SW/vv
04/30/15
Item #10

AN ORDINANCE 2015-04-30-0336

AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT WITH THE SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC. IN AN AMOUNT NOT-TO-EXCEED $1,000,000.00 FOR THE BOTANICAL GARDEN FAMILY ADVENTURE GARDEN, A 2015 GRANT FUNDED PROJECT FROM THE TEXAS PARKS AND WILDLIFE URBAN OUTDOOR RECREATION GRANT PROGRAM.

* * * * *

WHEREAS, on August 21, 2014, City Council approved the submission of a grant application and acceptance upon award of up to $1,000,000.00 for the Botanical Garden Family Adventure Garden; and

WHEREAS, on January 22, 2015, the Texas Parks and Wildlife Commission approved a $1,000,000.00 grant that will be used toward construction of the Family Adventure Garden at the San Antonio Botanical Garden; and

WHEREAS, the City-owned Botanical Garden, located at 555 Funston Place, was opened to the public on May 3, 1980; and

WHEREAS, chartered in 1980, the San Antonio Botanical Garden Society, Inc., (Society) a 501 (c)(3) non-profit organization, was specifically established in support of the Botanical Garden; and

WHEREAS, the mission of this organization is to support the Botanical Garden in its role of inspiring people to connect with the world of plants, and understand the importance of plants in our lives; and

WHEREAS, the Society has collaborated with the City to bring major capital improvements to the Botanical Garden such as: the Lucile Halsell Conservatory, the Sullivan Carriage House, the Auld House, acquisition of Funston properties, Texas Native Trail revitalization, upgraded children's facilities, extensive landscape lighting, and master planning; and

WHEREAS, as part of their continuing efforts to support, improve, educate and serve the city's growing community, the Botanical Garden intends to construct improvements on recently purchased land adjacent to the Botanical Garden which may include a new garden entry, educational facilities and a family adventure garden; and

WHEREAS, the construction of these improvements is anticipated to be completed in approximately two years; and

WHEREAS, this funding agreement, between the City and the San Antonio Botanical Garden Society, Inc., will be executed in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on the contract; and

WHEREAS, the Goal Setting Committee set a 22% Minority/Women Business Enterprise (M/WBE) subcontracting goal and a 2% African American Business Enterprise (AABE) subcontracting goal; and

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WHEREAS, the San Antonio Botanical Garden Society, Inc. has committed to 22% MWBE and 2% AABE subcontractor participation; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute a funding agreement with the San Antonio Botanical Garden Society, Inc. (SABGS) in an amount not-to-exceed $1,000,000.00 for the Botanical Garden Family Adventure Garden, a 2015 Grant Funded project from the Texas Parks and Wildlife Urban Outdoor Recreation Grant Program. A copy of the funding agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Payment not to exceed the amount of $1,000,000.00 in SAP Fund 46099000, General Obligation Capital Project, SAP Project Definition 26-00637, Botanical Society (Family Adventure Garden), is authorized to be encumbered and made payable to the San Antonio Botanical Garden Society, Inc., for development of the Botanical Garden Family Adventure Garden.

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

SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of April, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Hollis Young
for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**10**
Date:	04/30/2015
Time:	11:03:29 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the negotiation and execution of a $1,000,000.00 funding agreement with the San Antonio Botanical Garden Society, Inc. for the Botanical Garden Family Adventure Garden, a 2015 Grant Funded project from the Texas Parks and Wildlife Urban Outdoor Recreation Grant Program [Gloria Hurtado, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]
Result:	Passed

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

Attachment I

STATE OF TEXAS	§	
	§	**FUNDING AGREEMENT – SAN ANTONIO**
COUNTY OF BEXAR	§	**BOTANICAL GARDEN SOCIETY, INC.**

This Agreement ("Agreement") is hereby made and entered into by and between the City of San Antonio ("City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2015 and San Antonio Botanical Garden Society, Inc. ("Grantee"), a Texas non-profit corporation, acting by and through its President, hereto duly authorized.

