without limitation, notices from Governmental Authorities, notices from any party claiming any default in any financing or payment obligation, and any other notice not of a routine nature;

B. promptly notify FOUNDATION and CITY of any suit, proceeding or action that is initiated or threatened in connection with the Project or against FOUNDATION, CITY or the COUNTY in connection with the Project; and

C. cooperate with FOUNDATION in all aspects of the development and construction of the Project, and except as expressly authorized by this Development Agreement not unreasonably hinder, delay or interfere with the development and construction of the Project.

Section 8.03 Additional Costs Resulting From Changes In Applicable Law.

Any additional costs for the construction of the Project resulting from any change of whatsoever form in Applicable Law enacted by the COUNTY, which is specific to the Project or similar facilities, or designed to specifically affect the Project, shall be borne by the COUNTY. Any additional costs for the costs of construction of the Project resulting from a change in Applicable Law by any Governmental Authority other than the COUNTY shall constitute a Development Cost and be borne by the parties pursuant to this Development Agreement.

Section 8.04 Limitation of Funding Obligations.

Notwithstanding anything in this Development Agreement to the contrary,

A. Any and all amounts payable by COUNTY under this Development Agreement are payable solely from the net proceeds of the Bonds, the earnings thereon and the Visitor's Taxes, and no claim for payment of any amount of the County Contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of COUNTY.

B. Any and all amounts payable by CITY under this Development Agreement are payable solely from funds appropriated by the City Council for such purpose, if any, and no claim for payment of any amount of the City Contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of CITY.

C. Neither CITY nor COUNTY shall have any obligation to pay any portion of the Foundation Contribution or Cost Overruns, if any, except to the extent that such Cost Overruns are required to be paid by COUNTY, as provided in Section 8.03.

ARTICLE 9. CONVEYANCE AND LEASEBACK

Section 9.01 Conveyance of Auditorium Tract and SAFD Tract.

CITY will execute, acknowledge and deliver to FOUNDATION the Deed Without Warranty on the Conveyance Date, subject to the disclaimers, releases, conditional limitations and rights of reverter of title therein set forth.

A. CITY will have no obligation to provide to FOUNDATION a survey of the Auditorium Tract or SAFD Tract or any form of title assurance or insurance therefor or to incur any other cost or expense in connection with such conveyance; it being understood, however, that FOUNDATION has ordered a title commitment for an owner's title insurance policy from Presidio Title and a survey from Bury + Partners and that prior to, and as a condition to FOUNDATION'S, acceptance of the Deed Without Warranty, FOUNDATION shall receive an owner's policy of title insurance in an amount acceptable to FOUNDATION insuring FOUNDATION'S good and indefeasible title in and to the property described in the survey, subject only to the exceptions to title appearing in the title commitment. FOUNDATION shall provide written notice to CITY and COUNTY of FOUNDATION'S election not to accept the Deed Without Warranty.

B. The Deed Without Warranty will convey title upon conditional limitations, with provision for automatic reverter of title to CITY. Immediately upon an automatic reverter of title, CITY shall own and have the right to possess the Reserve Fund and Capital Repair Fund, and FOUNDATION shall deliver such funds to CITY and shall execute promptly any and all documents or instruments necessary or requested by CITY to evidence its ownership and right to possession of the Reserve Fund and Capital Repair Fund.

C. The Auditorium Tract includes a portion of a roadway commonly known as Auditorium Circle, as depicted on the survey prepared by Bury + Partners. FOUNDATION shall comply with all applicable requirements of City Code if it elects to seek closure of the portion of Auditorium Circle conveyed by CITY. CITY shall cooperate with FOUNDATION in its efforts to comply with such requirements.

D. Immediately following any termination of this Development Agreement that occurs following an Automatic Termination Event or an Event of Default, FOUNDATION shall execute instruments of conveyance to CITY, conveying the Auditorium Tract and SAFD Tract, free and clear of all liens and encumbrances that did not exist on the Conveyance Date, other

than utility easements, dedications and street vacations that may have occurred in connection with the platting of the Campus. Such obligation to convey shall be in addition to any reverter of title to CITY pursuant to the Deed Without Warranty resulting from such Automatic Termination Event or Event of Default. This obligation shall survive termination of this Development Agreement.

Section 9.02 Lease of Auditorium Tract and SAFD Tract.

On the Conveyance Date, following the delivery of the Deed Without Warranty to FOUNDATION, CITY, as tenant, shall lease the Auditorium Tract and SAFD Tract from FOUNDATION, as landlord, upon the terms and conditions set forth in the Lease Agreement.

Section 9.03 Expenses of Ownership.

Subject only to CITY'S obligations as tenant under the Lease Agreement, FOUNDATION shall assume the risks of all costs of ownership of the Auditorium Tract and the SAFD Tract. FOUNDATION shall own, fully equip, operate and maintain the Campus in a manner consistent with a first-class venue for the performing arts and shall have and perform all obligations as an owner, including (but not limited to) maintenance, repair and replacement of the foundation, structural components, infrastructure improvements and the operating systems (including replacements required by physical or functional obsolescence); payment of insurance premiums for insurance maintained at levels necessary to replace all improvements; payment of all utilities; and other duties associated with ownership of a first-class performing arts center.

Section 9.04 Taxes.

As publicly owned facilities, the Auditorium Tract and SAFD Tract are, on the Effective Date, exempt from assessment for ad valorem taxes. The Parties contemplate that the Auditorium Tract and SAFD Tract, following conveyance to FOUNDATION for development in accordance with this Development Agreement, will be exempt from payment of all ad valorem taxes and that costs of construction will be exempt from sales taxes. Notwithstanding the foregoing, FOUNDATION assumes the obligation for payment of all ad valorem taxes hereafter assessed against the Auditorium Tract and SAFD Tract, whether prior, during or following development. FOUNDATION and COUNTY shall work cooperatively to achieve and thereafter maintain tax exempt status for the Campus; it being understood and agreed, however, that if ad valorem taxes shall ever be assessed against the Auditorium Tract or the SAFD Tract for the

period prior to the Construction Commencement Date, the COUNTY and CITY agree to use all lawful means to rebate, refund or otherwise return to FOUNDATION the amount of any taxes so paid to them.

Section 9.05 Restrictions on Sale.

Except as provided in Section 9.01 hereof, FOUNDATION shall not, voluntarily or involuntarily, transfer, sell, encumber, or convey the Auditorium Tract or SAFD Tract or any portion thereof or interest therein, without the prior, written consent of CITY and COUNTY, and any attempted conveyance or encumbrance of any of such properties shall be void and of no legal effect; provided, however, that FOUNDATION will be permitted, without the prior consent of CITY and COUNTY, to (i) lease or license portions of the Auditorium Tract and the SAFD Tract when such lease or license is consistent with the Public Purpose and (ii) subject to obtaining any consents required under the San Antonio City Code, grant utility, drainage and access easements and similar rights and interests in and to the Auditorium Tract and the SAFD Tract to the extent necessary or desirable in connection with the development or use of the Performing Arts Center. This restriction shall survive the termination of this Development Agreement.

ARTICLE 10. NAMING RIGHTS

Recognizing that the right to license naming rights to facilities comprising the Campus will be an important incentive that FOUNDATION may employ to obtain Pledges and for other fund-raising efforts, FOUNDATION will have the sole and exclusive right, following the Conveyance Date, to grant license agreements for the naming rights to the Campus and each of its component parts, subject to the following limitations:

Section 10.01 SAFD Building.

FOUNDATION shall obtain CITY'S prior approval of any name to be used for the SAFD Building, which may not be unreasonably withheld, conditioned or delayed.

Section 10.02 Municipal Auditorium.

Subject only to the circumstances described in Section 10.03 below, FOUNDATION shall obtain CITY'S prior approval of the "flag name" of the facility now known as Municipal

Auditorium and of the terms of the license agreement granting the naming rights to such facility, which may not be unreasonably withheld, conditioned or delayed.

Section 10.03 Exception to Approval Requirement.

FOUNDATION will not be required to obtain CITY'S approval of any name to be used or the terms of a naming rights license agreement if:

A. such license agreement evidences a legally binding and enforceable obligation of a single licensee to fund an amount not less than ten percent (10%) of the total Capital Budget as consideration for naming rights;

B. such license agreement provides that, if such amount is not fully funded, the license agreement will terminate; and

C. the license agreement and the name(s) permitted thereunder comply with the Naming Parameters identified in Section 10.04.

Section 10.04 Naming Parameters.

Any license agreement granting naming rights for the Campus or the Performing Arts Center shall contain the following restrictions, limitations and conditions:

A. The licensed name shall:

(1) Include the name of a facilitator or benefactor of the Campus;

(2) Honor a person, place, institution, group, entity or event, whether now existing or that existed in the past;

(3) Recognize events or affairs of historic significance; or

(4) Embrace civic ideals or goals.

B. The licensed name shall not include a name or reference that:

(1) Is defamatory, libelous, obscene, vulgar or offensive to the general public;

(2) May violate the rights of any person, institution, group or entity;

(3) Identifies or is identified with distilled liquor or spirits, habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses or publications, pornography, massage parlors, erectile dysfunction, birth control or sexually transmitted diseases, firearms or firearm ammunition, tattoo parlors, pawn shops, check-cashing establishments, or any product or service which is prohibited by Applicable Law;

(4) Advocates or opposes any political candidate, issue, cause, or belief;

(5) Identifies or is identified with a person or organization that has been convicted of a criminal offense; or

(6) Advocates violence, criminal activity or immorality.

ARTICLE 11. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 11.01 By FOUNDATION.

FOUNDATION hereby makes the following representations, warranties and covenants to CITY and COUNTY as of the Effective Date:

A. Existence. FOUNDATION is a non-profit corporation duly incorporated and legally existing under the laws of the State of Texas, and is exempt from taxation under Section 501(c) (3) of the Code, as amended.

B. Authorization. FOUNDATION is duly and legally authorized to enter into this Development Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned representative is authorized to act on behalf of and bind FOUNDATION to the terms of this Development Agreement. FOUNDATION has provided to CITY and COUNTY, on or prior to the Effective Date, a certified copy of a resolution of its Board of Directors authorizing FOUNDATION'S execution of this Development Agreement through the undersigned representative, together with documents evidencing FOUNDATION'S good standing and authority to transact business in the State of Texas. FOUNDATION has all requisite power to perform all of its obligations under this Development Agreement. The execution of this Development Agreement by FOUNDATION does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.

C. Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Development Agreement, all documents executed by FOUNDATION pursuant hereto and all obligations of FOUNDATION hereunder and thereunder are enforceable against FOUNDATION in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

D. No Legal Bar. The execution and delivery of this Development Agreement and the performance of its obligations hereunder by FOUNDATION will not conflict with any provision of any Applicable Laws to which FOUNDATION is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which FOUNDATION is a party or by which it is bound or any order or decree applicable to FOUNDATION.

E. Litigation. There are no legal actions or proceedings pending or, to the knowledge of FOUNDATION, threatened against FOUNDATION which, if adversely determined, would materially and adversely affect the financial condition, business or prospects of FOUNDATION or its ability to fulfill its obligations under this Development Agreement.

F. Documents. All documents made available by FOUNDATION to CITY and/or CITY'S agents or representatives and/or to COUNTY and/or COUNTY'S agents or representatives prior to the Effective Date, including without limitation the Master Plan and all financial documents relating to FOUNDATION, are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.

G. Knowledge. FOUNDATION has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by FOUNDATION or any other Party under this Development Agreement are in any way inaccurate, incomplete or misleading.

Section 11.02 By COUNTY.

COUNTY hereby makes the following representations, warranties and covenants to and with CITY and FOUNDATION as of the Effective Date:

A. Existence. COUNTY has been duly created under the laws of the State of Texas.

B. Authorization. COUNTY is duly and legally authorized to enter into this Development Agreement and has complied with all Applicable Laws to which it may be subject, and the undersigned representative has been duly authorized to act on behalf of and bind COUNTY to the terms of this Development Agreement. COUNTY has provided to CITY and FOUNDATION, on or prior to COUNTY'S execution of this Development Agreement, a certified copy of a resolution of its governing body authorizing COUNTY'S execution of this Development Agreement through such representative. COUNTY has all requisite power to perform all of its obligations under this Development Agreement and the execution and

performance of this Development Agreement by COUNTY does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.

C. Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Development Agreement, each document executed by COUNTY pursuant hereto and all obligations of COUNTY hereunder and thereunder are enforceable against COUNTY in accordance with their terms.

D. Litigation. There are no pending legal actions or proceedings which, if adversely determined, would materially and adversely affect the ability of COUNTY to fulfill its obligations under this Development Agreement.

E. Knowledge. COUNTY has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by COUNTY or any other Party under this Development Agreement are in any way inaccurate, incomplete or misleading.

Section 11.03 By CITY.

CITY hereby makes the following representations and covenants to and with FOUNDATION and COUNTY as of the Effective Date unless another date is expressly stated to apply and subject to the disclaimer set forth in Section 11.04 hereof:

A. Existence. CITY is a municipal corporation and home rule city of the State of Texas principally situated in Bexar County.

B. Power and Authority. CITY has all requisite municipal corporate power and authority to enter into this Development Agreement and perform all of its obligations hereunder. The execution and performance by CITY of this Development Agreement has been duly authorized by the City Ordinance and, except for the additional approval of FOUNDATION and COUNTY, does not require the consent or approval of any other person which has not been obtained, including, without limitation, any Governmental Authority.

C. No Legal Bar. The execution and performance by CITY of this Development Agreement does not and will not violate any provisions of any contract, agreement, instrument or Governmental Rule to which CITY is a party or is subject.

D. Litigation. There are no pending legal actions or proceedings which, if adversely determined, would materially and adversely affect the ability of CITY to fulfill its obligations under this Development Agreement.

E. Enforceable Obligations. Assuming due authorization, execution and delivery by each Party hereto and thereto, this Development Agreement, each document executed by CITY pursuant hereto and all obligations of CITY hereunder and thereunder are enforceable against CITY in accordance with their terms.

Section 11.04 Disclaimer by CITY and COUNTY.

FOUNDATION ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS CONTAINED WITHIN THIS DEVELOPMENT AGREEMENT, NEITHER CITY, COUNTY NOR ANY THEIR RESPECTIVE EMPLOYEES, OFFICERS, REPRESENTATIVES OR ELECTED OFFICIALS HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PROJECT, THE SUBJECT MATTER OF THIS DEVELOPMENT AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS DEVELOPMENT AGREEMENT. FOUNDATION AGREES THAT NEITHER CITY, COUNTY, NOR ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, REPRESENTATIVES OR ELECTED OFFICIALS WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING:

A. THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN CITY REPRESENTATIVE OR COUNTY REPRESENTATIVE PURSUANT TO THIS DEVELOPMENT AGREEMENT.

B. THE COMPLIANCE OF THE PROJECT, THE MASTER PLAN OR ANY FEATURE THEREOF AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE.

C. THE ACCURACY OR COMPLETENESS OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, SCHEDULES OR OTHER MATTERS RELATING TO THE PROJECT OR ANY IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED UNDER THE TERMS OF THIS DEVELOPMENT AGREEMENT.

IT IS UNDERSTOOD AND AGREED BY FOUNDATION (FOR ITSELF AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER FOUNDATION) THAT EACH OF THEM HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO ALL SUCH MATTERS.

Section 11.05 Reliance.

Each Party agrees and acknowledges that, in entering into this Development Agreement,

A. Each Party is expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each other Party, without any obligation to investigate the accuracy or completeness thereof;

B. Notwithstanding any investigation thereof by any Party, each Party may continue to rely thereon until this Development Agreement is or shall be terminated according to its terms;

C. Such representations, warranties and covenants are a material inducement to each Party in making this Development Agreement and agreeing to undertake and accept its terms; and

D. Each Party would not be willing to do so in the absence of any of such representations, warranties and covenants.

Section 11.06 Additional Covenants of FOUNDATION.

FOUNDATION further covenants with CITY and COUNTY and agrees:

A. Reserve Fund. FOUNDATION shall use good faith, commercially reasonable efforts to preserve and protect the Reserve Fund and expend the Reserve Fund solely for the purposes described in this Development Agreement.

B. Auditorium and SAFD Tracts. FOUNDATION shall not encumber, sell, lease or otherwise divest itself of any interest in any part of the Auditorium Tract or the SAFD Tract without the prior, written consent of CITY and COUNTY; provided, however, that FOUNDATION will be permitted, without the prior consent of CITY and COUNTY, to (i) lease or license portions of the Auditorium Tract and the SAFD Tract when such lease or license is consistent with the Public Purpose or (ii) subject to obtaining any consents required under the San Antonio City Code, grant utility or access easements and similar rights or interests in and to the Auditorium Tract and the SAFD Tract to the extent necessary or desirable in connection with the development or use of the Performing Arts Center. From and after the date of Final

Completion, FOUNDATION shall maintain the improvements situated on the Auditorium Tract and the SAFD Tract in good condition and repair, reasonable wear and tear excepted, subject only to FOUNDATION's financial ability to do so.

C. Expenditures. FOUNDATION shall expend funds advanced to it by COUNTY solely in accordance with Section 2.03B(2) and the Capital Budget.

D. Enforcement. FOUNDATION shall use commercially reasonable efforts to diligently enforce its rights, and seek remedies available to it upon any default under the terms of the Construction Contract, any contract evidencing a Pledge, a license agreement granting naming rights to any part of the Campus, and as necessary to preserve and protect its right, title and interests in and to the Auditorium Tract and SAFD Tract.

E. Compliance. FOUNDATION shall operate the Campus in accordance with the Operating Manifest.

F. INDEMNIFICATION BY FOUNDATION. FOUNDATION COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, COUNTY AND THEIR RESPECTIVE ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS AND REPRESENTATIVES, 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 INJURY OR DEATH AND PROPERTY DAMAGE, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO FOUNDATION'S BREACH OF THIS DEVELOPMENT AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF FOUNDATION, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES IN BREACH OF THE PERFORMANCE OF DUTIES OF FOUNDATION UNDER THIS DEVELOPMENT AGREEMENT. FOUNDATION SHALL PROMPTLY ADVISE EACH OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST SUCH PARTY KNOWN TO FOUNDATION RELATED TO OR ARISING OUT OF FOUNDATION'S ACTIVITIES RELATED TO THIS DEVELOPMENT AGREEMENT AND SHALL INVESTIGATE AND

DEFEND SUCH CLAIM OR DEMAND AT FOUNDATION'S EXPENSE TO THE EXTENT THE SAME IS COVERED BY FOUNDATION'S INDEMNITY UNDER THIS SECTION. EACH PARTY WILL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING FOUNDATION OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION.

G. Indemnification Procedures.

(1) If any Person indemnified pursuant to Section 11.06(F) (an "Indemnitee") shall discover or have actual notice of facts giving rise or which may give rise to a claim for indemnification under this Article XI, or shall receive notice of any claim or demand, with respect to any matter for which indemnification may be claimed, the Indemnitee shall, within twenty (20) days following service of process (or within such shorter time as may be necessary to give the Person obligated to indemnify the Indemnitee (the "Indemnitor") a reasonable opportunity to respond to such service of process) or within twenty (20) days after any other such notice, notify the Indemnitor in writing thereof together with a statement of such information respecting such matter as the Indemnitee then has; it being understood and agreed that any failure or delay of the Indemnitee to so notify the Indemnitor shall not relieve the Indemnitor from liability hereunder except and solely to the extent that such failure or delay shall have adversely affected the Indemnitor's ability to defend against, settle, or satisfy any such claim or demand. Following such notice, the Indemnitor shall have the right, at its sole cost and expense, to contest or defend such claim or demand through attorneys, accountants, and others of its own choosing (the choice of such attorneys, accountants, and others being subject to the approval of the Indemnitee, such approval not to be unreasonably withheld) and in the event it elects to do so, it shall promptly notify the Indemnitee of such intent to contest or defend such claim or demand. If within twenty (20) days following such notice from the Indemnitee (or within such shorter time as may be necessary to give the Indemnitor a reasonable opportunity to respond to service of process or other judicial or administrative action), the Indemnitee has not received notice from the Indemnitor that such claim or demand will be contested or defended by the Indemnitor, the Indemnitee shall have the right to (i) authorize attorneys satisfactory to it to represent it in connection therewith or (ii) subject to the approval of the Indemnitor, which approval shall not be unreasonably withheld or delayed, at any time settle, compromise, or pay

such claim or demand, in either of which events the Indemnitee shall be entitled to indemnification therefor subject to this Section 11.06.

(2) In the event and so long as the Indemnitor is actively contesting or defending against a claim or demand as hereinabove provided, the Indemnitee shall cooperate with the Indemnitor and its counsel in such contest or defense, shall join in making any appropriate counterclaim or cross-claim in connection with the claim or demand, and shall provide such access to the books and records of the Indemnitee as shall be necessary in connection with such defense or contest, all at the sole cost and expense of the Indemnitor. Notwithstanding that the Indemnitor is actively conducting such defense or contest, any claim or demand may be settled, compromised or paid by the Indemnitee without the consent of the Indemnitor; provided, however, that if such action is taken without the Indemnitor's consent, its indemnification obligations in respect of such claim shall thereby be nullified. Any such claim or demand may be settled, compromised, or paid by the Indemnitor without the Indemnitee's consent, so long as such settlement or compromise does not cause the Indemnitee to incur any present or future material cost, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by Indemnitee.

(3) CITY and COUNTY hereby covenant and agree to assert any governmental immunity or defense that may be available to the CITY or COUNTY, including, but not limited to, the Tort Claims Act.

(4) In the event any claim or demand involves matters partly within or partly outside the scope of the indemnification by an Indemnitor hereunder, then the attorneys' fees, costs, and expenses of contesting or defending such claim or demand shall be equitably allocated between the Indemnitee and the Indemnitor.

(5) If a conflict of interest exists between the Indemnitee and the Indemnitor with respect to any claim or demand, the Indemnitee shall have the right to participate in the defense of such claim or demand with separate counsel chosen by the Indemnitee, subject to the reasonable approval of the Indemnitor, and paid by the Indemnitor.

H. FOUNDATION Liability. The obligations and liabilities of FOUNDATION hereunder are solely the obligations and liabilities of FOUNDATION and shall not be the obligations or liabilities of the any of the officers, directors, trustees, employees, volunteers, or donors of and to FOUNDATION. Neither the COUNTY nor the CITY may seek any remedy

under or related to this Development Agreement against any of the officers, directors, trustees, employees, volunteers, or donors of and to FOUNDATION, none of whom shall have any personal liability hereunder.

I. No Third Party Beneficiary. The provisions of this Article 11 are solely for the benefit of the COUNTY and the CITY and are not intended to create or grant any rights, contractual or otherwise, to any other Person.

J. Survival. The obligations contained in this Article 11 will survive the expiration or earlier termination of this Development Agreement, but only insofar as such indemnities relate to (i) any liabilities, damages, suits, claims or judgments that accrue or arise prior to or (ii) any acts or omissions that occur prior to, the expiration or earlier termination of this Development Agreement.

K. Waiver of Subrogation. With respect to any policies of insurance which may be required to be provided by FOUNDATION in connection with this Development Agreement or the construction of the Campus, or required under the Construction Contract or other agreement related hereto, FOUNDATION waives and shall require each other party to provide such insurance to waive any subrogation rights against CITY or COUNTY with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (1) any risks insured against under any valid collectible insurance contract or policy in force at the time of any such injury and/or damage giving rise to such claim or (2) any risk that would be covered under any insurance so required to be obtained and maintained, even if such required insurance is not in fact obtained and maintained.

L. Waiver of Consequential Damages. FOUNDATION, COUNTY and CITY waive all present and future claims for consequential damages against the other Parties arising from or related to this Development Agreement, and such waiver shall survive any termination of this Development Agreement.

ARTICLE 12. TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES

Section 12.01 Automatic Termination Events.

The Parties acknowledge that certain obligations and requirements of this Development Agreement are of fundamental importance to the Parties, such that the breach thereof justifies

and requires the automatic termination of this Development Agreement and that no alternate remedy would appropriately protect the respective interests of the Parties. Each of the following is an Automatic Termination Event that, when it occurs, will result in the automatic termination of this Development Agreement, other than with respect to those matters which survive termination as expressly stated in this Development Agreement, without notice or opportunity to cure by any Party:

A. If, at any time, following the Conveyance Date,, record title to the Auditorium Tract or the SAFD Tract is not vested in an organization exempt from taxation under Section 501(c)(3) of the Code.

B. If FOUNDATION has provided to CITY and COUNTY notice of its refusal to accept the Deed Without Warranty described in Section 9.01B.

C. Following Substantial Completion, the Auditorium Tract or the SAFD Tract is not used for the Public Purpose.

D. Fee simple title to the Auditorium Tract or SAFD Tract reverts to CITY.

E. The County Certificate of Termination has been filed in the Public Record.

F. The entry of a non-appealable ruling by a court of competent jurisdiction that the action of COUNTY pursuant to this Development Agreement is beyond the authority conferred upon COUNTY by any Applicable Laws and that the COUNTY did not have authority to enter into this Development Agreement.

G. The entry of a non-appealable ruling by a court of competent jurisdiction that any action of CITY pursuant to this Development Agreement is beyond the authority conferred upon CITY by any Applicable Laws and that the City did not have authority to enter into this Development Agreement.

