MH/vv
03/10/16
Item #29A

AN ORDINANCE **2016-03-10-0213**

AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND BROOKS DEVELOPMENT AUTHORITY (BDA) FOR THE DESIGN AND CONSTRUCTION OF A NEW SPAY AND NEUTER FACILITY AT BROOKS CITY BASE, IN AN AMOUNT NOT TO EXCEED $606,774.00 FOR THE PROJECT PLUS $104,200.00 FOR BUILT-IN FURNITURE AND FIXTURES, FUNDED WITH CERTIFICATES OF OBLIGATION AND THE GENERAL FUND LOCATED IN COUNCIL DISTRICT 3.

* * * * *

WHEREAS, in the FY 2016 budget, the City Council authorized the allocation of $800,000.00 for the development of a new low cost spay neuter clinic to be located on the campus of Brooks City Base; and

WHEREAS, Brooks Development Authority (BDA) will design and construct a 2,240 square foot spay and neuter facility that includes two exam rooms, a surgery prep area with two wash tables, a surgery room with two surgery tables, and cat and dog holding rooms; and

WHEREAS, the City will lease the facility from BDA and will either operate the facility or contract with another animal care agency to operate it; and

WHEREAS, this ordinance will authorize the execution of a Funding Agreement between the City of San Antonio and BDA for the design and construction of a new spay and neuter facility at Brooks City Base, located in Council District 3; **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 Transportation and Capital Improvements or his designee is authorized to execute a Funding Agreement between the City of San Antonio and Brooks Development Authority (BDA) for the design and construction of a new spay and neuter facility at Brooks City Base, in an amount not to exceed $606,774.00 for the project plus $104,200.00 for built-in furniture and fixtures, funded with Certificates of Obligation and the General Fund located in Council District 3. A copy of the funding agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funding in the amount of $710,974.00 for this ordinance is available per the table below:

Amount	Fund	General Ledger	Cost Center	WBS Element
$158,538.00	11001000	5501065	3701010001	
$52,436.00	11001000	5709060	3701010001	
$500,000.00	43099000	5201140		37-00005-05-02-01
Total Amount $710,974.00				

SECTION 3. Payment not to exceed $710,974.00 is authorized to Brooks Development Authority (BDA), and should be encumbered with a purchase order. Payments for services are contingent upon the availability of funds and the sale of future City of San Antonio, Certificates of Obligation in accordance

with the adopted capital budget. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 4. 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 5. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 10th day of March, 2016.

M A Y O R
for Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**29A (in consent vote: 29A, 29B)**
Date:	03/10/2016
Time:	11:07:58 AM
Vote Type:	Motion to Approve
Description:	An Ordinance for the Brooks Spay and Neuter Facility, authorizing the execution of a Funding Agreement with Brooks Development Authority for the design and construction of a new spay and neuter facility at Brooks City Base, in an amount not to exceed $606,774.00 for the project plus $104,200.00 for built-in furniture and fixtures, funded with Certificates of Obligation and the General Fund located in Council District 3.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor	x					
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x			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 §
COUNTY OF BEXAR §

FUNDING AGREEMENT FOR THE SPAY AND NEUTER FACILITY

This Funding Agreement is hereby made and entered into by and between the City of San Antonio (referred to as "City"), a Texas corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2016 and Brooks Development Authority, a Texas Defense Base Authority (referred to as "Grantee"), acting by and through its duly authorized board of directors (City and Grantee are referred to herein collectively as "the Parties" and individually as "the Party")

WHEREAS, City adopted its FY2016-2021 Capital Budget on September 10, 2015 and approved funding of a project titled "Spay and Neuter Facility", defined as capital improvements to facilitate future development at Brooks City Base; and

WHEREAS, Grantee is the fee simple owner of the real property located at 8234 City Base Landing, San Antonio, Texas 78235 and the proposed location of the Project; and