WITNESSETH:

WHEREAS, the San Antonio Botanical Garden Society, Inc., was chartered in 1980 as a 501(c)(3) non-profit organization, to support the City-owned Botanical Garden, located at 555 Funston Place, and

WHEREAS, the Grantee has partnered with the City to bring major capital improvements to the Botanical Garden as part of the Grantee's continuing efforts to support, improve, educate and serve the city's growing community; and

WHEREAS, the Grantee intends to construct improvements on recently purchased land adjacent to the Botanical Garden which may include a new garden entry, educational facilities and a family adventure garden; and

WHEREAS, on August 21, 2014, City Council authorized the submission of a grant application and the acceptance of up to $1,000,000.00 upon award from the Texas Parks and Wildlife Department (TPWD) Urban Outdoor Recreation Grant Program for the implementation of the Botanical Garden Family Adventure Garden in Council District 2; and

WHEREAS, on January 22, 2015, the TPWD approved a $1,000,000.00 grant to be used toward construction of the Family Adventure Garden ("Project") at the San Antonio Botanical Garden; and

WHEREAS, Grantee will raise all funds to fulfill the TPWD match requirement; and

WHEREAS, Grantee will serve as manager for the completion of the planned addition of Family Adventure Garden at the San Antonio Botanical Garden;

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

I. TERM

1.01 This Agreement shall continue in full force and effect from the date of execution by the Parties until the Project, as defined in Section 2 below, has been completed.

1.02 In the event that TPWD terminates the Grant due to non-compliance with grant regulations, this Agreement will terminate. In the event of such termination, City and Grantee will not be responsible for providing any additional funding for the completion of the Project.

II. GENERAL RESPONSIBILITIES

2.01 Provided Grantee receives the funding described in Section 6.01, Grantee shall perform the services and activities described in this Agreement. The funds provided for under this Agreement shall only be used for the Project at the San Antonio Botanical Garden.

2.02 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President shall be Grantee's designated representative responsible for the administration of this Agreement on behalf of Grantee.

2.03 The Parks and Recreation Director ("Director") or his designee, is responsible for the administration of this Agreement on behalf of City.

2.04 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in Sections 2.02 and 2.03 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee agrees to manage and implement all portions of the planned Project at the San Antonio Botanical Garden.

3.02 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee's use of City Funds.

3.03 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

(A) Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.

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

Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that is construction contractor submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of CIMS.

IV. LEGAL AUTHORITY

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

4.02 Grantee represents, warrants, assures and guarantees that the undersigned has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

V. PERFORMANCE BY GRANTEE

5.01 Grantee, in accordance and compliance with the terms, provisions and requirements of this Agreement, shall contract with a design consultant for plans associated with the Project.

VI. FUNDING AND ASSISTANCE BY CITY

6.01 In consideration of Grantee's performance of all services and activities set forth in this Agreement, City agrees to reimburse Grantee for all Eligible Expenses (as defined in Section 8.01) incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City shall not exceed $1,000,000.00.

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

6.03 Grantee will be solely responsible for providing all match funding required for receipt of TPWD grant funds.

6.04 City will be responsible for all reporting required by TPWD for the TPWD Grant and Grantee agrees to promptly provide any clarification requested and/or documentation needed by City to submit such reports.

VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

7.01 Grantee understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support of the use of such City funds.

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

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

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

7.03 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities

pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

7.04 In order to be reimbursed for Eligible Expenses, Grantee shall submit to City a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation, in such detail as City may request, including but not necessarily limited to, a copy of the paid invoice(s).

7.05 Grantee agrees that reimbursement shall amount to fifty percent (50%) of all invoices received, to expend TPWD Grant funds. The remaining fifty percent (50%) shall represent the Grantee's required match funding.

7.06 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Grantee shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to Grantee, refund to the City those funds, determined to:

(A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or
(B) Not be supported by adequate documentation to fully justify the expenditure.
(C) In the event Grantee is not satisfied with the determination of City that an expenditure was outside the permissible parameters of this Agreement, Grantee shall have the right to register an appeal of that decision with the Director. Director shall hold a hearing allowing Grantee to present evidence directly to Director. After such hearing Director shall render a decision and such decision shall be final. City will not be responsible for reimbursement of any expenditure that is declined by TPWD.

7.07 Unless City has questions concerning an expenditure by Grantee, City agrees to provide payment to Grantee on a quarterly basis upon receipt of a request for reimbursement as defined above.

