SS/vv
04/16/15
Item #16

AN ORDINANCE 2015-04-16-0313

ESTABLISHING THE NORTHEAST CORRIDOR ENHANCEMENT MATCHING GRANT PROGRAM BY ALLOCATING TO IT $100,000.00 IN PREVIOUSLY BUDGETED FUNDS FROM THE FY 2015 NON-DEPARTMENTAL/ NON-OPERATING GENERAL FUND BUDGET; AND AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS AND CONTRACTS NECESSARY TO ADMINISTER THE GRANT PROGRAM.

* * * * *

WHEREAS, on June 6, 2014, City Council passed an Ordinance adopting a Revitalization Plan for the Northeast Corridor (NEC); and

WHEREAS, in order to secure a dedicated source of revenue to implement the strategies identified in the NEC Revitalization Plan, City Council passed an Ordinance creating Tax Increment Reinvestment Zone Thirty-Three (also known as "NEC TIRZ") on December 4, 2014; and

WHEREAS, as the NEC TIRZ generates revenue, it will provide the primary source of funding for NEC revitalization projects; and

WHEREAS, however, a gap in funding exists between the adoption of the NEC TIRZ and receipt of its first revenue; and

WHEREAS, interim funds were set aside in the FY 2015 Non-Departmental/Non-Operating general fund budget to bridge the funding gap and support the projects identified in the NEC Revitalization Plan for FY 2015; and

WHEREAS, the NEC Enhancement Matching Grant Program is one such project; and

WHEREAS, the NEC Enhancement Matching Grant Program is critical to the achievement of the NEC Revitalization Plan Goals such as improving Corridor Design, increasing Corridor Marketability, and Business Development; and

WHEREAS, the NEC Enhancement Matching Grant Program is a mechanism for assisting commercial property owners and/or tenants with the cost of making façade, landscape, and signage improvements to their businesses; and

WHEREAS, cumulative improvements to the commercial streetscape enhance the NEC's overall appearance and function, which, in turn, attracts customer traffic and private investment; and

WHEREAS, $100,000.00 will be used to provide the City match portion of the NEC Enhancement Grants to qualified applicants; and

WHEREAS, the NEC Enhancement Matching Grant Program will be administered on a competitive, matching reimbursement basis; and

WHEREAS, maximum award amounts for each category of improvement, façade, landscape, and signage, will be set at $20,000.00, $5,000.00, and $2,000.00, respectively; **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 Department of Planning and Community Development, or his designee, is authorized to establish the Northeast Corridor Enhancement Matching Grant program by allocating to it $100,000.00 in previously budgeted funds from the FY 2015 Non-Departmental/Non-Operating General Fund budget.

SECTION 2. A description of the Northeast Corridor Enhancement Matching Grant Program, grant application and Northeast Corridor Design Guidelines are attached hereto as **Attachments I, II,** and **III** respectively.

SECTION 3. The City Manager, or her designee, or the Director of the Department of Planning and Community Development, or his designee, is hereby authorized to execute a contract and a Covenant and Agreement with the grant applicant for the NEC Enhancement Matching Grant Program. A copy of the grant contract and Covenant and Agreement templates are attached hereto and incorporated herein for all purposes as **Attachments IV** and **V,** respectively.

SECTION 4. The City Manager, or her designee, or the Director of the Department of Planning and Community Development, or his designee, is hereby authorized to execute any and all documents and contracts necessary to administer the Northeast Corridor Enhancement Matching Grant program.

SECTION 5. Funding in the amount of $100,000.00 for this ordinance is available for Fund 11001000, Cost Center 0800206001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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SECTION 7. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 16th day of April, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**16 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 21, 22)**
Date:	04/16/2015
Time:	10:54:33 AM
Vote Type:	Motion to Approve
Description:	An Ordinance for the Northeast Corridor Enhancement Grant program approved in the FY 2015 General Fund Budget authorizing City staff to execute contracts administered as part of the program. [Peter Zanoni, Deputy City Manager; John Dugan, Director, Planning and Community Development]
Result:	Passed

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

Attachment I

NORTHEAST CORRIDOR ENHANCEMENT MATCHING GRANT PROGRAM

PURPOSE

The purpose of the Northeast Corridor (NEC) Enhancement Matching Grant Program is to enhance the streetscape of the Perrin Beitel and Nacogdoches Road corridor by providing matching funds to commercial property owners and tenants to make façade, signage, and landscape improvements to their businesses. An aesthetically pleasing environment and comfortable surroundings contribute to commercial corridor revitalization by encouraging customer traffic and business development.

ELIGIBILITY

Owners or tenants of commercial properties within the designated NEC boundary are eligible to apply for grant funds. This roughly includes Perrin Beitel and Nacogdoches Roads between NE Loop 410 and O'Conner Road, Naco-Perrin Boulevard, and portions of Thousand Oaks Drive. Priority will be given to properties located in or near targeted NEC Gateways. See attached map for exact NEC boundaries and Gateway locations.

Property owners must be able to demonstrate ownership of property and be current on accounts with all applicable taxing entities. Tenants must provide a copy of their lease and proof of property owner's approval to make improvements.