WHEREAS, Grantee has committed the not-to-exceed amount of $606,774.00 of its funds for the design and construction of the Brooks Spay and Neuter Facility (hereafter referred to as "the Project") and City has committed the not-to-exceed amount of $606,774.00 for the Project, plus $104,200.00 to fund built-in furniture and fixtures to be funded from the City's budgeted amount for furnishings, fixtures and equipment with City's commitment to be utilized after the use of Grantee's initial $606,774.00; and

WHEREAS, Grantee shall be responsible for the design and construction of the Project and City's financial commitment shall not exceed $606,774.00 for the Project, plus $104,200.00 to fund built-in furniture and fixtures ("Built-Ins");

WHEREAS, Grantee shall be responsible for the design and construction of the Project and Grantee's financial commitment shall not exceed $606,774.00 for the Project;

WHEREAS, Grantee has agreed to grant City an irrevocable 35-year right to lease the use of the Project (hereafter referred to as the "Term"), subject to an early termination clause of the lease outlined in **Section 10.04** herein.

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

I. TERM

The Term of this Funding Agreement shall commence upon execution of the Funding Agreement by the City Manager or his/her designee (hereafter referred to as the "Effective Date") and

continue until the earlier of (a) the expiration of 35 years from the completion and City's occupation of the Spay and Neuter Facility or (b) the termination of this Funding Agreement, as otherwise provided in herein. The Term of this Funding Agreement shall coincide with the terms of the Primary Lease and the Sub Lease.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Grantee hereby grants to City a 35-year irrevocable right to lease the Project for City's use. Such lease shall substantially be in the form of the Lease Agreement.

2.02 The Project, for which Grantee is responsible to construct, shall be in compliance with the approved Scope of Work described in **Exhibit "A,"** attached hereto and incorporated herein by reference. Grantee shall complete design and construction of the Project on or before December 31, 2016. Grantee shall construct the Project in accordance with the plans and specifications approved by City at a total construction cost not to exceed $1,213,548.00, plus $104,200 provided by the City for the Built-Ins. The funding for the construction cost will be shared between the Parties up to a maximum contribution of $606,774.00 by each Party, plus the City's funding of $104,200 for the Built-Ins.

2.03 The Parties accept and agree the total cost for this Project shall not exceed $1,213,548.00, plus $104,200 for Built-Ins. The funding for the Project will be shared between the Parties up to a maximum contribution of $606,774.00 by each Party, plus the City's funding of $104,200 for the Built-Ins. Upon receipt and acceptance of bids for construction of the Project, the selected bid(s) by Grantee shall not exceed $1,213,548.00, plus $104,200 for the Built-Ins.

2.04 Grantee shall include, as part of the construction cost of the Project, all interior construction to accommodate the spay and neuter clinic requirements of the Project. The Parties agree Grantee shall not provide Furniture, Fixtures and Equipment or other internal structures/equipment necessary for City to conduct business from the Project facility other than the Built-Ins.

2.05 Based on bids received, the construction budget estimate of the Project is $1,063,946.00, plus soft costs and contingency estimated at $213,548.00, plus the Built-Ins estimated at $104,200, for a total Project cost estimated at $1,317,748. Grantee shall contribute the initial $606,774.00 of its funds for the Project.

2.06 City shall not be obliged to provide funding for the Project beyond City's commitment of its not-to-exceed funding $606,774.00, plus the City's funding of $104,200 for the Built-Ins (hereafter referred to as "Grant Funds").

2.07 Grantee shall not be obliged to provide funding for the Project beyond Grantee's commitment of its not-to-exceed funding of $606,774.00 **(hereafter referred to as "Grantee's Contribution"**

2.08 Grantee shall provide City its plans and specifications for the Project, including a construction schedule (hereafter referred to as "Plans"), and such Plans shall be subject to the

review and approval of City, acting in its capacity as Grantor under this Funding Agreement. After approval by City, said Plans shall be attached hereto, incorporated into this Funding Agreement and labeled as **Exhibit "B"** and Grantee shall not make any substantial changes to the Plans without the prior written approval of City.