7.08 Upon termination of this Agreement, 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, Grantee shall refund such amount to City within thirty (30) calendar days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VIII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY

8.01 Grantee may use the funds provided under the terms of this Agreement for the cost of Basic Services, as defined in Exhibit B, **TPWD Budget Summary – Local Park Grants Program - Grant Funded Items**. Expenditures of the funds by Grantee provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

8.02 The following shall not be considered Eligible Expenses under this Agreement:

(A) Personnel costs, salaries or wages paid directly by Grantee, except as allowed by 8.01 above
(B) Travel or mileage
(C) Costs or fees associated with attendance at meetings, seminars, or conferences

8.03 Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

IX. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

9.01 Grantee further represents and warrants that as of the date hereof:

(A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.
(B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.
(C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.
(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

X. ACCESSIBILITY OF RECORDS

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

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

XI. MONITORING AND EVALUATION

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

XII. INDEMNIFICATION

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

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

XIII. INSURANCE

13.01 Grantee agrees to obtain all insurance coverages (except for professional liability insurance) with minimum limits of not less than those limits delineated in Section 13.04 (Insurance table) and provide a Certificate of Insurance and Endorsement that names the City as an additional insured. Grantee shall cause the Architect to obtain professional liability insurance with the minimum limited delineated in Section 13.04.

13.02 Prior to the commencement of any work under this Agreement, Grantee and Architect shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled **"San Antonio Botanical Garden Family Adventure Garden"** in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company

affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

13.04 Grantee's and Architect's financial integrity is of interest to the City; therefore, subject to Grantee's and Architect's right to maintain reasonable deductibles in such amounts as are approved by the City. Grantee and, with respect to the professional and liability policy only, Architect shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's and Architect's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, 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 below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented to you	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 f. $100,000
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
5. Professional Liability Insurance (claims made form)	$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services. Architect shall provide coverage for an

	additional 12 months after the completion date of the contract.

13.05 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the City as additional insureds. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.06 As they apply to the limits required by the City, 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). Grantee and Architect shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Grantee and Architect shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Parks & Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

13.07 Grantee and Architect (to the extent the same applies to professional liability insurance) agree that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

(A) Name the City, 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;

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

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

(D) 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.

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

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

13.10 Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's and Architect's or its subcontractors' performance of the work covered under this Agreement, subject to the limitations set forth in Section 29 hereof.

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

13.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

XIV. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

14.01 Grantee is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts. In all events, Grantee shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 2007-04-12-0396, and the amendments thereto in connection with the award of the construction contract(s). Said ordinances are incorporated herein for all purposes, as if fully set forth herein. Grantee agrees that Grantee will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Grantee further agrees that Grantee will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Business Economic Development Advocacy (SBEDA) Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development, Division of Internal Review and the City Clerk's Office in connection with the Parking Facility.

14.02 Grantee agrees to comply with any and all SBEDA goals assigned to this

Agreement as outlined in Exhibit A, **SBEDA Ordinance Compliance Provisions**.

14.03 Grantee agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its Project are found or if Grantee does not meet the SMWBE goals as specified by the City's Department of Economic Development, whichever is less, as a result of a review or investigation conducted by City's Department of Economic Development, Grantee will be required to submit a written report to City's Department of Economic Development. Grantee will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies.

XV. NONDISCRIMINATION

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

XVI. CONFLICT OF INTEREST

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

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

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

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

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

XVII. POLITICAL ACTIVITY

17.01 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.

XVIII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

XIX. CONTRACTING

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

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

XX. CHANGES AND AMENDMENTS

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

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

XXI. ASSIGNMENTS

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

XXII. SEVERABILITY OF PROVISIONS

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

herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIII. DEFAULT

23.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same and Grantee shall have 30 days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

23.02 Upon default by City in the performance of its obligations hereunder Grantee shall give City notice of the same and City shall have 30 days following receipt of written notice of default from Grantee (or such reasonably longer time as may be necessary provided City commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If City fails to timely cure such default, Grantee may pursue all remedies available in law or equity and/or other rights Grantee may have in this Agreement, subject to the limitations set forth in Section 23.01.

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

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 Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or

otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXVI. NOTICES

26.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

City: Director, Parks and Recreation Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Grantee: President,
San Antonio Botanical Garden Society, Inc.
555 Funston
San Antonio, Texas 78209

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. 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.

XXVII. PARTIES BOUND

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

XXVIII. RELATIONSHIP OF PARTIES

28.01 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.

XXIX. DESIGN DEFECTS

29.01 City acknowledges that Grantee shall have no liability for design defects and City's only recourse for design defects shall be against the Architect, provided however, Grantee shall reasonably cooperate with City at no material cost to Grantee, to pursue the correction of such defects. This provision shall survive termination of this Agreement.