GUIDELINES

Grants are awarded on a matching reimbursement basis; the total cost of the enhancement project is split 50/50 (up to the maximum award amount) between the grant recipient and City of San Antonio.

Project Type	**Eligible Examples** (include, but are not limited to)	**Maximum Award**
Façade Improvements	Rehabilitation or replacement of exterior architectural elements such as doors, windows, and awnings, removal of false facades, painting of storefront, removal of burglar bars and installation of security window film, upgrade of signage attached to building.	$20,000
Landscape	Installation of landscape elements (in-ground or planters) in parking lots, base of signs, perimeter plantings, and entrance to buildings. All landscaping requires the use of low-water, drought-tolerant native plants.	$5,000
Signage	Repair and upgrade to on-premises signage that is not attached to building (e.g. multiple tenant signs in parking lot), removal of non-conforming or out-dated signage (e.g. pole signs).	$2,000
		Maximum Total Award for Single Property Application is $27,000

Enhancements must be permanent improvements (e.g. no temporary signage or banners). All work must be permitted as applicable and comply with San Antonio Unified Development Code (UDC) and NEC design guidelines. Projects must be complete within 90 days of notice that a grant has been awarded. Work started before notice of grant award is not eligible for reimbursement.

If applicant is selected for grant award, three bids for proposed work will be required prior to signing an Award Contract.

EVALUATION CRITERIA

Projects should convey positive change to the community and upgrade the appearance of a property's exterior, street frontage, or parking area. Determinations for grant awards will be based on potential for cumulative visual impact, consistency with NEC Revitalization Plan goals and design guidelines, and proximity to NEC Gateways.

TO APPLY

Interested parties should complete a "NEC Enhancement Grant Program Application" and submit the address below. ***Applications must be delivered in-person or by courier. Deadline for receipt is 4:30 PM on Friday, May 1.***

City of San Antonio Department of Planning and Community Development (DPCD)
Attn: NEC Grant Program
1400 S. Flores St.
San Antonio, TX 78204

Applicants may be contacted by a representative from the San Antonio Department of Planning and Community Development (DPCD) for more information on their proposed project. If you have questions regarding the NEC Enhancement Grant Program or application requirements, please contact Heather Yost at Heather.Yost@sanantonio.gov or (210) 207-7919.

Attachment II

NEC ENHANCEMENT GRANT PROGRAM

APPLICATION – PAGE 1 OF 2

Type of Grant Requested *Applicants may apply for more than one grant, but total award cannot exceed $27,000*

_____ Façade (max $20,000) _____ Landscape (max $5,000) _____ Signage (max $2,000)

Applicant Information

Applicant is (check one): Owner_____ Tenant_____

Property owner must be able to prove ownership as condition of grant award. Tenants must provide a copy of lease agreement and approval from property owner as a condition of grant award. Please provide this documentation with the application form if available.

Applicant Name: _____

Applicant Address (street, city, state, zip):

_____

Applicant Email: _____

Applicant Phone: _____

Property Information

Business Name or Name of Center: _____

Property Address (street, city, state, zip): _____

NEC ENHANCEMENT GRANT PROGRAM

APPLICATION – PAGE 2 OF 2

Description of Project

If requesting more than one grant (façade, landscape, and signage), describe each grant request separately and be as specific as possible. Include type and color of materials being used, quantities, measurements of buildings, types of plants being used for landscaping, etc. Provide any supporting documentation you have, such as pictures of property to be enhanced, scopes of work, color samples, preliminary designs. ***Attach extra pages as necessary to fully describe your project and related costs.***

Estimated Costs and Total Amount Requested

Item or Work	Description	Estimated Cost
		$
		$
		$
		$
		Total

I understand that this document is for application purposes only and does not constitute an agreement with the City of San Antonio. I understand that if my application is selected, I will be required to provide all required documentation prior to the execution of an Award Contract.

Applicant Signature: _____ Date: _____

Attachment III

Northeast Corridor (NEC) Design Guidelines

I. OVERVIEW

The Northeast Corridor (NEC) is one of San Antonio's designated revitalization corridors. One of the main goals of the NEC Revitalization Plan is to improve the design of the corridor in order to make it more attractive to investors and customers. "Design" refers to the appearance and function of buildings, infrastructure, and streetscape.

A common strategy for improving the appearance of reinvestment corridors is the adoption of design guidelines. Design guidelines supplement City zoning and code requirements with the intention of creating unified, complete communities that are inviting for residents, businesses, and customers. Guidelines present a range of options for the design of new buildings and infrastructure as well as for the redevelopment of existing facilities. Common design guidelines address building materials, landscaping, signage, lighting, and buffers.

While there are no formally-adopted design guidelines in place for the NEC at this time, the City can require grant recipients to meet supplemental design standards as a condition of receiving City grant funds.

II. DESIGN STANDARDS

Building Materials, Landscaping, and Signage

- The requirements for building materials apply to all building elevations visible from major NEC thoroughfares (Perrin Beitel, Nacogdoches, Naco-Perrin, Thousand Oaks, etc).
- To the greatest extent possible, building materials, colors, and finishes should be used that are compatible with existing properties in the NEC to support a consistent visual theme.
- All building finishes shall feature earth toned colors.