2.09 The approvals given in this **Article II** neither relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the State of Texas Commission on Environmental Quality (Article 9102), nor does City's approval of the Plans release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.10 All Grant Funds must be expended to achieve the stated public purpose of the Project for public use. Grantee understands the funding provided by City through this Funding Agreement shall not be expended on private administrative/office space. Grantee is responsible for tracking the use of Grant Funds accordingly. Any improvements impacting both the public and non-public space shall be apportioned.

2.11 Grantee shall submit all future Project changes to the Director of The Transportation & Capital Improvements Department (hereafter referred to as "TCI") of City or his/her designee, for review and written approval, to ensure the proposed future changes are compatible with the approved Plans.

2.12 City shall have authority to inspect the Project throughout the construction process, to ensure compliance with the Plans. Grantee shall cause its design and construction professional to provide periodic certifications of construction certifying construction has been conducted in compliance with the Plans. Upon request by City, any and all drawings shall be certified by a qualified Engineer or Architect currently licensed by the State of Texas and shall conform to all applicable federal, state and local laws and regulations. Grantee shall submit said certification to the TCI Director or his/her designee at the completion of Project construction. City shall have the right to withhold funding until such certifications are provided.

2.13 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Director of Facilities & Infrastructure shall be Grantee's designated representative responsible for the management of this Funding Agreement and the point of contact for City on all matters regarding this Funding Agreement.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents it will comply with all federal, state and local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors working on the Project.

3.02 To the extent applicable, Grantee agrees to abide by Chapters 252, and 271 of the Texas Local Government Code, and Chapters 2254 and 2267 of the Texas Government Code or other competitive contracting processes allowed for as express exceptions to these laws.

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

3.04 PREVAILING WAGE RATE AND LABOR STANDARDS.

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

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and 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. 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 Grantee calls for bids for construction of a given phase. Grantee further is required to cause the latest prevailing wage determination decision to be included in bids and contracts with 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 shall audit certified payroll records, as necessary, in accordance with this Funding Agreement.

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

3.05 **ENVIRONMENTAL.** Construction shall be in accordance with the all local, state and federal environmental requirements including all City applicable construction and development regulations as well as federal Environmental Protection Agency, Texas Department of State Health Services and Texas Commission on Environmental Quality rules and regulations

and all other regulations and laws relating to the environment, asbestos containing materials, Hazardous Substances or exposure to such and shall develop and operate the Project in accordance with the terms and conditions of this Funding Agreement.

3.06 **SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM.** Small/Minority and Woman Owned Business Terms and Conditions are attached hereto, incorporated herein by reference and labeled as **Exhibit "C."**

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges it shall construct the Project in a manner consistent with its intended use by City. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees the programs and use described herein will continue for the Term of this Funding Agreement.

4.02 The Project improvements shall facilitate the construction and use of the Project during the entire term of the Primary Lease and Sub-Lease issued in connection with the Project.

4.03 Grantee hereby acknowledges, accepts and agrees City, through an executed sub-Lease, has been granted the right to sub-lease the subject property to a third-party entity to operate the facility upon its completion.

V. FUNDING BY CITY

5.01 Notwithstanding any other provisions of this Funding Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of $606,774.00 plus the City's funding of $104,200 for the Built-Ins.

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

5.03 City Funding shall consist of reimbursements paid to Grantee for costs for design and construction of the Project, not to exceed $606,774.00 plus the City's funding of $104,200 for the Built-Ins. City funding provided under this Funding Amendment only may be used for the portions of the Project which are dedicated to public use/public purpose. No City funds shall be used for Grantee's personal office space or other non-public aspects of the Project.

