

AN ORDINANCE 2008-02-14-0113

APPROVING AN INTERLOCAL AGREEMENT WITH BROOKS DEVELOPMENT AUTHORITY FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES IN AN AMOUNT NOT TO EXCEED \$2,113,000.00 IN CONNECTION WITH THE BROOKS CITY-BASE SOUTH NEW BRAUNFELS ROAD PROJECT PHASE 2, LOCATED IN DISTRICT 3, AND APPROPRIATING FUNDS.

* * * * *

WHEREAS, the Brooks City-Base South New Braunfels Road Project provides for the construction of new roadway and drainage improvements on South New Braunfels Road from Sidney Brooks to Research Plaza which will reduce area flooding as recommended from a storm water study completed with Phase I; and

WHEREAS, this Ordinance authorizes the execution of an Interlocal Agreement with Brooks Development Authority for the design and construction management services in an amount not to exceed \$2,113,000.00 in connection with this Project; and

WHEREAS, approval of this Ordinance will be a continuation of Council policy to collaborate with other governmental agencies in supporting the City's commitment to maintain and improve existing infrastructure; **NOW THEREFORE**,

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

SECTION 1. The City Manager or her designee is hereby authorized to execute an Interlocal Agreement between the City of San Antonio and Brooks Development Authority and provide payment in the amount of \$2,113,000.00 for construction of new roadway and drainage improvements on South New Braunfels Road from Sidney Brooks to Research Plaza in connection with the Brooks City-Base South New Braunfels Road Project. A copy of the Agreement in substantially the same form as the City's standard Interlocal Agreement for street construction is attached hereto and incorporated herein for all purposes as **Attachment I**. The Contract must be executed by all parties within 90 days of signing of this Ordinance; otherwise, the contract must be considered through a subsequent ordinance.

SECTION 2. The following financial adjustments are hereby authorized:

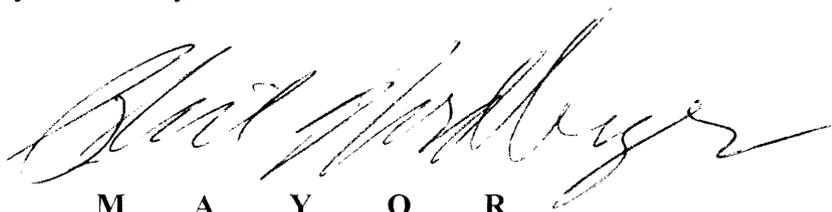
- a) The amount of \$2,113,000.00 is appropriated in SAP Fund 43902027, 2007 CO Streets Improvements, SAP WBS CO-20780-01-01-03, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to Trf to 40-00182-90-01. The amount of \$2,113,000.00 is authorized to be transferred to SAP Fund 43099000.
- b) The budget in SAP Fund 43099000, SAP Project Definition 40-00182, Brooks-New Braunfels Extension, shall be revised by increasing SAP WBS element 40-00182-90-01 entitled Trf Fr CO-20780-01-01-03, SAP GL account 6101100 – Interfund Transfer In, by the amount \$2,113,000.00.

- c) The amount of \$2,113,000.00 is appropriated in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00182, Brooks-New Braunfels Extension, SAP WBS Element 40-00182-05-02-01, entitled City Construction, SAP GL Account 5201140, and is authorized to be encumbered and made payable Brooks Development Authority, representing the maximum amount of the City's contribution to this project.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall be effective on the tenth day following passage.

PASSED AND APPROVED this the 14th day of February, 2008.



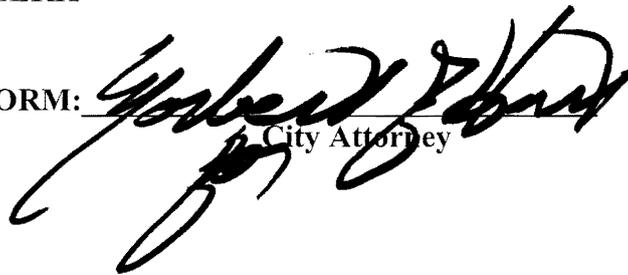
M A Y O R

PHIL HARDBERGER

ATTEST:

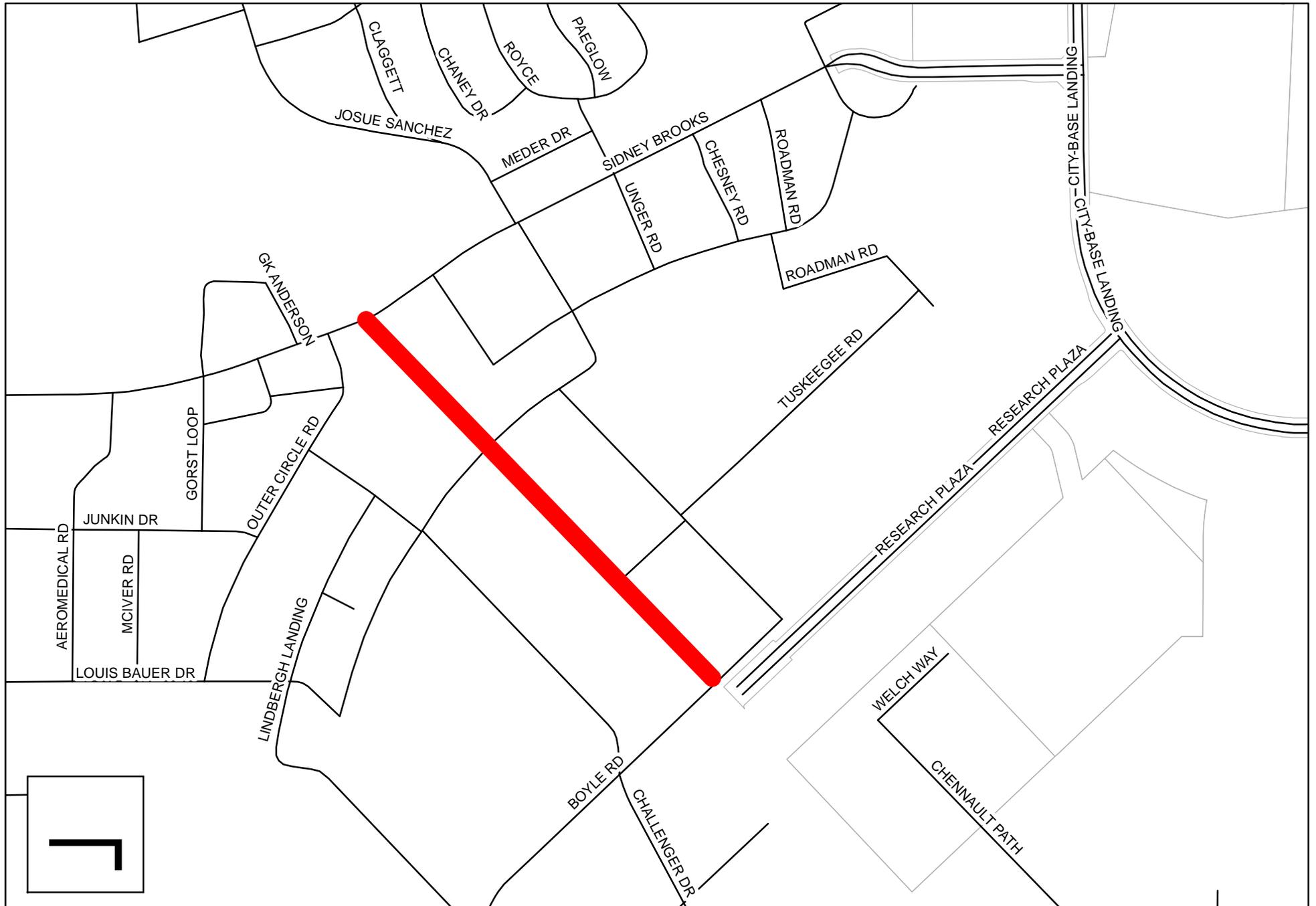

CITY CLERK

APPROVED AS TO FORM:


City Attorney

Agenda Item:	13						
Date:	02/14/2008						
Time:	01:53:54 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving an interlocal agreement with Brooks Development Authority for design and construction management services in an amount not to exceed \$2,113,000.00 in connection with the Brooks City-Base South New Braunfels Road Project Phase 2, located in District 3, and appropriating funds. [Jelynn LeBlanc Burley, Deputy City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
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				x
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

Brooks City-Base - S. New Braunfels Avenue



**INTERLOCAL AGREEMENT BETWEEN CITY OF SAN ANTONIO AND
BROOKS DEVELOPMENT AUTHORITY**

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as “City”), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and the Brooks Development Authority (hereinafter referred to as “BDA”), a defense base development authority and political subdivision of the State of Texas, established by the City of San Antonio pursuant to Chapter 379B of the Texas Local Government Code acting by and through its Board of Directors, and duly authorized Executive Director.