H. Any legal proceeding (i) contesting the validity of the Election, (ii) prohibiting the COUNTY from funding the COUNTY Contribution, or (iii) contesting the validity or enforceability of this Development Agreement, which proceeding (1) is concluded by a final non-appealable determination that the Election was not valid, that prohibits the COUNTY from funding the County Contribution or that determines that this Development Agreement is not valid or enforceable, or (2) prevents the Construction Commencement Date to occur in accordance with this Development Agreement.

I. Failure by COUNTY to fund all or part of the County Contribution in accordance with the terms of this Development Agreement, and COUNTY'S failure to thereafter fund such amounts within thirty (30) days following notice from CITY to COUNTY that COUNTY'S continued failure to fund will result in an Automatic Termination Event.

Section 12.02 Events of Default.

Each of the following will be an Event of Default:

A. A Party fails to perform or observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Development Agreement, which failure continues for more than thirty (30) days following written notice of such failure to such Party, or such longer period of time as may be reasonable under the circumstances, if such failure cannot be cured within thirty (30) days because of the nature of the default and during such thirty (30) day period curative action has commenced and is thereafter pursued diligently by such Party.

B. Any material representation or warranty of a Party is untrue when made or becomes untrue thereafter and remains untrue after thirty (30) days following written notice to such Party that the material representation or warranty is untrue.

C. A Party submits a report, application, certificate or other information required under the terms of this Development Agreement which intentionally or knowingly contains any false or misleading statements of material facts.

D. FOUNDATION fails to achieve each of the Preconstruction Development Milestones within the time period required by this Development Agreement, as such time period may be extended by COUNTY.

E. FOUNDATION fails to achieve each of the Preconstruction Financing Milestones within the time period required by this Development Agreement, as such time period may be extended by COUNTY.

F. FOUNDATION transfers or encumbers the Auditorium Tract or the SAFD Tract without the consent of COUNTY and CITY, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, that FOUNDATION may, without the consent of COUNTY and CITY, (i) lease or license portions of the Auditorium Tract and the SAFD Tract when such lease or license is consistent with the Public Purpose, and (ii) subject to obtaining any consents required under the San Antonio City Code, grant utility, drainage and access

easements and similar rights and interests in and to the Auditorium Tract and SAFD Tract to the extent necessary or desirable in connection with the development and use of either or both of such Tracts.

G. FOUNDATION fails to maintain the Reserve Fund in accordance with this Development Agreement.

H. FOUNDATION makes a general assignment for the benefit of creditors.

I. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state thereof is filed by or against FOUNDATION and is not dismissed, withdrawn or otherwise concluded without adjudication within seventy-five (75) days after being filed.

J. FOUNDATION admits in writing its inability to pay its debts when due.

K. A bill in equity or other proceeding for the appointment of a receiver of FOUNDATION or other custodian for FOUNDATION'S business or assets is filed and consented to by FOUNDATION.

L. A receiver or other custodian (permanent or temporary) of FOUNDATION'S assets or property, or any part thereof, is appointed by any court of competent jurisdiction.

M. Proceedings for a composition with creditors under any state or federal law have been instituted by or against FOUNDATION.

N. A final judgment representing a claim or charge against the assets of FOUNDATION in an amount in excess of \$1.0 million remains unsatisfied or of record for one-hundred eighty (180) days or longer (unless a supersedeas or other appeal bond is filed).

O. FOUNDATION is dissolved.

P. Execution is levied against FOUNDATION'S business or its property.

Q. FOUNDATION shall cease to pursue diligently the construction of the Project for more than sixty (60) consecutive days following the Construction Commencement Date for any cause other than by reason of Force Majeure Event, and such cessation has the effect of delaying the Scheduled Completion Date by more than one (1) year.

R. FOUNDATION shall fail, after funding by the Disbursing Agent of a Payment/Reimbursement Request to pay or cause payment to the General Contractor, Project Architect, Contractors or others engaged by FOUNDATION in the design and construction of

the Project amounts due and owing to be paid out of such funding and not disputed by FOUNDATION in connection therewith for a period of more than thirty (30) days.

S. FOUNDATION causes the Construction Commencement Date to occur before Foundation has fully achieved all Preconstruction Development Milestones and Preconstruction Financial Milestones.

Section 12.03 Remedies for Uncured Event of Default under Section 12.02.

After delivery of any required notice and expiration of any applicable cure period, any non-defaulting Party may pursue, at its option and without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to it under this Development Agreement and/or at law or in equity. The rights and remedies provided in this Development Agreement shall be in addition to and cumulative of all other rights and remedies available to a Party, and the pursuit of one remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus. Any failure of a Party to exercise any right or remedy as provided in this Development Agreement shall not be deemed a waiver by such Party of any claim for actual damages (but not consequential damages) it may have by reason of the other Party's default or the interruption of construction of the Project for which FOUNDATION is responsible under the terms of this Development Agreement and specific performance.

Section 12.04 Mediation.

In the event of a dispute by the Parties to this Development Agreement which cannot, within a reasonable time, be resolved, the Parties agree to submit the disputed issue to non-binding mediation. The Parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within three (3) days after the mediation is initiated or ten (10) days after mediation is requested. The Parties participating in the mediation shall share the costs of the mediation proportional to the number of Parties participating. The provisions hereof shall survive any termination of this Development Agreement.

ARTICLE 13. ASSIGNMENT

The Parties shall not assign (partially or in the entirety) any rights or duties under this Development Agreement without prior written consent of each other Party, such consent to not be unreasonably withheld; provided, however, that to the extent assignment is approved, the transfer of this Development Agreement or any of the documents referenced herein shall confer all rights and duties with respect to the development of the Project and the construction of the Performing Arts Center. Such rights and duties shall run with the Campus and any interest therein acquired by any subsequent owner or other party with an interest in all or any part of the Auditorium Tract or the SAFD Tract.

ARTICLE 14. FORCE MAJEURE EVENTS

Section 14.01 Mitigation.

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

Section 14.02 Notice.

Each Party whose performance under this Development Agreement is prevented by a Force Majeure Event shall provide notice to the other Parties within ten (10) business days after the Party becomes aware of the occurrence of the Force Majeure Event. The notice shall describe the facts and circumstances of the Force Majeure Event and the anticipated effect thereof on the performance of such Party's obligations, duties, covenants and agreements under this Development Agreement, which notice shall be supplemented from time to time upon request. Such Party shall also give notice to the other Parties of its ability to resume performance under this Development Agreement within a reasonable time following termination of the Force Majeure Event.

Section 14.03 Effect of Force Majeure Event.

For so long as a Party is unable to perform a duty, obligation, covenant or agreement under this Development Agreement because of the existence or the effect of a Force Majeure Event, other than an obligation to pay or cause to be paid money, the performance of such duty, obligation, covenant or agreement will be suspended.

ARTICLE 15. CAPACITY OF CITY

Section 15.01 City Council Approval.

Notwithstanding anything to the contrary set forth in this Development Agreement, COUNTY and FOUNDATION recognize and agree that any contracts or agreements contemplated to be entered into by CITY under the terms of this Development Agreement which are not attached as exhibits to this Development Agreement will be subject to the prior approval of City Council, if the approval of the City Council is required under the terms of City's Charter or other applicable law. Further, any approvals required of CITY for any assignment of this Development Agreement will be subject to the prior approval of City Council.

Section 15.02 Capacity of CITY and COUNTY.

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

Section 15.03 Capacity of Parties Acting on Behalf of CITY or COUNTY.

Notwithstanding anything to the contrary in this Development Agreement, all references in this Development Agreement to employees, agents, representatives, contractors and the like of CITY or COUNTY shall refer only to such persons or entities acting on behalf of CITY or COUNTY in its capacity as a Party to this Development Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of CITY'S or COUNTY'S required Governmental Functions.

Section 15.04 No Limitation on CITY'S or COUNTY'S Governmental Functions.

The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Development Agreement by CITY or COUNTY (as a Party to this Development Agreement) shall be binding upon, constitute a waiver by or estop CITY or COUNTY from exercising in good faith any of its rights, powers or duties in its required Governmental Functions. For example, approval by CITY of this Development Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, CITY in the exercise of its Governmental Functions or as may be required under any Applicable Laws.

ARTICLE 16. REPRESENTATIVES

Section 16.01 Foundation Representative.

Upon execution of this Development Agreement, FOUNDATION shall designate in writing to the COUNTY the name of the individual who is to be the "**Foundation Representative**" (herein so called) with full authority to execute any and all instruments requiring FOUNDATION'S signature and to act on behalf of FOUNDATION with respect to all matters arising out of this Development Agreement. FOUNDATION shall have the right, from time to time, to change the Person who is the Foundation Representative by giving the COUNTY written notice thereof. The Foundation Representative shall represent the interests of FOUNDATION, be responsible for overseeing all aspects of design, construction and development of the Project, and work closely with the County Representative, on behalf of FOUNDATION. Actions, decisions or determinations by the Foundation Representative on behalf of FOUNDATION shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Development Agreement, in which case, actions taken by the Foundation Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the Foundation Representative shall be binding on FOUNDATION, provided, however the Foundation Representative shall not have any right to modify, amend or terminate this Development Agreement.

Section 16.02 The County Representative.

Upon execution of this Development Agreement, the COUNTY shall designate an individual or a committee of up to five (5) individuals to be the County Representative (the "County Representative") and provide FOUNDATION with written notice of the identity of the individuals so designated, provided that, in the event the COUNTY designates more than one (1) individual, FOUNDATION shall nevertheless be entitled to communicate, deal, and rely on any one (1) of such individuals so designated. The COUNTY shall have the right, from time to time, to change any or all of the Persons who are the County Representatives by giving FOUNDATION written notice thereof. With respect to any action, decision or determination which is to be taken or made by the COUNTY under this Development Agreement, the County Representative may take such action or make such decision or determination or shall notify FOUNDATION in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Actions, decisions or determinations by the County Representative on behalf of the COUNTY shall be done in his or her reasonable business judgment unless express standards or parameters therefor are included in this Development Agreement, in which case, actions taken by the County Representative shall be in accordance with such express standards or parameters. Any consent, approval, decision or determination hereunder by the County Representative shall be binding on the COUNTY; provided, however, the County Representative shall not have any right to modify, amend or terminate this Development Agreement. FOUNDATION and any Person dealing with the COUNTY in connection with this Development Agreement or any matter governed by this Development Agreement may rely and shall be fully protected in relying upon the authority and capacity of the County Representative or any such designee to act for and bind the COUNTY in any such matter.

ARTICLE 17. SCHEDULE AND REPORTS

Section 17.01 Design and Construction.

FOUNDATION shall provide to the COUNTY, as and when available, for its information, the Schedule for the permitting, design and construction of the Project, as it may be revised from time to time (with the COUNTY being furnished informational copies of such revisions). The Schedule shall include time for adverse weather conditions to the extent normally encountered in the San Antonio, Texas area and the impacts thereof, establish a date for Substantial Completion not later than the Scheduled Completion Date, delineate all phases of the

Project and set forth a projected date for completion of each phase in sufficient detail to allow the COUNTY or its representative(s) to monitor progress of the Project. The Schedule shall be related to the design and construction of all aspects of the Project. The Schedule shall indicate the projected dates for the starting and completion of the various stages of design and construction and shall be revised as required by the conditions of the Project. The Parties acknowledge and agree that notwithstanding any theoretical delay or theoretical extensions of time for completion as may be shown on any schedules or printouts, the Schedule shall be governed by this Development Agreement and shall be extended only in accordance with the procedures set forth in this Development Agreement. The phases of the Project to be addressed in the Schedule shall include, without limitation, (a) the design phases, (b) acquisition and approval of Permits and (c) all construction phases. Dates set forth in this Development Agreement shall be included in the Schedule and such dates may not be extended, except as provided in this Development Agreement.

Section 17.02 Progress Reports.

FOUNDATION shall provide to the County Representative and the City Representative written progress reports on a regular basis, but no less often than semi-annually. Such reports shall describe the status of the design and construction of the Project and include, but not be limited to, actual versus estimated percentage completion for each component of the Project, any change in costs incurred in connection with the construction of the Project, performance against schedule, any change in the critical path and revisions to the Schedule as of the end of each reporting period.

Section 17.03 Significant Event Reports.

Should any Force Majeure Event or other situation, occurrence or event having a material impact on the Work occur, FOUNDATION within a reasonable time following FOUNDATION'S acquiring actual knowledge of such occurrence prepare a written "**Significant Event Report**" (herein so called) detailing all available information and the steps being taken to correct the problem and forward the same to the County Representative.

Section 17.04 Inspection Reports.

Beginning on the Construction Commencement Date and continuing through the date of Substantial Completion, FOUNDATION shall cause its designee to implement and require all

reasonably necessary inspections, testing, and safety programs for the design and construction of the Project or otherwise mandated by Applicable Law or specified in the Construction Contract, and shall prepare and submit its inspection reports, procedures, schedules and requirements with respect to such programs in writing to the County Representative as prepared.

Section 17.05 Final Construction Report.

A. Within thirty-five (35) months after issuance of each series of the Bonds, FOUNDATION shall deliver or cause to be delivered to the County Representative a report which shall set forth (i) the total costs incurred by FOUNDATION in connection with the design and construction of the Project through the date of such report, (ii) all material items required to complete the Project and the estimated cost thereof, and (iii) the status of any litigation affecting FOUNDATION or the COUNTY and related to the design or construction of the Project.

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

Section 17.06 Returns Required by Law.

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

Section 17.07 Inspection Rights of the COUNTY.

FOUNDATION agrees that the County Representative, shall have the right at all times during normal business hours of FOUNDATION, the Contractors or General Contractor, upon not less than three (3) Business Days prior written notice to FOUNDATION during construction hours to inspect the progress of the construction of the Project. The County Representative shall, at the option of FOUNDATION, be accompanied by FOUNDATION or its representative during such inspection. The COUNTY agrees to require the County Representative to comply with all applicable safety requirements and procedures. In addition, FOUNDATION shall keep the books and records to be maintained by FOUNDATION pursuant to this Development Agreement at its regular business office, which the County Representative may examine and/or audit such books and records (at the COUNTY'S expense) during the normal business hours of

FOUNDATION, upon not less than three (3) Business Days notice to FOUNDATION. FOUNDATION further agrees to preserve and enforce the foregoing in favor of the COUNTY as to the General Contractor and all Contractors or other Persons retained by or on behalf of FOUNDATION. The provisions of this Section 17.07 shall in no way limit or otherwise relieve FOUNDATION from FOUNDATION'S obligation to complete the Project in conformance with this Development Agreement unless the COUNTY's inspections or tours interfere with FOUNDATION'S construction of the Project and then only to the extent that such acts continue after FOUNDATION'S notice to the COUNTY of such interference. The COUNTY, through appropriate designees, which may change from time to time, further reserves the right to enter the Project during regular business hours to conduct fire, safety and health inspections or any other inspections by Governmental Authorities or to exercise the COUNTY'S normal police powers, provided that in exercising such powers (a) the COUNTY shall use its best efforts not to unreasonably interfere with the operations of FOUNDATION and (b) the COUNTY'S inspection rights shall not be deemed to limit in any way FOUNDATION'S rights to contest the COUNTY'S findings with respect to such inspections or the exercise of such police powers.

ARTICLE 18. CASUALTY

Section 18.01 Damage or Destruction.

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

ARTICLE 19. MISCELLANEOUS PROVISIONS

Section 19.01 Notices.

The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Development Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Development Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

CITY: City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78207
Attention: City Manager

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205, and

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

FOUNDATION: Bexar County Performing Arts Center Foundation
3316 Oakwell Court
San Antonio, Texas 78218
Attention: President

With a copy to: Stephen L. Golden
Drenner & Golden Stuart Wolff, LLP
300 Convent, Suite 2650
San Antonio, Texas 78205

COUNTY: Bexar County, Texas
100 Dolorosa, Suite 101
Bexar County Courthouse
San Antonio, Texas 78205
Attention: County Judge

With a copy to: Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205
Attention: James P. Plummer, Esq.

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

Section 19.02 Business Days.

If any date or any period provided in this Development Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 19.03 Time.

Time is of the essence in all things pertaining to the performance of this Development Agreement.

Section 19.04 Severability.

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

Section 19.05 Waiver.

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

Section 19.06 Reservation of Rights.

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

Section 19.07 Further Documents.

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

Section 19.08 Incorporation of Exhibits and Other Documents by Reference.

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

Section 19.09 Authority for Execution.

CITY hereby certifies and represents that the execution of this Development Agreement is duly authorized and adopted in conformity with City Charter and its ordinances. FOUNDATION hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with the certificate of formation and agreements of such entity. COUNTY hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with all requirements applicable to it.

Section 19.10 Governing Law; Venue.

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

Section 19.11 Attorneys' Fees.

If any Party to this Development Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Development Agreement

and the other Party thereto places the enforcement of this Development Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Development Agreement into any judgment on this Development Agreement.

Section 19.12 No Oral Modification.

Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Development Agreement in whole or in part unless such agreement is in writing and signed by the Party against whom such charge, waiver, modification, discharge, termination or abandonment is sought to be enforced.

Section 19.13 No Party Deemed Drafter.

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

Section 19.14 Use of Defined Terms.

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

Section 19.15 Multiple Counterparts.

This Development Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.

Section 19.16 Entire Agreement, Amendment and Waiver, Survival.

This Development Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Development Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of CITY, approved by action of City Council and in the case of COUNTY, approval by action of its Court of Commissioners. No failure or delay of any Party in exercising any power or right under this Development Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude any other or future exercise thereof or the exercise of any other right or power. All of the representations and warranties of each Party contained in this Development Agreement shall survive the execution, delivery and acceptance of this Development Agreement and any termination hereof. Unless otherwise set forth in this Development Agreement, all agreements of the Parties contained in this Development Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Development Agreement to so survive.

Section 19.17 Table of Contents; Headings.

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

Section 19.18 Parties in Interest.

The terms of this Development Agreement shall be binding upon, and insure to the benefit of, the Parties hereto and their successors and permitted assigns. Nothing in this Development Agreement, whether express or implied, shall be construed to give any person (other than the Parties hereto and their successors and permitted assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this

Development Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Development Agreement.

Section 19.19 Notices of Changes in Fact.

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

A. Any change in any material fact or circumstance represented or warranted by such Party in this Development Agreement; and

B. Any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Development Agreement, specifying in each case, the nature thereof and what action the Party has taken and proposes to take with respect thereto.

THEREFORE, IN WITNESS WHEREOF, CITY and FOUNDATION have executed this Development Agreement as of this _____ day of May, 2008.

FOUNDATION:

**BEXAR COUNTY PERFORMING ARTS
CENTER FOUNDATION**

J. BRUCE BUGG, JR., President and Chairman

COUNTY:

BEXAR COUNTY, TEXAS

By _____

Name: _____

Title: _____

CITY:

CITY OF SAN ANTONIO, TEXAS

By _____

Name: _____

Title: _____

Date: _____

ATTEST:

City Clerk

APPENDIX 1 TO GRANT AND DEVELOPMENT AGREEMENT

As used in this Development Agreement, each of the following terms and phrases has the meaning as set forth on this Appendix 1, unless the context in which such term or phrase is used in this Development Agreement clearly indicates otherwise.

“Abandoned” means the complete cessation of construction activities related to the Performing Arts Center prior to the Substantial Completion of the main performance hall for a continuous period of twelve (12) months unless such cessation results from (a) a Casualty or other Force Majeure Event (b) a default by CITY or COUNTY that continues beyond the expiration of any applicable notice and cure period, or (c) the continuation of litigation, diligently pursued, concerning the Auditorium Tract, SAFD Tract or the Project, and continues despite commercially reasonable efforts to minimize the resulting delay.

“Affiliate” of a specified Person means a Person who (a) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (b) owns directly or indirectly thirty-five percent (35%) or more of the equity or voting interests of the specified Person; (c) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (a) or (b); or (d) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

“Applicable Law” means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority or any board of fire underwriters (or other body exercising similar functions), or any recorded restrictive covenant or deed restriction applicable to the Project, including, the Americans with Disabilities Act and all applicable zoning ordinances and building codes, flood disaster laws, health laws and environmental laws and regulations.

“Architectural Consultant” shall have the meaning given to such term in Section 4.01 of this Development Agreement.

“Auditorium Tract” means the parcel of land on which Municipal Auditorium is located, known as 100 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds on an instrument attached to this Development Agreement as Exhibit “A-1”, save and except any portion thereof which lies in a public road or right-of-way.

“Automatic Termination Event” means each occurrence described in Section 12.01.

“Bonds” has the meaning given to such term in Section 7.03 of this Development Agreement.

“Business Day” means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally under the laws of the State of Texas. Use of the word **“day,”** as opposed to Business Day, means calendar day.

“Campus” means collectively, the Auditorium Tract, SAFD Tract, the Performing Arts Center and other improvements reflected in the Master Plan.

“Capital Budget” means the budgeted amount for all hard and soft capital costs of the Project, including, but not limited to, Preconstruction Costs, architectural, engineering, consulting, permitting, and legal fees, basic construction costs and fees, Development Costs (defined below), food and beverage equipment (including concessions, catering, etc.), seating systems, suites, premium and general seating, furniture, fixtures and equipment, site development, onsite infrastructure and drainage, environmental remediation, utility relocation, construction oversight and management expenses, pre-opening expenses, interest expense associated with the Foundation Contribution, fees of the Disbursing Agent, and construction budget contingencies. The Capital Budget will not include costs of issuance of the Bonds (including legal fees) and additional financing costs (including capitalized interest, debt service and operating reserve funds, and credit enhancement fees) resulting from the Bonds or costs resulting from any other actions or delays on the part of the COUNTY (other than the time periods for approvals provided herein), any costs for the lease of fixtures, furniture and equipment, any costs of offsite infrastructure, or any costs of traffic mitigation.

“Capital Repair Fund” means the fund described in Section 5.12 of this Development Agreement.

“Casualty” shall mean damage, destruction or other property casualty to the Project resulting from a fire or other Force Majeure Event.

“Certificate of Commencement of Construction” means the sworn certificate of FOUNDATION in the form attached as Exhibit “C” of this Development Agreement.

“Certificate of Substantial Completion” means the sworn certificate of FOUNDATION that all Performing Arts Center are Substantially Complete, in the form attached as Exhibit “D” to of this Development Agreement.

“Certificate of Termination” means the sworn certificate of COUNTY delivered to CITY pursuant to Section 2.04.

“Chapter 334” means Chapter 334, Texas Local Government Code, as amended.

“CITY” means City of San Antonio, Texas, a home rule city under Article 11, Section 5, of the Texas Constitution and Municipal Corporation primarily situated in Bexar County, Texas.

“City Code” means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of CITY.

“City Contribution” means the installment payments to be made by CITY to the Reserve Fund, subject to the limitations on funding described in Section 7.04.

“City Council” means the City Council of City of San Antonio, Texas, or any successor governing body.

“City Ordinance” means Ordinance No. _____ authorizing this Development Agreement, adopted _____, 2008.

“City Representative” means the person so designated by resolution of the City Manager of CITY or the replacement for such person identified by CITY, with notice of the identity of the person initially designated to serve as City Representative and each subsequent replacement to be given in writing to County Representative and Foundation Representative in accordance with this Development Agreement.

“Code” means the Internal Revenue Code of 1986, 26 U.S.C.S §101, et seq., as amended.

“Conceptual Design Documents” shall mean drawings and other documents prepared by the Project Architect based on the Master Plan that establish the conceptual design of the Project and the Project to be constructed as part of the Project illustrating the scale and relationship of the Project components. The Conceptual Design Documents shall include a site plan, schematic drawings, and preliminary building plans, sections and elevations. At FOUNDATION’S option, the Conceptual Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction material shall be noted on the drawings or described in writing.

“Construction Commencement Date” means the earlier of (A) the date on which FOUNDATION has given the Construction Notice or (B) on-site construction activities have commenced on the Campus by or on behalf of FOUNDATION.

“Construction Contract” means a guaranteed maximum price construction contract for the construction of the Performing Arts Center in accordance with the Final Plans for a total contract price within the approved Capital Budget and requiring a Payment Bond and Performance Bond of the General Contractor.

“Construction Documents” shall mean the architectural drawings, specifications, and other documents, as amended from time to time pursuant to this Development Agreement, setting forth the design of the Project and the requirements for its construction in sufficient detail for establishing the costs for construction, the permitting and construction of the Project and other improvements to be constructed as part of the Project.

“Construction Notice” means the notice to be provided by FOUNDATION to the General Contractor under the Construction Contract to commence construction of the Performing Arts Center.

“Contract” means one or more construction contracts entered into by FOUNDATION relating to the construction of the Project.

“Contractors” mean the contractors selected and engaged by FOUNDATION and/or General Contractor to construct the Project.

“Controlling Person” means a person or entity (A) acting on behalf of FOUNDATION, (B) subject to the direction of FOUNDATION, (C) is in privity of contract with FOUNDATION with respect to the subject matter of this Development Agreement, (D) is a contractor, subcontractor or sub-subcontractor providing labor or materials or other services in connection

with the Project, (E) is a limited liability company that has as a manager or member FOUNDATION, an affiliate, parent or subsidiary of FOUNDATION or a person or entity described in (A), (B), (C) or (D) hereof, or (E) is a general partnership or limited partnership that has, as a general partner, FOUNDATION, an affiliate, parent or subsidiary of FOUNDATION or a person or entity described in (A), (B), (C) or (D) hereof.