5.05 The Director of the TCI or his/her designee shall be responsible for the administration of this Funding Agreement on behalf of City and the Director or his/her designee shall be the point of contact for all communication regarding this Funding Agreement from Grantee.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

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

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

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

6.03 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Funding Agreement and further agrees all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this Funding Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 City shall pay invoices submitted by Grantee at minimum monthly, based upon receipt and approval of a mathematically correct invoice received through City's internet-based Project Reporting Information Management Exchange Link (hereafter referred to as "PRIME*Link*") or any other updated program used by City for this purpose. City acknowledges Grantee shall contribute $606,774.00 for the construction of the Project; therefore this funding agreement and the construction of the facility is for the benefit of City. Grantee shall draw on its $606,774.00 prior to drawing on City funds. City shall process invoices in an expeditious manner to pay construction costs as invoices are submitted by Grantee. Payments will be made to Grantee and Grantee shall use City's funds to pay the construction costs of the Project.

6.05 All requests for payment shall be submitted by Grantee through PRIME*Link*. Grantee shall sign a Business Level Agreement and ensure all of its employees or representatives utilizing PRIME*Link* sign and comply with an Individual User Agreement. Such requests by Grantee for payment shall be completed through PRIME*Link* and/or utilizing forms and instructions approved by TCI. Prior to the initial request for payment, Grantee shall submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the portal.

6.06 Prior to payment, City shall have the right to inspect work completed by Grantee, to ensure conformance with the approved Plans. Invoices shall include all supporting documentation reflecting costs have been incurred, as required by City.

6.07 City agrees to provide Grantee written notice regarding any expenditure City reasonably determines to be outside the permissible parameters of this Funding Agreement. Said notice shall provide Grantee 30 days from receipt of said notice to cure the deficiency or refund to City any sum of money paid by City to Grantee determined to:

A. not having been spent by Grantee strictly in accordance with the terms of this Funding Agreement; or

B. not be supported by adequate documentation to fully justify the expenditure.

6.08 Upon termination of this Funding Agreement, should any expense or charge subsequently be disallowed or disapproved using the same criteria as set out in this Article VI, as a result of any auditing, monitoring or my any other means by City, Grantee shall refund such amount to City within 30 working days of City's written request specifying the amounts disallowed or disapproved.

VII. ALLOWABLE EXPENDITURES

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

- Construction Contract
- Construction change orders
- Architectural/Engineering Design contract(s), studies and amendments

7.02 Expenditures of the funds provided under this Funding Agreement only shall be allowed if incurred directly and specifically in the performance of and in compliance with this Funding Agreement, for the public purpose/public use stated herein and in compliance with all applicable city, state and federal laws, regulations and/or ordinances. No City funds provided through this Funding Agreement may be used for Grantee's internal office space or other non-public aspects of the Project.

7.03 The following shall not be considered allowable costs under this Funding Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization
- Travel and travel-related expenses

- Costs or fees for consultant and/or professional services, except for those directly related to the projects
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's General Contractor and shown on the approved Plans and specifically approved by City.
- Advertising
- Construction of non-public aspects of the Project

7.04 Written requests for prior approval shall be Grantee's responsibility and shall be made 30 days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Funding Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants:

A. all information, data or reports heretofore or hereafter provided to City is, shall be and shall remain complete and accurate, as of the date shown on the information, data or report and 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 Funding Agreement and Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder;

C. no litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee; and

D. no provision contained herein contravenes or in any way conflicts with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

IX. ACCESSIBILITY OF RECORDS & MONITORING

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

9.02 Grantee agrees and represents it will cooperate with City, at no charge to 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 Funding Agreement.

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

X. TERMINATION

10.01 City shall have the right to terminate this Funding Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines Grantee has failed to comply with any term of this Funding Agreement. City shall provide Grantee with written notification as to the nature of the non-compliance and give Grantee a 60 day period, from the date of City's written notification, to cure any issue of non-compliance. Should Grantee fail to cure any default within this 60 day period, City may

terminate this Funding Agreement immediately by providing written notice to Grantee, withhold further payments to Grantee and seek repayment of any and all funds disbursed by City.

