FLM:GG
02-21-2013
Item No. 10.

AN ORDINANCE 2013-02-21-0125

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A DEVELOPER PARTICIPATION AGREEMENT WITH THE SAN ANTONIO FOOD BANK AND APPROPRIATING FUNDS IN THE AMOUNT NOT TO EXCEED $55,986.00 FOR THE CONSTRUCTION OF AN ALLEY, A 2007 BOND SAVINGS FUNDED PROJECT LOCATED IN COUNCIL DISTRICT 6; AND, AMENDING THE CAPITAL IMPROVEMENT BUDGET WITH REALLOCATION OF $58,000.00 IN 2007 BOND SAVING FUNDS TO THE SAN ANTONIO FOOD BANK AND ANIMAL CARE SERVICES ALLEY PROJECT.

* * * * *

WHEREAS, the San Antonio Food Bank and the City of San Antonio's Animal Care Facility are adjacent to each other, located at the southwest corner intersection of Old Highway 90 and State Highway 151; and

WHEREAS, both facilities experience a high number of entering/exiting visitors on a continual basis throughout the year; and

WHEREAS, there is a 1,000 foot long right-of-way owned by the City of San Antonio beginning at Old Hwy 90 to the north, running adjacent to the Food Bank, and extending south to Wintergarden Drive, a public street providing access to the Animal Care Services facility; and

WHEREAS, the San Antonio Food Bank is undergoing an expansion to their facility and was granted a temporary construction easement in August 2012 to make this right-of-way usable and to accommodate vehicles entering/exiting their property during construction; and

WHEREAS, both the City of San Antonio and the San Antonio Food Bank are interested in utilizing this right-of-way on a permanent basis by constructing an alley to enhance public safety and accessibility associated with the entering/exiting of visitors by providing additional access and another point of connectivity; and

WHEREAS, Texas Local Government Code Sections 212.071 – 212.074 allow municipalities to participate in a Developer Participation Contracts; and

WHEREAS, the statutes limit the participation of the municipality to a level not to exceed 30 percent of the total contract price; and

WHEREAS, the total cost of this Project is estimated to be $186,621.00; and

WHEREAS, the statutes also allow participation by the municipality at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the municipality; and

WHEREAS, this Ordinance authorizes the negotiation and execution of a Developer Participation Agreement with San Antonio Food Bank for the construction of an alley, a 2007 Bond Savings Project located in Council District 6; and

WHEREAS, this Ordinance also amends the Capital Improvement Budget with reallocation of $58,000.00 in 2007 bond saving funds to the San Antonio Food Bank and Animal Care Services Alley Project; **NOW THEREFORE,**

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

SECTION 1. The City Manager, or her designee, is authorized to execute a Developer Participation Contract, **ATTACHMENT A,** with **San Antonio Food Bank** for the construction of an alley.

SECTION 2. The following financial adjustments are hereby approved:

a) The amount of $58,000.00 is appropriated in SAP Fund 45907001, 2007 G.O. BOND SOLD 2012 - STREETS, SAP WBS Element GO-00401-01-01-67-01, Trf To 40-00442-90-01, SAP General Ledger 6102100, Interfund Transfers Out. The amount of $58,000.00 is authorized to be transferred to SAP Fund 45099000, General Obligation Capital Projects.

b) The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00442, SA Food Bank & Animal Care Svcs Alley, shall be revised by increasing SAP WBS Element 40-00442-90-01, Trf Fr GO-00401-01-01-67-01, SAP General Ledger 6101100, Interfund Transfers In, by the amount $58,000.00.

c) The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00442, SA Food Bank & Animal Care Svcs Alley, shall be revised by increasing SAP WBS Element 40-00442-05-01, Cap Admin, SAP General Ledger 5402030, Cap Admin Cost-Direct by the amount $1,409.80.

d) The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00442, SA Food Bank & Animal Care Svcs Alley, shall be revised by increasing SAP WBS Element 40-00442-05-01, Cap Admin, SAP General Ledger 5402050, Cap Admin Cost-Indirect by the amount $604.20.

e) The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00442, SA Food Bank & Animal Care Svcs Alley, shall be revised by increasing SAP WBS Element 40-00442-05-02-01, City Construction, SAP General Ledger 5201140, Construction by the amount $55,986.00.

f) Payment in the amount of $55,986.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00442, SA Food Bank & Animal Care Svcs Alley, is authorized to be encumbered and made payable to **San Antonio Food Bank** for construction services.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer 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 immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this **21st** day of **February. 2013.**

for

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Frank L. Milton

Michael D. Bernard, City Attorney

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 10

Name:	9, 10, 12, 13, 15, 16A, 16B, 17, 18, 19, 20, 21, 25, 26A, 26B, 26C
Date:	02/21/2013
Time:	09:56:55 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of a Developer Participation Agreement with the San Antonio Food Bank in the amount not to exceed $55,986.00 for the construction of an alley access road between the San Antonio Food Bank and Animal Care Services, a 2007 Bond Savings funded project located in Council District 6; and, amending the Capital Improvement Budget with reallocation of $58,000.00 in 2007 Bond Saving funds to the San Antonio Food Bank and Animal Care Services Alley Project. [Peter Zanoni, Deputy City Manager; Majed A. Al-Ghafry, Director, Public Works]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

STATE OF TEXAS	§	
	§	**DEVELOPER PARTICIPATION CONTRACT**
COUNTY OF BEXAR	§	**SAN ANTONIO FOOD BANK AND**
		ANIMAL CARE SERVICES ALLEY PROJECT

This Developer Participation Contract is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. 2013-02-21-0189 dated Feb. 21, 2013 and the San Antonio Food Bank, a Texas Non-Profit Corporation (hereinafter referred to as "FOOD BANK" or "Developer"), acting by and through its officers, hereto duly authorized.

WHEREAS, the San Antonio Food Bank and Animal Care Services Alley, a Public Infrastructure Improvement Project (hereinafter "Project") is to construct an alley/public infrastructure improvement and qualifies as a road/alley project for which excess City funds may be used; and

WHEREAS, the City has identified the FOOD BANK as the appropriate party to contract with for the fulfillment of the public purpose of infrastructure construction in accordance with all applicable laws of public funding; and

WHEREAS, the City is the fee simple owner of the property referenced as the proposed location of the Project; and

WHEREAS, Developer shall construct the alley in accordance with the Uniform Development Code, hereinafter "UDC"; and

WHEREAS, the public benefit to be gained from the Project is the provision of safe public access for use by the citizens of San Antonio to the Animal Care Services and FOOD BANK; and

WHEREAS, Texas Local Government Code, Sections 212.071 – 212.074 allow the municipality to participate in a Developer's cost of public infrastructure improvements in Developer Participation Contracts; and

WHEREAS, the statutes limit the participation of the municipality to a level not to exceed 30 percent (30%) of the total contract price for required public infrastructure improvements; and

WHEREAS, the Developer Participation contract with FOOD BANK for Project limits the City of San Antonio participation to a level not to exceed 30% of the total contract price or $55,986.00 for public alley infrastructure improvement; and

WHEREAS, the total estimated contract price is $186,621.00 and

WHEREAS, the City of San Antonio's agreed participation in the Project is an amount not to exceed $55,986.00; and

ATTACHMENT A

WHEREAS, the amount appropriated by City Council to the Project is in an amount not to exceed $55,986.00; and

WHEREAS, the Developer will complete the design and construction of the Project not later than three (3) years from the date of execution of this contract;

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

I. DEFINITIONS

1.01 "City" means the City of San Antonio, Texas, a Texas municipal corporation.

1.02 "City's Representative" means the Director of Capital Improvement Management Services ("CIMS") or such other person as the City Manager may designate.

1.03 "Amount appropriated by City Council" is an amount not exceed $55,986.00

1.04 "City Share" means total amount appropriated by City Council not to exceed FIFTY-FIVE THOUSAND NINE HUNDRED AND EIGHTY-SIX DOLLARS ($55,986.00), as authorized by Sections 212.071 and 212.074 of the TEXAS LOCAL GOVERNMENT CODE.

1.05 "Contract" means this Developer Participation Contract between the City of San Antonio, Texas and San Antonio Food Bank.

1.06 "Contract Documents" means this Contract and Exhibit A through EXHIBIT C attached hereto and made a part hereof for all purposes.

1.07 "Construction Documents" means the plans, specifications and estimates for the Project which shall be provided by the Developer pursuant to the terms of this Contract. The Construction Documents shall illustrate the dimensions, materials, methods of construction, methods of excavation, and other details of the Project. A description of the Construction Documents is provided in Exhibit A.

1.08 "Developer" means San Antonio Food Bank.

1.10 Developer's Representative" means Eric S. Cooper, Executive Director, or such other person as Developer may designate.

1.11 "Developer's Share" means all costs of the Project in excess of City Share.

1.12 "Development" means the San Antonio Food Bank and Animal Care Service Alley Project attached hereto as Exhibit B.

1.13 "Director" means the Director, Public Works, City of San Antonio.

1.14 "Project" means the public infrastructure improvements consisting of the

construction of the San Antonio Food Bank and Animal Care Services Alley Project, as more fully described in Exhibit A attached hereto and made a part hereof for all purposes.

1.15 "Project Costs" means all costs and expenses incurred by Developer with respect to the completion of the Project in accordance with this Contract, including without limitation all costs to (i) prepare the Construction Documents, including but not limited to: (a) all engineering fees and expenses for all studies, estimates of probable costs and other work performed by the Project Engineer; (b) all required utility removal, replacement, and relocation cost along with all required environmental reports and permits; (c) all title work; (d) all legal fees; and (e) all other fees and expenses relating to the Project; and (ii) all costs and expenses to construct the Project.

1.16 "Project Engineer" means Spawglass Contractors, Inc.

1.17 "Work" means the installation and construction of the Project by Developer in accordance with the Construction Documents and as provided herein.

II. CONTRACT PROVISIONS

2.01 Background. This Contract qualifies as a "Developer Participation Contract" pursuant to Sections 212.071-212.074 of the TEXAS LOCAL GOVERNMENT CODE. In this regard, Developer shall construct the public infrastructure improvements on property owned and/or dedicated as right of way to the City. City shall pay the City Share and Developer shall pay the cost for Developer's Development by paying the Developer's Share.

2.01.01 The Project provides for the design and construction of an alley specified in the Plans. The construction of the Project will provide public access to the FOOD BANK and Animal Care Service.

2.02 Developer shall design and construct the Project in accordance with the requirements of the City Unified Development Code "UDC" Conventional Street/Alley Design Standards.

2.03 After the Project is constructed and accepted by City, Developer shall submit a Request for Reimbursement to City for the City Share as may be attributable to the completed engineering and construction of the Project. Any such request shall be accompanied by a certificate from the Project Engineer certifying the amount of the Work performed and confirming that such Work was performed in accordance with the Construction Documents, stating the amount of the City Share attributable thereto and Developer's Share and include a breakdown of labor, names of Contractors and materials used. Upon approval of the Request for Reimbursement, City shall pay the City Share within thirty (30) days following City's receipt of such approved Request for Reimbursement. Developer shall initially pay all costs incurred from time to time with respect to the Work.

2.04 Prior to the commencement of construction, Developer shall provide City with (i) a payment and performance bonds in accordance with and in satisfaction of Section 212.073 of the TEXAS LOCAL GOVERNMENT CODE and Chapter 2253 of the Government Code, reflecting the City as beneficiary thereunder, and (ii) insurance certificates showing the City as a named insured in types and amounts reasonably required by the City's Risk Manager. The foregoing shall

remain in force and effect throughout the course of construction of the Project.