XXX. TEXAS LAW TO APPLY

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

XXXI. GENDER

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

XXXII. CAPTIONS

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

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

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
City Manager

Date: _____

SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC.

By: Mary Ann Beach
Mary Ann Beach
President

Date: April 13, 2015

ATTEST: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

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. Contract Requirements and Commitment

Grantee understands and agrees that the following provisions shall be requirements of this contract, and by its execution, Grantee commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of Grantee to commit, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE and M/WBE subcontracting goals shall constitute default.

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

C. Definitions

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective firms 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 Grantee to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if Grantee 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 Grantee 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 Grantee and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the Grantee'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 Grantee'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 Grantee; 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 Grantee'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 Grantees 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 Grantee.

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.

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 Grantee 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 Grantee 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 Grantee 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 Grantee'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 Grantee'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 Grantee'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 IEDD Director or designee.

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

D. SBEDA Program Compliance – General Provisions

As Grantee 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 Grantee'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. Grantee voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, Grantee further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Grantee shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding Grantee'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. Grantee 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 Grantee or its Subcontractors or suppliers;

3. Grantee 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. Grantee shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Grantee'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 Grantee 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 Grantee 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. Grantee 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. Grantee 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 Grantee's Subcontractor / Supplier Utilization Plan, the Grantee 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 Grantee and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **twenty-two percent (22%)** ***of the amount indicated on the 010 and Subcontractor/Supplier Utilization Plan for this project*** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier

Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least ***two percent (2%) the amount indicated on the 010 and Subcontractor/Supplier Utilization Plan for this project*** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This two percent (2%) subcontracting goal will also count toward the aforementioned twenty-two percent (22%) M/WBE subcontracting goal. The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each AABE Subcontractor, and documentation including a description of each AABE Subcontractor's scope of work and confirmation of each AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for AABE 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 AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 22% and AABE Subcontracting goal of 2% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved,

overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of December 2014, African-American owned firms represent approximately 2.93% of available subcontractors, Hispanic-American firms represent approximately 17.10%, Asian-American firms represent approximately 1.14%, Native American firms represent approximately 0.29%, and Women-owned firms represent approximately 4.86% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Grantee 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, Grantee 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. Grantee'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. Grantee 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 Grantee, Grantee 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 Grantee's reported subcontract participation is accurate. Grantee 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 Grantee's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Grantee, and no new CITY contracts shall be issued to the Grantee 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.

E. Violations, Sanctions and Penalties

In addition to the above terms, Grantee 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 Grantee or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

EXHIBIT B

TEXAS PARKS & WILDLIFE

Budget Summary -- Local Park Grants Program

Project Name: San Antonio Botanical Garden Family Adventure Garden

	GRANT FUNDED ITEMS	GRANT SUB-TOTAL	NON-GRANT FUNDED ITEMS	NON-GRANT SUB-TOTALS	ELEMENT TOTALS
I. PROFESSIONAL SERVICES		$ -		$ 361,000	
Pre-Agreement Costs					
Beginning Date:					
A. Permits and surveys	$ -		$ 1,000		$ 1,000
B. Plans and specifications	$ -		$ 360,000		$ 360,000
C.					$ -
II. LAND ACQUISITION		$ -		$ -	
A.	$ -		$ -		$ -
B.	$ -		$ -		$ -
III. CONSTRUCTION		$ 2,000,000		$ 1,200,000	
A. Construction - paving, walls and sitework	$ 865,000		$ -		$ 865,000
B. Construction - native landscaping	$ -		$ 393,000		$ 393,000
C. Construction - other landscaping	$ -		$ 99,000		$ 99,000
D. Utilities	$ 200,000		$ -		$ 200,000
E. Exhibits, finishes, site features	$ 760,000		$ 446,700		$ 1,206,700
F. Restrooms and concessions building	$ 175,000		$ -		$ 175,000
G. Contingency	$ -		$ 236,300		$ 236,300
H. Signage	$ -		$ 25,000		$ 25,000
I.					$ -
J.					$ -
K.					$ -
L.					$ -
M.					$ -
N.					$ -
TOTAL PROJECT COST		$ 2,000,000		$ 1,561,000	$ 3,561,000
50% MATCH AMOUNT	$ 1,000,000				

Match amount cannot exceed: Urban Outdoor-$1,000,000; Outdoor-$400,000; Small Community-$75,000

Sum of Grant + Non-Grant $ 3,561,000