10.02 Grantee shall have the right to terminate this Funding Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever Grantee determines City has failed to comply with any term of this Funding Agreement. Grantee shall provide City with written notification as to the nature of the non-compliance and give City a 60 day period, from the date of Grantee's written notification, to cure any issue of non-compliance. Should City fail to cure any default within this 60 day period, Grantee may terminate this Funding Agreement immediately by providing written notice to City.

10.03 In the event of termination of the Primary Lease or the Sub Lease, for any reason, City shall have the right immediately to terminate this Funding Agreement by providing written notice to Grantee. Upon termination of this Funding Agreement, Grantee must pay City a sum equal to the unamortized amount of money received by Grantee under both this Funding Agreement.

10.04 City shall have the right to terminate its lease on the subject property after 20 years of occupying the Project facility upon 90 days written notice to Grantee. In the event of termination after 20 years by City, City shall have no further financial responsibility to Grantee or any other party regarding the subject facility.

10.05 The Parties have the right to terminate this Funding Agreement at any time with written consent of both Parties.

10.06 Either Party has the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if Grantee defaults under the material terms of this Funding Agreement and fails to cure such default within the 60 day cure period set forth above, subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which Grantee may be entitled.

XI. LIABILITIES

11.01 City and Grantee acknowledge Grantee is an agency of the State of Texas and City is a political subdivision and, as such, are subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §§ 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

11.02. Acceptance of the Plans by City shall not constitute nor be deemed a release of the responsibility and liability of Grantee, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, drawings, Plans and Specifications or other documents prepared for the Project.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Funding Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the TCI, which clearly shall be labeled "**Brooks Spay and Neuter Facility – Brooks Development Authority**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) 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 City. City shall have no duty to pay or perform under this Funding Agreement until such certificate and endorsements have been received and approved by TCI. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

12.02 City reserves the right to review the insurance requirements of this **Article XII** during the effective period of this Funding 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 Funding Agreement. In no instance will City allow modification whereby City may incur increased risk.

12.03 Grantee's financial integrity is of interest to City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by City, Grantee shall obtain and maintain in full force and effect for the duration of this Funding 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. 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. Explosion, Collapse, Underground g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000

h. Damage to property rented by you	
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. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

12.04 Grantee agrees to require, by written contract, all Grantee's Subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement naming Grantee and City as additional insureds. Grantee shall provide 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 Funding 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.

12.05 As they apply to the limits required by City, 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 ten (10) days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Transportation and Capital Improvements
P.O. Box 839966
San Antonio, Texas 78283-3966

12.06 Grantee agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City of San Antonio, 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 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 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 City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten calendar days advance notice for nonpayment of premium.

12.07 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 contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Funding Agreement.

12.08 In addition to any other remedies 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, 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.

12.09 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 Funding Agreement.

12.10 It is accepted, understood and agreed 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 Funding Agreement.

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

12.13 Grantee and any subcontractors are responsible for all damage to their own equipment and/or property.

12.14 Grantee shall comply with Texas Government Code Chapter 2253 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).

XIII. NON-DISCRIMINATION

13.1 **NON-DISCRIMINATION.** As a party to a Funding Agreement with City, 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 identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Grantee represents and warrants it will comply with City's *Non-Discrimination Policy* throughout the course of the Project and shall continue to comply with said *Non-Discrimination Policy*.

13.2 With regard to the Project, as part of Grantee's compliance with City's Non-Discrimination Policy, Grantee shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Subcontractors, Sub-Consultants, vendors, suppliers or commercial customers, nor shall Grantee retaliate against any person for reporting instances of such discrimination. Grantee shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Grantee acknowledges it understands and agrees a material violation of this clause shall be considered a material breach of this Funding Agreement and may result in termination of this Funding Agreement, disqualification of Grantee from participating in City contracts or other sanctions. This **Article XIII** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Grantee's certification of its compliance with this *Non-Discrimination Policy*, as submitted to City pursuant to this Agreement, is hereby incorporated into the material terms of this Funding Agreement. Grantee shall incorporate this clause into each of its Subcontractor, Sub-Consultant and supplier agreements entered into, pursuant to this Agreement.