“Conveyance Date” means the date on which CITY has delivered to FOUNDATION the Deed Without Warranty, which shall occur within fifteen (15) days of following the Effective Date.

“Cost Overruns” means the amount by which funds required to complete the development of the Project and construction of the Campus facilities exceeds the Capital Budget.

“COUNTY” means Bexar County, Texas.

“County Auditor” has the meaning given to such term in Section 8.01C of this Development Agreement.

“County Community Venues Project Office” has the meaning given to such term in Section 8.01C of this Development Agreement.

“County Contribution” means the funding of the Capital Budget by COUNTY under the terms of this Development Agreement of up to \$100,000,000.

“County Representative” has the meaning given to such term in Section 16.02 of this Development Agreement.

“Deed Without Warranty” means the deed in the form attached to this Development Agreement as Exhibit “B”.

“Design Drawings” shall mean the drawings and other documents based on the Master Plan and the Conceptual Design Documents that illustrate and describe the refinement of the design of the Project to be constructed as part of the Project, establishing the scope, relationships, forms, size and appearance of the Project and the improvements to be constructed as part of the Project by means of plans, sections and elevations, including specifications that identify major materials and systems and establish in general their quality levels.

“Development Agreement” means this Grant and Development Agreement.

“Development Costs” shall mean all expenses incurred and included in the Project budget, including but not limited to those related to architects, engineers, legal, accounting, financial and other third party consultants associated with the development, design, planning, construction (inclusive of interest expense associated with the Foundation Contribution, but exclusive of financing costs associated with the issuance of the Bonds or the costs associated with obtaining pledges for the Foundation Contribution) of the Project incurred by FOUNDATION, together with other costs of FOUNDATION related solely to the development of the Campus; it being expressly understood that administrative expenses related to the

operation of the FOUNDATION as opposed to administrative expenses related to the development of the Campus shall not be included in Development Costs.

“Development Plan” means the comprehensive plan for the development and construction of the Project, describing the development phases, the target dates for completing each development phase and the allocation of the Capital Budget to each development phase.

“Disbursing Agent” means the person designated by the COUNTY, and approved by FOUNDATION, which may not be unreasonably withheld, conditioned or delayed, to manage and supervise the Project Disbursement Fund.

“Effective Date” means the later of (A) the date on which this Development Agreement has been duly executed on behalf of CITY, COUNTY and FOUNDATION or (B) the City Ordinance is effective.

“Environmental Condition” shall mean any Environmental Event that occurs, and any Recognized Environmental Condition that exists, prior to the time the CITY delivers exclusive possession of the Project to FOUNDATION.

“Environmental Event” means (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Hazardous Materials which may cause a threat or actual injury to human health, the environment, plant or animal life, (ii) the occurrence of any Environmental Proceedings pursuant to any Environmental Laws arising out of any of the foregoing, and (iii) any claims, demands, actions, causes of actions, remedial and/or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of an Environmental Proceeding.

“Environmental Laws” means any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), CERCLA, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

“Environmental Proceeding” means:

- (i) Any notice of any investigation, response action, spill, proceeding, whether executive, administrative or judicial, or litigation or litigation threatened in writing relating to Environmental Laws or other

environmental matters concerning property insofar as such investigation, response action, spill, litigation, litigation threatened in writing or proceeding relates to such property; or

- (ii) Receipt of any notice from any Person of: (a) any violation or alleged violation of any Environmental Law relating to a property or any part thereof or any activity at the time conducted on any property, or (b) the commencement of any clean-up, abatement or control pursuant to or in accordance with any Environmental Law of any Hazardous Materials on or about any such property or any part thereof or (c) any violation of any Applicable Laws or harm to Person or property in each case with respect to worker safety at or in connection with such property or any part thereof.

“Event of Default” means those events described in Section 12.02 of this Development Agreement.

“Final Completion” means the final completion of the Performing Arts Center, substantially in accordance with the Construction Contract, as certified by the Project Architect pursuant to a certificate of final completion, including, but not limited to, the completion of the punch list type items referred to in the definition of the term “Substantial Completion.” Substantial Completion of such Work is a prerequisite to Final Completion of same.

“Final Funding Percentage” means the percentage of the Capital Budget to be funded respectively by COUNTY and FOUNDATION, as calculated in accordance with Section 7.01 of this Development Agreement.

“Final Plans” means the final plans and specifications for the construction and equipping of the Performing Arts Center which will be compatible with the Operating Budget and the Capital Budget.

“Force Majeure Event” means labor disputes, Casualties (which are not the result of willful misconduct of a Party or its respective employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; acts of war or terrorism; act of military authority; sabotage; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by FOUNDATION or its respective subcontractors, agents, or employees; or other delays due to causes beyond its or their control. For the purposes of the preceding sentence, a cause “beyond its or their control” does not include any act, omission, error or breach of duty of any Controlling Person.

“Forensic Study” means a study of the structural soundness of the existing improvements on the Auditorium Tract and SAFD Tract for the Project.

“FOUNDATION” means Bexar County Performing Arts Center Foundation, a Texas non-profit corporation, exempt from taxation under Section 501(c) (3), Internal Revenue Code of 1986, as amended, its successors and permitted assigns.

“Foundation Contribution” means (A) the Capital Budget less the County Contribution, and (B) the Reserve Fund.

“Foundation Office” shall mean the business office of FOUNDATION which shall be located in San Antonio, Texas, as the same may be designated or relocated by FOUNDATION from time to time.

“Foundation Representative” has the meaning given to such term in Section 16.01 of this Development Agreement.

“General Contractor” means such general contractor(s) or construction manager(s) as may be selected by FOUNDATION with respect to the construction of the Project who shall be responsible for the supervision, coordination, and construction of the Project.

“Governmental Authority(ies)” means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Project.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which a Governmental Authority is authorized or required to perform.

“Hazardous Materials” means (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in a Applicable Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any Environmental Law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls or (iii) any substance, emission or material determined to be hazardous or harmful.

“Lease Agreement” means the Lease Agreement in the form attached hereto was Exhibit “E”.

“Master Plan” means the conceptual master plan for the Campus, attached to this Development Agreement as Exhibit “F”, prepared by FOUNDATION and approved by CITY and COUNTY, which integrates and enhances Veterans Memorial Plaza.

“Maximum Cost” has the meaning given to such term in Section 2.03B(1).

“Memorandum of Understanding” means the Memorandum of Understanding executed by CITY on February 19, 2008, by COUNTY on February 19, 2008 and by FOUNDATION on February 19, 2008.

“Milestones” means those events as more fully described in Section 2.03 of this Development Agreement.

“Municipal Auditorium” means the improvements on the Auditorium Tract.

“Naming Parameters” means the guidelines for suitability and acceptability of naming rights for the facilities comprising the Campus as set forth in Article 10 of this Development Agreement.

“Operating Budget” means an operating budget and business plan with a five-year operating horizon that reflects that FOUNDATION can operate the Campus on a fiscally sound basis while accommodating use of the Campus by the Symphony Society of San Antonio, San Antonio Opera, Arts San Antonio, other resident companies, CITY and COUNTY, in accordance with the Operating Manifest, and other uses consistent with the Public Purpose.

“Operating Manifest” means a compendium of operating and booking policies and procedures set and amended by the FOUNDATION from time-to-time that reflects the uses of the Performing Arts Center for the Public Purpose and the rents and other amounts anticipated to be charged therefor, including (by way of example and not limitation) use by the Symphony Society of San Antonio, the San Antonio Opera, Arts San Antonio and other resident companies for performance, rehearsal, offices and other uses that generate Visitors Tax.

“Parties” means, collectively, CITY, COUNTY and FOUNDATION (each, a **“Party”**).

“Payment/Reimbursement Request” has the meaning given to such term in Section 8.01C of this Development Agreement.

“Payment Bond” means a bond of a corporate surety licensed in the State of Texas, issued solely for the protection and use of those payment beneficiaries who have a direct contractual relationship with FOUNDATION, the contractor, a subcontractor or material supplier related to the construction of the Performing Arts Center, or their contractual assignees, in a penal sum equal to the penal sum of the related Performance Bond. A Payment Bond shall authorize payment for (A) labor used to carry out the work under the Construction Contract(s), (B) materials used or ordered, delivered for use, directly to carry out such work, (C) specially fabricated material, (D) rental and running repair costs for construction equipment used or required and delivered for use, directly to carry out the work at the worksite, and (E) power, water, fuel and lubricants used, or ordered and delivered for use, directly to carry out the work.

“Performance Bond” means a bond of a corporate surety licensed in the State of Texas, issued for the benefit of FOUNDATION, COUNTY and CITY, as appropriate, in form reasonably acceptable to COUNTY and CITY, in the penal sum equal to one hundred percent (100%) of the cost of the work as set forth in the budget attached to the Construction Contract and being sufficient to fund the costs of Substantial Completion of the work described in such Construction Contract in accordance with the terms thereof.

“Performing Arts Center” means, collectively, (A) a multiple purpose, variable acoustic hall of not less than 1700 seats and not less than approximately 180,000 gross square feet, (B) a multiple purpose, multiple form, acoustically sound studio theater with not less than 250 seats, (C) a rehearsal hall containing at least approximately 3,000 square feet, (D) lobby space containing at least 8 square feet per person, (E) education facilities, (F) offices for administrative personnel, (G) offices for San Antonio arts organizations, and (H) other improvements to be constructed or installed on the Auditorium Tract and/or SAFD Tract in

accordance with the Final Plans.

“Permits” means all permits, consents, approvals, authorizations, variances, waivers, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, utility companies and insurance rating agencies which are required for the planning, design, construction, completion, use and occupancy of the Project and the Project.

“Person” means an individual, partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture, limited liability company or any other entity, the United States, or a federal, state, or political subdivision thereof or any agency or court of such state or subdivision.

“Plans and Specifications” has the meaning given to such term in Section 4.02A.

“Pledge” means a private-sector donation received by FOUNDATION or to be paid to FOUNDATION in not more than five (5) annual installments; if payable in installments, it must be evidenced by a legally binding and enforceable contract between FOUNDATION and the donor in form reasonably acceptable to COUNTY and CITY and shall provide, at a minimum, that the initial installment will be paid not later than the year following the year in which the contract is made, provided however, that any Pledge pursuant to a Naming Agreement equal to or greater than \$15,000,000 may be payable in not less than fifteen (15) annual installments and may contain such other approval rights and/or conditions as are reasonably acceptable to CITY, COUNTY and FOUNDATION.

“Preconstruction Costs” means the costs of forensic studies, surveys, geotechnical, engineering, architectural, professional services, and other preconstruction costs incurred in the ordinary course of Project development, and shall include those costs incurred by FOUNDATION prior to the Effective Date.

“Preconstruction Development Milestones” means the obligations of FOUNDATION described in Section 2.03B of this Development Agreement.

“Preconstruction Financial Milestones” means the obligations of FOUNDATION described in Section 2.03C of this Development Agreement.

“Preconstruction Termination Notice” means the notice which may be filed in the Public Records by the CITY or COUNTY indicating that FOUNDATION has not provided the evidence thereof to the CITY and COUNTY, as required by this Section 2.03C(2).

“Project” means, collectively, the entire conceptual planning, site planning, development, construction and equipage of the Campus.

“Project Architect” means the architectural firm selected by FOUNDATION as the primary architect for the Project, it being understood that other firms may be selected by FOUNDATION for the design and site planning of the Project, including any local design firms retained by the primary architect or FOUNDATION on an as-needed basis.

“Project Disbursement Fund” means the funded established pursuant to Section 6.01 of this Development Agreement.

“Project Completion Date” means the date of Final Completion of all the Work in accordance with the requirements of this Development Agreement.

“Project Manager” has the meaning given to such term in Section 5.01 of this Development Agreement.

“Public Purpose” means as defined in the Deed Without Warranty.

“Public Records” means the Official Public Records of Real Property of Bexar County, Texas.

“Quality Standard” means the substantially similar standard of quality of design, acoustics and materials as are included in the Bass Performance Hall in Fort Worth, Texas. In applying the Quality Standard, it is not anticipated or required that the Performing Arts Center have the same appearance or include the same materials as the Bass Performance Hall, but rather that the materials and finishes of the Performing Arts Center be comparable to those contained in the Bass Performance Hall.

“Recognized Environmental Conditions” shall mean the presence of any Hazardous Materials at, on, in or under the Campus or the Project located thereon.

“Reserve Fund” means an endowment fund maintained by FOUNDATION to address funding deficits incurred in its operation of the Campus.

“Revenues” means all of the revenues and income of every nature and from whatever source derived by FOUNDATION from the operation of the Campus (but excluding capital proceeds, grants and donations for capital purposes or specific projects) including, but not limited to, rents, ticket sales, concessions, and other revenues received therefrom.

“Review and Approval or Consent Rights” shall have the meaning set forth in Section 4.05A hereof.

“Reviewing Party” shall have the meaning set forth in Section 4.05A hereof.

“SAFD Building” means the improvements on the SAFD Tract.

“SAFD Tract” means the parcel of land on which the City of San Antonio Fire Department Headquarters building is located, known as 115 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds on an instrument attached to this Development Agreement as Exhibit “A-2”, save and except any portion thereof which lies in a public road or right-of-way.

“Schedule” means the written schedule prepared by FOUNDATION, reflecting the agreed target dates for the completion of preconstruction obligations under this Development Agreement and the commencement of construction and Substantial Completion of the

Performing Arts Center.

“Scheduled Completion Date” means the date by which Substantial Completion is required to occur pursuant to Section 2.03G, provided, however that any date beyond such date shall require the approval of the COUNTY, such approval to not be unreasonably withheld, delayed, or conditioned.

“Substantial Completion” or **“Substantially Complete”** means the point of progress of the applicable work and improvements, in accordance with the Final Plans and all Applicable Laws, is sufficiently complete that, subject only to minor punch-list type items, (A) such improvements can be occupied lawfully and utilized for the intended purpose, (B) a certificate of occupancy (either permanent or temporary) has been issued by the Governmental Authority and (C) a certificate has been provided by the architect(s) of such improvements to the effect that the improvements are “substantially completed.”

“Substantial Completion Certificate” means a certificate confirming the Substantial Completion of the Campus, signed and sworn to by FOUNDATION and delivered and filed in accordance with Section 2.03D.

“Submitting Party” shall have the meaning set forth in Section 4.05A hereof.

“Term” means as defined in Section 2.01 of this Development Agreement.

“Use Agreement” has the meaning given to such term in Article 1.J of this Development Agreement.

“Visitors Tax” means the tax imposed by COUNTY pursuant to Sections 334.103 and 334.252 of the Texas Local Government Code for the purposes of this Development Agreement, following approval of the voters at an election duly called and held for such purpose.

“Work” means the work to be performed on the Project.

EXHIBIT "A-1" GRANT AND DEVELOPMENT AGREEMENT

DESCRIPTION OF AUDITORIUM TRACT

[TO BE ATTACHED]

EXHIBIT "A-2" TO GRANT AND DEVELOPMENT AGREEMENT

DESCRIPTION OF SAFD TRACT

[TO BE ATTACHED]

EXHIBIT "B" TO GRANT AND DEVELOPMENT AGREEMENT

FORM OF DEED WITHOUT WARRANTY

AFTER RECORDING RETURN TO:

BEXAR COUNTY PERFORMING ARTS
CENTER FOUNDATION

Attn: J. Bruce Bugg, Jr., Chairman and President
3316 Oakwell Court
San Antonio, Texas 78218

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED WITHOUT WARRANTY

Date: _____, 2008

Grantor: City of San Antonio, Texas, a Texas municipal corporation, pursuant to Ordinance No. _____, duly adopted by the City Council of City of San Antonio on _____, 2008

Grantor's Mailing Address: P. O. Box 839966, San Antonio, Bexar County, Texas 78283-3966, Attention: City Attorney, 3rd Floor, City Hall.

Grantee: Bexar County Performing Arts Center Foundation, a Texas non-profit corporation

Grantee's Mailing Address: 3316 Oakwell Court, San Antonio, Bexar County, Texas 78218.

Consideration: Cash and other good and valuable consideration and other benefits accruing under the terms of that certain Grant and Development Agreement by and between Grantor, Bexar County, Texas ("**County**") and Grantee dated _____, 2008 (the "**Grant and Development Agreement**"), the sufficiency and receipt of all of which are hereby confessed and acknowledged.

Property (including any improvements):

Parcel 1: The parcel of land known as 100 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds in Exhibit "A-1", attached hereto as a part hereof for all purposes.

Parcel 2: The parcel of land known as 115 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds in Exhibit "A-2", attached hereto as a part hereof for all purposes.

Reservations from Conveyance: All portions of the Property which may lie within a public road or right-of-way are saved and excepted from this conveyance.

Exceptions to Conveyance: This conveyance is made subject to the restrictive covenants set forth in Exhibit "B", attached hereto as a part hereof for all purposes (the "**Restrictive Covenants**"), and the Restrictive Covenants shall run with the land and shall be enforceable by Grantor or the County. In addition, this conveyance is subject to validly existing and effective easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and taxes for 2008, which Grantee assumes and agrees to pay.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's legal representatives, successors and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in Section 5.0023 of the Texas Property Code (or its successor) are excluded.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THIS CONVEYANCE SHALL BE EFFECTIVE FOR ONLY SO LONG AS:

A. Fee simple title to the Property is vested in an organization exempt from taxation under Section 501(c) (3) of the Internal Revenue Code of 1986, 26 U.S.C. § 101, et seq., as amended (the "**Code**");

B. Neither Grantor nor the County has caused to be filed in the Real Property Records of Bexar County, Texas, the Preconstruction Termination Notice (as defined in the Grant and Development Agreement), prior to the date on which the Certificate of Substantial Completion has been filed in the Real Property Records of Bexar County, Texas;

C. Efforts to construct the Performing Arts Center on the Property have not been abandoned prior to substantial completion of the Performing Arts Center;

D. Upon completion of the Performing Arts Center, the Property is continuously used (subject to temporary cessation due to force majeure, or for remodeling and repairs, or reconstruction following a casualty) primarily for the Public Purpose; and

E. The County has not provided a County Certificate of Termination (as defined in the Grant and Development Agreement) to Grantor and filed such certificate in the Real Property

Records of Bexar County, Texas, prior to the date on which the Certificate of Substantial Completion has been filed in the Real Property Records of Bexar County, Texas.

F. If a petition is filed by or against an owner of fee simple title to the Property under any section or chapter of federal or state bankruptcy laws or under any similar law or statute of the United States or any state thereof, the petition shall have been dismissed, withdrawn or otherwise concluded without adjudication within one hundred eighty (180) days after being filed.

In the event that (i) fee simple title to the Property is not vested in an organization exempt from taxation under the Code, (ii) either Grantor or County have caused the Preconstruction Termination Notice to be filed in the Real Property Records of Bexar County, Texas, (iii) efforts to construct the Performing Arts Center have been abandoned prior to Substantial Completion thereof, (iv) the County has provided to Grantor and caused to be filed in the Real Property Records of Bexar County, Texas the County Certificate of Termination prior to the substantial completion of the construction of the Performing Arts Center, (v) upon completion, the Performing Arts Center is not continuously used (subject to temporary cessation due to force majeure, or for remodeling and repairs, or reconstruction following a casualty or condemnation) primarily for the Public Purpose, or (vi) a petition is filed by or against an owner of fee simple title to the Property under any section or chapter of federal or state bankruptcy laws or under any similar law of statute of the United States or any state thereof and the petition has not been dismissed, withdrawn or otherwise concluded without adjudication within one hundred eighty (180) days after having been filed, then, upon any such event or occurrence, all right, title and interest conveyed by this Deed Without Warranty shall automatically revert to and vest in Grantor, Grantor's successors and assigns, without the necessity of any further act on the part of or on behalf of Grantor, it being the intent of Grantor to convey a fee simple determinable estate to the Grantee.

For the purposes of this Deed Without Warranty, Grantor and Grantee confirm and agree that:

(1) The word "**abandoned**" means the complete cessation of construction activities related to the Performing Arts Center prior to Substantial Completion of the main performance hall for a continuous period of twelve (12) months unless such cessation results from (a) a Casualty or other Force Majeure Event (as defined in the Grant and Development Agreement) (b) a default by Grantor or the County under the Grant and Development Agreement that continues beyond the expiration of any applicable notice and cure period, or (c) the continuation of litigation, diligently pursued, concerning the Property or the Project (as defined in the Grant and Development Agreement), that continues despite commercially reasonable efforts to minimize the resulting delay.

(2) The phrase "**the County**" means Bexar County, Texas.

(3) The phrase "**Performing Arts Center**" means, collectively, a performing arts center open to the general public comprising (a) a multiple purpose, variable acoustic hall of not less than 1700 seats and not less than approximately 180,000 gross square feet,

(b) a multiple purpose, multiple form, acoustically sound studio theater with not less than 250 seats, (c) a rehearsal hall containing at least approximately 3,000 square feet, (d) lobby space containing at least 8 square feet per person, (e) arts education facilities, (f) offices for administrative personnel, (g) offices for San Antonio arts organizations, and (h) other improvements capable of use for the Public Purpose;

(4) The phrase "Public Purpose" means use of the Performing Arts Center for performing and visual arts activities in San Antonio, Texas, including but not limited to musical, dance, and theatrical performances, rehearsals, art exhibitions, arts education, and similar activities, that are open to the general public; it being understood and agreed that ancillary and complimentary commercial uses generating revenue intended to provide financial support for the Performing Arts Center, to enhance the Public Purpose and/or to provide goods, services or amenities to patrons, customers or invitees of the Performing Arts Center shall be deemed consistent with the Public Purpose and permissible; and

(5) The phrase "open to the general public" means accessible by the general public on a paid or unpaid basis, from time to time.

F. Grantor establishes the Restrictive Covenants as conditions, covenants and restrictions, whether mandatory, prohibitive, permissive or administrative, to regulate the uses of the Property and to restrict the Grantee's rights to grant naming rights to the improvements placed upon it. Grantor and Grantee stipulate that (1) the Restrictive Covenants touch and concern the Property; (2) privity of estate exists by reason of the ownership of the Property; (3) notice is given by the filing of this Deed Without Warranty in the Public Records; and (4) the Restrictive Covenants are reasonable; (5) the Restrictive Covenants are for the common benefit of Grantor and Grantee and the citizens who will use the Property for the Public Purpose. The Restrictive Covenants will run with the Property, are binding upon Grantee, and its successors and assigns, and inure to the benefit of Grantor, Grantee and the citizens who use the Property for the Public Purpose, and their respective successors and assigns, forever or until such time as the right, title and interest in and to the Property conveyed by this Deed Without Warranty shall automatically revert to and vest in Grantor.

THIS PROPERTY IS CONVEYED BY GRANTOR AND ACCEPTED BY GRANTEE "AS IS," "WHERE IS" AND "WITH ALL FAULTS," AND GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY WRITTEN, ORAL, IMPLIED OR OTHER REPRESENTATIONS, STATEMENTS OR WARRANTIES BY GRANTOR OR ANY AGENT, EMPLOYEE, OFFICER, ELECTED OFFICIAL OR OTHER REPRESENTATIVE OF GRANTOR. EXCEPT FOR THE GRANT AND DEVELOPMENT AGREEMENT, ALL PREVIOUS WRITTEN, ORAL, IMPLIED OR OTHER STATEMENTS, REPRESENTATIONS, WARRANTIES OR AGREEMENTS, IF ANY, ARE MERGED IN THIS DEED WITHOUT WARRANTY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, GRANTOR SHALL HAVE NO LIABILITY TO GRANTEE, AND GRANTEE HEREBY RELEASES GRANTOR FROM ANY LIABILITY (INCLUDING CONTRACTUAL AND/OR STATUTORY ACTIONS FOR CONTRIBUTION OR INDEMNITY AND CLAIMS BASED ON GRANTOR'S NEGLIGENCE IN WHOLE OR IN PART AND CLAIMS BASED ON STRICT LIABILITY), FOR, CONCERNING OR REGARDING:

A. THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING THE SUITABILITY THEREOF FOR ANY ACTIVITY OR USE INCLUDING, WITHOUT LIMITATION, THE PUBLIC PURPOSE;

B. ANY IMPROVEMENTS OR SUBSTANCES LOCATED OR COMPRISING THE PROPERTY; OR

C. THE COMPLIANCE OF THE PROPERTY WITH ANY STATUTE, LAW, TREATY, RULE, CODE, ORDINANCE, REGULATION, PERMIT, OFFICIAL INTERPRETATION, CERTIFICATE, JUDGMENT, DECISION, DECREE, INJUNCTION, WRIT, ORDER OR LIKE ACTION OF ANY FEDERAL, STATE, COUNTY, MUNICIPALITY, COURT, TRIBUNAL, REGULATORY COMMISSION OR OTHER OR OTHER GOVERNMENTAL ENTITY, AUTHORITY, AGENCY OR BODY, WHETHER LEGISLATIVE, JUDICIAL OR EXECUTIVE (OR A COMBINATION OR PERMUTATION THEREOF) WITH JURISDICTION OVER THE PROPERTY.