WHEREAS, the City’s Capital Improvements Management Services Department is designated as the managing City department (hereinafter referred to as “Managing City Department”) for the City; and

WHEREAS, City and BDA desire to cooperate in the construction of various road and street improvements in the City of San Antonio and BDA’s boundary or immediately adjacent to boundary of BDA that, when completed will connect with the state highway system; and

WHEREAS, the parties desire to enter into this Interlocal Agreement pursuant to Ch. 791, Texas Government Code, through which BDA should oversee and administer the construction of the capital improvement project described as the S. New Braunfels Road from Sidney Brooks to Research Plaza construction project for the purpose of providing for the construction of roadway and drainage improvements and a storm water study with Phase II construction to reduce area flooding; and

WHEREAS, City and BDA have adopted a budget for expenditure of funds, and included therein is an allocation of funds for a program to provide for the construction of roadway and drainage improvements on S. New Braunfels from Sidney Brooks to Research Plaza (hereinafter referred to as the “Project”). This Project is designed according to this storm water study and Phase I construction to reduce flooding;

NOW THEREFORE:

The parties hereto agree as follows:

I. SCOPE OF WORK

- 1.1 This agreement between the parties is authorized by and subject to the Interlocal Cooperation Act, (Chapter 791, Texas Government Code.)
- 1.2 The City is providing funding for the construction of roadway and drainage improvements on S. New Braunfels from Sidney Brooks to Research Plaza.
- 1.3 The BDA will provide, oversee, administer, and carry out all activities and services necessary to design in a manner satisfactory to the City and in compliance with the

following documents, affixed hereto and incorporated herein for all purposes as Attachment I:

- (a) Bid Proposal (if any)
- (b) Brooks City-Base, S. New Braunfels from Sidney Brooks to Research Plaza Bid Specifications.

- 1.4 BDA agrees to comply with and shall utilize a Competitive Low Bid or a Request for Proposal (“RFP”) process, as applicable, to award all applicable contracts for which the funds granted hereunder by City are used, in accordance with and as described and set out in Chapter 252 of the Texas Local Government Code and in Chapter 2254 of the Texas Government Code pertaining to Professional and Consulting Services.
- 1.5 BDA agrees to provide to City, through BDA’s contractor, Payment and Performance Bonds, in a form satisfactory to City, and in an amount equal to the total cost of the Project, including the cost of all labor and materials related thereto, showing the “CITY OF SAN ANTONIO” as obligee for the purpose of assuring the completion of the work described herein and payment of all laborers and suppliers of materials.
- 1.6 BDA shall not be obligated to commence work on the Project until all funds are committed or secured by City. Such request will include potential future funding sources and timelines as to when the funds expect to be secured.
- 1.7 All work shall be performed in a good and workmanlike manner.
- 1.8 BDA agrees to comply with all applicable law, rules, regulations, and ordinances including obtaining of permits and inspections and payment of applicable fees.

II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on March 1, 2008 and shall terminate on December 31, 2008.

III. CONSIDERATION

- 3.1 In consideration BDA’s performance of its requirements under this agreement, the CITY will provide payment of \$ 2,113,000.00 to the BDA in accordance with the budget submitted to CITY by BDA on the terms set forth in this agreement. Said budget is affixed hereto and incorporated herein for all purposes as Attachment II.
- 3.2 In consideration for BDA’S performance of its requirements under this Agreement, BDA may compensate itself for overhead and administrative costs incurred in accordance with implementing the Agreement in an amount not to exceed seven percent (7%) of the total in place construction cost related to the Project (the “BDA Fee”).

- 3.3 It is expressly understood and agreed by the City and BDA that the City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet City's liabilities hereunder.