XIV. CONFLICT OF INTEREST

14.01 Grantee covenants 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 Funding Agreement. Grantee further covenants in the performance of this Funding Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Grantee further covenants 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.

14.03 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 Funding Agreement shall:

A. participate in any decision relating to this Funding 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; nor

B. have any direct or indirect interest in this Funding Agreement or the proceeds thereof.

XV. POLITICAL OR RELIGIOUS ACTIVITY

15.01 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.

15.02 None of the performances rendered by Grantee under this Funding Agreement shall involve, and no portion of the funds received by Grantee under this Funding Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Funding Agreement be used for sectarian instruction or as a place of religious worship.

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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.

XVII. CONTRACTING

17.01 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 Funding Agreement. Compliance by contractors with this Funding Agreement shall be Grantee's responsibility. Grantee is responsible to ensure all local, state and federal permits and approvals required by or for this Funding Agreement are obtained.

17.02 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.

17.03 By signing this Funding Agreement, Grantee certifies it will not award any funds provided under this Funding Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in programs with City.

XVIII. CHANGES AND AMENDMENTS

18.01 Unless this Agreement expressly provides 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.

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

XIX. ASSIGNMENTS

Grantee shall not transfer, pledge or otherwise assign this Funding 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.

XX. SEVERABILITY OF PROVISIONS

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

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Funding 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 Funding 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 Funding Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 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.

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

XXII. ENTIRE AGREEMENT

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

22.02 **INCORPORATION OF ATTACHMENTS.** Each of the Attachments listed below is an essential part of the Funding Agreement, which governs the rights and duties of the Parties.

Exhibit A – Scope of Work
Exhibit B – Plans
Exhibit C - Small/Minority and Woman Owned Business Terms and Conditions

XXIII. NOTICES

23.01 For purposes of this Funding 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: Assistant Director for Support Services
Transportation & Capital Improvements
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: Brooks Development Authority
3201 Sidney Brooks
San Antonio, Texas 78235
Attn: President and CEO

23.02 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 business days of such change.

XXIV. FORCE MAJURE

City or Grantee may grant temporary relief from any deadline for performance of any term of this Funding Agreement if either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the Party. To obtain an extension based upon Force Majeure, Grantee must provide written notice to City of the occurrence of the Force Majeure event within ten (10) days following the date Grantee becomes aware of the event and the fact that it will delay Grantee's performance of its obligations under this Funding Agreement. City will not unreasonably withhold its consent.

XXV. RELATIONSHIP OF PARTIES

Grantee attests and confirms it is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

XXVI. TEXAS LAW TO APPLY

This Funding 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 and venue of any court action brought directly or indirectly by reason of this Funding Agreement shall be in Bexar County, Texas.

XXVII. GENDER

Words of any gender used in this Funding 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.

XVIII. CAPTIONS

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

XXIX. LEGAL AUTHORITY

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

29.02 The signer of this Funding Agreement for Grantee represents, warrants, assures and guarantees he/she has full legal authority to execute this Funding Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

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

EXECUTED BY THE PARTIES IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original on this the ___ day of _____, 2016.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl Sculley
CITY MANAGER

GRANTEE: BROOKS DEVELOPMENT AUTHORITY, a Texas Defense Base Development Authority

_____
Leo Gomez,
PRESIDENT & CEO

APPROVED AS TO FORM:

_____
CITY ATTORNEY

EXHIBIT A
SCOPE OF WORK

EXHIBIT B

PLANS

EXHIBIT C

SBEDA

Funding Agreement – Brooks Spay and Neuter Facility

I.