2.05 The Construction Contract shall prohibit third party beneficiaries other than City which shall be specifically designated as a third party beneficiary, shall not be assignable by the Developer and shall provide City access to the Project at all reasonable times for inspection purposes. The Developer shall acknowledge therein that it has read this Contract and understands that City has certain rights hereunder and pursuant to the Construction Contract. "As Built" Plans shall be provided to the City no later than 60 days after completion of the Project, as jointly certified by the Project Engineer and the Director.

2.06 The Developer warrants that title to all Work covered by a Request for Reimbursement will pass to the City no later than the time of payment. The Developer further warrants that upon submittal of an Request for Reimbursement, all Work for which the Request for Reimbursement is issued shall, to the best of the Developer's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Developer, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **DEVELOPER SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DEVELOPER'S CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE DEVELOPER'S CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE CITY TO DEVELOPER.**

2.07 In the Request for Reimbursement, Developer shall certify that there are no known liens or bond claims outstanding at the date of the Request for Reimbursement, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Request for Reimbursement and that except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work, and that releases from all Subcontractors and Developer's Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work performed; provided that if any of the foregoing is not true and cannot be certified, Developer will revise the Request for Reimbursement as appropriate and identify all exceptions to the requested certifications.

2.08 The City will, within thirty (30) days after receipt of the Developer's Request for Reimbursement, either pay the Request for Reimbursement, for such amount as the City determines is properly due, or notify the Developer in writing of the City's reasons for withholding payment in whole or in part as provided in Section 2.11.

2.09 The payment of the Request for Reimbursement will constitute the City's understanding that based on the City's evaluation of the Work and the data comprising the Request for Reimbursement, that the Work has been completed and that, to the best of the City's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to any specific qualifications.

The Payment will further constitute a representation that the Developer is entitled to payment in the amount paid. However, the issuance of a Payment will not be a representation that the City has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Developer's right to payment.

2.10 The City may withhold Payment in whole or in part, to the extent reasonably necessary to protect the City if, in the City's opinion, the requirements of Section 2.10 cannot be made. If the City is unable to make payment in the amount of the Request for Reimbursement the City will notify the Developer as provided in Section 2.09. If the Developer and City cannot agree on a revised amount, the City will promptly issue Payment for the amount for which the City agrees. The City may also withhold Payment in whole or in part, because of subsequently discovered evidence, may modify the whole or a part of a Payment to such extent as may be necessary, in the City's opinion, to protect the City from loss for which the Developer is responsible, including loss resulting from acts and omissions because of:

2.10.01 defective Work not remedied;

2.10.02 third party claims filed or reasonable evidence indicating probable filing of such claims for which Developer is responsible hereunder unless security acceptable to the City is provided by the Developer;

2.10.03 failure of the Developer to make payments properly to Contractors, Subcontractors or for labor, materials or equipment;

2.10.04 reasonable evidence that the Work cannot be completed for the unpaid balance of the City Share and Developer has failed to provide City adequate assurance of its continued performance within a reasonable time after demand;

2.10.05 damage to the City or another contractor;

2.10.06 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual costs for the anticipated delay; or

2.10.07 persistent failure by the Developer to carry out the Work in accordance with the Contract Documents.

The City will pay the undisputed portions of such Request for Reimbursement within the time frames established in Article II.

2.11 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld. The City shall not be deemed in default by reason of withholding payment as provided for in subparagraph 2.11.

2.12 After the City has reviewed the Request for Reimbursement, the City may make payment in the manner and within the time provided in the Contract Documents.

2.12.01 The Developer shall, within ten (10) days following receipt of payment from the City, require its Contractor to pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide the City with evidence of such payment. Developer's failure to require such payments within such time shall constitute a material breach of this contract, unless the Developer is able to demonstrate to City bona fide disputes associated with the unpaid subcontractor or supplier and its work. Developer's Contactor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Developer's Contractor hereunder, and if the City so requests, shall provide copies of such subcontractor payments to the City. If the Developer has failed to make payment promptly to its Subcontractors or for materials or labor used in the Work for which the City has made payment to the Developer, the City shall be entitled to withhold payment to the Developer to the extent necessary to protect the City.

2.12.02 The City will, on request, furnish to a Contractor or Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Developer and action taken thereon by the City on account of portions of the Work done by such Contractor or Subcontractor.

2.12.03 The City shall not have an obligation to pay or to see to the payment of money to a Contractor or Subcontractor, except as may otherwise be required by law, if any.

2.12.04 Payments to material suppliers shall be treated in a manner similar to that provided in this Section regarding Contractors and Subcontractors.

2.12.05 A reimbursement payment, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

2.12.06 The Developer shall, as a condition precedent to any obligation of the City under this Contract, provide to the City payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

2.13 Inspections. The Project shall be accessible at all reasonable times to the City or his designee for inspection. The Developer acknowledges any inspections performed by City during the course of construction for purposes of this Contract (as opposed to routine building and construction

inspections performed by City for permitting and acceptance purposes common to all similar construction projects) are for the benefit of City only and may not be relied upon by others, be claimed by Developer as an approval by City, a permit granted by City, a waiver by City, or used for any purpose by Developer, the Developer or any third party. Developer further acknowledges that Developer and Developer are required to perform their own inspections and inspections by City do not address any obligations of Developer or others. Subject to the foregoing, City shall promptly notify Developer of any defects or non-conformances discovered during any City inspection.

2.14 Construction Documents. Developer shall provide City with a complete set of Construction Documents meeting the requirements of this Contract and in conformance with all applicable local, state and federal codes and regulations and customary engineering practices. The Construction Documents shall be prepared by and bear the seal of the individual engineer working on behalf of the Project Engineer. Construction of any part of the Project shall in no event commence prior to City approval of the Construction Documents for that part of the Project. Developer shall cause the Project Engineer to commence preparation of the Construction Documents promptly upon completion of engineering and design and to diligently continue same to completion. Developer shall provide City with copies of the Project Engineer's invoices for the Project as such invoices are received by Developer, and City shall pay the City Share thereof. City shall own the Construction Documents upon payment by City of the City Share of the total Project Engineer charges and Developer shall thereupon obtain and provide Project Engineer's assignment of its interest to City. Developer hereby assigns its interest in the Construction Documents to City, to become effective upon receipt by Developer of the total City Share. City shall own the Construction Documents for all purposes and may duplicate them, license them, use them and re-use them for any and all purposes.

2.15 Warranty. If the Work is found to be defective, either wholly or in part, and/or found to be non-conforming with the Contract Documents and/or the Construction Documents during the 12 Month period following completion of the Project as defined in the Construction Contract, City shall immediately give Developer written notice thereof; specifying the defect and/or non-conforming Work with particularity. Developer shall correct such defective or nonconforming Work within thirty (30) days of notice thereof given by City, or within such longer time as may be reasonably necessary, provided Developer is working diligently and continuously towards a cure. If Developer fails to so cure such defective or non-conforming Work, then City may, at its own expense, correct such defective or non-conforming Work by City's own crews or by outside Developers, at City's option, and the reasonable cost of such correction shall be deemed to be sums due City by Developer, and may be offset against any outstanding sums due by City to Developer under this Contract. The cost of City crews shall be determined by prevailing market rates for performing the work required to correct such defects and/or nonconforming work. At the end of said 12-month period, all available product and workmanship material warranties, including all warranties given by Developer, shall be assigned to City, to the extent assignable. This provision shall survive termination of this Contract.

2.16 Default. Upon the occurrence of a default by Developer in the performance of its obligations hereunder and the failure of Developer to cure such default within thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided the Developer commences the cure within thirty (30) days and continuously and

diligently pursues the cure to completion) (a "Default"), City shall have the right to terminate this Contract.

2.16.01 In the event of Default by Developer and only if City decides to construct the Project, the Developer grants to City a twenty-five (25) foot construction easement on each side of the proposed alley Project for City to complete the construction of the Project. In the event of Default by Developer, City may require Developer to cease construction and, City may, at its option, take over construction of the Project with its own Developer. In this event, Developer agrees to reimburse City for any reasonable costs in excess of City Share. This Contract shall operate as an agreement by Developer to allow City access to the Property as necessary to complete the Project in accordance with the Contract Documents. These remedies are in addition to any money damages and/or legal, equitable and/or other contract rights City may have in the event of a Default; provided that it is expressly agreed that neither party shall have the right to seek consequential, special or punitive damages against the other for any default under this Contract.

2.17 Representations and Warranties. Developer and City represent, warrant, certify and agree that neither this Contract, nor the Contract Documents, nor any part of the relationship between the parties hereto shall be construed in any way or operate as creating a joint venture, partnership or other business entity between Developer and City.

III. TERM

3.01 The term of this Contract shall commence upon execution of the Contract by the City Manager or designee and continue until the Project is complete and the road and bridge are accepted by the City.

IV. GENERAL RESPONSIBILITIES OF DEVELOPER AND CITY

4.01 Developer hereby accepts full responsibility for the performance of all services and activities described in this Contract to complete the design and construction of the Project not later than three (3) years from the date of execution of this Contract. Construction of the Project shall be in accordance with the City Unified Development Code "UDC", all state and federal environmental requirements including all City applicable construction and development regulations.

4.02 Current budget estimates of the Project are $186,621. Developer shall provide all necessary funding for the Project beyond the City Share contained herein and provide evidence to City that all Project funds have been secured.

4.03 Unless written notification by Developer to the contrary is received and approved by City, Eric S. Cooper, Executive Director shall be Developer's designated representative responsible for the management of this Contract.

4.04 Communications between City and Developer shall be directed to the designated representatives of each as set forth in paragraphs numbered 4.03 and 4.04 hereinabove.

4.04 The Director of Public Works or his designee shall be responsible for the administration of this Contract on behalf of City until the completion of the Project.

4.06 Developer shall provide to City its plans and specifications for the Project and such Plans shall be subject to the review and approval of City. After approval by City, Developer shall not make any substantial changes to the Plans without the prior written approval of City. This Section does not relieve Developer of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

4.06.01 Developer shall obtain as part of the Project Cost any and all required environmental permits for the Project.

4.06.02 Developer shall coordinate all required environmental permits for the Project with the City's Environmental Division.

4.07 Developer shall provide a schematic showing the width of the alley.

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

4.09 Developer shall dedicate and/or obtain at no cost to the City all the Right of Way required by the City's Unified Development Code (UDC) for construction of the Project.

4.10 Any development of the Project affecting the floodplain shall comply with UDC.

4.11 Developer shall coordinate with all utilities affected by the Project.

4.11.01 Developer shall pay as part of the Project Cost all required costs for utility removal, replacement and relocation.

V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

5.01 Developer warrants and represents that it will comply with all federal, state and local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all Developers and Subcontractors that may work on the Project.

5.02 Developer agrees to abide by the following laws, Ordinances, Rules and regulations in its expenditures of City Funds:

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

5.02.02 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.

A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this Agreement. Developer agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

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

C. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the Developer shall cause its Construction Contractor to forfeit as a penalty to the City $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

5.02.03. City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531.) Developer may obtain authoritative interpretations and guidance for such compliance from the City's Department of Economic Development (207-3900). (See EXHIBIT C)

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

VI. FUNDING AND ASSISTANCE BY CITY

6.01 Developer shall be responsible for the design and construction of the Project and all associated costs, if any, in excess of the City Share.