Permitted Materials	Prohibited Materials
• Finished masonry or equivalent • Decorative concrete (profiled, sculpted, fluted, textured, or varied in design) • Native stone (or synthetic equivalent) • Brick or brick veneer • Stucco • Cement fiber board (hardiplank) • Glass • Metal may be used on roofs, canopies or awnings; balconies and railings; doors, windows, and their framing • Window Security Film (used in place of burglar bars)	• Siding made of vinyl, wood fiber hardboard, oriented strand board, plastic or fiberglass panels • Corrugated, ribbed, galvanized, aluminum, coated, or unpainted metal (prohibition does not apply to metals used on roofs, awnings, or canopies) • Unfired or underfired clay, sand, or brick • Unfinished concrete masonry units (cinderblock) • Smooth or untextured concrete finishes • Mirrored glass with a reflectance greater than 20% • Burglar bars

• The requirements for landscaping include the use of drought-tolerant, low-water, and native trees, plants, and shrubs for sustainability and conservation of resources. See SAWS approved plant list at http://www.saws.org/conservation/outdoor/plants/ or San Antonio UDC "Recommended Plant List." • All San Antonio regulations concerning utilities and maintaining clear lines of sight apply.

Permitted	Prohibited
• Xesriscaping • Screening of parking areas with vegetative buffer • Planters and planter boxes • Landscaping at base of on-premises signage • Plantings in frontage ROW (with appropriate accommodation for utilities and lines of sight)	• Trees, plants, and shrubs not on SAWS or San Antonio approved plant list • Any feature that inhibits a clear line of sight for vehicular or pedestrian traffic

• All signs (affixed to building or on-premises) must be properly permitted and meet current San Antonio UDC regulations. • All signage should contribute to a cohesive, uncluttered aesthetic and enhance the appeal of the NEC

Permitted	Prohibited
• Externally illuminated signage and lettering • Internally illuminated signs with opaque field and translucent letters • Hanging signs • Removal of outdated or abandoned pole signs • Walls signs(up to allowed number and surface area) • On-premise signage meeting height and area regulations • On-premises signage meeting design regulations	• Internally illuminated channel letter, flashing, or strobe signs • Digital, video or LED signs • Temporary signage (e.g. banners) •

Attachment IV

NEC ENHANCEMENT MATCHING GRANT PROGRAM

GRANTEE AGREEMENT

PROPERTY AT:

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This AGREEMENT is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its Director of the Department of Planning and Community Development pursuant to Ordinance No. 2015-04-09-XXXX, dated April 9, 2015, and (hereinafter referred to as "GRANTEE"), Owner of subject property located at , San Antonio, Texas (hereinafter referred to as the "Property").

WHEREAS, CITY has earmarked $100,000.00 in FY 2015 Non-Departmental/ Non-Operating general funds to improve the marketability of the Perrin Beitel and Nacogdoches corridors that are included within the boundaries of the NEC Revitalization Initiative by enhancing the appearance and function of existing commercial buildings; and

WHEREAS, GRANTEE has submitted an application for, and is deemed eligible to receive funds based upon its application for façade, landscape and/or signage improvements at GRANTEE'S Property (hereinafter referred to as "Project"); and

WHEREAS, the City Council has designated the Department of Planning and Community Development as the CITY department responsible for the administration and monitoring of the Project and all matters pertaining thereto; and

WHEREAS, the CITY wishes to engage GRANTEE to implement and manage said Project; **NOW THEREFORE:**

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

I. TERM

1.1 Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall terminate on the earlier of (a) , or (b) Project completion.

II. RESPONSIBILITIES

2.1 GRANTEE hereby accepts responsibility for the performance, in a satisfactory and efficient manner as solely determined by CITY, of all services and activities set forth in this AGREEMENT.

2.2 Unless written notification by GRANTEE to the contrary is received and approved by CITY, , in his or her capacity as Owner of the Property shall be the GRANTEE'S representative responsible for the management of all contractual matters pertaining to this AGREEMENT.

2.3 CITY's Director of the Department of Planning and Community Development or his designee shall be CITY's representative responsible for the administration of this AGREEMENT.

2.4 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.2 and 2.3 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

3.1 GRANTEE shall obtain all necessary permits, if required, prior to the commencement of the Project.

3.2 GRANTEE shall coordinate with the appropriate utility provider(s) and/or CITY departments and obtain all necessary authorizations prior to commencement of the Project, and submit same to CITY's Department of Planning and Community Development within ten days of GRANTEE's receipt thereof.

3.3 GRANTEE shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting GRANTEE's operations pursuant to this AGREEMENT.

3.4 The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the City funded portion of this Agreement. GRANTEE agrees that its construction contractor performing work on the City funded portion of the Project will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 (attached hereto as Exhibit "C") 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.

3.5 In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, GRANTEE shall request upon advertisement of construction bids, and the City will provide GRANTEE with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the Project, the GRANTEE is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the GRANTEE calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the GRANTEE is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the GRANTEE'S general contractor and all subcontractors for construction of each Phase. GRANTEE 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.