BROOKS
SPAY & NEUTER FACILITY
DISTRICT 3

March 10, 2016

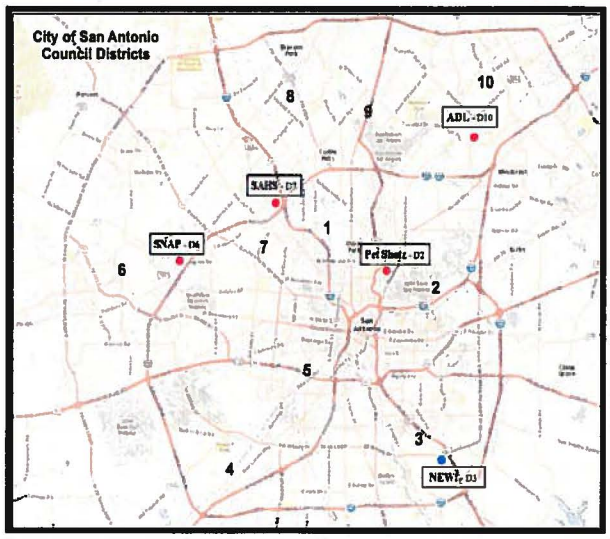
Purpose

- Requesting Approval
  - A. Funding Agreement – CoSA/BDA
  - B. Lease Agreement – CoSA/BDA

Background

3

- Spay/Neuter Surgeries
  - FY 07 – 15,000
  - FY 15 – 58,000
- Brooks Clinic Requirements
  - Wellness Services
  - 1st Year – 4,000 surgeries
  - 3rd Year – 8,000 surgeries



Project History

4

FY 2014

Conception

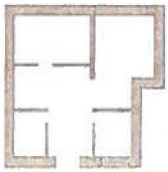
FY 2015

Partnership Established

FY 2016

Budget Approval

($800 K)



FY 2016

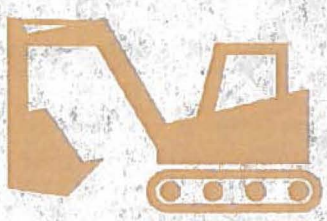
Design

Feb. 2016

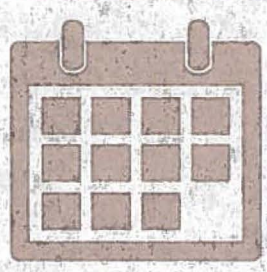
BDA Approval

Agreement Details

Total Cost: $1.3 M
BDA - $606 K
CoSA - $606 K + $104 K

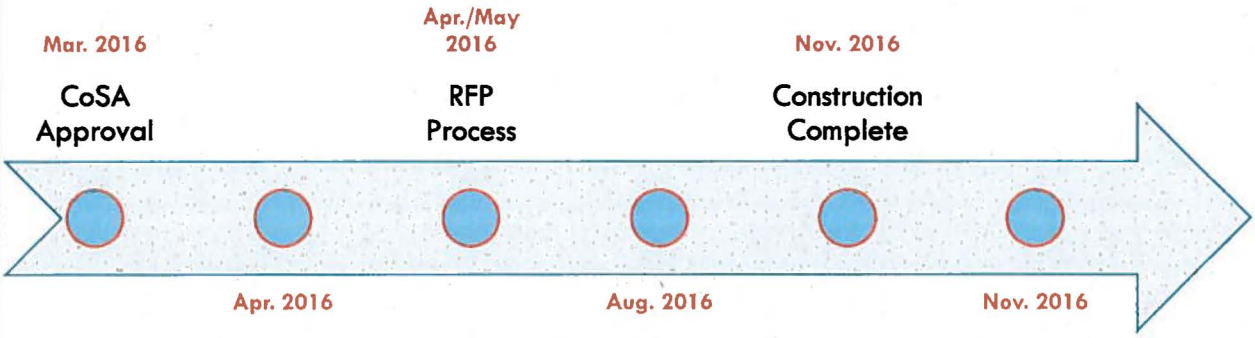


BDA Responsible for
Design & Construction



35 Year
Operating Lease

Next Steps



BROOKS
SPAY & NEUTER FACILITY
DISTRICT 3

March 10, 2016