6.02 City shall reimburse Developer only for eligible expenses incurred hereunder. Notwithstanding any other provisions of this Contract, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the amount appropriated by City Council.

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

6.04 Funding shall consist of a one-time reimbursement not to exceed $55,986.00 paid to Developer for costs of design and construction of the Project, not to exceed the amount appropriated by City Council.

6.05 It is further expressly understood and agreed by City and Developer that the City's obligations under this Contract shall not exceed $55,986.00. City's obligation to pay the funds under this Contract is limited to the amount appropriated by City Council. Additionally, it is expressly understood and agreed by City and Developer that this Contract in no way obligates City's General Fund monies or any other monies or credits of City.

VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY DEVELOPER

7.01 Developer shall maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Contract. Developer further agrees:

7.01.01 That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Contract and with all generally accepted accounting practices; and

7.01.02 That Developer's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

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

7.03 In order to be reimbursed for work completed, Developer shall submit to the City a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation (i.e., copies of paid itemized invoices) as requested by the City. Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans.

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

7.04.01 Have not been spent by Developer strictly in accordance with the terms of this Contract; or

7.04.02 Not be supported by adequate documentation to fully justify the expenditure.

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

VIII. RIGHT OF REVIEW AND AUDIT

8.01 The Developer grants the City or its designees, the right to audit, examine or inspect, at the City's election, all of the Developer's records relating to the performance of the Work under the Contract during the term of the Contract and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Developer agrees to retain its records for a minimum of four (4) years following termination of the Contract, unless there is an ongoing dispute under the contract, then, such retention period shall extend until final resolution of the dispute. "Developer's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Contract. Example of Developer records include but are not limited to billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state filings for issue in question, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents.

8.02 The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Developer agrees to allow the City's designee access to all of the Developer's Records, Developer's facilities, and current or former employees of Developer, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Developer also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

8.03 Developer must include this audit clause in any Subcontractor, supplier or vendor contract.

IX. ALLOWABLE EXPENDITURES

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

- Construction contract
- Construction contingencies with approved change orders
- Design Plans and specifications

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

9.02 The following shall not be considered allowable costs under this Contract:

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

X. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

10.01 Developer further represents and warrants that:

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

10.01.02 It is financially stable and capable of fulfilling its obligations under this Contract and that Developer shall provide City immediate written notice of any Adverse material change in the financial condition of Developer that may materially and adversely effect its obligations hereunder.

10.01.03 No litigation or proceedings are presently pending or to Developer's knowledge, threatened against Developer.

10.01.04 None of the provisions contained herein contravene or in any way conflict with the authority under which Developer is doing business or with the provisions of any existing indenture or agreement of Developer.

XI. ACCESSIBILITY OF RECORDS

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

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

XII. TERMINATION

12.01 Notwithstanding any other provision of this Contract, this Contract may be terminated immediately by the City for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Developer, including but not limited '" to the following causes:

12.01.01 Failure or refusal of the Developer/Developer's Contractor to start the Work.

12.01.02 A reasonable belief that the progress of the Work being made by the Developer or Developer's Contractor is insufficient to complete the Work within the specified time.

12.01.03 Failure or refusal of the Developer or Developer's Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

12.01.04 A reasonable belief that the Developer or Developer's Contractor has abandoned the Work.

12.01.05 A reasonable belief that the Developer or Developer's Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

12.01.06 Failure or refusal on the part of the Developer to observe any material requirements of this Contract Documents.

12.01.07 Failure or refusal of the Developer or Developer's Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the City.

12.01.08 A reasonable belief by the City that collusion exists or has occurred for the purpose of illegally procuring the contract, Contractor or a Subcontractor, or that a fraud is being perpetrated on the City in connection with the construction of Work under the Contract.

12.01.09 Repeated and flagrant violation of safe working procedures.

12.02 When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Section 13.06 the Developer shall, as of the date specified by the City, discontinue the Work or portion of the Work as the City shall designate, whereupon the Surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Developer and the Surety or its authorized agents, assume the obligations of the Developer for the Work or that portion of the Work which the City has ordered the Developer to discontinue and may:

12.02.01 perform the Work with forces employed by the surety;

12.02.02 with the written consent of the City, tender a replacement Developer to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as, of the time of the termination; or

12.02.03 with the written consent of the City, tender and pay to the City in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work, and compensate the City for any other loss sustained as a result of Developer 's default.

12.03 In the event of termination for cause, the Surety shall assume the Developer's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the City for all Work performed by the surety or the replacement Developer in accordance with the terms of the Contract Documents, subject to any rights of the City to deduct any costs, damages, or actual damages that the City may have incurred, including but not limited to additional fees, expenses and attorneys fees, as a result of such termination.

12.04 The balance of the City's contribution remaining at the time of the Developer's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified, exercise its obligation to assume the obligations of the Developer, or that portion of the Contract which the City has ordered the Developer to discontinue, then the City shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Developer agrees that the City shall have the right to take possession of or use any or all of the

materials, plant, tools, equipment, supplies, and property of every kind provided by the Developer for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Developer the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the City to complete the Work shall be deducted by the City out of the balance of the Contract Sum remaining unpaid to or unearned by the Developer. The Developer and the surety shall be liable to the City for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees and attorney's fees), and actual damages, as the case may be, incurred as a result of the termination.

12.05 The City shall not be required to obtain the lowest bid for the Work of completing the construction, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages. In case the City's costs and damages are less than the sum which would have been payable under the Contract if the same had been completed by the Developer, then the City may pay to the Developer (or the Surety, in the event of a complete termination for cause) the difference, provided that the Developer (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the same had been completed by the Developer, then the Developer and his Sureties shall pay the amount of the excess to the City on notice from the City for the excess amount owed. When only a: particular part of the Work is being carried on by the City by Agreement or otherwise under the provisions of this Section, the Developer shall continue the remainder of the Work in conformity with the terms of the Agreement and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the City.

XIII. INDEMNITY

13.01 Developer covenants and agrees to FULLY REIMBURSE, INDEMNIFY, and HOLD HARMLESS; City and the elected officials, agents, employees, officers, directors, volunteers, Developers, Subcontractors, consultants, subconsultants and representatives of City individually or collectively, (collectively, the "City Parties') from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury, death and property damage, (the "Damages") made upon City, arising, out of or resulting from Developer's negligent activities or omissions under this Contract, including any negligent acts or omissions of any agent, officer, director, representative, employee, consultant, subconsultant, licensee, sublicensee, Developer or Subcontractor of Developer, and their respective officers, agents, employees, directors and representatives (collectively "Developer Parties") while in the exercise of the performance of the rights or duties under this Contract, all without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, OR THE CITY PARTIES IN SUCH INSTANCE WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF

COMPETENT, JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS ,LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.02 The provisions of this INDEMNITY are solely for the benefit of the parties, hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer shall promptly advise City in writing within 24 hours of any claim or demand against City or Developer known to Developer and related to or arising out of Developer's negligent activities or omissions under this Contract, and shall see to the investigation and defense of such claim or demand at Developer's cost. Notwithstanding any condition imposed by a policy of insurance to which Developer and City are named, City shall retain the right, at its option and at its own expense, to participate in such defense provided by any insurance or self-insurance of Developer under this section without relieving Developer of any of its obligations under this section.

XIV. INSURANCE

14.01 Prior to the commencement of any work under this Contract, Developer shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Capital Improvements Management Services (CIMS) Department, which shall be clearly labeled, "Developer Participation Contract David Edwards Drive Project" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City's CIMS Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

14.04 Developer agrees to obtain all insurance coverages with minimum limits of not less

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

than those limits delineated in Section 15.03 (Insurance Table) from each vendor subcontracted by Developer and provide a Certificate of Insurance and Endorsement that names the Developer and the CITY as an additional insured.

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

City of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

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

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

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

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

14.09 It is agreed that Developer's insurance shall be deemed primary and noncontributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.

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

XV. GUARANTEE/WARRANTY

15.01 Developer Guarantees that design and construction of the road and pedestrian walkway shall meet the requirements of the City's Unified Development Code and be constructed in strict compliance with the Plans and Specifications.

XVI. NONDISCRIMINATION

16.01 Developer covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the *use* of or admission to the premises, which said discrimination Developer acknowledges is prohibited.

XVII. CONFLICT OF INTEREST

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

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

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

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

17.03.02 Have any direct or indirect interest in this Contract or the proceeds thereof.

XVIII. POLITICAL ACTIVITY

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

XIX. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

XX. CONTRACTING

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

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

XXI. CHANGES AND AMENDMENTS

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

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

XXII. ASSIGNMENTS

22.01 Developer shall not transfer, pledge or otherwise assign this Contract, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person. Any such assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, without the prior written consent of City shall, at City's option, be of no force and effect whatsoever. Any consent to any such assignment or transfer shall not constitute a waiver of any of the restrictions of this Section and the provisions of this Section shall apply to each successive assignment or other transfer hereunder, if any.

XXIII. SEVERABILITY OF PROVISIONS

23.01 If *any* clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract 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 Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract 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.

XXIV. NON-WAIVER OF PERFORMANCE

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

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

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

XXV. ENTIRE AGREEMENT

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

25.02 The terms of this Contract are intended to be a final expression of the parties agreement and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings, whether written or oral. The parties expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that this Contract constitutes the complete and exclusive statement of the parties' intent and that no extrinsic evidence may be introduced in any proceeding involving the Contract Documents. No addition to, deletion from, or modification of any term or provision of this Contract shall be effective unless it is made in a writing signed by the parties hereto.

XXVI. NOTICES

26.01 For purposes of this Contract, 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:	Public Works Director City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966
With Copies to:	Office of the City Clerk City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966
DEVELOPER:	San Antonio Food Bank 5200 Old Highway 90 West San Antonio, Texas 78227

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

Any communication so addressed and mailed shall be deemed to be given on the earliest of: (a) when actually received or delivered; (b) when proof of return of certified mail is received; or (c) on the first business day after deposit with an overnight air courier service, if proof to the address of the intended addressee is provided. A change of address may be given by written notice: as provided herein

XXVII. MISCELLANEOUS

27.01 Conflicts Between Documents. In the event of any conflict between the Exhibits hereto and the terms and provisions of this Contract, the terms and provisions of this Contract shall control.

27.02 Waiver. It is understood and acknowledged that City exercises no control over the means of accomplishing the Work. No approval by City shall impose any liability on City for any risk or damage to persons or property or the City Property or shall imply or guarantee any drainage implications or the operation of the drainage facilities to the parties, any other party or otherwise.

27.03 Third Party Beneficiaries. There shall be no third party beneficiaries to this Contract.

27.04 Partial Invalidity. Any provisions or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken and a11 remaining provisions shall continue to be valid and binding upon the parties and construed as close as reasonably possible to their original intent.

27.05 No Oral Modification. This Contract shall not be modified orally or by course of conduct or dealing. Any modification of this' Contract shall be in writing ,and signed' by the authorized party.

27.06 Counterparts. The Contract Documents may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

27.07. Force Majeure. In the event Developer or City is unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Contract, the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for the period of such delay, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, acts of terrorism, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to overcome. If the Developer suffers any event of "force majeure", such event shall likewise constitute force majeure with respect to Developer.

XXVIII PARTIES BOUND

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

XXIX. RELATIONSHIP OF PARTIES

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

XXX. TEXAS LAW TO APPLY

30.01 This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas. Exclusive venue shall lie in Bexar County, Texas.

XXXI. GENDER

31.01 Words of any gender used in this Contract 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.

XXXII. CAPTIONS

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

XXXIII. LEGAL AUTHORITY

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

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

XXXIV SBEDA TERMS AND CONDITIONS
SBE SUBCONTRACTING GOAL
SEE EXHIBIT C

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the 8th day of March, 2013.