3.6 GRANTEE understands and acknowledges that CITY may request periodic reports or support to ensure adherence to prevailing wage rates provisions.

3.7 Upon audit of the records and certified payrolls, should the CITY or its auditors find any wage violations, GRANTEE shall cause its construction contractor to forfeit as a penalty to the CITY sixty dollars ($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 pursuant to this AGREEMENT, by the contractor or any sub-contractor.

3.8 GRANTEE understands and agrees that the establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code and City Ordinance 2008-11-20-1045 shall not be construed to relieve GRANTEE, GRANTEE's contractor or any subcontractor from the 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 hereunder.

3.9 GRANTEE, its contractor and any subcontractor, in the execution of this AGREEMENT, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. GRANTEE and its contractor and any subcontractor agrees that he/she 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, handicap or political belief or affiliation.

3.10 GRANTEE shall forward any questions regarding these prevailing wage provisions to LaborComplianceOffice-LCO@sanantonio.gov.

IV. LEGAL AUTHORITY

4.1 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.

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

4.3 In the event that a dispute arises as to the legal authority to enter into this AGREEMENT of either the GRANTEE or the person signing on behalf of GRANTEE, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, GRANTEE shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

V. MAINTENANCE OF EFFORT

5.1 GRANTEE agrees that the funds and resources provided to it under the terms of this AGREEMENT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources,

services, or other benefits which would have been available to, or provided through, GRANTEE had this AGREEMENT not been executed.

VI. PERFORMANCE BY GRANTEE

6.1 GRANTEE, in accordance and compliance with the terms, provisions, and requirements of this AGREEMENT, shall manage, perform, and provide all of the activities and services set forth in the Project Application attached hereto, and incorporated herein for all purposes as Exhibit "A," to CITY's satisfaction, utilizing only those funds available for utilization under the Project Budget, also attached hereto and incorporated herein for all purposes as Exhibit "B."

6.2 Modifications or alterations to Exhibit "B" may be made only pursuant to the prior written approval of CITY's Director of the Department of Planning and Community Development or his designee.

VII. REIMBURSEMENT BY CITY

7.1 In consideration of GRANTEE's performance, in a satisfactory and efficient manner as determined by CITY, of all services and activities set forth in this AGREEMENT, CITY agrees to reimburse GRANTEE for all eligible expenses incurred hereunder. Such reimbursement, however, shall be in accordance with the Project Budget set forth in Exhibit "B" and shall be subject to any and all limitations and provisions set forth in this Article and in Article VIII hereunder.

7.2 GRANTEE understands and agrees that CITY shall conduct a final inspection of the Project to ensure that GRANTEE has performed hereunder to CITY's satisfaction, prior to disbursement of AGREEMENT funds.

7.3 GRANTEE understands and acknowledges that reimbursement by the CITY will be made after Project completion and subject to final inspection. Notwithstanding any other provision of this AGREEMENT, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed fifty percent (50%) of the lesser of a) the Project Cost as outlined in the Project Budget (Exhibit "B"), or b) the actual Project Costs, provided however, in no event shall CITY pay GRANTEE an amount greater than $. Said payments shall be made upon CITY's approval of the completed Project and GRANTEE's request for reimbursement, to be in a form determined by CITY, and accompanied by any and all receipts, invoices, cancelled checks, and other documentation within thirty (30) days of Project completion.

7.4 CITY shall not be liable for any GRANTEE cost, or portion thereof, which:

(A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;

(B) Was incurred prior to the commencement date or subsequent to the termination date of this AGREEMENT as specified in Article I hereinabove;

(C) Is not in strict accordance with the terms of this AGREEMENT, including all exhibits attached hereto; and/or

(D) Is not an allowable cost as defined by Article IX of this AGREEMENT or by the Project Budget (Exhibit "B").

7.5 CITY shall not be obligated or liable under this AGREEMENT to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

VIII. RECEIPT, DISBURSEMENT, AND ACCOUNT OF FUNDS BY GRANTEE

8.1 Within ten (10) working days of CITY's written request therefor, GRANTEE shall refund to CITY any sum of money paid by CITY to GRANTEE later determined to:

(A) Have resulted in overpayment to GRANTEE;

(B) Have not been spent by GRANTEE strictly in accordance with the terms of this AGREEMENT; and/or

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

8.2 Upon termination of this AGREEMENT should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, GRANTEE shall refund such amount to CITY within ten (10) working days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this AGREEMENT or from funds received from or through the CITY.

IX. ALLOWABLE COSTS

9.1 Costs shall be considered allowable only if approved in writing and incurred directly and specifically in the performance of and in compliance with this AGREEMENT and with all city, state and federal laws, regulations, and ordinances affecting GRANTEE's operations hereunder.

9.2 Approval of GRANTEE's budget as set forth in Exhibit "B," however, shall not constitute prior written approval of all the items included therein. For example, CITY's prior written authorization shall be required on any and all sub-contracts. GRANTEE understands and acknowledges that CITY shall not be obligated to any third parties (including any sub-contractors of GRANTEE), nor shall CITY funds be used to pay for contract services extending beyond the expiration of this AGREEMENT.