IV. PAYMENT

- 4.1 The CITY shall pay a Lump Sum of Two Million, One Hundred, Thirteen Thousand dollars (\$2,113,000.00) toward the total price of design and construction of the project within 30 days of the effective date of the Ordinance.
- 4.2 BDA hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the work provided for in this Agreement and any and all duly authorized modifications of said Agreement that may hereafter be made, and to the extent allowed by law, fully indemnify and hold harmless the CITY against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such BDA during the prosecution of the work herein undertaken
- 4.3 BDA agrees that the CITY shall not be obligated to any third parties (including any subcontractors or third party beneficiaries of the BDA). Further, no liens may be imposed on any CITY property by BDA or by any of its agents or contractors for any purpose.
- 4.4 BDA agrees that Contractor costs or earnings claimed under this Agreement will not be claimed under another contract or grant from another agency.
- 4.5 BDA agrees that at its sole cost and expense, shall take any and all corrective action deemed necessary or desirable by the CITY, and as required by any applicable federal, state, municipal, and other laws, codes, ordinances, rules, and regulations to cleanup, remove and abate any and all soil contamination, groundwater contamination or any other contamination of the right of way caused directly or indirectly by any release or discharge of any hazardous, toxic, or otherwise harmful substances in, on, under and around the facility by the BDA and/or the BDA's employees, agents, representatives, contractors, permittees, invitees or any other persons occupying the facility or any portion thereof by, through or under the BDA."
- 4.6 Upon completion or termination of this Agreement, or at any time during the term of this Agreement, all unused funds, rebates, or credits on-hand or collected thereafter relating to the Project/Projects, must immediately, upon receipt, be returned by BDA to the CITY.

V. AUDIT

- 5.1 Under the terms of the Agreement, BDA intends to expend \$250,000.00 or more of City dollars. Therefore, during the term of this Agreement, the BDA shall have completed an

independent audit of its financial statements performed within a period not to exceed ninety (90) days immediately succeeding the end of BDA's fiscal year.

- 5.2 The City reserves the right to conduct, or cause to be conducted an audit of all funds received under this Agreement at any and all times deemed necessary by City. The City audit staff, a Certified Public Accounting (CPA) firm, or other auditors as designated by the City, may perform such audit(s). The City reserves the right to determine the scope of every audit. In accordance herewith, BDA agrees to make available to City all accounting and Project records.

BDA shall during normal business hours, and as often as deemed necessary by City and/or the applicable state agency or any other auditing entity, make available to the auditing entity books, records, documents, reports, and evidence with respect to all matters covered by this Agreement and shall continue to be so available for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except if there is litigation or if the audit report covering such agreement has not been accepted, the BDA shall retain the records until the resolution of such issues has satisfactorily occurred. The auditing entity shall have the BDA to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, including all books and records used by BDA in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

When an audit or examination determines that the BDA has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the BDA shall be notified and provided an opportunity to address the questioned expenditure or costs.

- 5.3. BDA shall promptly refund to City any amount previously paid by City for any improperly charged amount.

VI. RECORDS, REPORTING, AND COPYRIGHTS

- 6.1 BDA agrees to maintain in confidence all information pertaining to Agreement or other information and materials prepared for, provided by, or obtained from City including, without limitation, reports, information, project evaluation, project designs, data, other related information (collectively, the "Confidential Information") and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. BDA shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information. If disclosure is required (i) by law or (ii) by order of a court of competent jurisdiction, BDA shall give the Director of the Managing City

Department prior written notice that such disclosure is required with a full and complete description regarding such requirement.

- 6.2 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if BDA receives inquiries regarding documents within its possession pursuant to this Agreement, BDA shall within twenty-four (24) hours of receiving the requests forward such requests to City for disposition. At the CITY's option, the BDA may handle the request for public information with a copy being provided to the CITY.
- 6.3 Within a period not to exceed ninety (90) days from the termination date of the Agreement, BDA shall submit all final client and/or fiscal reports and all required deliverables to City. BDA understands and agrees that in conjunction with the submission of the final report, the BDA shall execute and deliver to City a receipt for all sums and a release of all claims against the Project/the Projects.