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
City Manager

3/4/13

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

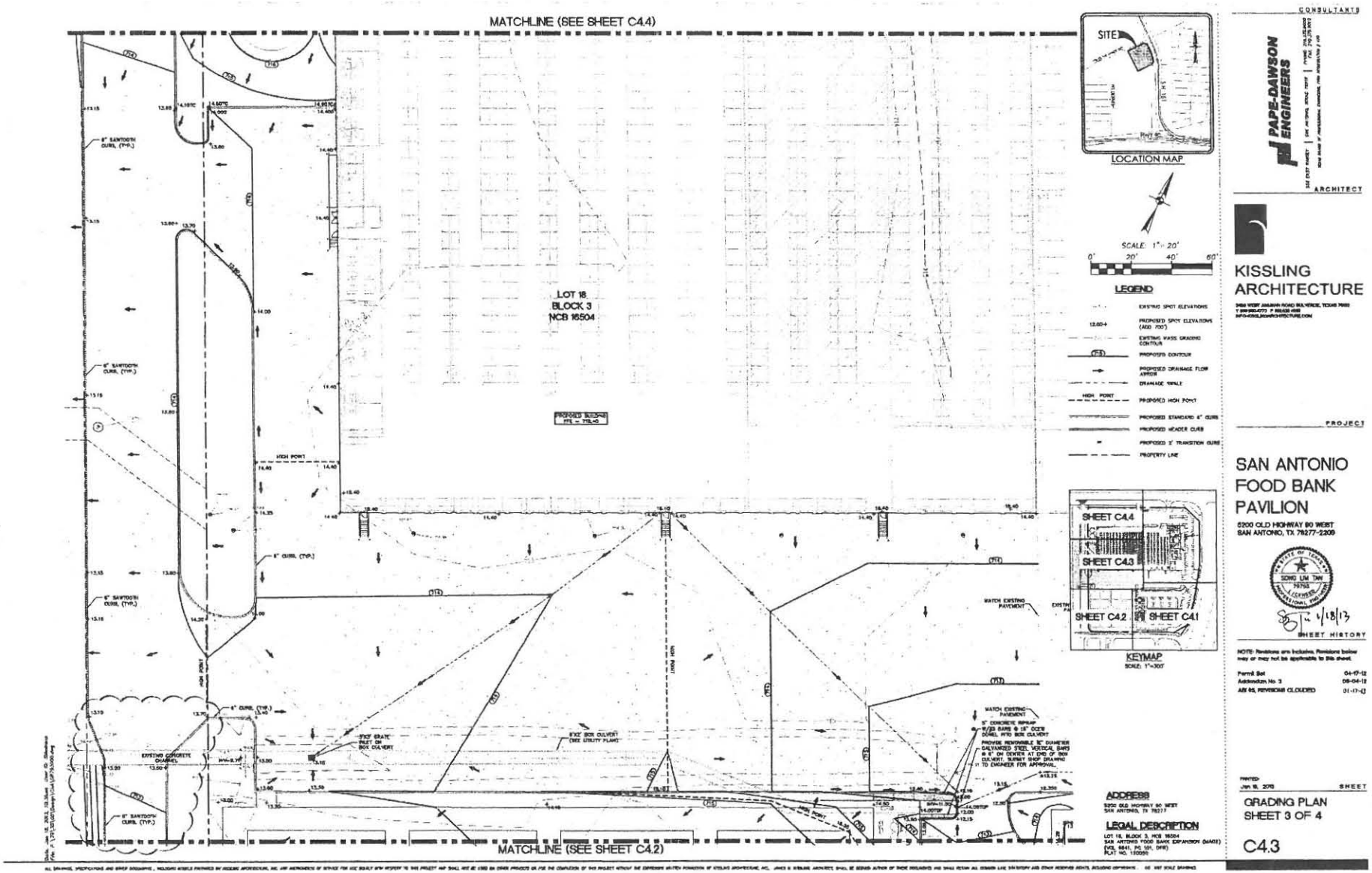
_____
CITY ATTORNEY

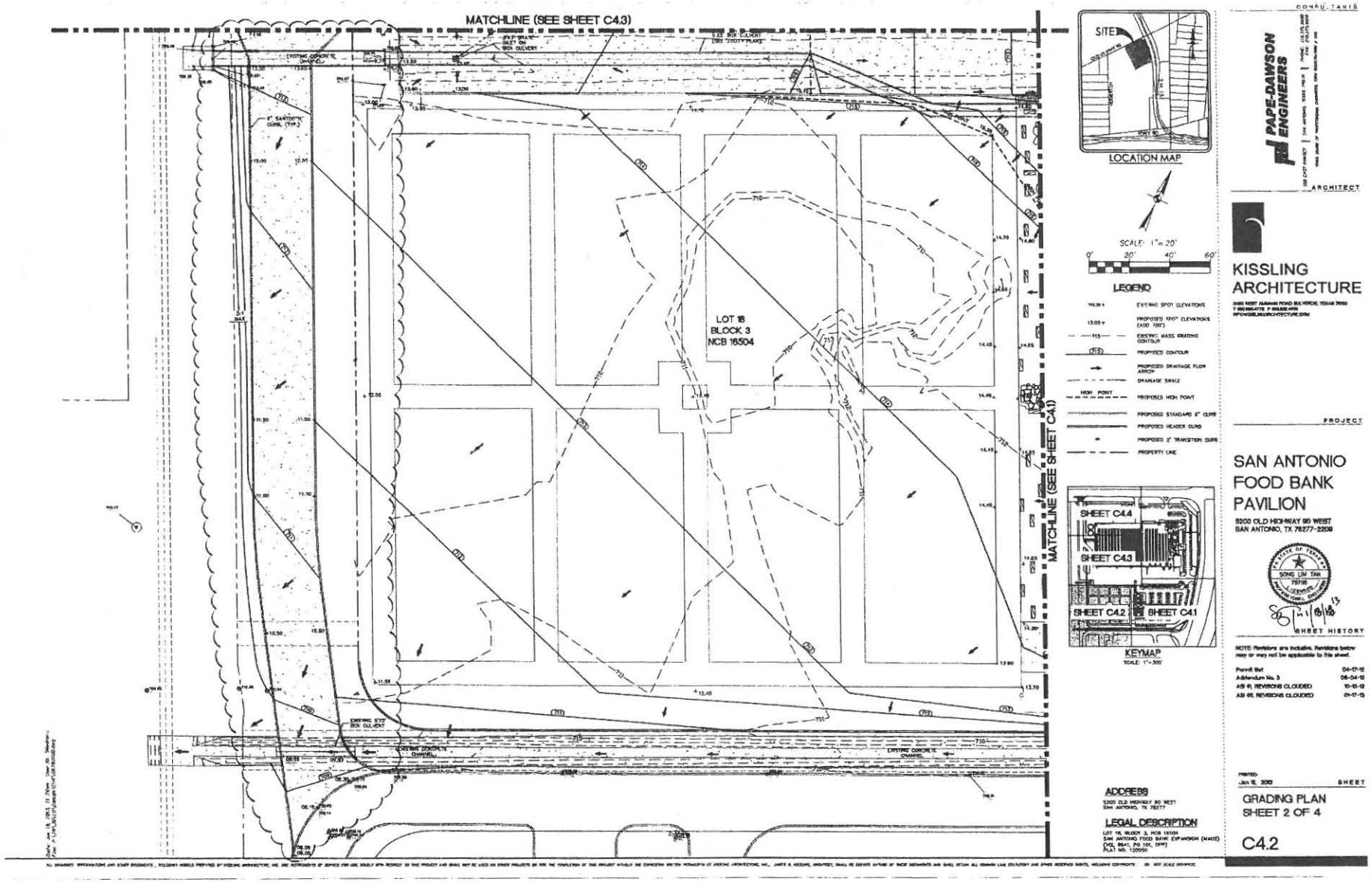
SAN ANTONIO FOOD BANK

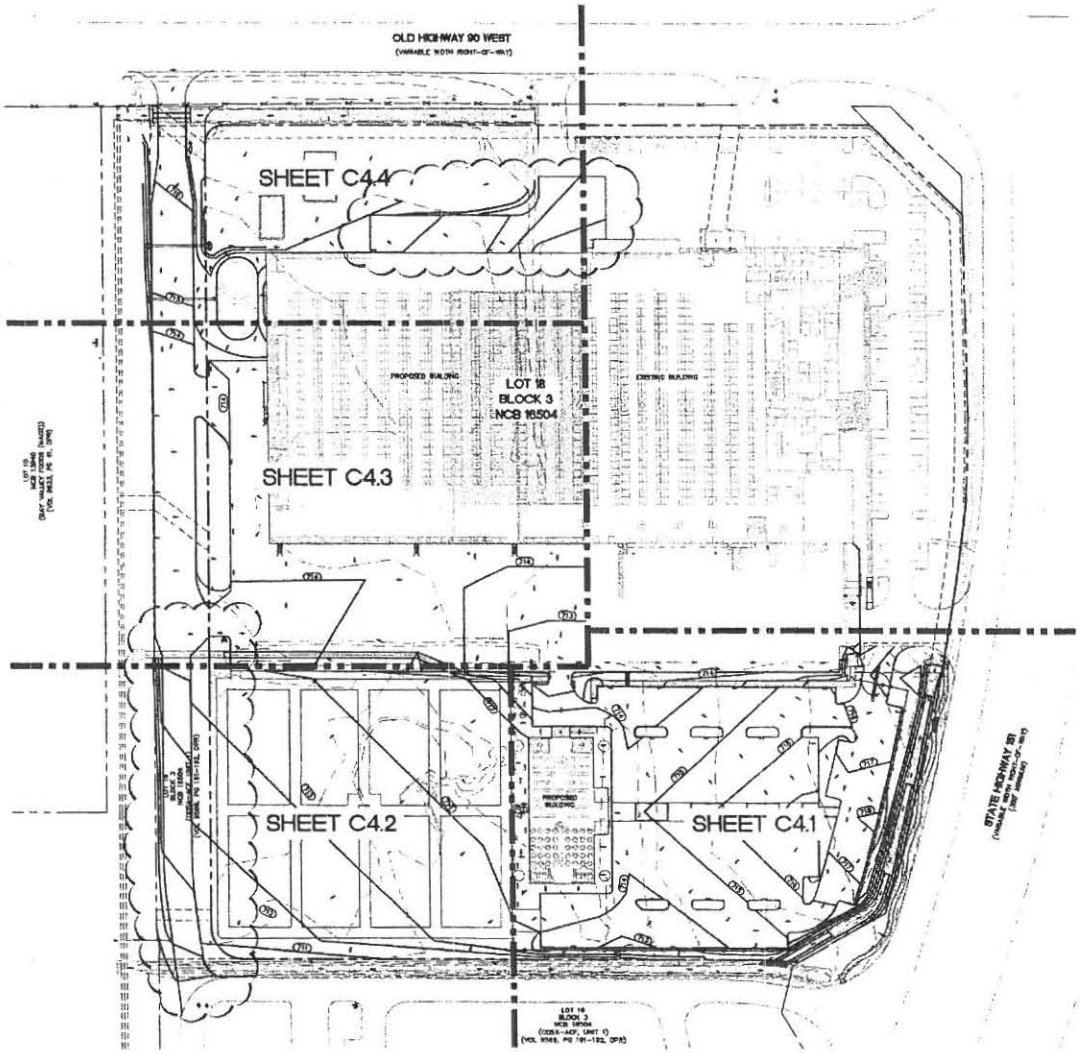
By: _____
Printed Name: Eric S. Cooper
Title: CEO