9.3 Written requests for prior approval shall be GRANTEE's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Written approval by CITY must be obtained prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property. 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.

X. PROGRAM INCOME

This Article intentionally left blank

XI. FURTHER REPRESENTATION, WARRANTIES AND COVENANTS

11.1 GRANTEE further represents and warrants that:

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

(B) No litigation or proceedings are presently pending or threatened against GRANTEE;

(C) 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;

(D) GRANTEE has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and

(E) None of the assets of GRANTEE are both currently and for the duration of this AGREEMENT subject to any lien or encumbrance of any character, except for current taxes not delinquent, and except as shown in the financial statements provided by GRANTEE to CITY.

11.2 During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, GRANTEE covenants that it shall not, without the prior written consent of CITY's Director of the Department of Planning and Community Development or his designee:

(A) Mortgage, pledge, or otherwise encumber or cause to be encumbered any of the assets of GRANTEE now owned or hereafter acquired by it;

(B) Permit any pre-existing mortgages, liens, or other encumbrances to remain on or attached to any of the assets of GRANTEE which are allocated to the performance of this AGREEMENT and with respect to which CITY has ownership hereunder;

(C) Sell, assign, pledge, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(D) Sell, convey, lease, or sub-lease all or any substantial part of its assets; or

(E) Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity, or corporation.

XII. MAINTENANCE OF RECORDS

12.1 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 applicable federal and state regulations establishing standards for financial management; and

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

12.2 GRANTEE agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the expenditures of funds under this AGREEMENT.

12.3 GRANTEE agrees to include the substance of this Article in all of its sub-contracts.

12.4 Nothing in this Article shall be construed to relieve GRANTEE of fiscal accountability and liability pursuant to this AGREEMENT and any applicable rules, regulations, and laws.

XIII. ACCESSIBILITY OF RECORDS

13.1 At any reasonable time and as often as CITY may deem necessary, GRANTEE shall make all of its records relative to the Project and/or 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. GRANTEE's records shall include, but shall not be limited to, the following: contracts and invoices.

XIV. MONITORING AND EVALUATION

14.1 CITY shall perform periodic on-site inspections of GRANTEE's performance pursuant to the terms of this AGREEMENT.

14.2 GRANTEE agrees that CITY may carry out inspections and evaluation activities so as to ensure compliance by GRANTEE with this AGREEMENT, the Project Application set forth in Exhibit "A," and with the program assurances and certifications executed by CITY, and with all other laws, regulations, and ordinances related to the performance hereof.

14.3 GRANTEE agrees to cooperate fully with CITY in the development, implementation, and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be necessary for its effective fulfillment of its inspection and evaluation responsibilities.

14.4 GRANTEE agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its inspections of GRANTEE's performance and that it will designate one of its staff to coordinate the inspection process as requested by CITY staff.

XV. INSURANCE

15.1 GRANTEE agrees to comply with the following insurance provisions:

(A) Prior to the commencement of any work under this AGREEMENT, GRANTEE shall furnish copies of all required endorsements and completed Certificate of Insurance to the CITY's Department of Planning and Community Development, which shall be clearly labeled "_____" in the Description of Operations block of the Certificate. The Certificate 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate must have the agent's signature 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 Department of Planning and Community Development. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

(B) 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 whereby CITY may incur increased risk.

(C) A GRANTEE's financial integrity is of interest to the CITY; therefore, subject to GRANTEE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, GRANTEE shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at GRANTEE's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized 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. 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 by 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. $100,000.00

(D) 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. GRANTEE 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 AGREEMENT for all purposes.

(E) 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 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 shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. GRANTEE shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Department of Planning and Community Development
P.O. Box 839966
San Antonio, Texas 78283-3966

(F) GRANTEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name 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.

- 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.

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.

- Provide 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.

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

(H) 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.

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

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

(K) 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.

(L) GRANTEE and any subcontractors are responsible for all damage to their own equipment and/or property.

XVI. INDEMNIFICATION

16.1 GRANTEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, 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, contractor or subcontractor of GRANTEE, and their respective officers, agents, employees, directors, and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this

INDEMNIFICATION 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 promptly advise the CITY in writing 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.

16.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article (Article XVI), is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT, and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

16.3 It is expressly understood and agreed that GRANTEE is and shall be deemed to be an independent contractor and operator responsible to all parties for its acts or omissions and that CITY shall in no way be responsible therefor.

XVII. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

17.1 GRANTEE shall comply with all applicable local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws in contracting with third parties to perform the project work hereunder.

17.2 So that CITY can investigate compliance with local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws, GRANTEE shall furnish to CITY any and all information and reports requested by CITY, and shall permit access by CITY of any and all of its books, records, and accounts.

17.3 In the event of non-compliance by GRANTEE (or GRANTEE's sub-contractors) with local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws, this AGREEMENT may be canceled, terminated, or suspended by CITY, in whole or in part, and GRANTEE may be barred from further contracts with CITY.