GRANTOR HAS NOT MADE, DOES NOT MAKE AND EXPRESSLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. GRANTEE AFFIRMS THAT PRIOR TO DELIVER OF THIS DEED WITHOUT WARRANTY, GRANTEE HAS INVESTIGATED AND INSPECTED THE PROPERTY TO ITS SATISFACTION AND BECOME FAMILIAR AND SATISFIED WITH THE CONDITION OF THE PROPERTY, AND GRANTEE HAS MADE ITS DETERMINATION AS TO (1) THE MERCHANTABILITY, QUANTITY, QUALITY AND CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS, AND (2) THE PROPERTY'S SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTEE AND ITS SUCCESSORS AND ASSIGNS HAVE ASSUMED ALL RISK AND LIABILITY WITH RESPECT TO THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS ON, WITHIN OR UNDER THE SURFACE OF THE PROPERTY, WHETHER KNOWN OR UNKNOWN, APPARENT, NON-APPARENT OR LATENT, AND WHETHER EXISTING PRIOR TO, AT OR SUBSEQUENT TO TRANSFER OF THE AUDITORIUM TRACT OR SAFD TRACT TO GRANTEE.

GRANTOR IS HEREBY RELEASED BY GRANTEE AND ITS SUCCESSORS AND ASSIGNS OF AND FROM ANY AND ALL RESPONSIBILITY, LIABILITY, OBLIGATIONS AND CLAIMS, KNOWN OR UNKNOWN, RELATING TO THE PROPERTY, OR EITHER OF THEM, INCLUDING ACTIONS FOR CONTRIBUTION OR INDEMNITY, THAT GRANTEE OR ITS SUCCESSORS AND ASSIGNS MAY HAVE AGAINST GRANTOR OR THAT MAY ARISE IN THE FUTURE, BASED IN WHOLE OR IN PART UPON THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES,

MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS ON, WITHIN OR UNDER THE SURFACE OF THE PROPERTY, INCLUDING ALL RESPONSIBILITY, LIABILITY, OBLIGATIONS AND CLAIMS THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED 42 U.S.C. § 9601 ET SEQ. GRANTEE FURTHER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY EXPLAINED TO GRANTEE AND THAT GRANTEE FULLY UNDERSTANDS AND ACCEPTS THE SAME.

This conveyance is intended to include any property interests obtained by after-acquired title.

When the context requires, singular nouns and pronouns include the plural.

[Signatures appear on following pages.]

Signed to be effective as of the first date above written.

GRANTOR:

CITY OF SAN ANTONIO, TEXAS, a Texas
municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

[Assistant] City Attorney

STATE OF TEXAS §

 §

COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2008, by _____, _____ of **CITY OF SAN ANTONIO, TEXAS**, a Texas municipal corporation, on behalf of said municipal corporation.

Notary Public in and for the State of Texas

My commission expires: _____

GRANTEE:
BEXAR COUNTY PERFORMING ARTS
CENTER FOUNDATION,
a Texas non-profit corporation

By: _____
Name: J. Bruce Bugg, Jr.
Title: Chairman and President

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2008, by J. Bruce Bugg, Jr., Chairman and President of Bexar County Performing Arts Center Foundation, a Texas non-profit corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

My commission expires: _____

EXHIBITS:

- Exhibit A-1 Description of Auditorium Tract
- Exhibit A-2 Description of SAFD Tract
- Exhibit B Restrictive Covenants

EXHIBIT "A-1" TO DEED WITHOUT WARRANTY

[Description of Auditorium Tract – to be attached]

EXHIBIT "A-2" TO DEED WITHOUT WARRANTY

[Description of SAFD Tract – to be attached]

EXHIBIT "B" TO DEED WITHOUT WARRANTY

RESTRICTIVE COVENANTS

1. Subject to the approval rights retained by Grantor under the terms of these Restrictive Covenants, Grantee will have the sole, exclusive and non-delegable right to enter into Naming Agreements. Each Naming Agreement shall identify specifically the name thereby authorized to be used.

2. Each Naming Agreement shall adopt and require compliance with the Naming Parameters. A copy of each Naming Agreement shall be given to Grantor by Grantee not less than thirty (30) days prior to the date on which such Naming Agreement will become effective.

3. Subject to the circumstances described in Section 4 below, the Naming Agreement for each of the following purposes shall be subject to and require the prior approval of Grantor, which may not be unreasonably withheld, conditioned or delayed, as a condition precedent to the validity and legally binding effect thereof:

A. Subject to the circumstances described in Section 4 below, the general name to be used in connection with the Performing Arts Center at any time located on Tract 1; and

B. The general name to be used in connection with the Performing Arts Center at any time located on Tract 2.

4. Grantee will not be required to obtain Grantor's approval of any named to be used or the terms of the Naming Agreement for the Performing Arts Center located on Tract 1, if that Naming Agreement:

A. Evidences a legally binding and enforceable obligation of a single licensee to fund an amount not less than ten percent (10%) of the total Capital Budget as consideration for such Naming Agreement;

B. Provides that it will terminate in all respects if such amount is not fully paid to Grantee;

C. Requires Grantor's approval, which may not be unreasonably withheld, conditioned or delayed, for any material waiver or amendment of the Naming Agreement, including, but not limited to, any reduction or extension of time related to the payment obligations of such licensee thereunder; and

D. Otherwise complies with Section 5 of these Restrictive Covenants.

5. Each Naming Agreement shall contain the following restrictions, limitations and conditions:

A. Each name to be used in connection with the Performing Arts Center shall:

(1) Include the name of a facilitator or benefactor of the Performing Arts

Center;

(2) Honor a person, place, institution, group, entity or event, whether now existing or that existed in the past;

(3) Recognize events or affairs of historic significance; or

(4) Embrace civic ideals or goals.

B. A name to be used in connection with the Performing Arts Center shall not include a name or reference that:

(1) Is defamatory, libelous, obscene, vulgar or offensive to the general public;

(2) May violate the rights of any person, institution, group or entity;

(3) Identifies or is identified with distilled liquor or spirits, habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses or publications, pornography, massage parlors, erectile dysfunction, birth control or sexually transmitted diseases, firearms or firearm ammunition, tattoo parlors, pawn shops, check-cashing establishments, or any product or service which is prohibited by applicable law;

(4) Advocates or opposes any political candidate, issue, cause, or belief;

(5) Identifies or is identified with a person or organization that has been convicted of a criminal offense; or

(6) Advocates violence, criminal activity or immorality.

C. The consideration payable to Grantee pursuant to such Naming Agreement shall be paid in not less than five (5) equal, annual installments provided, however, that consideration of at least \$15,000,000 may be paid in up to fifteen (15) equal annual installments.

6. Neither the Property nor any interest therein may be voluntarily or involuntarily, transferred, sold, encumbered, leased or conveyed without the prior written consent of Grantor and County, which consent may not be unreasonably withheld, conditioned or delayed, and any attempted conveyance or encumbrance of the Property shall be void and of no legal effect; provided, however, that notwithstanding the foregoing, without the prior consent of Grantor and County, (i) portions of the Property may be leased or licensed when such lease or license is consistent with the Public Purpose, and (ii) subject to obtaining any approvals required with respect to such easements under the San Antonio City Code, utility, drainage and access easements and similar rights and interests in and to the Property may be granted to the extent necessary or desirable in connection with the development and use of the Property.

7. For the purpose of this Declaration:

A. "**Capital Budget**" means the total budget prepared by Grantee for the development, construction, equipping and furnishing of the Performing Arts Center.

B. **“Naming Agreement”** means an agreement granting the right to use a specific name to identify the Performing Arts Center or a component part thereof;

C. **“Naming Parameters”** means the requirements and limitations described in Section 4 of these Restrictive Covenants.

8. These Restrictive Covenants run with the Property and are binding upon Grantee and Grantee’s successors and assigns until title to the Property shall automatically revert to and vest in Grantor.

9. Failure by Grantor to enforce these Restrictive Covenants is not a waiver.

10. Grantor may correct typographical or grammatical errors, ambiguities or inconsistencies contained in these Restrictive Covenants, provided that any such correction must not impair or affect a vested right of Grantee or any party to a Naming Agreement.

11. These Restrictive Covenants may be amended at any time by the mutual consent of Grantor and Grantee.

12. The provisions of these Restrictive Covenants are severable. If any provision hereof is invalidated or declared unenforceable, the other provisions will remain valid and enforceable.

13. Any notice required or permitted by these Restrictive Covenants must be given in writing by certified mail, return receipt requested. Unless otherwise required by law or by these Restrictive Covenants, actual notice to the party to be notified is sufficient.

14. Grantor may bring an action against Grantee to enforce or enjoin a violation of these Restrictive Covenants. If Grantor is successful in such proceeding, Grantee shall be liable to Grantor for all costs and reasonable attorneys’ fees incurred by Grantor in enforcing or enjoining a violation of these Restrictive Covenants. Grantee acknowledges that the Restrictive Covenants are necessarily special, unique and extraordinary and that the harm to Grantor arising from a breach thereof cannot be reasonably and adequately be compensated by money damages, as such breach will cause Grantor to suffer irreparable harm. Accordingly, upon failure of Grantee to comply with the Restrictive Covenants at any time, Grantor or any of its successors or assigns shall be entitled to injunctive relief or other extraordinary relief, such injunctive or other extraordinary relief to be cumulative to, but not in limitation of, any other remedies that may be available at law or equity, but Grantor shall not be entitled to, and Grantor hereby waives the right to, any punitive or consequential damages.

EXHIBIT C TO GRANT AND DEVELOPMENT AGREEMENT
CERTIFICATE OF COMMENCEMENT OF CONSTRUCTION

DATE: _____, 200__

AFFIANT: BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION
 3316 Oakwell Court
 San Antonio, Texas 78218

Unless defined herein, each capitalized term or phrase used in this Certificate of Commencement of Construction ("**Certificate of Commencement of Construction**") will have the meaning ascribed to such term or phrase in the Grant and Development Agreement (the "**Development Agreement**") dated May __, 2008, between Affiant, City of San Antonio, Texas ("**CITY**") and Bexar County, Texas ("**COUNTY**"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Commencement of Construction has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Commencement of Construction as its agent and representative and deliver it to CITY and to COUNTY in accordance with the terms of the Development Agreement and the Deed Without Warranty.

2. Description of Construction Obligations. Affiant entered into the Development Agreement and agreed to commence construction the Performing Arts Center, as therein provided, not later than the first day of the forty-second month following the Effective Date of the Development Agreement. The Construction Commencement Date has occurred, being _____, 200__.

3. Liability for False Statements. Affiant is aware that CITY and COUNTY are relying upon the truth and accuracy of this Certificate of Commencement of Construction and that Affiant will be liable to CITY and to COUNTY for all damages, attorney's fees, and other expenses incurred because of any false statement contained in this Certificate of Commencement of Construction.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, _____, by _____.

[seal]

Notary Public, State of Texas

EXHIBIT D TO GRANT AND DEVELOPMENT AGREEMENT

CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE: _____, 200__

AFFIANT: BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION
3316 Oakwell Court
San Antonio, Texas 78218

Unless defined herein, each capitalized term or phrase used in this Certificate of Substantial Completion of Completion ("Certificate of Substantial Completion") will have the meaning ascribed to such term or phrase in the Grant and Development Agreement (the "Development Agreement") dated May __, 2008, between Affiant, City of San Antonio, Texas ("CITY") and Bexar County, Texas ("COUNTY"), which is incorporated herein by reference for all purposes.

The person signing this Certificate of Substantial Completion has been duly sworn. Under oath, the undersigned swears the following information is true and correct:

1. Representations of Affiant. The undersigned person has been duly authorized by Affiant to sign this Certificate of Substantial Completion as its agent and representative and deliver it to CITY and to COUNTY in accordance with the terms of the Development Agreement and the Deed Without Warranty.

2. Description of Construction Obligations. Affiant entered into the Development Agreement and agreed to construct the Performing Arts Center on the Auditorium Tract and the SAFD Tract, as therein provided. Construction of the Improvements commenced on _____, 200__. The Performing Arts Center were Substantially Complete on _____, 200__.

3. Liability for False Statements. Affiant is aware that CITY and COUNTY are relying upon the truth and accuracy of this Certificate of Substantial Completion and that Affiant will be liable to CITY and to COUNTY for all damages, attorney's fees, and other expenses incurred because of any untruthful or inaccurate statement contained in this Certificate of Substantial Completion.

AFFIANT:

Printed Name _____

SWORN AND SUBSCRIBED to before me on this _____ day of _____, _____, by _____.

[seal]

Notary Public, State of Texas

EXHIBIT E TO GRANT AND DEVELOPMENT AGREEMENT

LEASE AGREEMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

THIS LEASE AGREEMENT (herein so called) is made and entered into by and between BEXAR COUNTY PERFORMING ARTS CENTER FOUNDATION, a Texas non-profit corporation, hereinafter referred to as "LANDLORD" and CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation, hereinafter referred to as "TENANT" as of the later date on which this Lease Agreement has been signed by LANDLORD or TENANT, as indicated following their respective signatures below shown (the "Effective Date"), upon the terms, conditions, agreements and covenants herein set forth.

WITNESSETH:

This Lease Agreement is made and entered into pursuant to and in performance of certain agreements of LANDLORD and TENANT under that certain Grant and Development Agreement (herein to called) dated effective _____, 2008, among LANDLORD, TENANT and Bexar County, Texas, which is incorporated herein by reference for all purposes. Unless defined in this Lease Agreement, each capitalized term or phrase used in this Lease Agreement will have the meaning ascribed to such term in the Grant and Development Agreement.

LANDLORD hereby leases to TENANT, and TENANT hereby takes from LANDLORD the following described premises (hereinafter referred to as the "Demised Premises") in San Antonio, Bexar County, Texas, to-wit:

Tract 1: The parcel of land known as 100 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds in Exhibit "A-1", attached hereto as a part hereof for all purposes.

Tract 2: The parcel of land known as 115 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds in Exhibit "A-2", attached hereto as a part hereof for all purposes,

together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Demised Premises and together with the building and other improvements now situated thereon.

TO HAVE AND TO HOLD the same, subject to any and all conditions, restrictions and encumbrances appearing of record in Bexar County, Texas as of the Effective Date, for a term beginning on the Effective Date and unless terminated prior to such date by LANDLORD or TENANT as hereinafter provided, ending on the *earlier* to occur of (a) reverter of fee simple title to TENANT of either Tract 1 or Tract 2, or (b) as to Tract 1, sixty (60) days following TENANT's receipt of notice from LANDLORD that the Construction Commencement Date will occur on or about the expiration of sixty (60) days following the date of such notice, and as to Tract 2, the later to occur of (i) sixty (60) days following TENANT's receipt of notice from LANDLORD that the Substantial Completion of the Performing Arts Center on Tract 1 will occur on or about twelve (12) months following the date of such notice or (b) four (4) years following the Effective Date, subject to the termination option described in paragraph 37 herein.

TENANT accepts the Demised Premises upon the following terms, conditions and covenants:

1. RENT: TENANT agrees to pay, without offset or deduction, for the account of LANDLORD rent for the Demised Premises in the total amount of ONE DOLLAR (\$1.00), payable in advance on the Effective Date (the

"Base Rent").

2. SECURITY DEPOSIT. No Security Deposit will be required of TENANT.
3. ACCEPTANCE OF DEMISED PREMISES: TENANT ACKNOWLEDGES THAT IT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND ANY BUILDINGS AND IMPROVEMENTS SITUATED THEREON AND ANY FURNITURE, FIXTURES AND EQUIPMENT LOCATED THEREIN AS SUITABLE FOR THE PURPOSES FOR WHICH THE SAME ARE LEASED IN THEIR PRESENT CONDITION, "AS IS," "WITH ALL FAULTS," WITHOUT EXCEPTION, AND THAT LANDLORD HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF THE DEMISED PREMISES. TENANT HEREBY WAIVES ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES AND LIENS BASED ON ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE, ANY AND ALL WARRANTIES OF HABITABILITY, AND ANY OTHER IMPLIED WARRANTIES NOT EXPRESSLY SET FORTH IN THIS LEASE AGREEMENT. TENANT ACKNOWLEDGES AND AGREES THAT TENANT HAS FULLY EXERCISED THE RIGHT TO INSPECT THE PREMISES FOR ANY DEFECTS AS TO THE SUITABILITY OF SUCH PROPERTY FOR THE PURPOSE TO WHICH TENANT INTENDS TO PUT THE DEMISED PREMISES. THIS LEASE IS SUBJECT TO ALL COVENANTS, EASEMENTS, RESERVATIONS, RESTRICTIONS AND OTHER MATTERS OF RECORD APPLICABLE TO THE DEMISED PREMISES.
4. USE OF DEMISED PREMISES: The Demised Premises shall be used by TENANT for any lawful purpose.
5. COMPLIANCE WITH THE LAW: TENANT shall comply with all governmental laws, ordinances and regulations applicable to TENANT's uses of the Demised Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the Demised Premises, all at TENANT's sole expense.
6. ADDITIONAL RENT: Except for any taxes hereafter assessed and owed that relate to the Demised Premises or this Lease Agreement, the Base Rent shall be absolutely net to LANDLORD so that this Lease shall yield, net to LANDLORD, the Base Rent specified herein throughout the term of this Lease Agreement and that all insurance premiums for insurance obtained by TENANT pursuant to this Lease (if any), utility charges, expenses for ordinary maintenance and repairs, all expenses relating to compliance with laws, and all other costs, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to TENANT'S occupancy of the Demised Premises which may arise or become due during the term or by reason of events occurring during or prior to the term of this Lease Agreement (all such items being hereinafter collectively called the "Expenses") shall be paid or discharged by TENANT. All such amounts are sometimes hereinafter collectively referred to as "Additional Rent".
7. DELINQUENT PAYMENTS. All payments of Base Rent and Additional Rent shall be payable without previous demand therefor and without any right of offset or deduction whatsoever, and in case of nonpayment of any item of Additional Rent by TENANT when the same is due, LANDLORD shall have, in addition to all its other rights and remedies, all of the rights and remedies available to LANDLORD under the provisions of this Lease Agreement or by law or in equity. The performance and observance by TENANT of all the terms, covenants, conditions and agreements to be performed or observed by TENANT hereunder shall be performed and observed by TENANT at TENANT'S sole cost and expense.
8. INDEPENDENT OBLIGATIONS. Any term or provision of this Lease Agreement to the contrary notwithstanding, the covenants and obligations of TENANT to pay Base Rent and Additional Rent hereunder shall be independent from any obligations, warranties or representations, express or implied, of LANDLORD herein contained.
9. MAINTENANCE BY TENANT: TENANT shall, at its expense, maintain the Demised Premises, including all windows, window glass, plate glass and all doors of the building and all operating systems within the building (including plumbing, electrical, HVAC and the like), in the same state of repair and condition as delivered

to TENANT on the Effective Date, reasonable wear and tear excepted. TENANT shall not, however, be required to replace any structural or non-structural components of the Demised Premises, including but not limited to the roof, the exterior walls and the HVAC system. Notwithstanding anything contained herein to the contrary, LANDLORD shall not be required to make any repairs or incur any expenses associated with the Demised Premises at any time during the term of this Lease Agreement, and LANDLORD shall have no liability whatsoever for TENANT's failure to do so.

10. CARE OF DEMISED PREMISES BY TENANT: TENANT shall, throughout the term of this Lease Agreement, take good care of the Demised Premises, including the buildings and other improvements and keep them in a clean and safe condition, free from waste or nuisance and, at the expiration or termination of this Lease Agreement, deliver up the Demised Premises clean and free of trash and in good repair and condition. TENANT shall provide its own janitorial services in sufficient quantity and quality to satisfy TENANT's obligations under this Lease Agreement.

11. ALTERATIONS, ADDITIONS AND IMPROVEMENTS: TENANT shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Demised Premises without the prior written consent of LANDLORD, with such consent to be not unreasonably withheld. TENANT shall under no circumstances permit any liens or claims to be asserted against the Demised Premises or LANDLORD in connection with the construction by TENANT of any improvements to the Demised Premises.

12. SIGNS: TENANT may remove all signs installed by TENANT at the termination of this Lease Agreement, provided that TENANT shall, at its expense, repair any damage to the Demised Premises associated with such removal.

13. HAZARDOUS ACTIVITIES PROHIBITED: TENANT shall not permit any operation or activity or storage or use of any hazardous or any other materials in the Demised Premises that would increase the risk or likelihood of harm, damage or casualty to the Demised Premises.

14. PROPERTY INSURANCE OBLIGATIONS: TENANT may, but shall have no obligation to, maintain policies of insurance insuring TENANT's interest in the Demised Premises and TENANT's property against (a) loss or damage by fire; (b) loss or damage from such other risks or hazards now or hereafter embraced by an "Extended Coverage Endorsement," and (c) loss from so-called explosion, collapse and underground hazards; it being understood, however, that LANDLORD shall have no liability to TENANT with respect to any damage to the Demised Premises or to TENANT's property arising from any casualty or other occurrence. LANDLORD shall, at its sole cost and expense, insure the Demised Premises during the term of this Lease Agreement against (a) loss or damage by fire; (b) loss or damage from such other risks or hazards now or hereafter embraced by an "Extended Coverage Endorsement," and (c) loss from so-called explosion, collapse and underground hazards in amounts not less than \$20,000,000.00 with respect to Tract 1 and \$8,000,000.00 with respect to Tract 2. Such policy or policies of insurance shall (1) be endorsed to show TENANT as an additional insured, (2) contain provisions requiring not less than thirty (30) days' notice to TENANT of any amendment, termination or non-renewal, and (3) be issued by solvent insurance company(ies) licensed to do business in the State of Texas reasonably acceptable to TENANT. Each policy or a duly executed certificate of insurance shall be promptly delivered to TENANT and renewals thereof as required shall be delivered to TENANT at least ten (10) days prior to the expiration of the policy term. In the event that title to the Demised Premises shall revert to TENANT pursuant to the terms of that Deed Without Warranty of even date herewith pursuant to which TENANT, as grantor, has conveyed the Demised Premises to LANDLORD, as grantee, any and all insurance proceeds payable pursuant to policy(ies) before or after such reverter of title and not previously expended on repairs to the Demised Premises following a casualty shall be paid to TENANT, as its sole property, and LANDLORD will have no claim to or right in such proceeds.

15. LIABILITY INSURANCE: TENANT, at its sole cost and expense, shall procure and maintain throughout the term of this Lease Agreement, or any renewal or extension thereof, a policy of insurance insuring TENANT against all claims, demands or actions arising out of or in connection with tenant's use or occupancy of the Demised Premises, or as a result of the condition of the Demised Premises; the limits of such policy to be in an amount not less than One Million and No/100 Dollars (\$1,000,000.00) and such policy shall reflect LANDLORD as an additional insured. In addition, TENANT shall cause LANDLORD to be an additional insured on TENANT'S excess liability policy providing additional coverage for such claims of \$5,000,000 per occurrence and Ten Million

and No/100 Dollars (\$10,000,000.00) in the aggregate, subject to TENANT'S self-insured retention. Each policy (other than a Blanket Policy) obtained by TENANT under this Lease Agreement shall include as a condition that the insurance as to the interest of LANDLORD shall not be invalidated by any act or neglect of LANDLORD or TENANT. All such certificates shall provide that said insurance will not be canceled unless at least thirty (30) days prior written notice of such cancellation has been given to LANDLORD. Each policy or a duly executed certificate of insurance shall be promptly delivered to LANDLORD and renewals thereof as required shall be delivered to Landlord at least ten (10) days prior to the expiration of the policy term.

16. [INTENTIONALLY OMITTED]

17. WAIVER OF SUBROGATION: Each party hereto waives any and every claim which arises or may arise in its favor against the other party hereto during the term of this Lease Agreement or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Demised Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease Agreement with respect to any loss of or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of such mutual waivers, and to cause such insurance, policies to be property endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

18. HAZARDOUS SUBSTANCES: TENANT shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Demised Premises by TENANT, its agents, employees, contractors or invitees, without the prior written consent of LANDLORD. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Texas, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under Texas state law, (ii) Petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 Of the Federal Water Pollution Control Act (33 U.S.C. §1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. §6991 at seq.

19. LANDLORD'S RIGHT OF ENTRY: LANDLORD and its authorized agents shall have the, right, at reasonable times and upon prior notice to TENANT, to enter the Demised Premises (a) to inspect the general condition and state of repair thereof, (b) to make repairs permitted under this Lease Agreement, (c) to plan and perform studies related to the construction of the Performing Arts Center, or (d) for any other reasonable purpose, provided that such right shall be subject to any temporary use being made of the Demised Premises by TENANT which precludes such entry by LANDLORD. Following notice to TENANT by LANDLORD requesting entry, TENANT, or its agents, shall confirm LANDLORD's ability to gain access to the Demised Premises prior to LANDLORD'S exercise of such right of entry.

20. UTILITY SERVICE: TENANT shall pay one hundred percent (100%) of the cost of electric, gas, trash removal, water and sewer service used or consumed by TENANT in connection with its occupancy of the Demised Premises. Failure to timely pay all such charges will be a default under this Lease Agreement.

21. ASSIGNMENT AND SUBLEASING: The rights, duties, agreements and benefits conferred by this Lease Agreement in the Demised Premises may not be assigned or subleased by TENANT, in whole or in part, without the prior written consent of LANDLORD. Any assignment or subletting permitted by LANDLORD will be expressly subject to all terms and provisions of this Lease Agreement.