EXHIBIT A

Construction Documents


MATCHLINE (SEE SHEET C4.4)
MATCHLINE (SEE SHEET C4.2)
LOT 18
BLOCK 3
NCB 16504
LOCATION MAP
SITE
SCALE: 1" = 20'
LEGEND
KEYMAP
SHEET C4.4
SHEET C4.3
SHEET C4.2
SHEET C4.1
ADDRESS
LEGAL DESCRIPTION
CONSULTANTS
PAPE-DAWSON ENGINEERS
ARCHITECT
KISSLING ARCHITECTURE
PROJECT
SAN ANTONIO FOOD BANK PAVILION
5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209
SHEET HISTORY
SHEET
GRADING PLAN
SHEET 3 OF 4
C4.3


MATCHLINE (SEE SHEET C4.3)
MATCHLINE (SEE SHEET C4.1)
LOT 18
BLOCK 3
NCB 16504
SITE
LOCATION MAP
SCALE: 1"=20'
LEGEND
KEYMAP
SHEET C4.4
SHEET C4.3
SHEET C4.2
SHEET C4.1
ADDRESS
LEGAL DESCRIPTION
PAPE-DAWSON ENGINEERS
ARCHITECT
KISSLING ARCHITECTURE
PROJECT
SAN ANTONIO FOOD BANK PAVILION
5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209
SHEET HISTORY
GRADING PLAN
SHEET 2 OF 4
C4.2



LEGEND

- PROPERTY LINE
- EXISTING MASS GRADING CONTOUR
- (718) PROPOSED CONTOUR
- PROPOSED DRAINAGE FLOW ARROW

SCALE: 1"=60'

0' 60' 120' 180'

GRADING NOTES:

1. ALL GRADES AND CONTOURS ARE FINAL, TOP OF FINISHED SURFACE ELEVATIONS.
2. POSITIVE DRAINAGE SHALL BE MAINTAINED ON ALL SURFACE AREAS WITHIN THE SCOPE OF THIS PROJECT. DRAINAGE SHALL BE DIRECTED AWAY FROM ALL BUILDING FOUNDATIONS. CONTRACTOR SHALL TAKE PRECAUTIONS NOT TO ALLOW ANY PONDING OF WATER.
3. NO ABRUPT CHANGE OF GRADE SHALL OCCUR IN THE DRIVEWAYS, PARKING AREAS OR SIDEWALKS.
4. EXISTING UTILITIES ARE SHOWN ON THE UTILITY PLAN. THE CONTRACTOR WILL BE RESPONSIBLE FOR DETERMINING EXACT LOCATION OF ALL UTILITIES, WHETHER SHOWN ON THE PLANS OR NOT. THE CONTRACTOR SHALL UNCOVER EXISTING UTILITIES PRIOR TO CONSTRUCTION TO VERIFY SIZE, GRADE AND LOCATION. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY OF ANY DEVIATIONS FROM PLANS PRIOR TO BEGINNING CONSTRUCTION. ANY DAMAGE TO EXISTING UTILITIES, WHETHER SHOWN ON THE PLANS OR NOT, SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO REPAIR, AT HIS OWN EXPENSE.
5. CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF ANY QUESTIONS THAT MAY ARISE CONCERNING THE INTENT, PLACEMENT, OR LIMITS OF GRADES NECESSARY FOR CONSTRUCTION OF THIS PROJECT.
6. REFER TO GEOTECHNICAL REPORT FOR SUBSURFACE INFORMATION AND CONSTRUCTION GUIDELINES.
7. CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS (USE OF SILT FENCE, ETC.) TO KEEP DRAINAGE AND SILT FROM WASHING ONTO ADJACENT PROPERTY, INTO EXISTING STORM DRAINS OR ONTO ADJACENT STREETS. CLEAN UP OF SILT WASHED OFFSITE SHALL BE CONTRACTOR'S SOLE EXPENSE AND SHALL BE DONE IMMEDIATELY AFTER EACH OCCURRANCE. REFER TO EROSION AND SEDIMENTATION CONTROL PLAN.
8. SPOT ELEVATIONS SHOWN HAVE BEEN TRUNCATED (HUNDRED'S DIGIT) TO SAVE SPACE ON THE PLAN. ADD 800 TO ALL ELEVATIONS.
9. CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING TO ITS ORIGINAL OR BETTER CONDITION ANY DAMAGE DONE TO EXISTING UTILITIES, FENCES, PAVEMENT, CURBS, DRIVEWAYS OR SIDEWALKS.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ACQUIRING ALL NECESSARY PERMITS, TESTS, APPROVALS AND ACCEPTANCES PRIOR TO CONSTRUCTION.
12. REFER TO ARCHITECTURAL PLANS FOR ADDITIONAL DETAILS.
11. ALL DISTURBED AREAS SHALL BE REVEGETATED IN ACCORDANCE WITH PROJECT SPECIFICATIONS AND LANDSCAPING PLANS.
12. DUE TO FEDERAL REGULATION, TITLE 49, PART 192.191, CPS MUST MAINTAIN ACCESS TO GAS VALVES AT ALL TIMES. THE CONTRACTOR MUST PROTECT AND WORK AROUND ANY GAS VALVES THAT ARE IN THE PROJECT AREA.
13. REFER TO PROJECT SPECIFICATIONS FOR ADDITIONAL INFORMATION.
14. ALL EXCAVATION IS UNCLASSIFIED.
15. ALL SIDEWALKS SHALL HAVE 2% MAX. CROSS SLOPE AND 5% MAX. LONGITUDINAL SLOPE.
16. ALL ACCESSIBLE PARKING SPACES SHALL BE GRADED AS TO ACHIEVE A MAXIMUM 2% SLOPE IN ALL DIRECTIONS.
17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING WITH ALL NECESSARY UTILITY COMPANIES FOR PROVIDING TEMPORARY UTILITY SERVICES DURING CONSTRUCTION.
18. ALL CURBS ARE (0.5') 6" UNLESS OTHERWISE SPECIFIED.
19. SEE CIVIL DETAIL SHEETS FOR APPLICABLE DETAILS. REFER TO PROJECT SPECIFICATIONS FOR ADDITIONAL SPECIFICATIONS AND CONTRACT INFORMATION.
20. CONTRACTOR SHALL ADJUST THE TOP ELEVATIONS AS NECESSARY OF ALL MANHOLES, VALVE BOXES, METER BOXES, JUNCTION BOXES, ETC. TO MATCH PROPOSED GRADES AND PREVENT PONDING OF WATER ON TOP OF THESE ITEMS. (NO SEPARATE PAY ITEM).

ADDRESS

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277

LEGAL DESCRIPTION

LOT 18, BLOCK 3, NCB 16504
SAN ANTONIO FOOD BANK EXPANSION (SAGS)
(VOL. 9541, PG 101, OPR)
PLAT NO. 120050

CONSULTANTS

PAPE-DAWSON ENGINEERS

ARCHITECT

KISSLING ARCHITECTURE

PROJECT

SAN ANTONIO FOOD BANK PAVILION

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209

STATE OF TEXAS
SONG LIM TAN
79798
LICENSED
PROFESSIONAL ENGINEER

1/18/13

SHEET HISTORY

NOTE: Revisions are inclusive. Revisions below may or may not be applicable to this sheet.

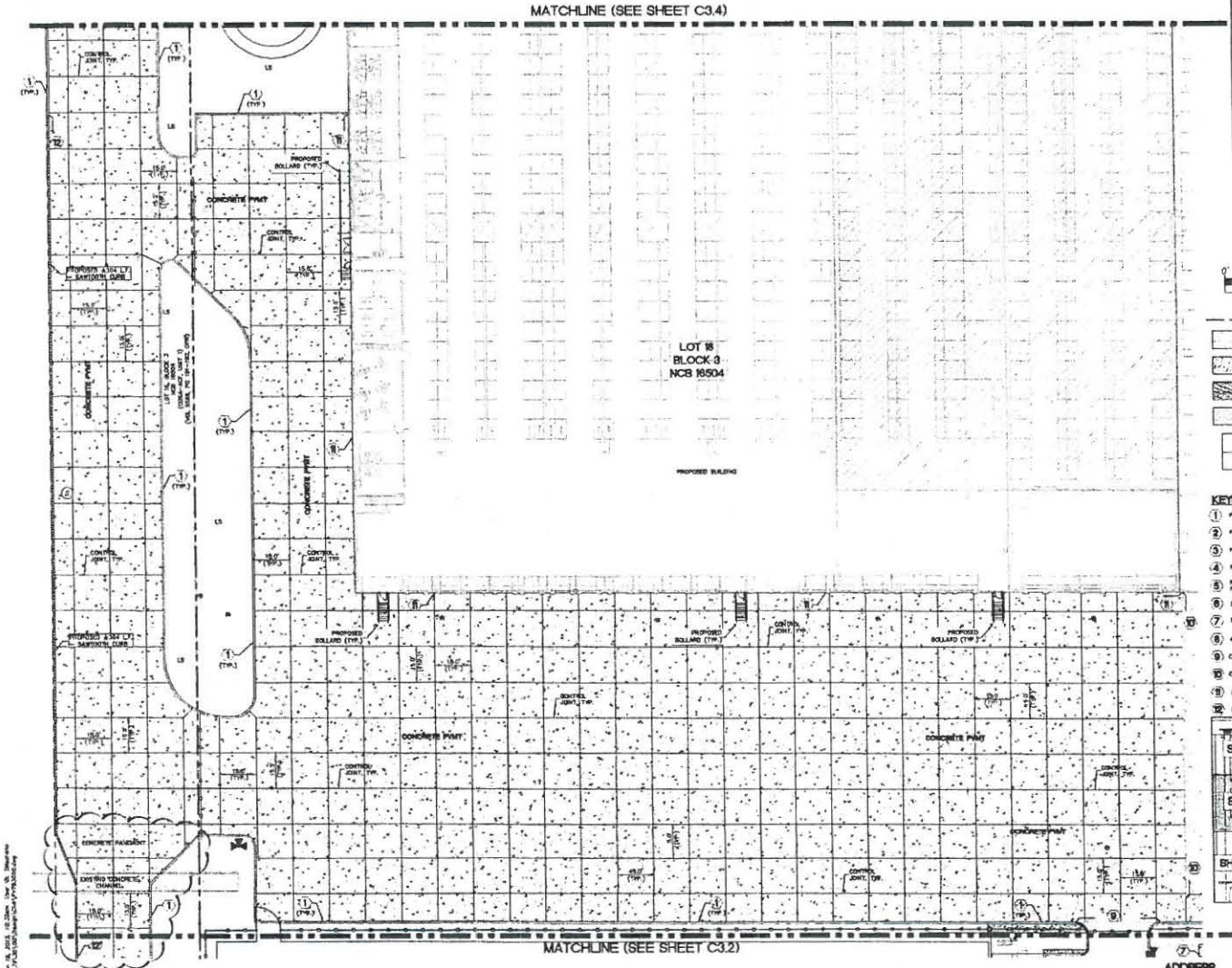
Permit Set	04-17-12
Addendum No. 3	08-04-12
ASI #1, REVISIONS CLOUDED	10-15-12
ASI #5, REVISIONS CLOUDED	01-07-13