VII. INSURANCE AND INDEMNITY REQUIREMENTS

- 7.1 **INDEMNITY:** BDA, TO THE EXTENT PROVIDED BY LAW, SHALL PROTECT, INDEMNIFY AND SAVE THE CITY, CITY COUNCIL MEMBERS, AND CITY EMPLOYEES, ACTING WITHIN THE SCOPE OF THEIR DUTIES AND/OR EMPLOYMENT, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING IN FAVOR OF ANY PERSON, CORPORATION OR GOVERNMENTAL ENTITY, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY OCCURRING, GROWING OUT OF, INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, SUCH CLAIMS, DEMANDS AND CAUSES OF ACTION CAUSED, BY ANY DEGREE, BY THE NEGLIGENCE OF BDA, PROVIDED BDA AND ITS EMPLOYEES ACTED IN ACCORDANCE WITH GOOD UTILITY PRACTICE.
- 7.2 BDA shall assure indemnity to City in all contracts, agreements, leases and binding recitals that allocate use or expend funding as described elsewhere in this Agreement by the same transfers of risk to the benefit and protection of BDA, whether preceded or followed by execution of this Agreement.
- 7.3 These assurances will be provided by, but not limited to, requirements of property and casualty insurance with such limits and coverage afforded as to provide indemnity for those losses, offenses, accidents and casualties which occur during the duration of design, construction, renovation, remediation, maintenance or any completed operations;

endorsements to property and liability policies, where appropriate, to add BDA and City as additional insureds.

VIII. SMALL, MINORITY OR WOMAN OWNED BUSINESS ADVOCACY POLICY

8.1 BDA agrees to comply with the following Small, Minority or Woman-owned Business Advocacy Policy:

(A) BDA is hereby advised that it is the policy of the City that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. BDA agrees that BDA will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will 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. BDA further agrees that BDA will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Minority or Woman-owned Business Advocacy Policy and City's Equal Opportunity Affirmative Action policy, these policies being available in City's Department of Economic Development, and the City Clerk's Office.

(B) If the amount of funds to be paid to BDA in Article IV, of this Agreement is for \$200,000.00 or more, then the BDA agrees to submit to the City a Good Faith Effort Plan ("GFEP") indicating BDA's utilization of Small, Minority and Woman-owned Business Enterprises no later than fifteen (15) days from the date of execution of this Agreement. If City approves the GFEP, and the City subsequently finds material deficiencies in any aspect of the GFEP, BDA will be required to submit a written report to City's Department of Economic Development. The BDA will also be required to submit a supplemental Good Faith Effort Plan indicating efforts to resolve any deficiencies. A denied Supplemental Good Faith Effort Plan, by the City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by the BDA.

IX. APPLICABLE LAWS

9.1 The BDA certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above-referenced law and regulations could subject the BDA to suspension of payments.

9.2 All of the work performed under this Agreement by BDA and by its contractors shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar.

- 9.3 The BDA shall comply with all applicable local, State, and Federal laws including, but not limited to:
- (A) worker's compensation;
 - (B) unemployment insurance;
 - (C) timely deposits of payroll deductions;
 - (D) filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc;
 - (E) Occupational Safety and Health Act regulations; and
 - (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.

X. DEFAULT/TERMINATION

- 10.1 Events of Default: As used in this Article, "default" shall mean the failure of the City or BDA to perform any obligation in the time and manner required by this Agreement, except where such failure to discharge obligations is the result of Force Majeure as defined in Article X, paragraph 10.5.
- 10.2 Notice and Cure: Upon failure of a Party hereto to perform any obligation required hereunder, the other Party shall give written notice of such default to the Party in default. The Party in default shall have thirty (30) days within which to cure such default, and if cured within such time, the default specified in such notice shall cease to exist.
- 10.3 Remedies Cumulative: If a default is not cured as provided in paragraph 10.2 above, the Party not in default may resort to all remedies available at law or equity, including recovery of reasonable expenses and reasonable attorneys' fees incurred in connection therewith.
- 10.4 Termination for Cause - Should either party fail to fulfill, in a timely and proper manner, obligations under this Agreement, the Party not in default shall thereupon have the right to terminate this Agreement by sending written notice to the other party of such termination and specify the effective date thereof (which date shall not be sooner than the end of ten (10) days following the day on which such notice is sent). The party receiving the termination notice shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date.
- 10.5 Force Majeure: Neither Party shall be liable to the other Party for failure to perform its obligations under this Agreement when such failure is attributable solely to Force Majeure. Force Majeure shall mean any cause beyond the reasonable control of either Party, including, without limitation, failure, or imminent threat of failure, of facilities or equipment, flood, freeze, earthquake, storm, fire, lightning, other acts of God, epidemic, war, acts of a public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbance or dispute, labor or material shortage, sabotage, restraint by court order or other public BDA, and action or non-action by, or failure or inability to obtain the necessary authorizations or approvals from, any governmental

agency or BDA, which by the exercise of due diligence it could not overcome. Nothing contained herein shall be construed so as to require the Parties to settle any strike, lockout, work stoppage or any industrial disturbance or dispute in which it may be involved, or to seek review of or take an appeal from any administrative or judicial action.