22. FIRE AND CASUALTY DAMAGE: If any portion of the building or other improvements on the Demised Premises should be damaged or destroyed by fire, tornado or other casualty, TENANT shall give immediate written

notice thereof to LANDLORD. If the Demised Premises have been rendered untenable by such damage or destruction, TENANT shall have the right to terminate this Lease Agreement by written notice to LANDLORD within thirty (30) days following such casualty, in which event this Lease Agreement will terminate and rent will be abated for the unexpired portion of this Lease Agreement, effective upon the date of such notice. Upon the occurrence of any such casualty, TENANT shall promptly repair and/or replace all damaged improvements to restore the same to substantially the condition as of the Effective Date to the extent that insurance proceeds are made available to TENANT by LANDLORD for such purpose, unless this Lease Agreement is terminated by TENANT as provided above. Except as otherwise provided in this Lease Agreement, all insurance proceeds available pursuant to insurance policies maintained by LANDLORD as set forth in paragraph 14 above shall be the property of LANDLORD and TENANT shall not be entitled to any portion thereof.

23. LIABILITY ISSUES.

a. LANDLORD shall not be liable for any injury to persons or damage to property on or about the Demised Premises or any adjacent area owned by LANDLORD caused by the acts, omissions, negligence or misconduct of TENANT, its employees, licensees or concessionaires or any other person entering the Demised Premises under express or implied invitation of TENANT, or arising out of the use of the Demised Premises by TENANT and the conduct of its business therein, or arising out of any breach or default by TENANT in the performance of its obligations hereunder. TENANT hereby releases LANDLORD from any loss, expense, claim or damage arising out of such damage or injury.

b. LANDLORD and LANDLORD's agents and employees shall not be liable to TENANT for any injury to persons or damage to property resulting from the Demised Premises or other premises owned by LANDLORD becoming out of repair or by defect in or failure of any sort whatsoever, including but not limited to equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness.

c. LANDLORD shall not be liable to TENANT for any loss or damage that may be caused by operations in construction of any private, public or quasi-public work, or of any other persons whomsoever.

24. CONDEMNATION: In the event that any part or portion of the Demised Premises shall be subject to condemnation or the threat of condemnation, either party may terminate this Lease Agreement upon thirty (30) days written notice to the other. All condemnation proceeds shall be payable to LANDLORD and TENANT hereby waives any right or claim thereto.

25. DEFAULT BY TENANT: The following events shall be deemed to be events of default under this Lease Agreement:

a. Failure of TENANT to pay the Base Rent, Additional Rent or other sum payable to LANDLORD or reimbursable to LANDLORD hereunder on the date that same is due and such failure shall continue for a period of ten (10) days.

b. Failure of TENANT to comply with any term, condition or covenant of this Lease Agreement, other than the payment of Base Rent. Additional Rent or other sum of money, and such failure shall not be cured or adequate steps be diligently taken to effect a cure within thirty (30) days after written notice thereof to TENANT, or such longer period of time not to exceed ninety (90) days as may be reasonably required to effect a cure if such failure is not capable of being cured within such thirty (30) day period.

c. Abandonment by TENANT of the Demised Premises or cessation of use of the Demised Premises for the purpose leased.

26. REMEDIES OF LANDLORD: Upon the occurrence of any of the events of default described in the sections above, LANDLORD shall have the option to terminate this Lease Agreement, in which event TENANT shall immediately surrender the Demised Premises to LANDLORD, to seek damages from TENANT arising out of or resulting from TENANT'S default, and/or to exercise any other remedies available to LANDLORD at law or in

equity. If TENANT fails to so surrender such premises, LANDLORD may, without prejudice to any other remedy which it may have for possession of the Demised Premises or arrearage in rent, enter upon and take possession of the Demised Premises and expel or remove TENANT and any other person who may be occupying such premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor.

27. REMOVAL OF IMPROVEMENTS BY TENANT: In the event of termination of this Lease Agreement for any reason other than TENANT'S default, the TENANT has the right to remove TENANT'S personal property, inventory and equipment. All existing personalty, equipment, and furnishings located within the Demised Premises as of the date of occupancy by TENANT shall remain the property of TENANT upon the termination of this Lease Agreement.

28. DISCLAIMER OF LANDLORD'S OBLIGATIONS CONCERNING SECURITY: Notwithstanding anything set forth in this Lease Agreement to the contrary, LANDLORD shall not provide any security services to the Demised Premises. TENANT shall bear all responsibility for securing the Demised Premises to its satisfaction, and LANDLORD shall have no responsibility to prevent, and shall not be liable to TENANT, its agents, employees and visitors arising out of losses due to theft, burglary or damage or injury to persons or property caused by persons gaining access to the Demised Premises.

29. ATTORNEY'S FEES: If, on account of any breach or default by LANDLORD or TENANT of their respective obligations under this Lease Agreement, it shall become necessary for the other to employ an attorney to enforce or defend any of its rights or remedies hereunder, and should such party prevail, it shall be entitled to any reasonable attorneys' fees incurred in such connection.

30. QUIET ENJOYMENT: LANDLORD warrants that it has full rights and power to execute and perform this Lease Agreement and to grant the estate demised herein and that TENANT, on payment of the rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Demised Premises during the full term of this Lease Agreement, subject to any and all matters of record in Bexar County, Texas as of the Effective Date.

31. EXHIBITS: All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.

32. USE OF LANGUAGE: Words of any gender used in this Lease Agreement shall be construed to include any other gender, and words in the singular shall be construed to include the plural, unless the context otherwise requires.

33. CAPTIONS: The captions or headings of paragraphs in this Lease Agreement are inserted for convenience only, and shall not be considered in construing the provisions hereof if any questions of intent should arise.

34. SUCCESSORS: The terms, conditions and covenants contained in this Lease Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of LANDLORD under this Lease Agreement, including, but not limited to, any notices required or permitted to be delivered by LANDLORD to TENANT hereunder, may, at LANDLORD's option, be exercised or performed by LANDLORD's agent or attorney.

35. SEVERABILITY: If any provision in this Lease Agreement should be held to be invalid, unenforceable, the validity and enforceability of the remaining provisions of this Lease Agreement shall not be affected thereby.

36. NOTICES: Any notice or document required or permitted to be delivered hereunder may be delivered in person or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the party to be notified at the address indicated following the signature for such party hereinbelow or at such other address as may have been previously specified by written notice delivered in accordance herewith.

37. EARLY TERMINATION OPTIONS. Notwithstanding anything set forth in this Lease Agreement to the

contrary, at the election of LANDLORD, this Lease Agreement, as it applies to the Tract 2, will terminate on the date which is sixty (60) days following TENANT'S receipt of an early termination notice from LANDLORD stating that LANDLORD has elected to terminate this Lease Agreement, provided that if such early termination notice is given to terminate this Lease Agreement prior to the fourth (4th) anniversary date of the Effective Date, LANDLORD shall be required to and shall (i) pay all moving expenses incurred by TENANT in relocating to other suitable premises and (ii) pay all rental expenses incurred by TENANT for such other suitable premises until such date that this Lease Agreement would have terminated according to its terms if such notice had not been given by LANDLORD, which obligations shall survive such termination. Following the expiration of such sixty (60) notice period, neither LANDLORD nor TENANT shall have any further obligation to the other, except pursuant to such provisions that survive the termination of this Lease Agreement.

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

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

LANDLORD warrants and certifies as follows: (i) LANDLORD and its officers, employees and agents are neither officers nor employees of the City; (ii) LANDLORD has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

LANDLORD acknowledges that City's reliance on the above warranties and certifications is reasonable.

37. GOVERNMENTAL IMMUNITY. Nothing in this Lease Agreement waives any governmental immunity available to TENANT under the laws of the State of Texas, and nothing in this Lease Agreement waives any defenses of the LANDLORD or TENANT to claims by third parties under applicable law.

38. APPROPRIATIONS. All obligations of TENANT under this Lease Agreement are funded through the City of San Antonio General Fund. If the San Antonio City Council fails to appropriate funds for this Lease Agreement in the City of San Antonio Budget, then the TENANT may terminate this Lease Agreement and have no further liability hereunder.

EXECUTED this _____ day of _____, 200 ____.

LANDLORD:

BEXAR COUNTY PERFORMING ARTS CENTER
FOUNDATION

By: _____
J. BRUCE BUGG, JR., PRESIDENT AND
CHAIRMAN

DATE: _____

TENANT:

CITY OF SAN ANTONIO, TEXAS

By: _____
NAME: _____
TITLE: _____

DATE: _____

ATTEST:

City Clerk

Exhibits: Exhibit "A-1" - Tract 1 Property Description
 Exhibit "A-2" - Tract 2 Property Description

EXHIBIT "F" TO GRANT AND DEVELOPMENT AGREEMENT

MASTER PLAN



Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATO

FORD POWELL & CARSON
Architects and Planners, Inc.

30 may 2008

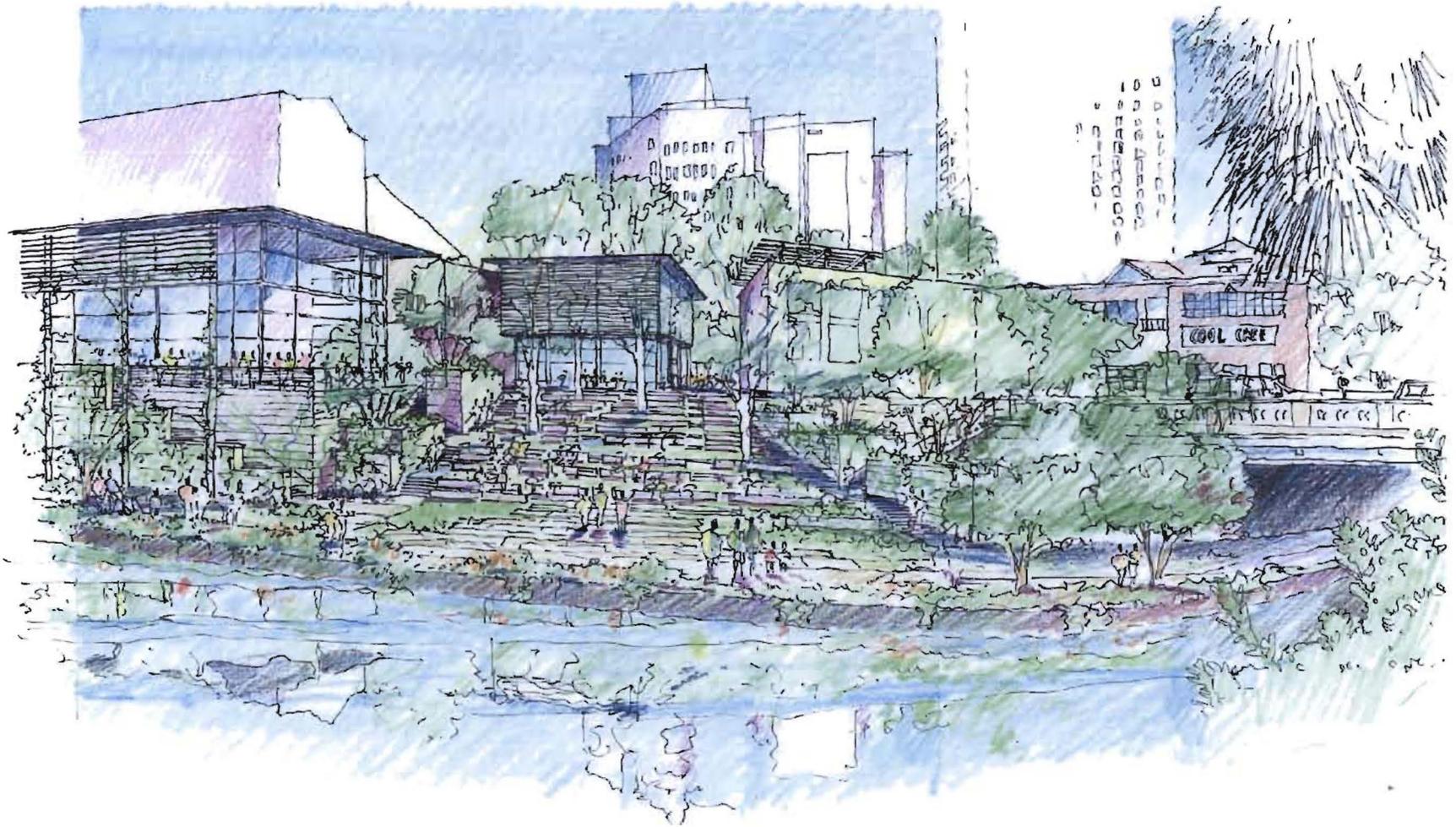


Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATO

FORD POWELL & CARSON
Architects and Planners, Inc.

30 may 2008



Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATS

FORD POWELL & CARSON
Architects and Planners, Inc.

30 may 2008

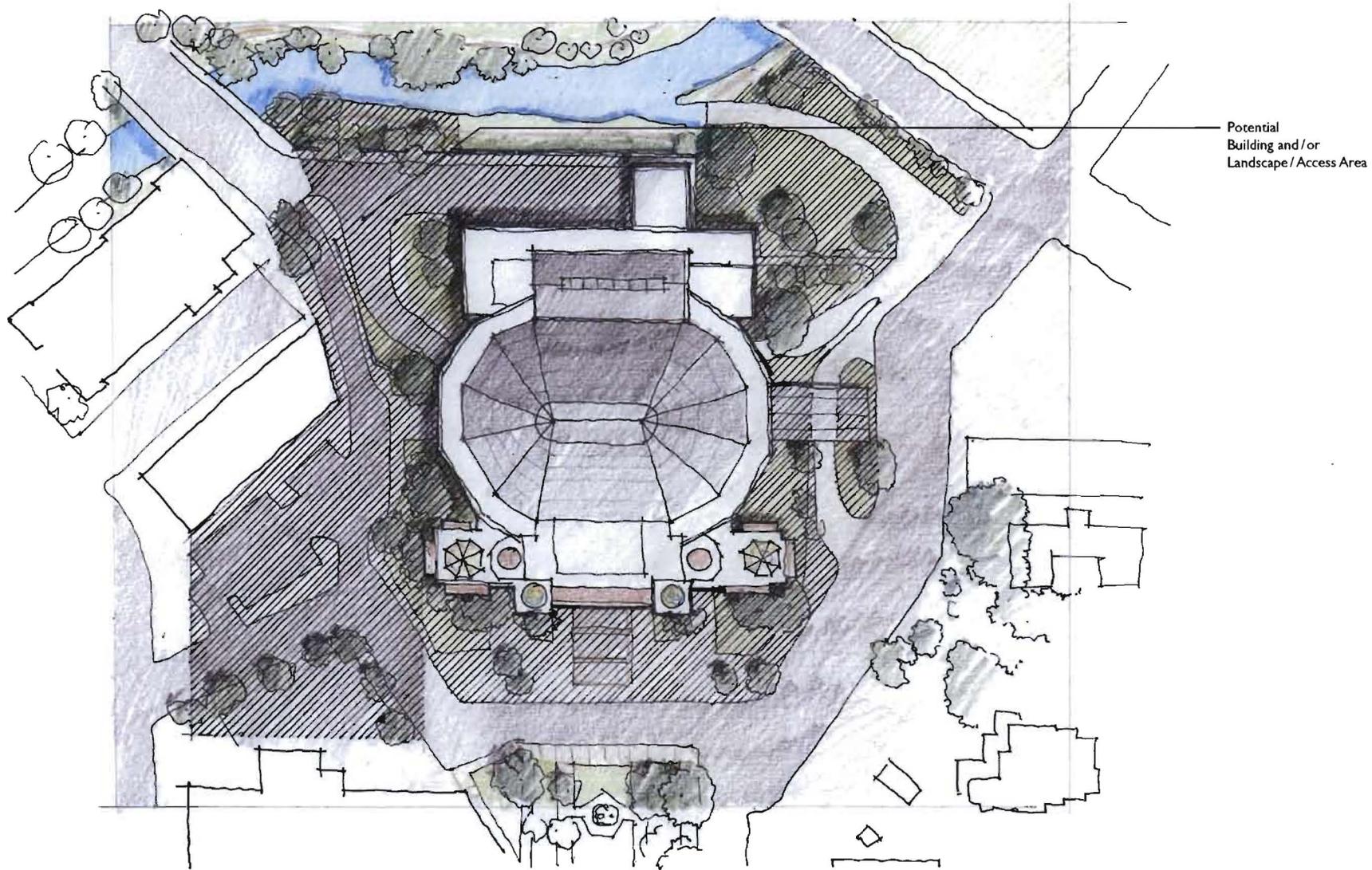


Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATO

FORD POWELL & CARSON
Architects and Planners, Inc.

30 may 2008

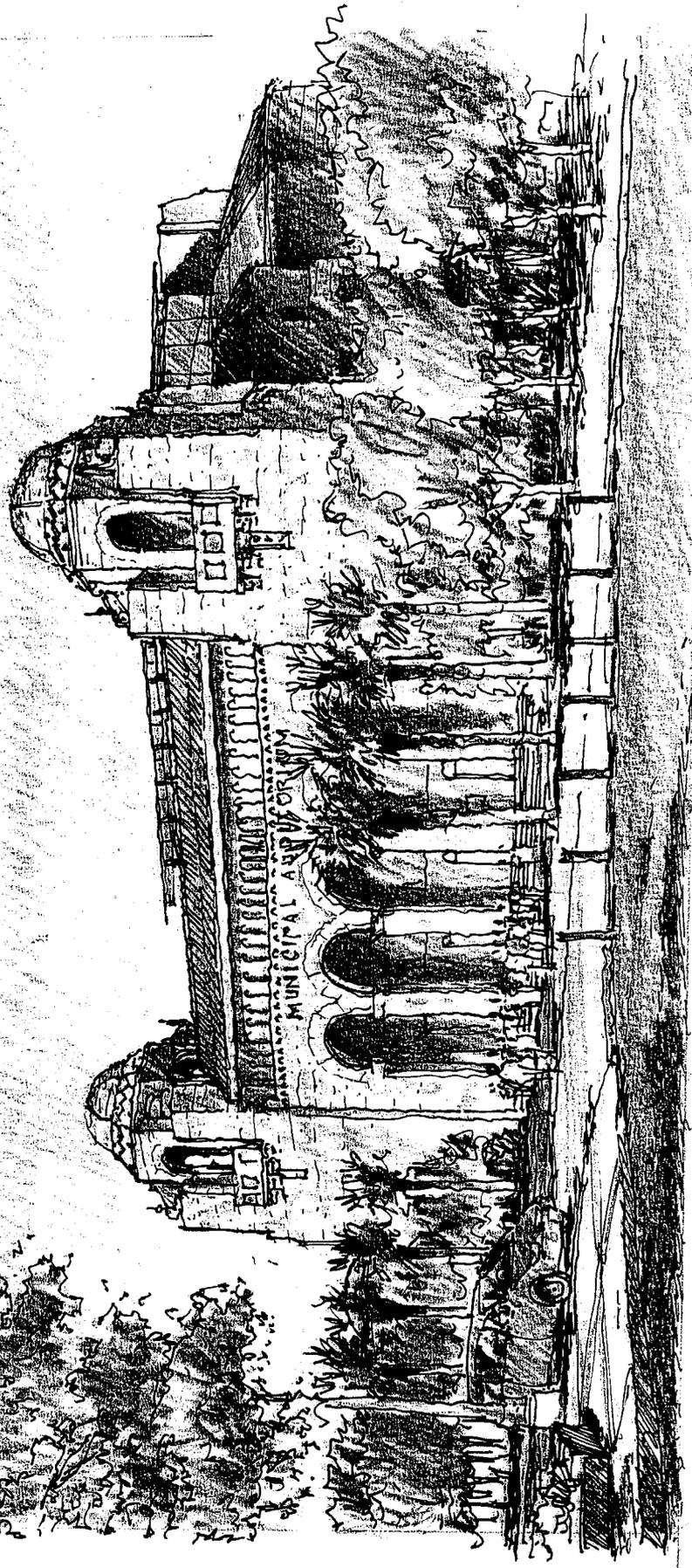


Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATD

FORD POWELL & CARSON
Architectural Firm, Inc.