PRINTED
Jan 18, 2013

SHEET
OVERALL GRADING PLAN

C4.0

2/22/2013



LOCATION MAP

SCALE: 1" = 20'

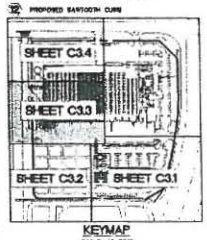
0' 20' 40' 60'

LEGEND

- PROPERTY LINE
- EXISTING CONCRETE PAVEMENT
- PROPOSED CONCRETE PAVEMENT (REFER TO CIVIL DETAIL SHEET)
- PROPOSED CONCRETE DRIVEWAY
- PROPOSED ASPHALT PAVEMENT (REFER TO CIVIL DETAIL SHEET)
- PROPOSED SUGGESTED CONTROL JOINT LAYOUT @ 15' O.C.E.W. (REFER TO GEOTECH REPORT)
- LS LANDSCAPE AREA

KEYED NOTES

1. PROPOSED STANDARD 6" CURB
2. PROPOSED HEADER CURB
3. PROPOSED WHEEL CHAIR RAMP
4. PROPOSED CONCRETE DRIVEWAY
5. PAVERS, SEE ARCHITECT PLANS FOR DETAIL
6. 2' CURB TRANSITION
7. PROPOSED SIDEWALK
8. ~~PROPOSED TRANSFORMER PAD~~
9. CONCRETE/ASPHALT PAVEMENT JUNCTURE
10. CONCRETE/CONCRETE PAVEMENT JUNCTURE
11. PROPOSED PAVEMENT/BUILDING CURB
12. PROPOSED SAWTOOTH CURB



KEYMAP

SCALE: 1"=300'

ADDRESS

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277

LEGAL DESCRIPTION

LOT 18, BLOCK 3, NCB 16504
SAN ANTONIO FOOD BANK EXPANSION (MAOC)
(VOL 9641, PG 101, OPR)
PLAT NO. 130050

CONSULTANTS

PAPE-DAWSON ENGINEERS

ARCHITECT

KISSLING ARCHITECTURE

PROJECT

SAN ANTONIO FOOD BANK PAVILION

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209

STATE OF TEXAS
SONG LIM TAN
79798
LICENSED
PROFESSIONAL ENGINEER

SHEET HISTORY

NOTE: Revisions are inclusive. Revisions below may or may not be applicable to this sheet.

Permit Set	04-17-12
Addendum No. 2	05-04-12
ASI #1, REVISIONS CLOUDED	10-15-12
ASI #2, REVISIONS CLOUDED	01-17-13

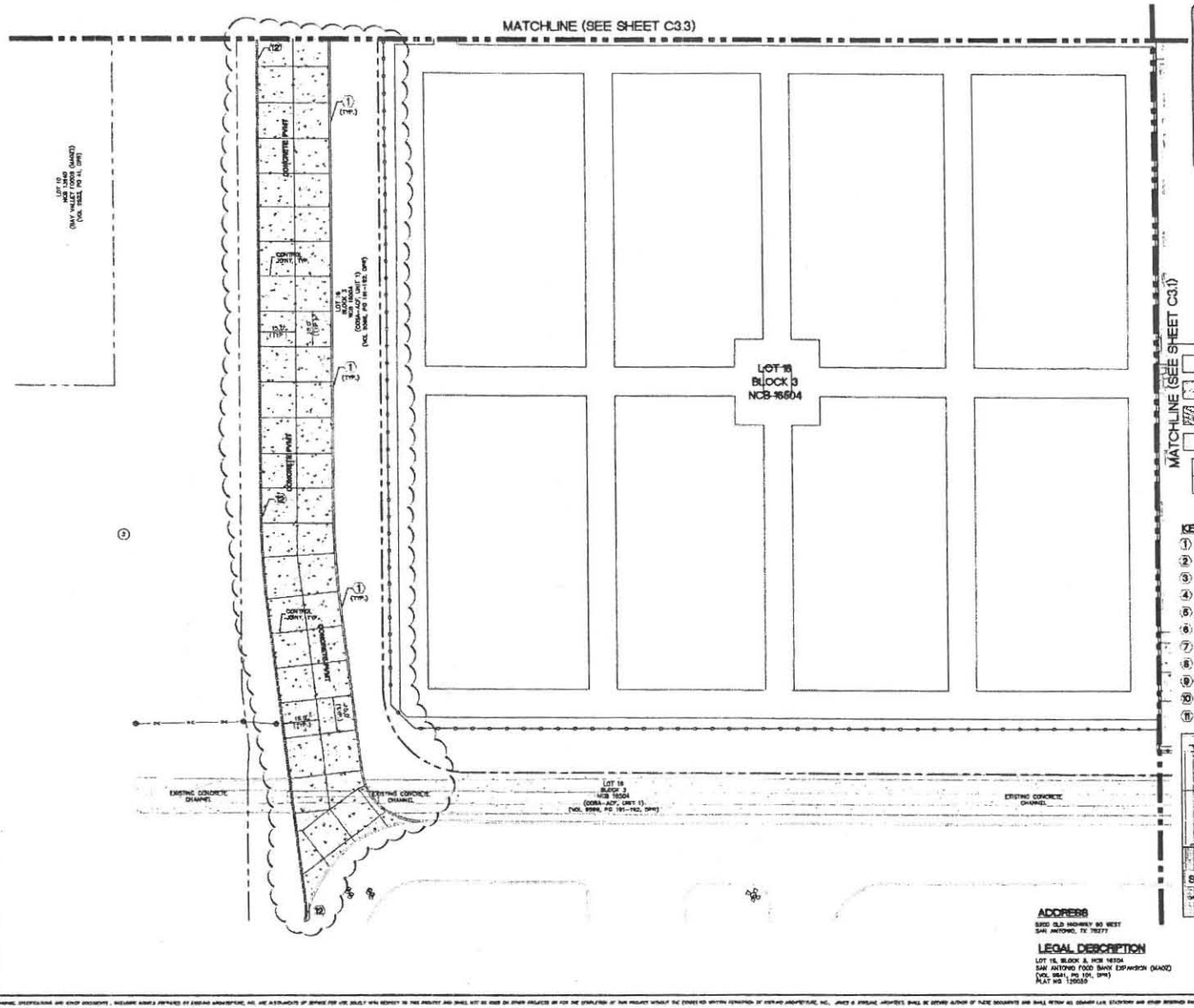
PRINTED
Jan 18, 2013

SHEET

PAVING PLAN
SHEET 3 OF 4

C3.3

2/22/2013



CONSULTANTS

PAPE-DAWSON ENGINEERS

ARCHITECT

KISSLING ARCHITECTURE

PROJECT

SAN ANTONIO FOOD BANK PAVILION

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209

STATE OF TEXAS
SONG LIM TAN
79198
LICENSED
ARCHITECT
1/18/13

SHEET HISTORY

NOTE: Revisions are inclusive. Revisions below may or may not be applicable to this sheet.

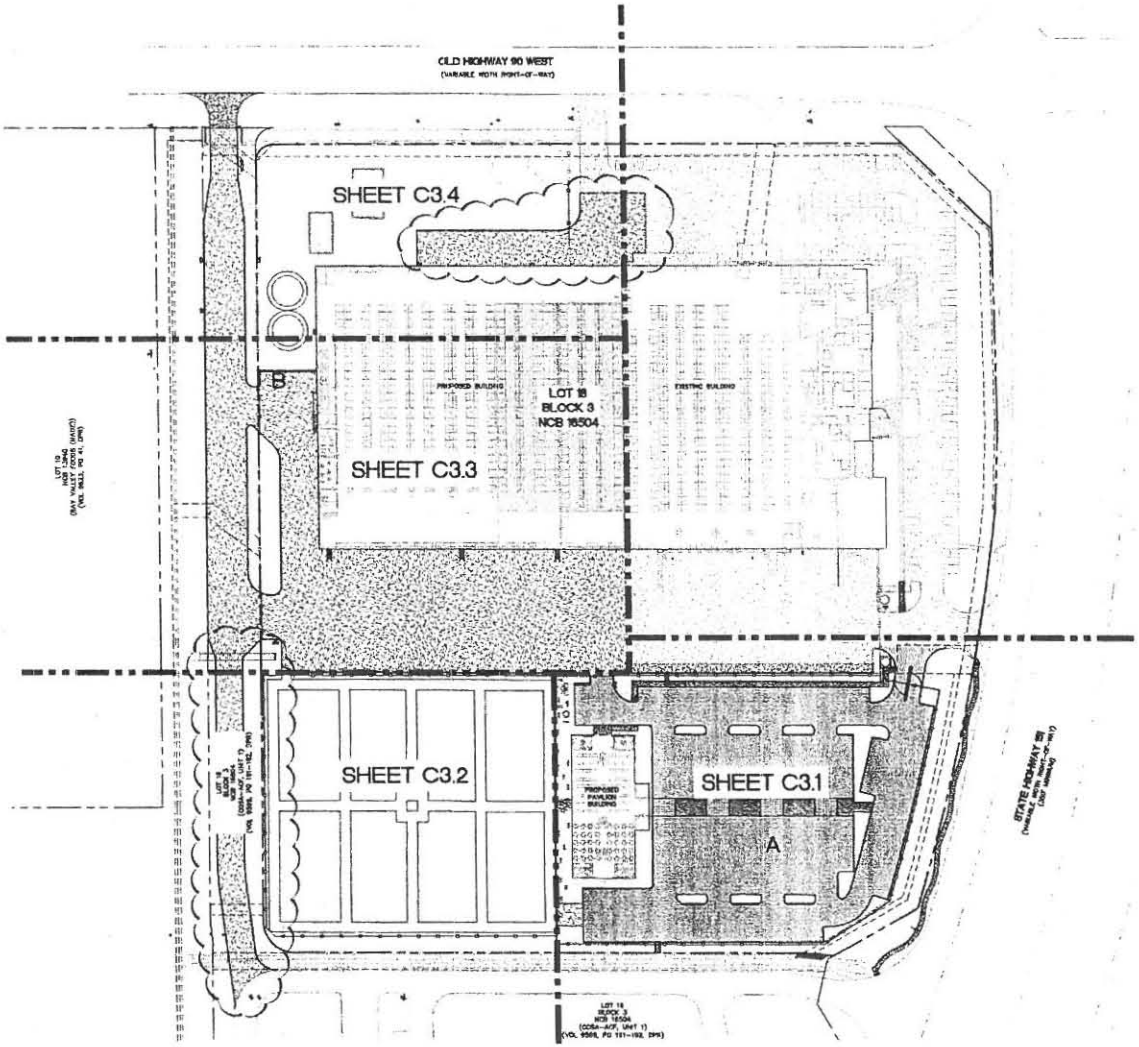
Permit Set	04-17-12
Addendum No. 3	06-04-12
AIS #1, REVISIONS CLOUDED	10-15-12
AIS #2, REVISIONS CLOUDED	01-07-13

PRINTED: Jan 18, 2013

SHEET

PAVING PLAN
SHEET 2 OF 4

C3.2



LOCATION MAP

SCALE: 1"= 60'

0' 60' 120' 180'

LEGEND:

- PROPERTY LINE
- EXISTING CONCRETE PAVEMENT
- PROPOSED CONCRETE PAVEMENT (REFER TO CIVIL DETAIL SHEET)
- PROPOSED ASPHALT PAVEMENT (REFER TO CIVIL DETAIL SHEET)
- PROPOSED SUGGESTED CONTROL JOINT LAYOUT @ 15' O.C.E.W. (REFER TO GEOTECH REPORT)

PAVING NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ACQUIRING ALL NECESSARY PERMITS BEFORE BEGINNING CONSTRUCTION.
2. ALL CURBS ARE 6" HIGH, UNLESS OTHERWISE NOTED.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING TO ITS ORIGINAL OR BETTER CONDITION ANY DAMAGE DONE TO EXISTING UTILITIES, FENCES, PAVEMENT, CURBS, DRIVEWAYS, SIDEWALKS, OR TREES.
4. THE CONTRACTOR SHALL SAW CUT EXISTING PAVEMENT, CURBS AND SIDEWALKS AT NEW PAVEMENT, CURB AND SIDEWALK JUNCTURES. NO JAGGED OR IRREGULAR CUTS WILL BE ACCEPTED.
5. CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF ANY QUESTIONS THAT MAY ARISE CONCERNING THE INTENT, ALIGNMENT, PLACEMENT, LIMITS, DIMENSIONS OR GRADES NECESSARY FOR CONSTRUCTION OF THIS PROJECT.
6. REFER TO PROJECT SPECIFICATIONS FOR ADDITIONAL SPECIFICATIONS AND CONTRACT INFORMATION.
7. CONCRETE DRIVEWAY SHALL BE CONSTRUCTED TO PROPERTY LINES, UNLESS OTHERWISE NOTED.