XI. ADVERSARIAL PROCEEDINGS

- 11.1 BDA agrees to comply with the following special provisions:
- (A) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and
 - (B) BDA, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.

XII. CITY-SUPPORTED PROJECT

- 12.1 BDA shall publicly acknowledge that this Project is supported by the City as directed by the Managing City Department.

XIII. ASSIGNMENT

- 13.1 BDA shall not assign or transfer BDA's interest in this Agreement or any portion thereof without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or otherwise assign shall be void ab initio and shall confer no rights upon any third person or party.

XIV. AMENDMENT

- 14.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and BDA and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the Managing City Department shall have the BDA to execute an amendment of this Agreement without the necessity of seeking any further approval by the City Council of the City of San Antonio if legally appropriated funds are available in the following circumstances:

(A) an increase in funding of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Agreement or (b) \$25,000.00, whichever is the lesser amount; provided, however, that the cumulative total of all amendments increasing Agreement funding during the term of this Agreement shall not exceed the foregoing amount;

(B) modifications to the Scope of Work set forth in Attachment I hereto, so long as the terms of the amendment stay within the parameters set forth in the Scope of Work hereto;

(C) modifications to the insurance provisions described in Article VII of this Agreement that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the Managing City Department.

XV. SUBCONTRACTING

- 15.1 BDA must comply with all applicable local, State and Federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the parties hereto that the City has the BDA to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by the City. If, in the sole determination of the City, it is found that all applicable local, State and Federal procurement standards, rules, regulations and laws have not been met by BDA with respect to any of its sub-contracts, then the BDA may be deemed to be in default of this Agreement, and as such, this Agreement will be subject to termination in accordance with the provisions hereof.
- 15.2 Any work or services for sub-contracting hereunder, shall be sub-contracted only by written Contract, and unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by sub-contractors with this Agreement shall be the responsibility of BDA. BDA agrees that payment for services of any sub-contractor shall be submitted through BDA, and BDA shall be responsible for all payments to sub-contractors.
- 15.3 It is contemplated that BDA will use the services of subcontractors. BDA may not assign all or any part of this Agreement to or sub-contract with any other party without first providing written notice to the City of San Antonio.

XVI. OFFICIAL COMMUNICATIONS

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

City:

Director of CIMS
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

BDA:

Executive Director
Brooks Development BDA
1BDA Crossing, Suite. 100
San Antonio, Texas 78235

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

XVII. VENUE

- 17.1 BDA and City agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

XVIII. GENDER

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

XIX. AUTHORITY

- 19.1 The signer of this Agreement for BDA represents, warrants, assures and guarantees that he has full legal BDA to execute this Agreement on behalf of BDA and to bind BDA to all of the terms, conditions, provisions and obligations herein contained.

XX. INDEPENDENT CONTRACTOR

- 20.1 It is expressly understood and agreed that the BDA is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the City shall in no way be responsible therefore, and that neither party hereto has BDA to bind the other nor to hold out to third parties that it has the BDA to bind the other.
- 20.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 20.3 Any and all of the employees of the BDA, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of the BDA only, and not of the City, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the BDA.

XXI. SEVERABILITY

- 21.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this

Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXII. ENTIRE AGREEMENT

22.1 This Agreement and its attachments, if any, constitute the entire and integrated Agreement between the parties hereto and contain all of the terms and conditions agreed upon, and supersede all prior negotiations, representations, or contracts, either oral or written.

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____ 200__.

CITY OF SAN ANTONIO

BROOKS DEVELOPMENT BDA

Sheryl Sculley
City Manager

Donald E. Jakeway
President & CEO
Brooks Development BDA

ATTEST:

ATTEST:

Leticia Vacek
City Clerk

Debbie Perales
Executive Assistant

APPROVED AS TO FORM:

Michael Bernard
City Attorney

ATTACHMENTS

Attachment I – Bid Proposal Documentation

Attachment II – Budget