30 may 2008

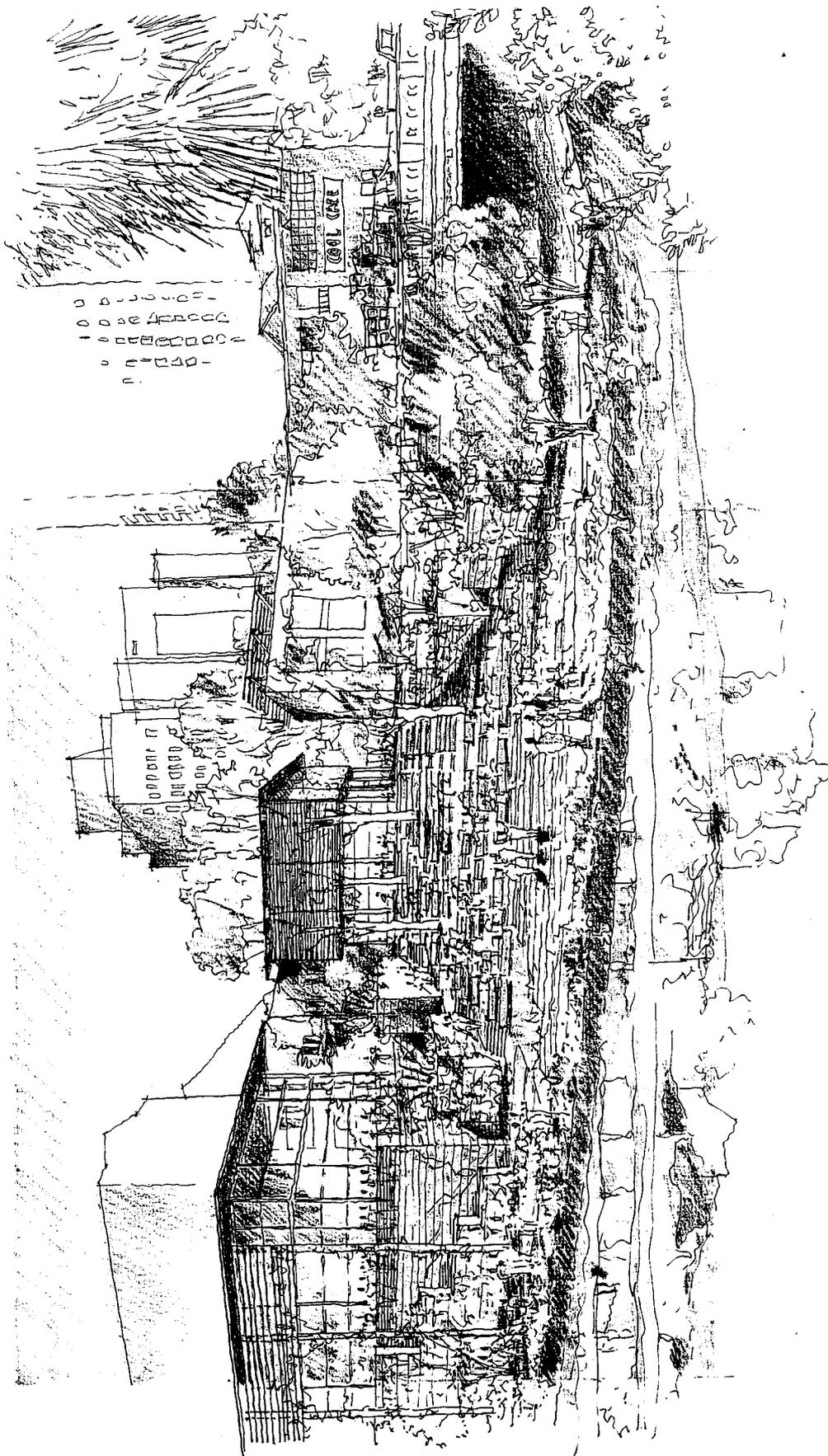


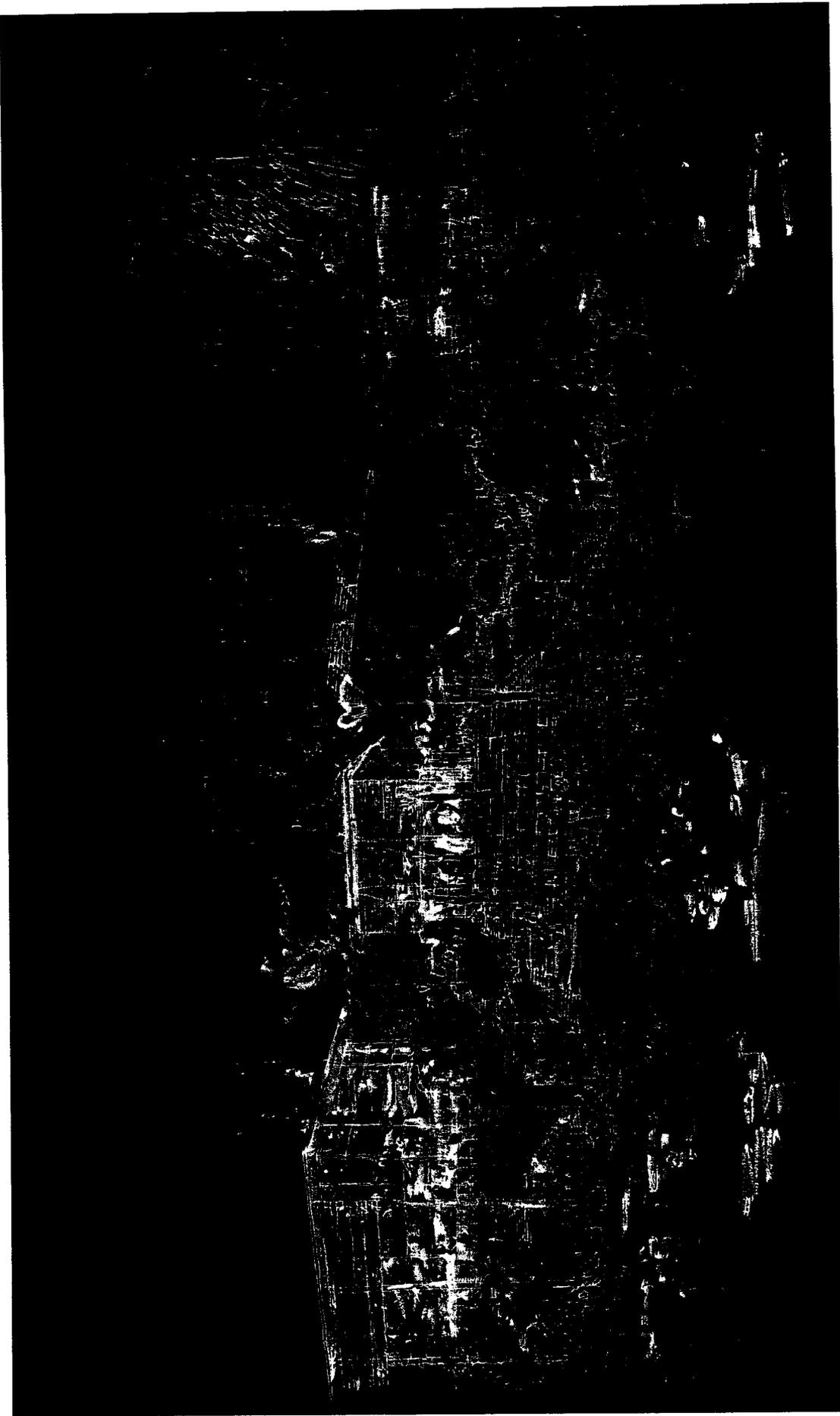
PERFORMING ARTS CENTER

Conceptual Master Plan for Bexar County Performing Arts Center

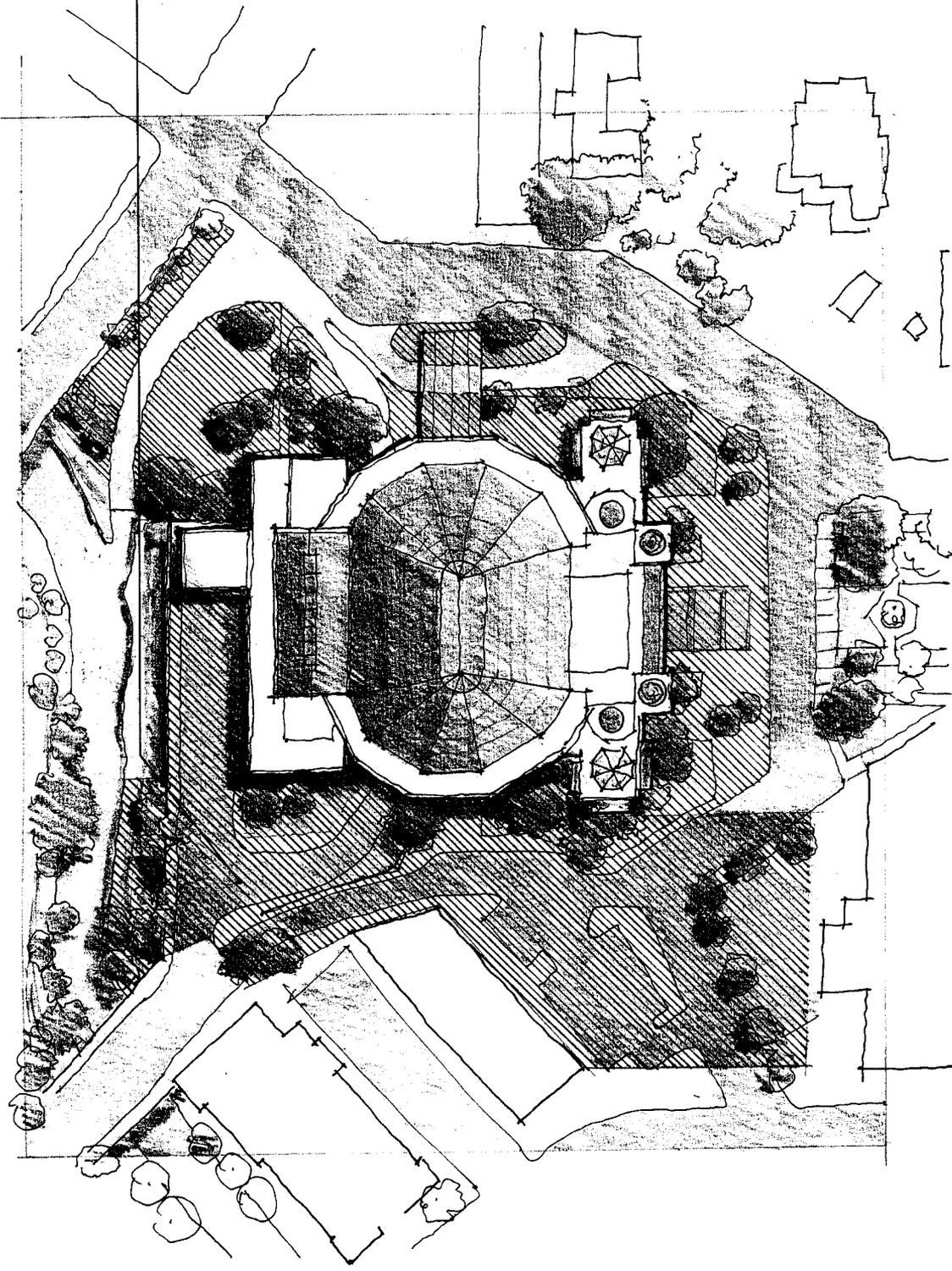
LAKE | FLATB | FORD POWELL & CARSON
Architects and Planners, Inc.

30 May 2008





Potential
Building and/or
Landscape/Access Area



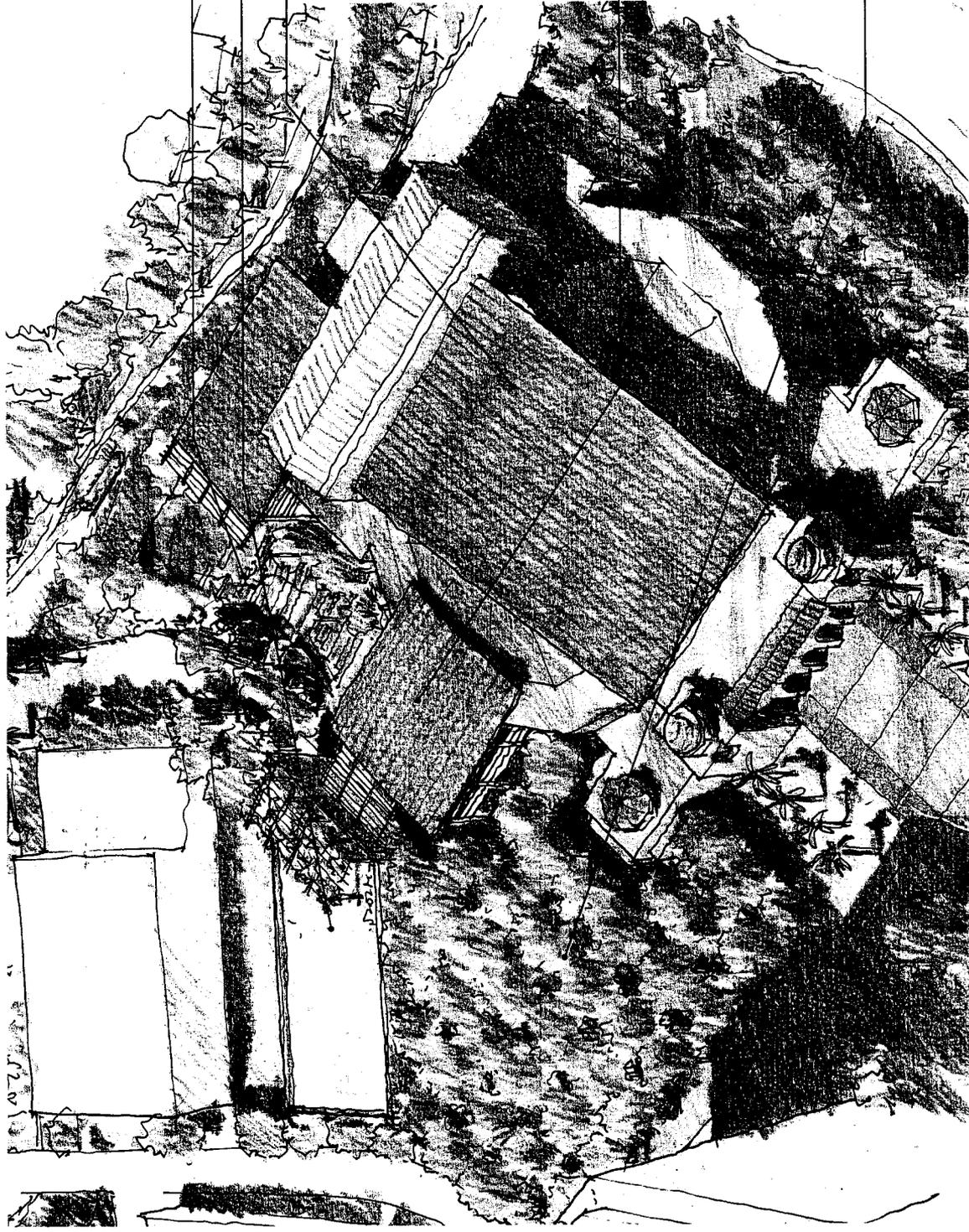
Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATO

FORD POWELL & CARSON
Architects and Planners, Inc.

30 May 2008

CONCEPTUAL ELEVATED ROOF LINES



outdoor amphitheater - link to river

adaptive reuse of existing fire headquarter building

new performance hall-adaptive reuse



new black box theater



performing arts plaza

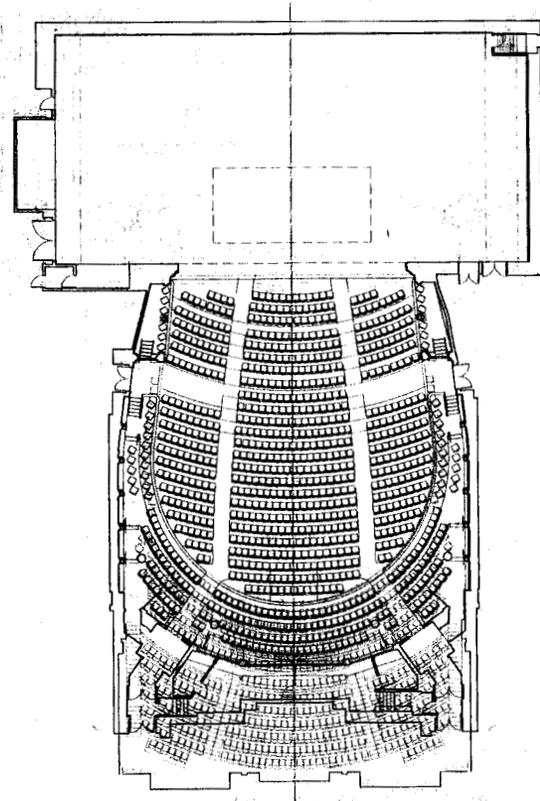


Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATO

FORD POWELL & CARSON
Architects and Planners, Inc.

30 may 2008

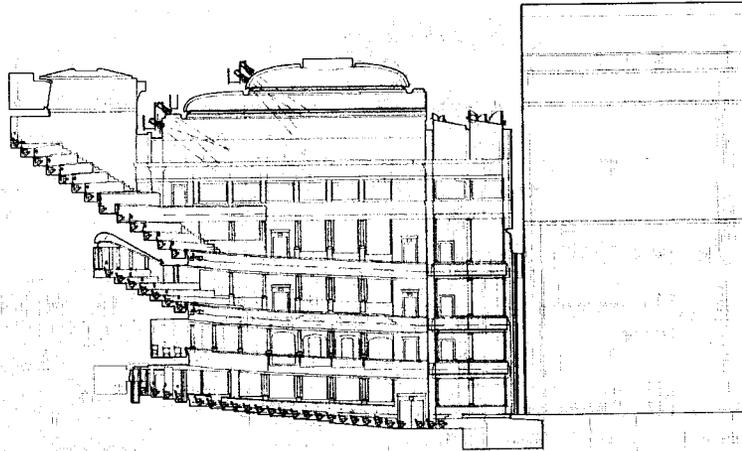


EXAMPLE OF
 BASS PERFORMANCE
 HALL "SUPERIMPOSED"
 ON MUNICIPAL AUDITORIUM

0' 15' 30'



Conceptual Master Plan for Bexar County Performing Arts Center			7
LAKE FLATO	FORD POWELL & CARSON <small>Architects and Planners, Inc.</small>	30 may 2008	



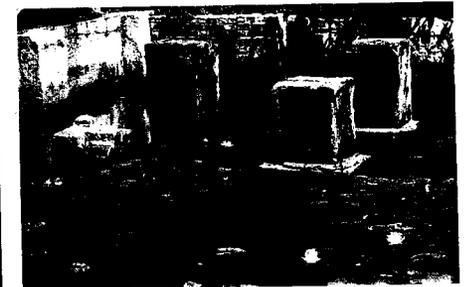
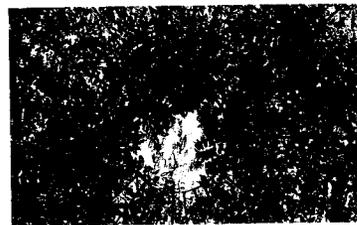
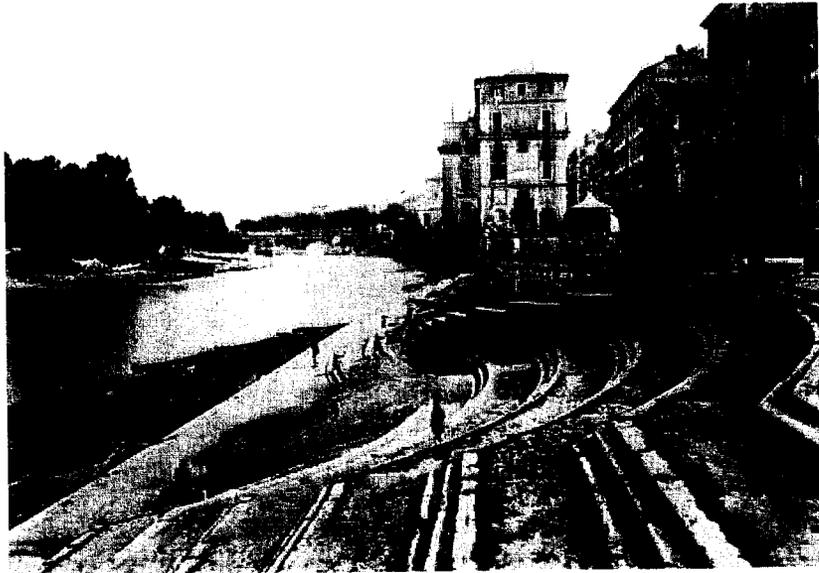
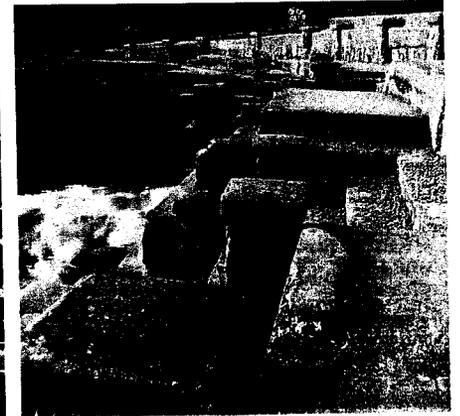
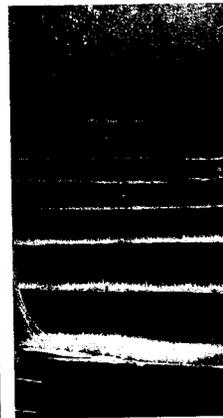
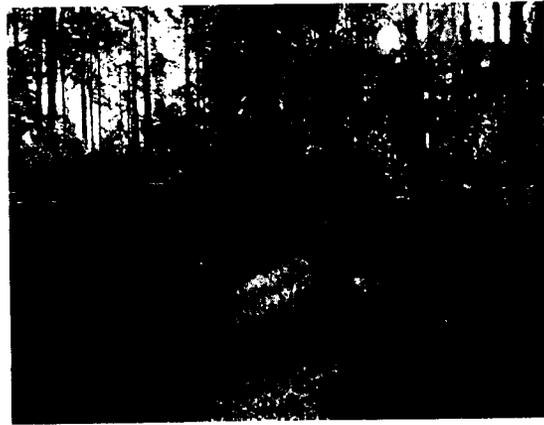
EXAMPLE OF
BASS PERFORMANCE
HALL SIDE ELEVATION
"SUPERIMPOSED"
ON MUNICIPAL AUDITORIUM

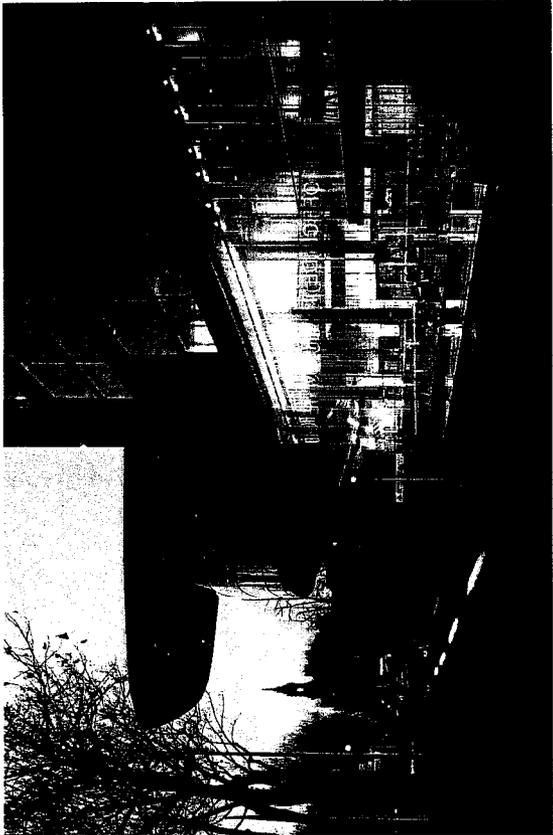
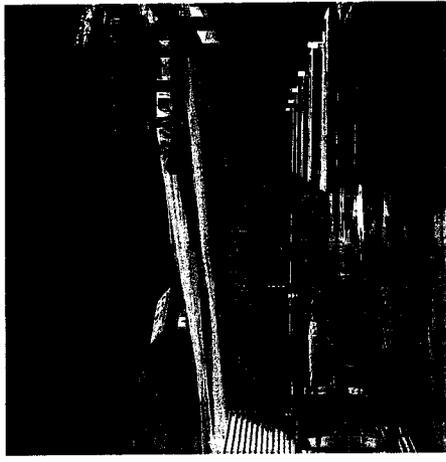
performance hall placed at first floor

0' 15' 30'



Conceptual Master Plan for Bexar County Performing Arts Center			8
LAKE FLATO	FORD POWELL & CARSON <small>Architects and Planners, Inc.</small>	30 may 2008	





Conceptual Master Plan for Bexar County Performing Arts Center

LAKE | FLATO

FORD POWELL & CARSON
Architectural Firm, Inc.

30 MAY 2008

EXHIBIT "G" TO GRANT AND DEVELOPMENT AGREEMENT

INSURANCE REQUIREMENTS

UNDER REVIEW BY FOUNDATION'S INSURANCE AGENT

1. **Commercial General Liability Insurance** (combined single Limit for Bodily Injury and Property Damage Liability). This policy (the "**CGL Policy**") shall be written on an occurrence basis, state that the insurance is primary insurance as regards any other insurance carried by FOUNDATION, and shall be in such amount and such policy limits so that the coverage and limits are adequate to maintain the Umbrella Policy described below without gaps in coverage between the CGL Policy and the Umbrella Policy and the following minimum policy limits:
 - a. \$2,000,000 General Aggregate
 - b. \$2,000,000 Products/Completed Operations Aggregate
 - c. \$2,000,000 Personal Injury
 - d. \$2,000,000 Each Occurrence

Coverage provided shall include the following:

- (1) Premises/operations,
 - (2) Contractor's Protective for Contractor's liability arising out of the hire of Subcontractors (Independent Contractors),
 - (3) Aggregate Limits of Insurance Per Project,
 - (4) Broad Form Contractual Liability specifically in support of, but not limited to, the indemnity provisions of the Contract Documents,
 - (5) Personal Injury Liability with Employment and Contractual exclusions removed,
 - (6) Broad Form Property Damage including Completed Operations,
 - (7) Product/Completed Operations for a period of two years following acceptance of Contractor's Work,
 - (8) All other "Broad Form CGL" coverages, without limitation, and
 - (9) Explosion, collapse, and underground damage to property of others (XCU) where such exposures exist.
2. **All Builder's Risk Insurance / Installation Floater**. This All Risk Builder's Risk Insurance ("**Builder's Risk Policy**"), insuring the interest of FOUNDATION, the COUNTY, the CITY, and the Contractor as their interest may appear, set forth in the single policy, including coverage against collapse and the coverage available under the so-called Installation Floater, written on the completed value basis in an amount not less than the Contract Price of Contractor's contract (including subcontracts) and all authorized and approved Change Orders. Coverage will include all materials, supplies and equipment that are specifically intended for installation into the Work while such materials, supplies and equipment are temporarily located off the Site of the Work on the

purpose of repair, adjustment or storage at the risk of one of the insured parties. Coverage will not include any tools or clothing of workmen or of any tools, equipment, protective fencing, scaffolding, temporary structures, forms and equipment, or other property owned, rented, or used by Contractor, any Subcontractors or Subcontractors and used in the performance of the Work, unless the value of such items is included in the Cost of the Work and such items are specifically identified in the contract documents.

3. **Workers' Compensation/Employers' Liability.** Statutory Workers' Compensation Insurance Coverage [as defined in Sec. 402.011(44) of the Texas Labor Code (1995)] with statutory limits for all of Contractor's workers at the site of the project. In case any work is sublet, the Contractor shall require all Subcontractors similarly to provide Workers' Compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the Contractor, or, when applicable, Contractor has complied with the requirements for joint agreements with independent contractors under Sections 406.141- 406.145, Texas Labor Code (1995).

Additionally, employer's liability insurance policy affording protection of not less than the following amounts:

\$1,000,000	Bodily Injury by Accident — Each Accident
\$1,000,000	Bodily Injury by Disease — Each Employee
\$1,000,000	Bodily Injury by Disease — Policy Limit

4. **Umbrella Liability Insurance.** An excess or umbrella liability insurance policy (the "**Umbrella Policy**") providing coverage in excess of the limits specified above (except for Workers' Compensation Insurance). Such policy shall have the same inception and expiration dates as the underlying liability policies and coverage no less broad than those in the primary policies or program. Minimum limits shall be:

\$50,000,000	Each occurrence
\$50,000,000	Annual aggregate

When commercially available, all such policies described above shall be written on an Occurrence (not Claims made) basis. In addition, the foregoing insurance coverages may be provided under an Owners Controlled Insurance Policy ("**OCIP**") acceptable to the COUNTY, such acceptance not to be unreasonably withheld, conditioned, or delayed.

5. **Error and Omissions Insurance.** An owner's protective professional indemnity umbrella policy ("**OPPI Policy**") specific to the Project. The OPPI Policy shall be in the amount of \$5,000,000 and shall have an extended reporting period two (2) years after the date of Final Completion.

EXHIBIT "H"

MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION GOALS

1. FOUNDATION will use good faith efforts to cause local, minority owned ("**MBE**") and women owned ("**WBE**") business enterprises (collectively, "**MWBE**") to be engaged in the construction of the Project at least up to the levels of the Construction Goals and Operation Goals described below.

2. FOUNDATION has established the following participation percentages as its minimum construction goals (the "**Construction Goals**"):

MWBE	20%
------	-----

3. The Construction Goals are percentages of the total dollar amounts of all trade contracts and material costs (other than those available from limited sources or suppliers) for the construction, equipment and designing of the Project and any Additional Work, but may not necessarily be achieved in each trade.

4. The Operator has established the following participation percentages as its minimum operational goals (the "**Operational Goals**"):

MWBE	20%
------	-----

5. The Operational Goals are percentages of the total amounts expected to be paid to all third-party companies for supplying food, beverages, novelties and notions and other concessions (other than those available from limited sources or suppliers) for items to be sold at and during the operation of the Project, but may not necessarily be achieved in each category.

6. FOUNDATION and the Operator, respectively, will use good faith efforts to meet and, if possible, exceed the minimum percentage for Construction Goals and Operational Goals.