ADDRESS

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277

LEGAL DESCRIPTION

LOT 18, BLOCK 3, NCB 16504
SAN ANTONIO FOOD BANK EXPANSION (MAOZ)
(VOL. 9441, PG 101, DPR)
PLAT NO. 120050

CONSULTANTS

PAPE-DAWSON ENGINEERS

ARCHITECT

KISSLING ARCHITECTURE

PROJECT

SAN ANTONIO FOOD BANK PAVILION

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209

SONG LIM TAN
79756
LICENSED
PROFESSIONAL ENGINEER
STATE OF TEXAS

1/18/13

SHEET HISTORY

NOTE: Revisions are indicative. Revisions below may or may not be applicable to this sheet.

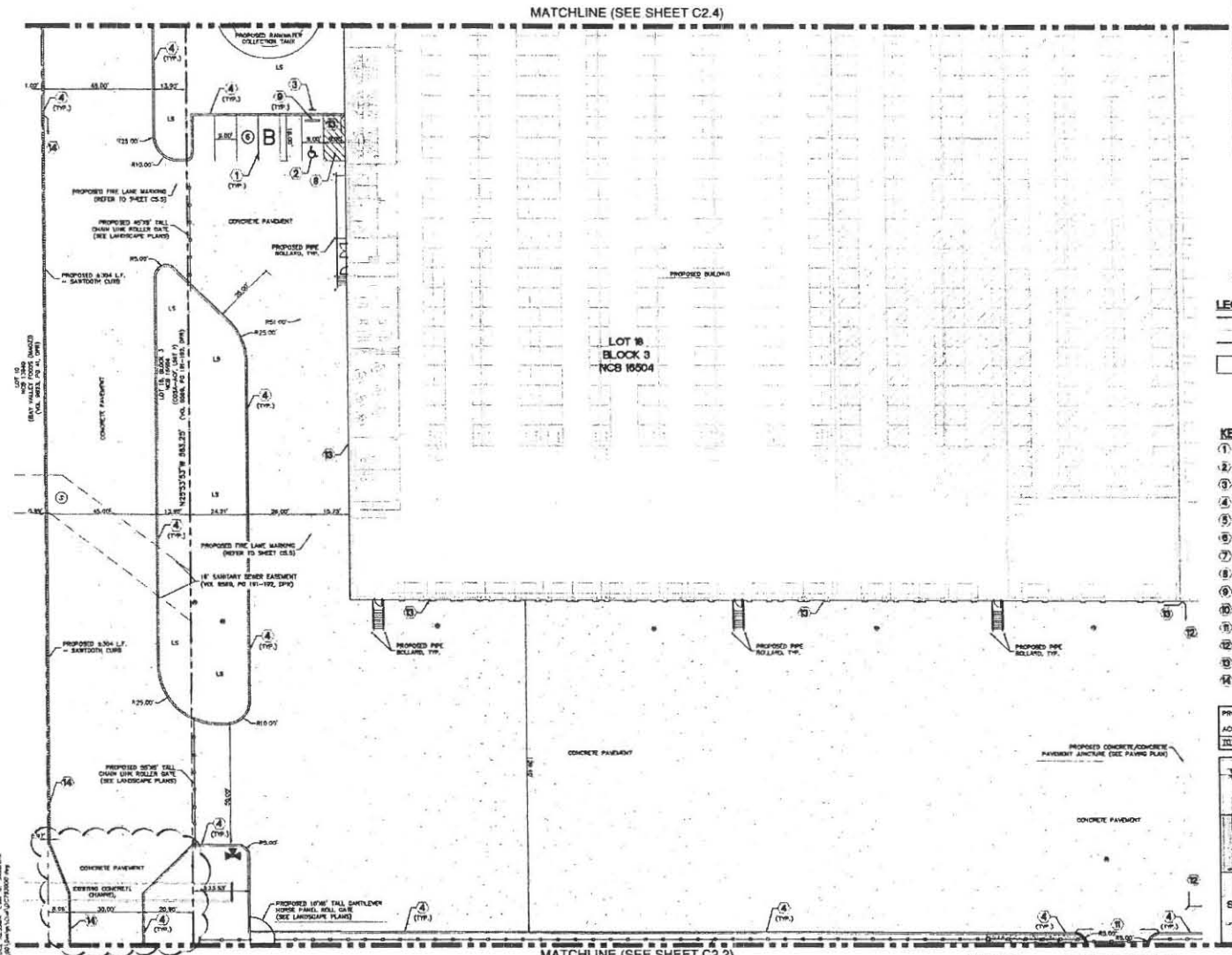
Permit Set	04-17-12
Addendum No. 3	06-04-12
ASI 01, REVISIONS CLOUDED	10-31-12
ASI 05, REVISIONS CLOUDED	01-17-13

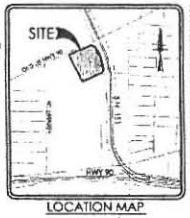
PRINTED
Jan 18, 2013

SHEET

OVERALL PAVING PLAN

C3.0





LOCATION MAP

SCALE: 1"= 20'
0' 20' 40' 60'

LEGEND:

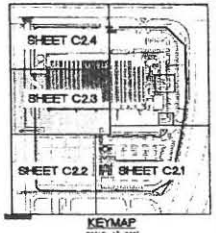
- PROPOSED 6" CURB
- EXISTING CURB
- PROPERTY LINE
- PROPOSED CONCRETE PAVEMENT (REFER TO CIVIL DETAIL SHEET)
- (5) PROPOSED PARKING COUNT
- ♿ ACCESSIBLE PARKING SYMBOL
- V DENOTES VAN ACCESSIBLE PARKING SPACE
- LS LANDSCAPE AREA

KEYED NOTES

1. PROPOSED 4" WIDE SOLID WHITE STRIPE (TYP.)
2. ACCESSIBLE PARKING SYMBOL (REFER TO CIVIL DETAILS SHEET)
3. PROPOSED ACCESSIBLE PARKING SIGN (TYP.) (REFER TO CIVIL DETAILS SHEET)
4. PROPOSED STANDARD 6" CURB (TYP.) (REFER TO CIVIL DETAILS SHEET)
5. PROPOSED WHEEL CHAIR RAMP (REFER TO CIVIL DETAILS SHEET)
6. PROPOSED HEADER CURB (TYP.) (REFER TO CIVIL DETAILS SHEET)
7. PROPOSED 3' TRANSITION CURB (REFER TO CIVIL DETAILS SHEET)
8. PROPOSED PARKED ISLAND (REFER TO CIVIL DETAILS SHEET)
9. PROPOSED WHEELSTOP (REFER TO CIVIL DETAILS SHEET)
10. PROPOSED PEDESTRIAN CROSSWALK (REFER TO CIVIL DETAILS SHEET)
11. CONCRETE/ASPHALT PAVEMENT JUNCTURE (REFER TO CIVIL DETAILS SHEET)
12. CONCRETE/CONCRETE PAVEMENT JUNCTURE (REFER TO CIVIL DETAILS SHEET)
13. PAVEMENT/BUILDING CURB (REFER TO CIVIL DETAILS SHEET)
14. PROPOSED SAWTOOTH CURB (REFER TO CIVIL DETAILS SHEET)

PARKING SUMMARY 'B'

PROPOSED PARKING (9'X18')	5
ACCESSIBLE PARKING STALLS	1
TOTAL	6



KEYMAP
SCALE: 1"=300'

ADDRESS
5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277

LEGAL DESCRIPTION
LOT 18, BLOCK 3, NCB 16504
SAN ANTONIO FOOD BANK EXPANSION (MAP22)
(VOL. 9841, PG 101, OPR.)
PLAT NO. 120080

CONSULTANTS

PAPE-DAWSON ENGINEERS

ARCHITECT

KISSLING ARCHITECTURE

PROJECT

SAN ANTONIO FOOD BANK PAVILION

5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209

STATE OF TEXAS
SONG LIM TAN
79758
LICENSED
PROFESSIONAL ENGINEER
1/18/13

SHEET HISTORY

NOTE: Revisions are inclusive. Revisions below may or may not be applicable to this sheet.

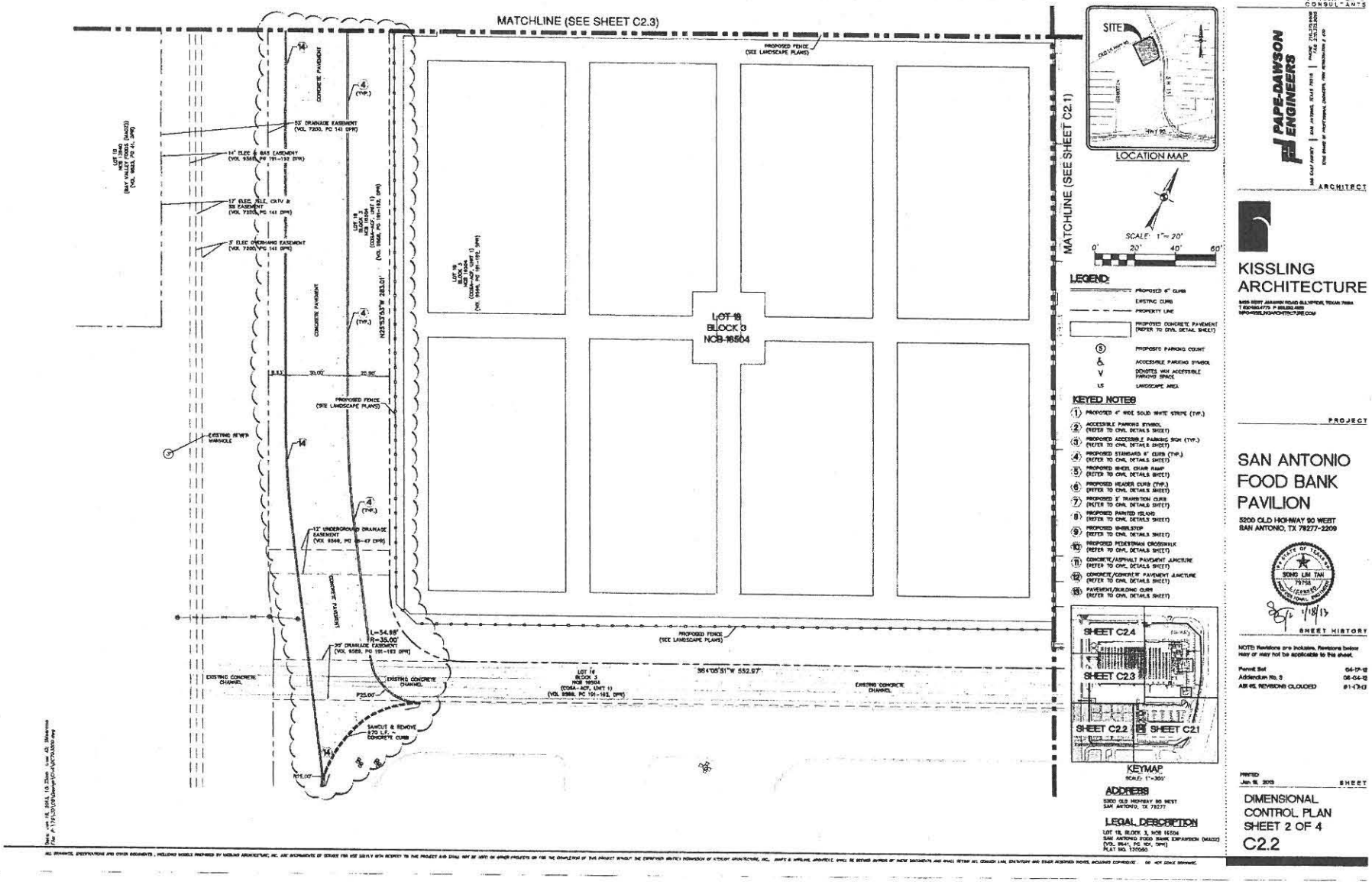
Permit Set	04-17-12
Addendum No. 3	08-04-12
ASI #1, REVISIONS CLOUDED	10-15-12
ASI #5, REVISIONS CLOUDED	04-17-13