XVIII. NONDISCRIMINATION

18.1 GRANTEE covenants that it, or its agents, employees or anyone under its control to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, or

familial status in employment practices or in the use of or admission to the premises at, in or on which the Project described herein is to be performed, which said discrimination GRANTEE acknowledges is prohibited.

XIX. CONFLICT OF INTEREST

19.1 GRANTEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee, his parent, child or spouse, a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity, a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

19.2 Pursuant to the subsection above, GRANTEE warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the CITY. GRANTEE further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

XX. NEPOTISM

20.1 GRANTEE shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by GRANTEE or who is a member of GRANTEE's governing body. The term "member of immediate family" shall include: wife, husband, son, daughter, mother, father, brother, sister, in-law, aunt, uncle, cousin, nephew, niece, step-parent, step-child, half-brother, and half-sister.

XXI. POLITICAL ACTIVITY

21.1 None of the performance rendered 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.

XXII. PUBLICITY

22.1 GRANTEE shall allow CITY to display a sign on the Project premises advertising CITY's participation in this Project.

XXIII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

23.1 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.

XXIV. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

24.1 GRANTEE certifies, and the CITY relies thereon in execution of this AGREEMENT, that neither GRANTEE nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department.

24.2 "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

24.3 GRANTEE shall provide immediate written notice to CITY, in accordance with Article XXXVIII, if, at any time during the term of this AGREEMENT, including any renewals hereof, GRANTEE learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

24.4 GRANTEE's certification is a material representation of fact upon which the CITY has relied in entering into this AGREEMENT. Should CITY determine, at any time during this AGREEMENT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this AGREEMENT in accordance with Article XXVIII relating to termination of the AGREEMENT.

XXV. SUB-CONTRACTING

25.1 Any other clause of this AGREEMENT to the contrary notwithstanding, none of the work or services covered by this AGREEMENT shall be sub-contracted without the prior written approval of CITY. Any work or services approved for sub-contracting hereunder, however, shall be sub-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 sub-contractors with this AGREEMENT shall be the responsibility of GRANTEE.

25.2 GRANTEE agrees that no sub-contract approved pursuant to this AGREEMENT shall provide for payment on a "cost plus a percentage of cost" basis.

25.3 GRANTEE warrants and certifies that should the level of work outlined in the Project Application, set forth in Exhibit "A," require special training, license, and/or certification to provide said service, GRANTEE or sub-contractor hired to perform such work has the required training, license and/or certification, and GRANTEE shall provide written proof to CITY prior to any such work being performed.

25.4 Despite CITY approval of a sub-contract, CITY shall in no event be obligated to any third party, including any sub-contractor of GRANTEE, for performance of work or services, nor

shall CITY funds ever be used for payment of work or services performed prior to the date of AGREEMENT execution or extending beyond the date of AGREEMENT expiration.

XXVI. CHANGES AND AMENDMENTS

26.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and GRANTEE.

26.2 Whenever and as often as deemed necessary by CITY, CITY may request and require changes to GRANTEE's Project Application (Exhibit "A") or Project Budget (Exhibit "B"). Such changes as requested or required by CITY, however, must be by written amendment hereto and may incorporate therein increases or decreases in the total monetary obligation of CITY to GRANTEE as provided for pursuant to the terms, provisions, and conditions of this AGREEMENT.

26.3 Except pursuant to (a) prior submission by GRANTEE of detailed information regarding budget and Project revisions, and (b) prior written approval thereof by CITY, GRANTEE shall not make transfers between or among line items approved within the Project Budget set forth as Exhibit "B." Instead, GRANTEE shall request budget revisions in writing and in a form prescribed by CITY; such request for revisions, however, shall not increase the total monetary obligation of CITY as provided for pursuant to this AGREEMENT, nor shall said revisions significantly change the nature, intent, or scope of the Project funded hereunder.

26.4 In the event that the level of funding for GRANTEE or for the Project described herein is altered, GRANTEE shall submit, immediately upon request by CITY, revised budget and Project information so as to enable re-evaluation by CITY of the original funding levels set forth in Exhibit "B."

26.5 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.

XXVII. SUSPENSION OF FUNDING

27.1 Upon determination by CITY of GRANTEE's failure to timely and properly perform pursuant to the provisions of this AGREEMENT, CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion and upon five (5) working days written notice to GRANTEE, withhold further payments to said GRANTEE. CITY's notice shall specifically set forth GRANTEE's alleged default or failure as well as the action required for cure thereof.

27.2 The period of funding suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. Upon expiration of the suspension period:

(A) Should CITY determine that the default or deficiency has been cured, GRANTEE may be restored to full compliance status and paid all eligible funds withheld during the suspension period; or

(B) Should CITY determine continued non-compliance, the provisions of Article XXVIII hereunder may be effectuated.

XXVIII. TERMINATION

28.1 "Termination" of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

28.2 CITY may terminate this AGREEMENT for any of the following reasons:

(A) Neglect or failure by GRANTEE to perform or observe any of the terms, conditions, covenants, or guarantees of this AGREEMENT or of any written contract or amendment between CITY and SUB-GRANTEE;

(B) Failure by GRANTEE to cure, within the period prescribed pursuant to the above Article XXVII of this AGREEMENT, any default or deficiency basis for suspension of funding hereunder;

(C) Finding by CITY that GRANTEE:

(1) is in such unsatisfactory financial condition as to endanger performance under this AGREEMENT, including, but not limited to:

(a) The apparent inability of GRANTEE to meet its financial obligations;

(b) The appearance of items that reflect detrimentally on the creditworthiness of GRANTEE, including, but not limited to, liens, encumbrances, etc., on the assets of GRANTEE;

(2) has allocated inventory to this AGREEMENT substantially exceeding reasonable requirements; or

(3) is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this AGREEMENT;

(D) Appointment of a trustee, receiver or liquidator for all or a substantial part of GRANTEE's property, or institution of bankruptcy, reorganization, rearrangement of, or liquidation proceedings by or against GRANTEE;

(E) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of GRANTEE's creditors;

(F) Inability by GRANTEE to conform to changes in local, state, and federal rules, regulations and laws as provided for in Article III and in paragraph number 26.5 of this AGREEMENT; and

(G) Violation by GRANTEE of any rule, regulation, or law to which GRANTEE is bound or shall be bound under the terms of this AGREEMENT.

28.3 CITY may terminate this AGREEMENT for convenience at any time after which GRANTEE shall be paid an amount not to exceed the total accrued expenditures as of the effective date of termination. In no event, however, will compensation to GRANTEE exceed an amount which bears the same ratio to the total compensation as the services actually performed by GRANTEE bears to the total services required of GRANTEE, less payments previously made.

28.4 GRANTEE may terminate this AGREEMENT for any of the following reasons:

(A) Cessation of outside funding upon which GRANTEE depends for performance hereunder; GRANTEE may opt, however, within the limitations of this AGREEMENT and with the written approval of CITY, to seek an alternative funding source, provided that the termination of funding by the initial outside source was not occasioned by a breach of agreement as defined herein or as defined in a contract between GRANTEE and the funding source in question; or

(B) Upon the dissolution of the GRANTEE organization provided such dissolution was not occasioned by a breach of this AGREEMENT.

28.5 Upon a decision to terminate by either CITY or GRANTEE, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

28.6 Upon receipt of notice to terminate, GRANTEE shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this AGREEMENT. To this effect, CITY shall not be liable to GRANTEE or GRANTEE's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

28.7 Within thirty (30) days after receipt of notice to terminate, GRANTEE shall submit a statement to CITY, indicating in detail the services performed under this AGREEMENT prior to the effective date of termination.

28.8 Any termination of this AGREEMENT as herein provided shall not relieve GRANTEE from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against GRANTEE hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from GRANTEE. Instead, all rights, options, and remedies of CITY contained in this AGREEMENT shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this AGREEMENT.

28.9 Should this AGREEMENT be terminated by either party hereto for any reason, including termination under paragraph number 28.3 of this AGREEMENT, and if the work required hereunder of GRANTEE is not fully completed to the satisfaction of CITY in accordance with the terms of this AGREEMENT, GRANTEE shall refund any and all sums of money paid by CITY to GRANTEE within ten (10) working days of CITY's written request therefor.

28.10 Upon termination of this AGREEMENT by CITY under paragraph number 28.2(A), GRANTEE shall be barred from future contracts with CITY absent the express written consent of the City Manager of CITY, or City Manager's designee.

XXIX. NOTIFICATION OF ACTION BROUGHT

29.1 In the event that any claim, demand, suit, proceeding, cause of action, or other action (hereinafter collectively referred to as "claim") is made or brought against GRANTEE, GRANTEE shall give written notice thereof to CITY within two (2) working days after itself being notified. GRANTEE's notice to CITY shall state the date and hour of notification to GRANTEE of the claim, the names and addresses of those instituting or threatening to institute the claim, the basis of the claim, and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XXXVIII of this AGREEMENT.

XXX. ASSIGNMENTS

30.1 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.

XXXI. LEGAL EXPENSES

31.1 Under no circumstances will the funds received under this AGREEMENT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY or any other public entity.

31.2 During the term of this AGREEMENT, if GRANTEE files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate if GRANTEE is in violation of paragraph 31.1 above.

31.3 GRANTEE, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the CITY remains unresolved.

31.4 For purposes of this Article, "adversarial proceeding" includes any cause of action filed by the GRANTEE in a state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

XXXII. SEVERABILITY OF PROVISIONS

32.1 If any clause or provision of this AGREEMENT is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including but not limited to the City Charter, City Code, or ordinances of 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.

XXXIII. NON-WAIVER OF PERFORMANCE

33.1 No waiver by CITY 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 CITY 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.

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

33.3 No representative or agent of CITY may waive the effect of the provisions of this Article.

XXXIV. SPECIAL CONDITIONS

34.1 GRANTEE understands and agrees that if it fails to maintain the improvements within the time proscribed in the Covenant (hereinafter described) and pursuant to paragraph 33.1 hereinabove, GRANTEE shall refund to CITY all monies paid to GRANTEE by CITY under this AGREEMENT within thirty (30) days of the date CITY requests such refund from GRANTEE. The word "maintain" shall be defined herein as, to keep in a condition of good repair and preserve its renovated and improved state, and preserve from failure or decline.

34.2 GRANTEE, if GRANTEE is the record title holder of the subject property herein, shall execute, or shall have the record title holder of said Property execute a Covenant and Agreement (hereinafter referred to as "Covenant") with CITY providing that the Property in which the Project is to be performed shall be maintained for a period of not less than five (5) years from the date of execution hereof.

34.3 GRANTEE shall abide by and ensure compliance with the Covenant to maintain subject Property for commercial use such as defined by the City of San Antonio's Unified Development Code Sections 35-310.08 through 35-310.14.

34.4 GRANTEE shall ensure that all third party contracts pursuant to this Project shall be at arms length.

XXXV. SECTARIAN ACTIVITY

35.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance, or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXXVI. ENTIRE AGREEMENT

36.1 This AGREEMENT and the Covenant, if applicable and executed, constitute the final and entire agreements between the parties hereto and contains all of the (including all exhibits hereto) terms and conditions agreed upon. Except for the Covenant, if applicable and executed, no other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXXVII. INTERPRETATION

37.1 In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this AGREEMENT or its governing rules, regulations, laws, codes, or ordinances, CITY shall have the final authority to render or secure an interpretation.

XXXVIII. NOTICES

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

CITY:
City of San Antonio
Department of Planning and Community Development
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: Director

GRANTEE:

San Antonio, Texas

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

XXXIX. PARTIES BOUND

39.1 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.

XL. GENDER

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

XLI. RELATIONSHIP OF PARTIES

41.1 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.

XLII. TEXAS LAW TO APPLY

42.1 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. Venue and jurisdiction arising under or in connection with this AGREEMENT shall lie exclusively in Bexar County, Texas.

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XLIII. CAPTIONS

43.1 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 this the _____ day of _____, .

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____

Director
Department of Planning and
Community Development

GRANTEE:

By: _____

APPROVED AS TO FORM:

By: _____

Assistant City Attorney

Attachments:
Exhibit "A" – Project Application
Exhibit "B" – Project Budget
Exhibit "C" – City Ordinance 2008-11-20-1045

Attachment V

COVENANT AND AGREEMENT

This COVENANT AND AGREEMENT is entered into by and between the CITY OF SAN ANTONIO, a Texas municipal corporation, (hereafter referred to as "CITY") acting by and through its Director of the Department of Planning and Community Development and , owner of subject property located at , San Antonio, Bexar County, Texas (hereinafter referred to as "GRANTEE").

WHEREAS, the San Antonio City Council has designated certain neighborhood commercial districts as target areas that receive commercial revitalization assistance; and

WHEREAS, CITY approved expenditure of funds for the project at _____ as part of the NEC Enhancement Matching Grant Program" (hereinafter referred to as "Project"); and

WHEREAS, in connection with said Project and pursuant to Ordinance No. 2015-04-09-_____ passed and approved on April 9, 2015, CITY has required execution of the instant Agreement prior to the remittance of any further City funds related to the Project; **NOW THEREFORE:**

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the following:

For and in consideration of CITY's remittance to GRANTEE of fifty-percent (50%) of the lesser of (a) the Project Cost as outlined in the Project Budget, or (b) the actual Project Cost, not to exceed $ in funds to provide for improvements located at the property in which fee title is held in the name of GRANTEE, and more particularly described hereinafter, GRANTEE agrees to the condition that the real property upon which the CITY-funded improvements and/or renovations will be made, to wit: the real property located at , San Antonio, Bexar County, Texas (and as more particularly described in the legal description in the attached Exhibit "A," and which is hereinafter referred to as the "Property"), will be maintained in a condition of good repair, and shall be preserved in its renovated and improved state and shall be kept from failure or decline. GRANTEE acknowledges his/her/its duty to maintain the property for commercial use. GRANTEE shall comply with the City of San Antonio Unified Development Code Sections 35-310.08 through 35-310.14.

Further, GRANTEE hereby covenants and agrees that CITY shall be allowed to inspect said property at any and all times deemed necessary by CITY to verify that the maintenance of said property is in compliance with the foregoing condition. Said conditions shall act as covenants running with the land and shall be binding on GRANTEE and successors in title for a period of five (5) years following the execution date hereof. GRANTEE and successors and assigns further understand and agree that CITY shall file the instant document for record in the Deed and Plat Records of Bexar County, Texas.

AGREED TO AND EXECUTED on this the _____ day of _____,
.

CITY OF SAN ANTONIO,
a Texas municipal corporation

By:_____

GRANTEE

By:_____

APPROVED AS TO FORM:

By: _____

Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, by , of the Department of Planning and Community Development of the City of San Antonio, a Texas municipal corporation, on behalf of said corporation.

_____
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, by , of the property located at .

_____
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

AFTER RECORDING, RETURN TO:
City of San Antonio
Office of the City Attorney
ATTN: Shreya Shah
P.O. Box 839966
San Antonio, TX 78283-3966