7. The Operator will use good faith efforts to engage qualified MWBE's who are certified by the South Central Texas Regional Certification Agency in third-party contracts for services including, but not limited to, accounting, legal, equipment maintenance, janitorial services, architectural, trade contractors, and other such services typically provided to the operator of an arena facility.

a. Women's Business Enterprise or WBE. A sole proprietorship, partnership or corporation that is locally owned, operated, and controlled by a woman or women with at least 51% control. The woman member(s) must have operational and managerial control, interest in capital, EXPERTISE and earnings commensurate with the percentage of ownership.

b. Minority Business Enterprise or MBE. A sole proprietorship, partnership or corporation that is locally owned, operated, and controlled by a minority group member(s) with at least 51% control. The minority group member(s) must have

operational and managerial control, interest in capital, EXPERTISE and earnings commensurate with the percentage of ownership.

c. Certification. Certification of MWBE qualification will be performed by the South Central Texas Regional Certification Agency.

8. Notwithstanding the goals outlined above, FOUNDATION and the Operator shall always have the right to accept the lowest qualified bid.

9. FOUNDATION agrees that it will provide quarterly reports to the COUNTY's MWBE Committee on its progress in connection with the provisions of this Exhibit "H".

EXHIBIT "I"

CONSTRUCTION CONTRACT REQUIREMENTS

1. The written agreements with the General Contractor for the construction of the Project (the "Contract Documents") shall provide that the General Contractor has visited the site and is aware of all site conditions that are observable or determinable from testing results or other information furnished to General Contractor by FOUNDATION and will comply with Section 5.04(j) of the Development Agreement.

2. The Contract Documents shall provide that all drawings, specifications, shop drawings, or other documents produced by the General Contractor or the subcontractors to construct the Project shall be the sole and exclusive property of FOUNDATION and that all rights, including copyrights, in and to such documents shall be vested in FOUNDATION.

3. The Contract Documents will require the General Contractor to acknowledge that it has reviewed the Development Agreement and that as a result of such review, it has no present actual knowledge of any conflicts between the Development Agreement and the Contract Documents.

4. The Contract Documents shall provide that all payments made to the General Contractor thereunder shall be based upon and allocated to a schedule of values approved by FOUNDATION.

5. The Contract Documents shall provide that the General Contractor shall furnish a waiver of lien from the General Contractor and its major subcontractors as a condition of payment which, except for retainage withheld, shall cover the work for which payment is requested and shall be conditioned only upon receipt of the payment requested.

6. The General Contractor will not enter into any subcontract with any Affiliate (whereby the General Contractor has any direct or indirect ownership or control), unless FOUNDATION has approved such arrangement.

7. The Contract Documents will allow for the coordination/cooperation of the General Contractor regarding COUNTY related work pursuant to the Development Agreement. The General Contractor shall afford access to the site and all areas of the work as may be reasonably necessary for the performance of such work.

8. The Contract Documents shall provide that the Contract Documents and FOUNDATION'S rights thereunder are assumable by the COUNTY upon the termination of the Development Agreement. In the event of such termination, the COUNTY may, but shall not be obligated to, elect to assume the rights and obligations of FOUNDATION under the Contract Documents. Such assumption shall be effective provided that notice thereof shall be furnished to the General Contractor within ten (10) business days of the termination of the Development Agreement. In the event of a termination of the Development Agreement, the COUNTY also shall have the option to elect to terminate the Contract Documents for convenience, without penalty to the COUNTY.

9. The Contract Documents shall require the General Contractor to ensure that any excavation is properly supported to avoid any and all damage to adjacent structures. The Contract Documents shall require the General Contractor to be responsible for design and execution of acceptable trenching and shoring procedures, which are, at a minimum, in accordance with TEX. GOV'T CODE, Section 2166.303 and TEX. H. & S. CODE, Subchapter C, Sections 756.021, et seq.

10. The Contract Documents shall require the General Contractor to submit, for review, a comprehensive QA/QC program. This plan shall be in sufficient detail so as to allow FOUNDATION to understand whom, how, and when the General Contractor will undertake such pro-active measures.

12. The Contract Documents shall require the General Contractor to submit to FOUNDATION, within 60 days from Substantial Completion, a complete assignment of, and reference manual showing, all the warranties and guarantees provided by the General Contractor and subcontractors for the Project. Such warranties and guarantees shall have effective dates that begin no sooner than the date of acceptance by FOUNDATION of the work product.

13. The Contract Documents shall require the General Contractor to prepare at least monthly a progress report in a form, in sufficient detail, and of a character approved by FOUNDATION, submitting three copies to COUNTY. The progress report shall specify for the items in the General Contractor's control, among other things, status of construction activities, an estimated percentage of completion, whether the Project is on schedule and budget, and if not, the reasons therefore, an analysis of contingency (used and unused), and the revised schedule, if any. The progress report shall also include photographs (aerial color until the roof is complete along with color interior progress shots) and status of compliance with applicable MWBE programs.

14. The General Contractor shall prepare a complete submittal log that identifies all the submittals required by the Contract Documents. The submittal log shall, as a minimum, list the following items to be submitted:

- Submittals required by technical specifications
- Listing of subcontractors
- Insurance certificates
- Performance and payment bonds
- Permits, fees and other items to be paid or obtained
- Payment applications
- Schedule of values
- List of projects
- Project closeout submittals

15. The Contract Documents shall require the General Contractor, and the subcontractors for each trade or division of the Work, under the direction of General Contractor, to keep a complete and accurate record of all changes or deviations from the Contract Documents. The General Contractor shall prepare or cause to be prepared legible and neat freehand drawings certifying the as-built conditions of the mechanical and electrical systems,

and specifically defining the variations from requirements of the Contract Documents. All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of drawings, shop drawings and specifications shall be kept at the Site for inspection of Architect and FOUNDATION and shall be delivered to FOUNDATION in good condition at the time of Final Completion.

16. The Contract Documents shall require that the appropriate subcontractor shall, under the direction of General Contractor, furnish to the COUNTY a complete set of manuals, containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus, building systems and components thereof, furnished under the Contract Documents and any additional data specifically required under the various sections of the specifications for each division of the Work.

17. The Contract Documents shall require the General Contractor to provide and maintain temporary barricades and fences that shall be sufficient height and completeness for security and safety purposes around the boundaries of the Construction Site as agreed to in the Master Plan. The General Contractor will maintain (including, but not limited to, periodic painting) such barricades and fences. The General Contractor shall provide gates at locations where required for access to the enclosed area.

18. The Contract Documents shall require the General Contractor to keep the existing streets, sidewalks, and parking lots located adjacent to the construction site (as it is defined in the Master Plan) clear and free of debris and building materials, and, to the extent it is legally able to do so, to repair any damage caused by General Contractor or its subcontractors. The General Contractor will use its best efforts to control dust so that it does not disturb persons within the immediate vicinity of the Site.

19. The Contract Documents shall require the General Contractor to acknowledge that the only obligations of the COUNTY are contained in the Development Agreement and all payments by the COUNTY are limited to the COUNTY Contribution, as defined in the Development Agreement, plus any change orders requested by and executed by, the COUNTY. The Contract Documents shall require the General Contractor to look solely to FOUNDATION for all payments, penalties and damages and to hold the COUNTY harmless from any and all claims, damages, losses and expenses of the General Contractor and its subcontractors arising under the construction documents between General Contractor and FOUNDATION.

20. The Contract Documents shall require the General Contractor to fulfill the requirements of the Limited Sales, Excise, and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the General Contractor will accept an exemption certificate from FOUNDATION. The Contract Documents shall require the General Contractor to pay any taxes otherwise assessed.

21. The Contract Documents shall require the General Contractor to obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project.

22. The Contract Documents shall include an indemnity provision in which, among other things, to the fullest extent permitted by law, the General Contractor indemnifies, defends and holds harmless FOUNDATION, and their respective agents, consultants, representatives, and employees from and against all claims, damages, losses, and expenses, including but not limited to, attorney's fees and costs incurred in connection therewith, arising out of, or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any willful or negligent act or omission of General Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by the negligent acts or omissions one or more of the indemnified parties. The Construction Documents shall also include the COUNTY in each indemnity that is given to FOUNDATION and shall name the COUNTY as an Additional Named Insured in each policy that covers FOUNDATION.

23. The Contract Documents shall provide that the General Contractor shall not permit a mechanic, contractor, materialman, artisan, or laborer lien to attach to the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this contract Documents nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

24. The Contract Documents shall require the General Contractor to indemnify and hold FOUNDATION and COUNTY harmless from any liens, claims, security interest or encumbrances filed by the General Contractor, subcontractors, or anyone claiming by, through or under the General Contractor for items covered by payments made by the General Contractor.

25. The Contract Documents shall provide that the General Contractor maintain adequate books, payrolls, and records satisfactory to FOUNDATION in connection with any and all Work performed by or through the General Contractor hereunder. General Contractor agrees to retain all such books, payrolls, and records (including data stored in computers) for a period of not less than three (3) years after completion of the Work. FOUNDATION and the COUNTY and their duly authorized representatives shall be afforded reasonable and timely access to all of the General Contractor's books, records, correspondence and other data and information relating to the Contract Documents and the Work.

26. The Contract Documents shall require the General Contractor's contracts and subcontracts to contain the language required by TEX. LABOR CODE Section 401.011 and 28 TAC 110.110.

27. The Contract Documents shall require the General Contractor to furnish a performance bond and a payment bond meeting all statutory requirements of the State of Texas (including Chapter 53 of the Texas Property Code, Chapter 2253 of the Texas Government Code, and Art. 7.19-1 of the Texas Insurance Code), in form and substance satisfactory to FOUNDATION. Each Bond shall be in a penal sum which is not less than the Contract Sum. The bonds shall be executed by a responsible corporate surety acceptable to FOUNDATION, holding a current certificate of authority from the United States Department of Treasury to issue bonds to the federal government ("Treasury Listed"), and duly licensed and authorized by the

State of Texas to issue surety bonds in Texas. If the risk insured exceeds ten percent (10%) of the surety company's capital and surplus, the surety must reinsure such excess in a manner acceptable to FOUNDATION. The amount of each bond provided by General Contractor shall be equal to One Hundred Percent (100%) of the Stipulated Sum. All bonds shall be accompanied by an executed Dual or Multiple Obligee Rider naming the COUNTY as additional obligees.

28. The Construction Documents shall require that payments due and unpaid under the Contract Documents shall bear interest at a rate no greater than that provided in the Texas Prompt Payment Act, Tex. Gov't Code Chapter 2251.

29. The Construction Documents shall require General Contractor to certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive, and taking into account the nature of the Projects and the improvements being furnished. The General Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

EXHIBIT "J" TO GRANT AND DEVELOPMENT AGREEMENT

FORM OF DEVELOPMENT COST PAYMENT/REIMBURSEMENT REQUEST

Requisition No. _____

REQUISITION FOR DISBURSEMENT OF DEVELOPMENT COSTS

1. All terms capitalized herein shall have the same meaning as in that certain Grant and Development Agreement (the "**Agreement**") dated as of _____, 2008, between Grant and Bexar County Performing Arts Foundation ("**Developer**"), the City of San Antonio, Texas ("**CITY**") and Bexar County, Texas ("**COUNTY**"). The sums requisitioned hereunder are for the payment of Development Costs of the Project. The expenditures for which money is requested hereby have been or will be made and properly recorded on the undersigned's books. FOUNDATION shall keep its books and records relating to amounts for which it seeks reimbursement or payment at its regular business office, which the COUNTY may examine and/or audit (at the COUNTY'S expense) at all reasonable times during normal business hours upon reasonable prior written notice to FOUNDATION.

2. FOUNDATION submits the following information for the following sums which are requisitioned for payment:

<u>Item No.</u>	<u>Budgetary Category</u>	<u>Contract Amount</u>	<u>Payee's Invoice No.</u>	<u>Name, Address of Payee</u>	<u>Purpose</u>	<u>Invoice Total</u>	<u>% Completion</u>
-----------------	---------------------------	------------------------	----------------------------	-------------------------------	----------------	----------------------	---------------------

[ADD ADDITIONAL SHEETS AS NEEDED]

3. This Requisition is for Development Costs which have not been the basis of a prior or contemporaneous Requisition, or if previously requested, were not paid by the COUNTY.

4. The work, material, and equipment or other property covered by this Requisition have been performed or delivered to the Requesting Party.

5. Attached are copies of all invoices for which reimbursement or payment is sought together with proof of payment therefore, if applicable.

6. The undersigned certifies that, with respect to all items covered by this Requisition, it has complied with the provisions of the Agreement. Submitted herewith are certificates or documents, if any, required to be submitted pursuant to the Agreement.

7. Attached hereto as Rider 1 are Affidavits and Partial Waivers of Lien executed by those consultants or contractors who could otherwise be entitled to a lien against the Project, if applicable.

8. Attached hereto as Rider 2 are AIA Forms G702 and G703.

9. The schedules and attachments to this Requisition are true and correct to the best of the undersigned's knowledge.

**BEXAR COUNTY PERFORMING ARTS
FOUNDATION**

By: _____
Name: _____
Title: _____
Date: _____

**APPROVED:
BEXAR COUNTY, TEXAS**

By: Community Venues Project Office

By: _____
Name: _____
Title: _____
Date: _____

**APPROVED:
BEXAR COUNTY, TEXAS AUDITOR'S OFFICE**

By: _____
Name: _____
Title: _____
Date: _____

Rider 1 to Exhibit "J"

AFFIDAVIT AND [PARTIAL] WAIVER OF LIEN¹

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared, _____, known to be the _____ of _____, a _____ (hereinafter called "**Contractor**") and who, being duly sworn, upon his oath declares and, on behalf of the Contractor, acknowledges as follows:

1. I am the duly authorized agent for the Contractor who has authorized me to make this affidavit, to enter into the agreements and to grant the lien waivers herein set forth, in its behalf and as its act and deeds, and all of the recitations herein are true and correct.
2. Contractor has supplied materials and performed labor in connection with the design of improvements upon the Project.
3. In consideration of and conditioned upon receipt of \$ _____, Contractor hereby waives and releases any and all liens, rights, and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialman's liens under the Constitution and statutes of the State of Texas) owned, claimed, or held by Contractor in and to the land and improvements constituting part of the Project [**but only as they relate to the amounts paid hereunder or previously paid. All lien rights with respect to unpaid amounts are reserved.**]
4. Contractor has paid all suppliers of material, sub-contractors, equipment lessors and others furnishing materials, labor, or equipment with respect to the work for which payment is requested on this Requisition and, to the best of Contractor's knowledge, there is no claim pending or threatened by any such person with respect to work described in Requisition No. _____.
5. Contractor agrees to indemnify and hold FOUNDATION, and the COUNTY harmless from any and all liens and claims of suppliers of material, subcontractors, equipment lessors and any others furnishing materials, labor or equipment in connection with the development, design and construction of the Project as defined in the Agreement between FOUNDATION and COUNTY.

EXECUTED this _____ day of _____, _____.

¹ Only required to be submitted by consultants and contractors who could be entitled to a lien against the Project, such as surveyors.

By: _____
Title: _____

SUBSCRIBED AND SWORN TO before me by the said _____
this _____ day of _____, _____, to certify which witness my hand
and seal of office.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary) _____

My commission expires: _____

THE STATE OF TEXAS

§

§

COUNTY OF BEXAR

§

This instrument was acknowledged before me on the _____ day of
_____, _____, by _____,
_____ of _____, a _____
corporation, on behalf of said corporation.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary) _____

My commission expires: _____

Rider 2 to Exhibit "J"

DEVELOPMENT COST PAYMENT/REIMBURSEMENT REQUEST

[AIA G702 and G703 Forms to be attached]

COPY

AFTER RECORDING RETURN TO:
BEXAR COUNTY PERFORMING ARTS
CENTER FOUNDATION
Attn: J. Bruce Bugg, Jr., Chairman and President
3316 Oakwell Court
San Antonio, Texas 78218

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED WITHOUT WARRANTY

Date: August 8, 2008

Grantor: City of San Antonio, Texas, a Texas municipal corporation, pursuant to Ordinance No. 2008-06-19-0547, duly adopted by the City Council of City of San Antonio on June 19, 2008

Grantor's Mailing Address: P. O. Box 839966, San Antonio, Bexar County, Texas 78283-3966, Attention: City Attorney, 3rd Floor, City Hall.

Grantee: Bexar County Performing Arts Center Foundation, a Texas non-profit corporation.

Grantee's Mailing Address: 3316 Oakwell Court, San Antonio, Bexar County, Texas 78218.

Consideration: Cash and other good and valuable consideration and other benefits accruing under the terms of that certain Grant and Development Agreement by and between Grantor, Bexar County, Texas ("**County**") and Grantee dated July 23, 2008 (the "**Grant and Development Agreement**"), the sufficiency and receipt of all of which are hereby confessed and acknowledged.

Property (including any improvements):

- Parcel 1: The parcel of land known as 100 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds in Exhibit "A-1", attached hereto as a part hereof for all purposes.

- Parcel 2: The parcel of land known as 115 Auditorium Circle, San Antonio, Bexar County, Texas 78205, as more particularly described by metes and bounds in Exhibit "A-2", attached hereto as a part hereof for all purposes.

Reservations from Conveyance: All portions of the Property which may lie within a public road or right-of-way are saved and excepted from this conveyance.

Exceptions to Conveyance: This conveyance is made subject to the restrictive covenants set forth in Exhibit "B", attached hereto as a part hereof for all purposes (the "**Restrictive Covenants**"), and the Restrictive Covenants shall run with the land and shall be enforceable by Grantor or the County. In addition, this conveyance is subject to validly existing and effective easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and taxes for 2008, which Grantee assumes and agrees to pay.

Grantor, for the Consideration and subject to the Reservations from Conveyance, the Exceptions to Conveyance and the conditions of automatic reverter set forth in this Deed Without Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's legal representatives, successors and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in Section 5.0023 of the Texas Property Code (or its successor) are excluded.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THIS CONVEYANCE SHALL BE EFFECTIVE FOR ONLY SO LONG AS:

A. Fee simple title to the Property is vested in an organization exempt from taxation under Section 501(c) (3) of the Internal Revenue Code of 1986, 26 U.S.C. § 101, et seq., as amended (the "**Code**");

B. Neither Grantor nor the County has caused to be filed in the Real Property Records of Bexar County, Texas, a Preconstruction Termination Notice (as defined in the Grant and Development Agreement), prior to the date on which a Certificate of Substantial Completion has been filed by Grantee in the Real Property Records of Bexar County, Texas;

C. Efforts to construct the Performing Arts Center on the Property have not been abandoned prior to substantial completion of the Performing Arts Center;

D. Upon completion of the Performing Arts Center, the Property is continuously used (subject to temporary cessation due to force majeure, or for remodeling and repairs, or reconstruction following a casualty) primarily for the Public Purpose; and

E. The County has not provided a County Certificate of Termination (as defined in the Grant and Development Agreement) to Grantor and filed such certificate in the Real Property Records of Bexar County, Texas, prior to the date on which a Certificate of Substantial Completion has been filed by Grantee in the Real Property Records of Bexar County, Texas.

F. If a petition is filed by or against an owner of fee simple title to the Property under any section or chapter of federal or state bankruptcy laws or under any similar law or statute of the United States or any state thereof, the petition shall have been dismissed, withdrawn or otherwise concluded without adjudication within one hundred eighty (180) days after being filed.

In the event that (i) fee simple title to the Property is not vested in an organization exempt from taxation under the Code, (ii) either Grantor or County have caused a Preconstruction Termination Notice to be filed in the Real Property Records of Bexar County, Texas, (iii) efforts to construct the Performing Arts Center have been abandoned prior to Substantial Completion thereof, (iv) the County has provided to Grantor and caused to be filed in the Real Property Records of Bexar County, Texas a County Certificate of Termination prior to the substantial completion of the Performing Arts Center, (v) upon completion, the Performing Arts Center is not continuously used (subject to temporary cessation due to force majeure, or for remodeling and repairs, or reconstruction following a casualty or condemnation) primarily for the Public Purpose, or (vi) a petition is filed by or against an owner of fee simple title to the Property under any section or chapter of federal or state bankruptcy laws or under any similar law of statute of the United States or any state thereof and the petition has not been dismissed, withdrawn or otherwise concluded without adjudication within one hundred eighty (180) days after having been filed, then, upon any such event or occurrence, all right, title and interest conveyed by this Deed Without Warranty shall automatically revert to and vest in Grantor, Grantor's successors and assigns, without the necessity of any further act on the part of or on behalf of Grantor, it being the intent of Grantor to convey a fee simple determinable estate to the Grantee.

For the purposes of this Deed Without Warranty, Grantor and Grantee confirm and agree that:

(1) The word "**abandoned**" means the complete cessation of construction activities related to the Performing Arts Center prior to Substantial Completion of the main performance hall for a continuous period of twelve (12) months unless such cessation results from (a) a Casualty or other Force Majeure Event (as defined in the Grant and Development Agreement) (b) a default by Grantor or the County under the Grant and Development Agreement that continues beyond the expiration of any applicable notice and cure period, or (c) the continuation of litigation, diligently pursued, concerning the Property or the Project (as defined in the Grant and Development Agreement), that continues despite commercially reasonable efforts to minimize the resulting delay.

(2) The phrase "**completion of the Performing Arts Center**" means the point in time at which the Performing Arts Center may be occupied lawfully and utilized for the Public Purpose.

(3) The phrase "**the County**" means Bexar County, Texas.

(4) The phrase "**Performing Arts Center**" means, collectively, a performing arts center open to the general public comprising (a) a multiple purpose, variable acoustic hall of not less than 1700 seats and not less than approximately 180,000 gross square feet,

(b) a multiple purpose, multiple form, acoustically sound studio theater with not less than 250 seats, (c) a rehearsal hall containing at least approximately 3,000 square feet, (d) lobby space containing at least 8 square feet per person, (e) arts education facilities, (f) offices for administrative personnel, (g) offices for San Antonio arts organizations, and (h) other improvements capable of use for the Public Purpose;

(5) The phrase "**Public Purpose**" means use of the Performing Arts Center for performing and visual arts activities in San Antonio, Texas, including but not limited to musical, dance, and theatrical performances, rehearsals, art exhibitions, arts education, and similar activities, that are open to the general public; it being understood and agreed that ancillary and complimentary commercial uses generating revenue intended to provide financial support for the Performing Arts Center, to enhance the Public Purpose and/or to provide goods, services or amenities to patrons, customers or invitees of the Performing Arts Center shall be deemed consistent with the Public Purpose and permissible; and

(6) The phrase "**open to the general public**" means accessible by the general public on a paid or unpaid basis, from time to time.

(7) The phrase "**substantial completion**" means the point of progress of the construction of the applicable improvements when a certificate of occupancy (either temporary or permanent) has been issued by the City of San Antonio.

G. Grantor establishes the Restrictive Covenants as conditions, covenants and restrictions, whether mandatory, prohibitive, permissive or administrative, to regulate the uses of the Property and to restrict the Grantee's rights to grant naming rights to the improvements placed upon it. Grantor and Grantee stipulate that (1) the Restrictive Covenants touch and concern the Property; (2) privity of estate exists by reason of the ownership of the Property; (3) notice is given by the filing of this Deed Without Warranty in the Public Records; and (4) the Restrictive Covenants are reasonable; (5) the Restrictive Covenants are for the common benefit of Grantor and Grantee and the citizens who will use the Property for the Public Purpose. The Restrictive Covenants will run with the Property, are binding upon Grantee, and its successors and assigns, and inure to the benefit of Grantor, Grantee and the citizens who use the Property for the Public Purpose, and their respective successors and assigns, forever or until such time as the right, title and interest in and to the Property conveyed by this Deed Without Warranty shall automatically revert to and vest in Grantor.

THIS PROPERTY IS CONVEYED BY GRANTOR AND ACCEPTED BY GRANTEE "AS IS," "WHERE IS" AND "WITH ALL FAULTS," AND GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY WRITTEN, ORAL, IMPLIED OR OTHER REPRESENTATIONS, STATEMENTS OR WARRANTIES BY GRANTOR OR ANY AGENT, EMPLOYEE, OFFICER, ELECTED OFFICIAL OR OTHER REPRESENTATIVE OF GRANTOR. EXCEPT FOR THE GRANT AND DEVELOPMENT AGREEMENT, ALL PREVIOUS WRITTEN, ORAL, IMPLIED OR OTHER STATEMENTS, REPRESENTATIONS, WARRANTIES OR AGREEMENTS, IF ANY, ARE MERGED IN THIS DEED WITHOUT WARRANTY. EXCEPT AS EXPRESSLY SET FORTH HEREIN, GRANTOR SHALL HAVE NO LIABILITY TO GRANTEE, AND GRANTEE HEREBY

RELEASES GRANTOR FROM ANY LIABILITY (INCLUDING CONTRACTUAL AND/OR STATUTORY ACTIONS FOR CONTRIBUTION OR INDEMNITY AND CLAIMS BASED ON GRANTOR'S NEGLIGENCE IN WHOLE OR IN PART AND CLAIMS BASED ON STRICT LIABILITY), FOR, CONCERNING OR REGARDING:

A. THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING THE SUITABILITY THEREOF FOR ANY ACTIVITY OR USE INCLUDING, WITHOUT LIMITATION, THE PUBLIC PURPOSE;

B. ANY IMPROVEMENTS OR SUBSTANCES LOCATED OR COMPRISING THE PROPERTY; OR

C. THE COMPLIANCE OF THE PROPERTY WITH ANY STATUTE, LAW, TREATY, RULE, CODE, ORDINANCE, REGULATION, PERMIT, OFFICIAL INTERPRETATION, CERTIFICATE, JUDGMENT, DECISION, DECREE, INJUNCTION, WRIT, ORDER OR LIKE ACTION OF ANY FEDERAL, STATE, COUNTY, MUNICIPALITY, COURT, TRIBUNAL, REGULATORY COMMISSION OR OTHER OR OTHER GOVERNMENTAL ENTITY, AUTHORITY, AGENCY OR BODY, WHETHER LEGISLATIVE, JUDICIAL OR EXECUTIVE (OR A COMBINATION OR PERMUTATION THEREOF) WITH JURISDICTION OVER THE PROPERTY.