PRINTED: Jan 18, 2013

SHEET

DIMENSIONAL CONTROL PLAN
SHEET 3 OF 4
C2.3

ALL DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS, INCLUDING MODELS PREPARED BY KISSLING ARCHITECTURE, INC. ARE INSTRUMENTS OF SERVICE FOR USE SOLELY WITH RESPECT TO THIS PROJECT AND SHALL NOT BE USED ON OTHER PROJECTS OR FOR THE COMPLETION OF THIS PROJECT WITHOUT THE EXPRESSED WRITTEN PERMISSION OF KISSLING ARCHITECTURE, INC. JAMES G. KISSLING ARCHITECT, SHALL BE DEEMED AUTHOR OF THOSE DOCUMENTS AND SHALL RETAIN ALL COMMON LAW, STATUTORY AND OTHER RESERVED RIGHTS, INCLUDING COPYRIGHT. DO NOT SCALE DRAWINGS.


MATCHLINE (SEE SHEET C2.3)
MATCHLINE (SEE SHEET C2.1)
PROPOSED FENCE (SEE LANDSCAPE PLANS)
LOT 18 BLOCK 3 NCB 16504
CONCRETE PAVEMENT
53' DRAINAGE EASEMENT (VOL 7200, PG 141 OPR)
14' ELEC & GAS EASEMENT
13' ELEC, TELE, CATV & SS EASEMENT
3' ELEC OVERHANG EASEMENT
EXISTING SEWER MANHOLE
12' UNDERGROUND DRAINAGE EASEMENT
20' DRAINAGE EASEMENT
L=54.98'
R=35.00'
EXISTING CONCRETE CHANNEL
SAWCUT & REMOVE 270 L.F. CONCRETE CURB
S64°05'51"W 552.97'
N33°55'14"W 283.01'
SITE
LOCATION MAP
SCALE: 1"= 20'
LEGEND:
PROPOSED 6" CURB
EXISTING CURB
PROPERTY LINE
PROPOSED CONCRETE PAVEMENT (REFER TO CIVIL DETAIL SHEET)
PROPOSED PARKING COUNT
ACCESSIBLE PARKING SYMBOL
DENOTES VAN ACCESSIBLE PARKING SPACE
LANDSCAPE AREA
KEYED NOTES
1 PROPOSED 4" WIDE SOLID WHITE STRIPE (TYP.)
2 ACCESSIBLE PARKING SYMBOL (REFER TO CIVIL DETAILS SHEET)
3 PROPOSED ACCESSIBLE PARKING SIGN (TYP.) (REFER TO CIVIL DETAILS SHEET)
4 PROPOSED STANDARD 6" CURB (TYP.) (REFER TO CIVIL DETAILS SHEET)
5 PROPOSED WHEEL CHAIR RAMP (REFER TO CIVIL DETAILS SHEET)
6 PROPOSED HEADER CURB (TYP.) (REFER TO CIVIL DETAILS SHEET)
7 PROPOSED 3' TRANSITION CURB (REFER TO CIVIL DETAILS SHEET)
8 PROPOSED PAINTED ISLAND (REFER TO CIVIL DETAILS SHEET)
9 PROPOSED WHEELSTOP (REFER TO CIVIL DETAILS SHEET)
10 PROPOSED PEDESTRIAN CROSSWALK (REFER TO CIVIL DETAILS SHEET)
11 CONCRETE/ASPHALT PAVEMENT JUNCTURE (REFER TO CIVIL DETAILS SHEET)
12 CONCRETE/CONCRETE PAVEMENT JUNCTURE (REFER TO CIVIL DETAILS SHEET)
13 PAVEMENT/BUILDING CURB (REFER TO CIVIL DETAILS SHEET)
SHEET C2.4
SHEET C2.3
SHEET C2.2
SHEET C2.1
KEYMAP
SCALE: 1"=300'
ADDRESS
5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277
LEGAL DESCRIPTION
LOT 18, BLOCK 3, NCB 16504
SAN ANTONIO FOOD BANK EXPANSION (MAGIC)
PLAT NO. 130060
CONSULTANTS
PAPE-DAWSON ENGINEERS
ARCHITECT
KISSLING ARCHITECTURE
PROJECT
SAN ANTONIO FOOD BANK PAVILION
5200 OLD HIGHWAY 90 WEST
SAN ANTONIO, TX 78277-2209
SONG LIM TAN
SHEET HISTORY
Permit Set 04-17-12
Addendum No. 3 06-04-12
ASI #5, REVISIONS CLOUDED #1-013
PRINTED Jan 18, 2013
SHEET
DIMENSIONAL CONTROL PLAN
SHEET 2 OF 4
C2.2

2/22/2013

EXHIBIT B

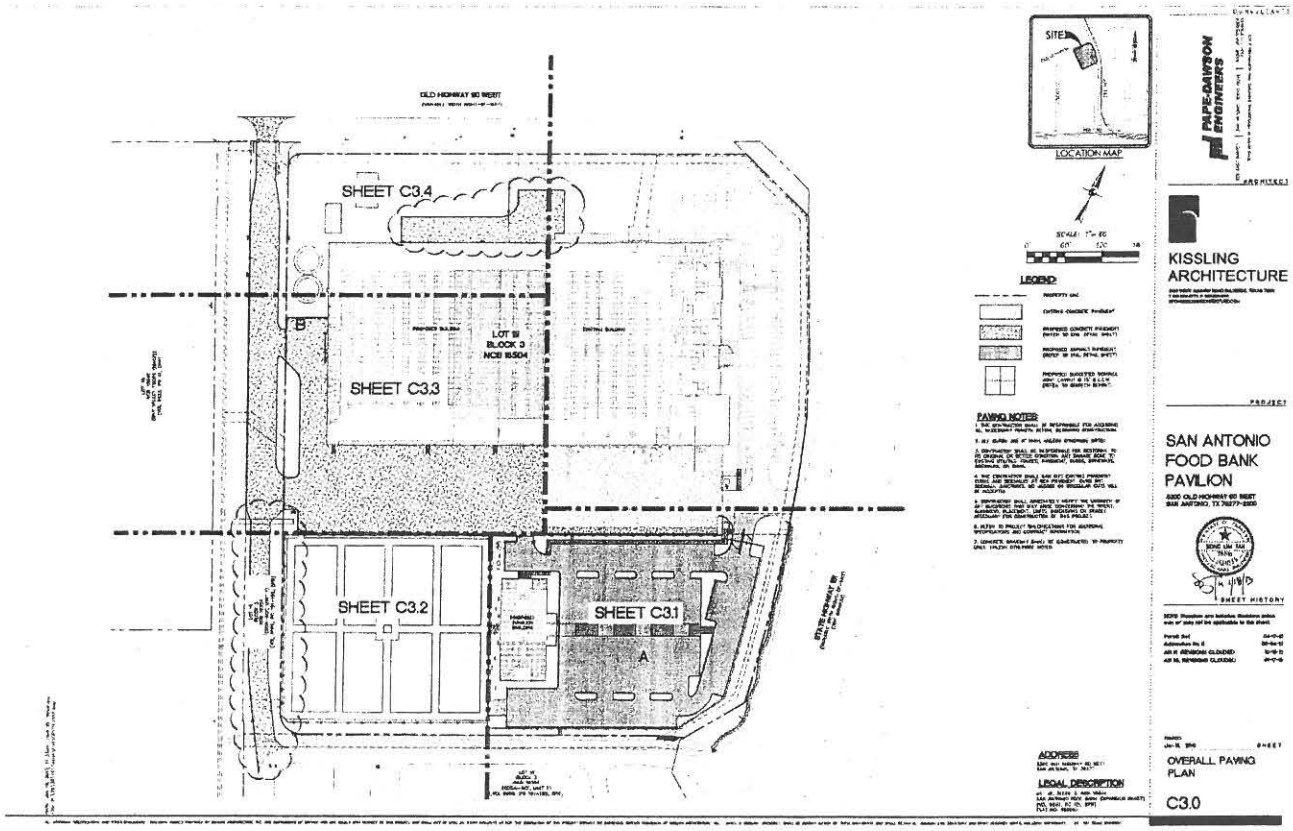

SHEET C3.4
SHEET C3.3
SHEET C3.2
SHEET C3.1
LOT 50
BLOCK 3
NCB 16504
B
A
SITE
LOCATION MAP
LEGEND
PAVING NOTES:
ADDRESS
LEGAL DESCRIPTION
PAPE-DAWSON ENGINEERS
KISSLING ARCHITECTURE
PROJECT
SAN ANTONIO FOOD BANK PAVILION
SHEET HISTORY
OVERALL PAVING PLAN
C3.0

Exhibit C
SBEDA TERMS & CONDITIONS

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

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

B. Definitions

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

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

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and

other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

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

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

Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

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

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

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

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

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. SBEDA Program Compliance – General Provisions

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

1. DEVELOPER shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding DEVELOPER's utilization and payment of

Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

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

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

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

5. DEVELOPER shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change

in its ownership or business structure.

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

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

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

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. DEVELOPER hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. DEVELOPER agrees to subcontract at least ***twenty-three percent (23%)*** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that DEVELOPER

submitted to the CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by DEVELOPER on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement, and,

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. DEVELOPER agrees to subcontract at least ***fifteen percent (15%)*** of its prime contract value to certified S/M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that DEVELOPER submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by DEVELOPER on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each S/M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, the failure of DEVELOPER to attain this subcontracting goal for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

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

efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. DEVELOPER's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. DEVELOPER shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of contract;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

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