GRANTOR HAS NOT MADE, DOES NOT MAKE AND EXPRESSLY DISCLAIMS, ANY WARRANTIES, REPRESENTATIONS, COVENANTS OR GUARANTEES, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. GRANTEE AFFIRMS THAT PRIOR TO DELIVER OF THIS DEED WITHOUT WARRANTY, GRANTEE HAS INVESTIGATED AND INSPECTED THE PROPERTY TO ITS SATISFACTION AND BECOME FAMILIAR AND SATISFIED WITH THE CONDITION OF THE PROPERTY, AND GRANTEE HAS MADE ITS DETERMINATION AS TO (1) THE MERCHANTABILITY, QUANTITY, QUALITY AND CONDITION OF THE PROPERTY, INCLUDING THE POSSIBLE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS, AND (2) THE PROPERTY'S SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTEE AND ITS SUCCESSORS AND ASSIGNS HAVE ASSUMED ALL RISK AND LIABILITY WITH RESPECT TO THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS ON, WITHIN OR UNDER THE SURFACE OF THE PROPERTY, WHETHER KNOWN OR UNKNOWN, APPARENT, NON-APPARENT OR LATENT, AND WHETHER EXISTING PRIOR TO, AT OR SUBSEQUENT TO TRANSFER OF THE AUDITORIUM TRACT OR SAFD TRACT TO GRANTEE.

GRANTOR IS HEREBY RELEASED BY GRANTEE AND ITS SUCCESSORS AND ASSIGNS OF AND FROM ANY AND ALL RESPONSIBILITY, LIABILITY,

OBLIGATIONS AND CLAIMS, KNOWN OR UNKNOWN, RELATING TO THE PROPERTY, OR EITHER OF THEM, INCLUDING ACTIONS FOR CONTRIBUTION OR INDEMNITY, THAT GRANTEE OR ITS SUCCESSORS AND ASSIGNS MAY HAVE AGAINST GRANTOR OR THAT MAY ARISE IN THE FUTURE, BASED IN WHOLE OR IN PART UPON THE PRESENCE OF TOXIC OR HAZARDOUS SUBSTANCES, MATERIALS OR WASTES OR OTHER ACTUAL OR POTENTIAL ENVIRONMENTAL CONTAMINANTS ON, WITHIN OR UNDER THE SURFACE OF THE PROPERTY, INCLUDING ALL RESPONSIBILITY, LIABILITY, OBLIGATIONS AND CLAIMS THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED 42 U.S.C. § 9601 ET SEQ. GRANTEE FURTHER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY EXPLAINED TO GRANTEE AND THAT GRANTEE FULLY UNDERSTANDS AND ACCEPTS THE SAME.

This conveyance is intended to include any property interests obtained by after-acquired title.

When the context requires, singular nouns and pronouns include the plural.

[Signatures appear on following pages.]

Signed to be effective as of the first date above written.

GRANTOR:

CITY OF SAN ANTONIO, TEXAS, a Texas
municipal corporation

By: *PPF*
Name: Penny Postoak Ferguson
Title: Assistant City Manager

ATTEST:

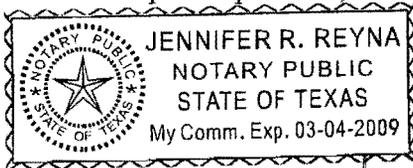
Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Jim Zentuck
[Assistant] City Attorney

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

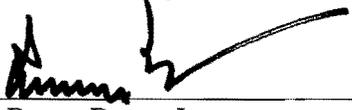
This instrument was acknowledged before me on the 6th day of August, 2008, by Penny Postoak Ferguson, Asst. City Manager **CITY OF SAN ANTONIO, TEXAS**, a Texas municipal corporation, on behalf of said municipal corporation.



Jennifer R. Reyna
Notary Public in and for the State of Texas

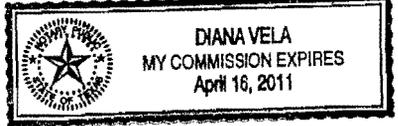
My commission expires: 3/4/09

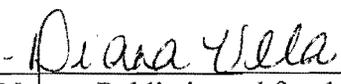
GRANTEE:
BEXAR COUNTY PERFORMING ARTS
CENTER FOUNDATION,
a Texas non-profit corporation

By: 
Name: J. Bruce Bugg, Jr.
Title: Chairman and President

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 31st day of July, 2008, by J. Bruce Bugg, Jr., Chairman and President of Bexar County Performing Arts Center Foundation, a Texas non-profit corporation, on behalf of said corporation.




Notary Public in and for the State of Texas

My commission expires: 4/16/2011

- EXHIBITS:
- Exhibit A-1 Description of Auditorium Tract
 - Exhibit A-2 Description of SAFD Tract
 - Exhibit B Restrictive Covenants

EXHIBIT "A-1" TO DEED WITHOUT WARRANTY

DESCRIPTION OF AUDITORIUM TRACT

3.360 ACRES OF LAND SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, BEING A PORTION OF LOT 15, URSULINE ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 105, PAGE 251, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, A PORTION OF THE ABANDONED OLD SAN ANTONIO RIVER LOCATED IN N.C.B. 180 AND A PORTION OF LOT 19, N.C.B. 412; SAID 3.360 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, AT A FOUND 100D NAIL, ON THE WESTERLY LINE OF AUDITORIUM CIRCLE, MARKING THE MOST NORTHERLY CORNER OF LOT 12, N.C.B. 180, URSULINE ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 105, PAGE 251, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, SAME BEING THE MOST EASTERLY CORNER OF LOT 11 AS CONVEYED TO OLD HAVANA INN, L.L.C., AS DESCRIBED IN VOLUME 7062, PAGE 158, REAL PROPERTY RECORDS OF BEXAR COUNTY, TEXAS;

THENCE, N 15° 01' 47" W, ALONG THE COMMON BOUNDARY LINE BETWEEN SAID LOT 11 AND THIS TRACT, A DISTANCE OF 58.02 FEET, TO A FOUND MAG NAIL MARKING THE MOST NORTHERLY CORNER OF LOT 11, SAME BEING THE MOST EASTERLY CORNER OF LOT 10 AND THE MOST EASTERLY CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO OLD HAVANA INN, L.L.C., AS DESCRIBED IN VOLUME 7256, PAGE 1696, REAL PROPERTY RECORDS OF BEXAR COUNTY, TEXAS;

THENCE, N 02° 26' 52" W, CROSSING SAID AUDITORIUM CIRCLE, A DISTANCE OF 71.61 FEET TO A SET "X" IN A ROCK PLANTER;

THENCE, N 89° 43' 36" E, ALONG THE SAID ROCK PLANTER, A DISTANCE OF 39.99 FEET, TO A SET "X" IN THE ROCK PLANTER;

THENCE, N 00° 16' 24" W, ALONG THE SAID ROCK PLANTER, A DISTANCE OF 4.54 FEET, TO A SET P.K. NAIL AT THE BASE OF THE NORTHERLY FACE OF A RETAINING WALL LOCATED ALONG THE SOUTHERLY LINE OF THE SAN ANTONIO RIVER;

THENCE, N 89° 46' 23" E, ALONG THE NORTHERLY FACE OF SAID RETAINING WALL, SAME BEING THE SOUTHERLY LINE OF THE SAN ANTONIO RIVER, A DISTANCE OF 246.01 FEET, TO A SET P.K. NAIL AT THE BASE OF THE RETAINING WALL; SAID NAIL MARKING AN ANGLE POINT IN THE RETAINING WALL;

THENCE, N 00° 10' 33" E, ALONG THE WESTERLY FACE OF THE RETAINING WALL, SAME BEING THE SOUTHERLY LINE OF THE SAN ANTONIO RIVER, A DISTANCE OF 6.89 FEET, TO A SET P.K. NAIL AT THE BASE OF THE RETAINING WALL; SAID NAIL MARKING AN ANGLE POINT IN THE RETAINING WALL;

THENCE, N 89° 50' 57" E, ALONG THE NORTHERLY FACE OF THE RETAINING WALL, SAME BEING THE SOUTHERLY LINE OF THE SAN ANTONIO RIVER, A DISTANCE OF 12.25 FEET, TO A SET P.K. NAIL AT THE BASE OF THE RETAINING WALL;

THENCE, N 65° 07' 13" E, ALONG THE SOUTHERLY LINE OF THE SAN ANTONIO RIVER, A DISTANCE OF 76.25 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP LOCATED IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF FOURTH STREET (55.6' WIDE);

THENCE, S 55° 13' 29" E, ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF FOURTH STREET, A DISTANCE OF 149.37 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP AT THE WESTERLY CURB LINE OF AUDITORIUM CIRCLE;

THENCE, ALONG THE WESTERLY AND NORTHERLY CURB LINE OF AUDITORIUM CIRCLE, THE FOLLOWING COURSES:

S 41° 32' 40" W, A DISTANCE OF 53.68 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

S 50° 10' 18" W, A DISTANCE OF 58.37 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

S 00° 34' 03" W, A DISTANCE OF 38.23 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

S 00° 28' 58" E, A DISTANCE OF 83.93 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

S 25° 19' 12" W, A DISTANCE OF 70.57 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

S 32° 22' 17" W, A DISTANCE OF 88.63 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

SOUTHWESTERLY, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 9.97 FEET, A CENTRAL ANGLE OF 60° 51' 16" AN ARC LENGTH OF 10.59 FEET AND A CHORD BEARING: S 56° 49' 19" W, 10.10 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

S 89° 49' 38" W, A DISTANCE OF 202.78 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

NORTHWESTERLY, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 10.17 FEET, A CENTRAL ANGLE OF 59° 34' 52" AN ARC LENGTH OF 10.57

FEET AND A CHORD BEARING: N 57° 59' 35" W, 10.10 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

N 31° 35' 41" W, A DISTANCE OF 96.93 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP;

NORTHWESTERLY, ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 14.46 FEET, A CENTRAL ANGLE OF 39° 41' 47" AN ARC LENGTH OF 10.02 FEET AND A CHORD BEARING: N 48° 06' 00" W, 9.82 FEET, TO A SET "X";

N 00° 22' 12" W, A DISTANCE OF 107.03 FEET, TO A SET P.K. NAIL;

S 89° 29' 03" W, CROSSING AUDITORIUM CIRCLE, A DISTANCE OF 20.55 FEET, TO A FOUND CONCRETE NAIL MARKING THE MOST EASTERLY CORNER OF THE AFOREMENTIONED LOT 12, N.C.B. 180;

THENCE N 15° 07' 00" W, ALONG THE COMMON BOUNDARY LINE BETWEEN THIS TRACT AND SAID LOT 12, A DISTANCE OF 58.10 FEET, TO THE POINT OF BEGINNING AND CONTAINING 3.360 ACRES OF LAND MORE OR LESS.

EXHIBIT "A-2" TO DEED WITHOUT WARRANTY

0.457 ACRES OF LAND SITUATED IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS BEING ALL OF LOT 12 AND A PORTION OF LOT 15, N.C.B. 180, URSULINE ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 105, PAGE 251, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS; SAID 0.457 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, AT A FOUND 100D MARKING THE MOST NORTHERLY CORNER OF SAID LOT 12, SAME BEING THE MOST EASTERLY CORNER OF LOT 11, AS CONVEYED TO OLD HAVANA INN, L.L.C., AS DESCRIBED IN VOLUME 7062, PAGE 158, REAL PROPERTY RECORDS OF BEXAR COUNTY, TEXAS;

THENCE, S 15° 07' 00" E, ALONG COMMON BOUNDARY LINE BETWEEN THIS TRACT AND LOT 12, A DISTANCE OF 58.10 FEET, TO A FOUND CONCRETE NAIL MARKING THE MOST EASTERLY CORNER OF SAID LOT 12;

THENCE, INTO AND ACROSS SAID LOT 15, THE FOLLOWING COURSES:

N 89° 29' 03" E, CROSSING AUDITORIUM CIRCLE, A DISTANCE OF 20.55 FEET, TO A SET P.K. NAIL;

S 00° 22' 12" E, A DISTANCE OF 107.03 FEET, TO A SET "X";

SOUTHEASTERLY, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 14.46 FEET, A CENTRAL ANGLE OF 39° 41' 47" AN ARC LENGTH OF 10.02 FEET AND A CHORD BEARING: S 48° 06' 00" E, 9.82 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP LOCATED AT THE BACK OF CURB ON THE EASTERLY SIDE OF AUDITORIUM CIRCLE;

S 69° 25' 06" W, CROSSING AUDITORIUM CIRCLE, A DISTANCE OF 88.98 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP LOCATED AT THE BACK OF CURB;

S 72° 48' 34" W, A DISTANCE OF 37.37 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP LOCATED AT THE BACK OF CURB;

S 86° 19' 20" W, A DISTANCE OF 5.68 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP LOCATED AT THE BACK OF CURB;

WESTERLY, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 14.56 FEET, A CENTRAL ANGLE OF 20° 39' 25" AN ARC LENGTH OF 5.25 FEET AND A CHORD BEARING: N 82° 39' 01" W, 5.22 FEET, TO A SET ½ INCH IRON ROD WITH BPI CAP LOCATED IN THE EASTERLY RIGHT OF WAY LINE OF NAVARRO STREET (55.6 R.O.W.);

THENCE, ALONG THE EASTERLY RIGHT OF WAY LINE OF NAVARRO STREET, THE FOLLOWING COURSES:

N 00° 01' 03" W, A DISTANCE OF 62.31 FEET, TO THE MOST SOUTHERLY BUILDING CORNER OF THE BUILDING SITUATED ON SAID LOT 12;

N 42° 49' 14" W, A DISTANCE OF 50.19 FEET, TO THE MOST WESTERLY BUILDING CORNER OF THE BUILDING SITUATED ON SAID LOT 12; SAID CORNER FURTHER MARKING THE MOST WESTERLY CORNER OF LOT 12, SAME BEING THE MOST SOUTHERLY CORNER OF LOT 11 AS CONVEYED TO OLD HAVANA INN, L.L.C., AS DESCRIBED IN VOLUME 7062, PAGE 158, REAL PROPERTY RECORDS OF BEXAR COUNTY, TEXAS;

THENCE, N 46° 56' 36" E, LEAVING THE EASTERLY RIGHT OF WAY LINE OF NAVARRO STREET AND ALONG THE COMMON BOUNDARY LINE BETWEEN LOT 12 AND LOT 11, A DISTANCE OF 164.61 FEET, TO THE POINT OF BEGINNING AND CONTAINING 0.457 ACRES OF LAND MORE OR LESS.

EXHIBIT "B" TO DEED WITHOUT WARRANTY

RESTRICTIVE COVENANTS

1. Subject to the approval rights retained by Grantor under the terms of these Restrictive Covenants, Grantee will have the sole, exclusive and non-delegable right to enter into Naming Agreements. Each Naming Agreement shall identify specifically the name thereby authorized to be used.

2. Each Naming Agreement shall adopt and require compliance with the Naming Parameters. A copy of each Naming Agreement shall be given to Grantor by Grantee not less than thirty (30) days prior to the date on which such Naming Agreement will become effective.

3. Subject to the circumstances described in Section 4 below, the Naming Agreement for each of the following purposes shall be subject to and require the prior approval of Grantor, which may not be unreasonably withheld, conditioned or delayed, as a condition precedent to the validity and legally binding effect thereof:

A. Subject to the circumstances described in Section 4 below, the general name to be used in connection with the Performing Arts Center at any time located on Tract 1; and

B. The general name to be used in connection with the Performing Arts Center at any time located on Tract 2.

4. Grantee will not be required to obtain Grantor's approval of any named to be used or the terms of the Naming Agreement for the Performing Arts Center located on Tract 1, if that Naming Agreement:

A. Evidences a legally binding and enforceable obligation of a single licensee to fund an amount not less than ten percent (10%) of the total Capital Budget as consideration for such Naming Agreement;

B. Provides that it will terminate in all respects if such amount is not fully paid to Grantee;

C. Requires Grantor's approval, which may not be unreasonably withheld, conditioned or delayed, for any material waiver or amendment of the Naming Agreement, including, but not limited to, any reduction or extension of time related to the payment obligations of such licensee thereunder; and

D. Otherwise complies with Section 5 of these Restrictive Covenants.

5. Each Naming Agreement shall contain the following restrictions, limitations and conditions:

A. Each name to be used in connection with the Performing Arts Center shall:

(1) Include the name of a facilitator or benefactor of the Performing Arts Center;

(2) Honor a person, place, institution, group, entity or event, whether now existing or that existed in the past;

(3) Recognize events or affairs of historic significance; or

(4) Embrace civic ideals or goals.

B. A name to be used in connection with the Performing Arts Center shall not include a name or reference that:

(1) Is defamatory, libelous, obscene, vulgar or offensive to the general public;

(2) May violate the rights of any person, institution, group or entity;

(3) Identifies or is identified with distilled liquor or spirits, habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses or publications, pornography, massage parlors, erectile dysfunction, birth control or sexually transmitted diseases firearms or firearm ammunition, tattoo parlors, pawn shops, check-cashing establishments, or any product or service which is prohibited by applicable law;

(4) Advocates or opposes any political candidate, issue, cause, or belief;

(5) Identifies or is identified with a person or organization that has been convicted of a criminal offense; or

(6) Advocates violence, criminal activity or immorality.

C. The consideration payable to Grantee pursuant to such Naming Agreement shall be paid in not less than five (5) equal, annual installments provided, however, that consideration of at least \$15,000,000 may be paid in up to fifteen (15) equal annual installments.

6. Neither the Property nor any interest therein may be voluntarily or involuntarily, transferred, sold, encumbered, leased or conveyed without the prior written consent of Grantor and County, which consent may not be unreasonably withheld, conditioned or delayed, and any attempted conveyance or encumbrance of the Property shall be void and of no legal effect; provided, however, that notwithstanding the foregoing, without the prior consent of Grantor and County, (i) portions of the Property may be leased or licensed when such lease or license is consistent with the Public Purpose, and (ii) subject to obtaining any approvals required with respect to such easements under the San Antonio City Code, utility, drainage and access easements and similar rights and interests in and to the Property may be granted to the extent necessary or desirable in connection with the development and use of the Property.

7. For the purpose of this Declaration:

A. “**Capital Budget**” means the total budget prepared by Grantee for the development, construction, equipping and furnishing of the Performing Arts Center.

B. “**Naming Agreement**” means an agreement granting the right to use a specific name to identify the Performing Arts Center or a component part thereof;

C. “**Naming Parameters**” means the requirements and limitations described in Section 4 of these Restrictive Covenants.

8. These Restrictive Covenants run with the Property and are binding upon Grantee and Grantee’s successors and assigns until title to the Property shall automatically revert to and vest in Grantor.

9. Failure by Grantor to enforce these Restrictive Covenants is not a waiver.

10. Grantor may correct typographical or grammatical errors, ambiguities or inconsistencies contained in these Restrictive Covenants, provided that any such correction must not impair or affect a vested right of Grantee or any party to a Naming Agreement.

11. These Restrictive Covenants may be amended at any time by the mutual consent of Grantor and Grantee.

12. The provisions of these Restrictive Covenants are severable. If any provision hereof is invalidated or declared unenforceable, the other provisions will remain valid and enforceable.

13. Any notice required or permitted by these Restrictive Covenants must be given in writing by certified mail, return receipt requested. Unless otherwise required by law or by these Restrictive Covenants, actual notice to the party to be notified is sufficient.

14. Grantor may bring an action against Grantee to enforce or enjoin a violation of these Restrictive Covenants. If Grantor is successful in such proceeding, Grantee shall be liable to Grantor for all costs and reasonable attorneys’ fees incurred by Grantor in enforcing or enjoining a violation of these Restrictive Covenants. Grantee acknowledges that the Restrictive Covenants are necessarily special, unique and extraordinary and that the harm to Grantor arising from a breach thereof cannot be reasonably and adequately be compensated by money damages, as such breach will cause Grantor to suffer irreparable harm. Accordingly, upon failure of Grantee to comply with the Restrictive Covenants at any time, Grantor or any of its successors or assigns shall be entitled to injunctive relief or other extraordinary relief, such injunctive or other extraordinary relief to be cumulative to, but not in limitation of, any other remedies that may be available at law or equity, but Grantor shall not be entitled to, and Grantor hereby waives the right to, any punitive or consequential damages.



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 7
Council Meeting Date: 6/19/2008
RFCA Tracking No: R-3504

DEPARTMENT: Convention Sports and
Entertainment Facilities

DEPARTMENT HEAD: Michael Sawaya

COUNCIL DISTRICT(S) IMPACTED:
Council District 1

SUBJECT:
Performing Arts Center Grant and Development Agreement

SUMMARY:

This ordinance approves the terms and conditions of the Grant and Development Agreement between the City of San Antonio, Bexar County and the Bexar County Performing Arts Center Foundation regarding Municipal Auditorium and the San Antonio Fire Department Headquarters Building, including the City's payment of \$500,000.00 a year for five years to the Foundation.

BACKGROUND INFORMATION:

In May 2007, Bexar County Commissioner's Court established the Cultural Facilities Committee ("Committee") to study the potential use of visitor taxes to finance construction of a cultural facility and recommend a preferred site. In November 2007, City Council approved an ordinance supporting the designation of Municipal Auditorium and the San Antonio Fire Department Headquarters Building as the preferred location for a new facility. On December 19, 2007, the Committee recommended Municipal Auditorium to the County Commissioners Court as the preferred site for the facility and requested \$110,000,000.00 from visitor tax revenues to support the initiative. Commissioners Court approved \$100,000,000.00 for the project on January 3, 2008.

On February 14, 2008, City Council approved a Memorandum of Understanding ("MOU") with Bexar County and the Bexar County Performing Arts Center Foundation ("Foundation"), a non-profit corporation. The MOU provided that the City would convey the Municipal Auditorium, located at 100 Auditorium Circle, and the adjacent San Antonio Fire Department Headquarters Building, located at 115 Auditorium Circle, as well as the underlying real estate to the Foundation for a new performing arts center campus, subject to Bexar County providing up to \$100,000,000.00 for the construction of the campus and the Foundation establishing a reserve fund of not less than \$10,000,000.00 for the support of the campus. On May 10, 2008, voters approved the extension of visitor taxes to fund this and other projects.

The negotiation of a Grant and Development Agreement (“Agreement”) with the parties setting out further details of the project has been completed. Under the Agreement, the Foundation will be responsible for the design, construction and operation of the campus. The County will pay up to \$100,000,000.00 of the construction costs from the visitor tax revenues approved by voters and the City will contribute \$500,000.00 a year for five years to the Foundation to be deposited in the performing arts center’s Reserve Fund. The Foundation will fundraise the remainder of the cost of construction and fund the Reserve Fund.

The City proposes to convey these City facilities using Texas Local Government Code Section 253.011 which allows a municipality to transfer title directly to a non-profit organization that agrees to use the property in a manner that primarily promotes a public purpose of the municipality. The failure of the Foundation to use the property for the operation of a performing arts center will result in the property automatically reverting to the City. In addition to this statutory automatic reverter, the Agreement provides that the property will revert to the City if the Foundation loses its non-profit status, the Foundation fails to achieve the levels of funding required by the Agreement or the Agreement is terminated prior to the filing of the Certificate of Substantial Completion. Following conveyance, the City will lease back and occupy the facilities until construction commences for each building, for annual rental of \$1.00. When complete the City and the County will have a limited number of days each year to use the facility for governmental purposes.

ISSUE:

City Council action is necessary to approve the terms and conditions of the Grant and Development Agreement that conveys Municipal Auditorium and the San Antonio Fire Department Headquarters Building to the Foundation for the development of a new performing arts center.

ALTERNATIVES:

The City can continue to operate the Municipal Auditorium.

FISCAL IMPACT:

The current net cost of operating the Municipal Auditorium (expenses exceeding revenues) is approximately \$500,000.00 per year. A financial commitment of \$500,000.00 to be paid to the Bexar County Performing Arts Foundation will be for five years, thus resulting in a future net savings to the Convention, Sports, and Entertainment Facilities Department’s operating budget each year. This payment would be made in the first budget year after the building closes for construction in order to avoid a duplicate negative financial impact within the year.

RECOMMENDATION:

Staff recommends approval of the agreement between the City, Bexar County and the Bexar County Performing Arts Center Foundation for the development of a new performing arts center.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Ordinance/Supplemental Documents	200806190547.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Michael J. Sawaya Director Convention Sports and Entertainment Facilities

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager