SW/vv
03/12/15
Item #15A

AN ORDINANCE 2015-03-12-0187

AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT WITH THE BOYS AND GIRLS CLUBS OF SAN ANTONIO IN AN AMOUNT NOT TO EXCEED $1,850,000.00 FOR THE DEVELOPMENT OF A RECREATIONAL FACILITY IN THE LONE STAR NEIGHBORHOOD, LOCATED IN COUNCIL DISTRICT 5.

* * * * *

WHEREAS, on May 12, 2012, San Antonio voters approved the 2012-2017 Bond Program, consisting of five propositions totaling $596 million; and

WHEREAS, the Bond Program funds will be used on various capital improvement projects, to address community infrastructure needs and improve the overall quality of life in San Antonio; and

WHEREAS, as part of that program, $1,850,000.00 in Parks, Recreation and Open Space Improvements General Obligation Bond funds was approved for the development of a recreational facility in the Lone Star neighborhood; and

WHEREAS, project design is anticipated to begin upon execution of the Funding Agreement and construction, is expected to be completed by December 2016; and

WHEREAS, the Boys and Girls Clubs of San Antonio is a non-profit organization which originally opened as the Boys Club in San Antonio in 1939 on Dolorosa Street; and

WHEREAS, after over 30 years in operation, girls were invited to become members of the club in 1975 and the name was officially changed in 1991 to The Boys and Girls Clubs of San Antonio (TBGC-SA); and

WHEREAS, the mission of the TBGC-SA is to enhance the educational, social, and moral development of San Antonio's youth ages 6-18, especially those most disadvantaged by providing a fun, safe place full of age appropriate activities and opportunities; and

WHEREAS, today, TBGC-SA serves more than 8,800 Club members annually, and operates five branch locations and two project units in the city of San Antonio. Additionally, TBGC-SA operates on-site programs in 43 locations in Harlandale, Judson and San Antonio Independent School Districts; and

WHEREAS, the Funding Agreement with the Boys and Girls Clubs of San Antonio will be executed in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on the contract; and

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WHEREAS, the Goal Setting Committee set a 20% Minority/Women Business Enterprise (M/WBE) subcontracting goal and 3% African American Business Enterprise (AABE) subcontracting goal; and

WHEREAS, the Boys and Girls Clubs of San Antonio has committed to meeting these goals; **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 execute a Funding Agreement with the Boys and Girls Clubs of San Antonio, in an amount not to exceed $1,850,000.00 for the development of a recreational facility in the Lone Star Neighborhood. A copy of the funding agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Payment in the amount of $1,850,000.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00370, Lone Star Recreational Facility, is authorized to be encumbered with a purchase order and made payable to the Boys and Girls Club of San Antonio, for the development of a recreational facility in the Lone Star neighborhood, located in Council District 5 on a reimbursement basis. 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 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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

PASSED AND APPROVED this 12th day of March, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Hollis Young

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**15A (in consent vote: 15A, 15B)**
Date:	03/12/2015
Time:	10:14:54 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a Funding Agreement with the Boys and Girls Clubs of San Antonio in an amount not to exceed $1,850,000.00 for the development of a recreational facility in the Lone Star neighborhood, located in Council District 5.
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			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**

This Funding Agreement ("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 City Manager pursuant to Ordinance No. _____ dated _____, and Boys & Girls Clubs of San Antonio, Inc. (hereinafter referred to as "Grantee"), a Texas Non-profit Corporation, acting by and through its officers, hereto duly authorized. City and Grantee are sometimes collectively referred to herein as "Parties" and individually referred to as "Party".

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Parks, Recreation & Open Space Improvements (Proposition 3 on the ballot); and

WHEREAS, among the Parks, Recreation & Open Space Improvements projects approved is a project titled "Lone Star Recreational Facility LF" (the "Project"); and

WHEREAS, the official brochure for the Bond Election described this project as follows: "Lone Star Recreational Facility LF: Development of a recreactional facility in the Lone Star neighborhood that may include land acquisition."; and

WHEREAS, the City is bound to comply with the terms and conditions contained in the official brochure as presented to the voters; and

WHEREAS, the City has identified Grantee as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, Grantee is the fee simple owner of the property located at 829 Nogalitos Street, San Antonio, TX 78204 (Real Property), the proposed location of the Project; and

WHEREAS, Grantee will enter into a 20 year ground lease with City for the property described more fully in the attached and incorporated Exhibit A ("Ground Lease") and which is the proposed location of the Project; and

WHEREAS, the public benefit to be gained from the Project is the provision of recreational facilities, operated under non-profit regulations, available for the citizens of San Antonio.

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

1.01 The term of this Agreement shall commence upon execution of the Agreement by the City Manager or designee and continue until completion of construction and/or final payment by the City whichever occurs first.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the construction of the Project by December, 2016. The Project shall include the design/construction of a minimum 20,000 square foot recreation facility ("Project") consisting of a learning center, multi-media centers, , game room, gymnasium, teen center and possibly other necessary components consistent with BGCSA youth development.

2.02 Current budget estimates of the Project are $3,800,000.00 Grantee shall provide all necessary funding for the Project beyond the City's commitment contained herein and provide evidence to City that all Project funds have been secured. In the event the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Executive Director shall be Grantee designated representative responsible for the management of this Agreement.

2.04 The Director of the Transportation and Capital Improvements ("TCI") or his designee shall be responsible for the administration of this Agreement on behalf of City.

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

2.06 Grantee shall provide to City their plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not 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 Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional to provide with payment request, certifications of construction certifying that construction has been conducted in compliance with the Plans.

2.08 Beginning on January 31, 2016, and on each succeeding January 31 throughout the term of the Agreement, Grantee shall provide to City an annual report ("Annual Report"). The Annual Report shall include the following:

2.08.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.

2.08.2 Evidence of insurance coverages, with City as additional insured, as outlined in Section 12 below.

2.08.3 Description of all maintenance activities, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

2.9 Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the design and construction of the Project not later than two (2) years from the date of execution of this Agreement.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee's use of City Funds and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 Grantee agrees to procure all contracts under this Agreement through open competitive contracting processes which are advertised to the public in an appropriate manner.

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

PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS

3.04 A.) 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 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 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, 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 of the Project. Grantee shall require its construction contractor to 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 deemed necessary by City to confirm compliance with this Agreement.

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

ENVIRONMENTAL

3.05 Construction shall be in accordance with the all applicable state and federal environmental requirements including all City applicable construction and development regulations.

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

3.06 Small/Minority and Woman Owned Business Terms and Conditions are attached hereto as Exhibit D.

COMPLIANCE WITH BOND COVENANTS

3.07 The Boys & Girls Clubs of San Antonio, Inc. shall not use, or permit the use of, City Funds, or earnings thereon, or any other amounts or any property, the acquisition, construction, or improvement of which is to be financed directly or indirectly with City Funds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest on the City's debt to be includable in the gross income of the bond owners for federal income tax purposes. In addition, purposes which are NOT permissible include, but are not limited to religious activities, and, restaurants, cafés, and retail stores.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow

others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees that the programs and use described above will continue for the term of this Agreement.

4.02 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The Project improvements may also be used for office space during the entire term of the Lease and the term of the Bonds in connection therewith.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of $1,792,000.00, plus the sum of $58,000.00 that City shall retain for fiscal and project oversight, for total funding by City of $1,850,000.00 ("City Funds").

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

5.03 Funding shall consist of reimbursements paid to Grantee for costs of construction of the Project, not to exceed $1,792,000.00 and $58,000.00 to be retained by the City.

5.04 It is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

5.05 After all City debt has been paid, Boys & Girls Club of San Antonio, Inc. shall own the building improvements associated with the Project.

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 City Funds received pursuant to this Agreement. Grantee further agrees:

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

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

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 Agreement for a minimum of four (4) years from the completion of the Project. 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 City Funds and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City Funds provided under this Agreement. All interest earned, if any, on City Funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 All requests for reimbursement shall be submitted through the COSA PRIME*link*. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIME*link* sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIME*link* and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must 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 will be processed and approved as task orders through the portal.

6.05 Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.06 City agrees to provide Grantee written notice regarding any expenditure for which Grantee has requested reimbursement under this Agreement which the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

(A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or

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

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

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 City Funds. 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 Agreement and with all city, state and federal laws; regulations

and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Project Management/Construction Management
- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design contract and amendments

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

7.02 The following shall not be considered allowable costs or use of City Funds under this 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 Project
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by Grantee's General Contractor and shown on the approved Plans
- Advertising

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (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 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 that:

(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 that since said date shown, shall not have undergone any significant change without written notice to City.

(B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.

(C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

IX. ACCESSIBILITY OF RECORDS

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

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

X. MONITORING AND EVALUATION

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this 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.

XI. INDEMNITY

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

11.02 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other person or entity. Grantee shall advise the City in writing within 24 hours of any claim or demand against the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Grantee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this paragraph.

XII. INSURANCE & BONDS

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

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

12.03 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

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	For Bodily Injury and Property Damage of $1,000,000 per occurrence;

the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
* if applicable	

12.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 12.03 (Insurance table) from each vendor subcontracted by Grantee and provide a Certificate of Insurance and Endorsement that names the Grantee and the CITY as an additional insured.

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

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

12.06 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 polices;

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

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

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

12.08 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.

12.09 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.

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

12.11 Grantee shall ensure that its general contractor complies 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. NONDISCRIMINATION

13.01 As a Party to this Agreement, 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.

XIV. CONFLICT OF INTEREST

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

14.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of

being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

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 Agreement shall:

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

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

XV. POLITICAL ACTIVITY

15.01 None of the activities performed hereunder shall involve, and no portion of the City 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.

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee to City, 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 Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this 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.

XVIII. CHANGES AND AMENDMENTS

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

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

XIX. ASSIGNMENTS

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

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

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

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 Section without formal action from the City Council.

XXII. ENTIRE AGREEMENT

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

XXIII. NOTICES

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

CITY: Director Transportation & Capital Improvements
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: CEO
Boys & Girls Clubs of San Antonio, Inc.
600 S.W. 19th Street
San Antonio, TX 78207

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

XXIV. PARTIES BOUND

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. TEXAS LAW TO APPLY

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

XXVII. GENDER

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

XVIII. CAPTIONS

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

XXIX. DEFAULT

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

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

XXX. LEGAL AUTHORITY

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

30.02 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

CITY OF SAN ANTONIO

By: _____
Mike Frisbie, P.E., City Engineer
Director, TCI

By: _____
Luis De La Torre
Board Chairman

BOYS & GIRLS CLUBS OF SAN ANTONIO, INC.

By: Angie Mock
Angie Mock
CEO

APPROVED AS TO FORM:

_____
CITY ATTORNEY

EXHIBIT A
Ground Lease
Lone Star Recreational Facility
829 Nogalitos, San Antonio, TX 78204

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Authorizing Ordinance:

Sublease That certain Sublease agreement by and between The City of San Antonio and the Boys and Girls Clubs of San Antonio, Inc. coterminous with this Ground Lease Agreement ("Lease" or "lease"). The Boys and Girls Clubs of San Antonio, Inc. is the Landlord under the Lease and the Subtenant under the Sublease. The City is the Tenant under both the Sublease and Ground Lease agreements.

Landlord: **The Boys and Girls Clubs of San Antonio, Inc.**

Landlord's Address: 600 S.W. 19th Street, San Antonio, TX 78207

Address for Rent Payment: 600 S.W. 19th Street, San Antonio, TX 78207

Tenant: City of San Antonio

Tenant's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Premises: A parcel containing approximately 1.979 acres of

	gross area located at 829 Nogalitos, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A,** which is incorporated herein for all purposes.
Permitted Use:	Community recreational facility
Lease Commencement Date:	The effective date of the Authorizing Ordinance
Initial Term:	Until the expiration of 20 years from the Lease Commencement Date
Initial Term Annual Rent:	In consideration of Tenants financial support for the construction of the improvements, there will be no rent.

Background:

In 2012, the City of San Antonio (City) held a Bond Election and received voter approval to fund a variety of Parks, Recreation & Open Space Improvements pursuant to such bonds. Among the Parks, Recreation & Open Space Improvements projects approved is the "Lone Star Recreational Facility" project, described in the official bond brochure as "Lone Star Recreational Center LF: Development of a recreation facility in the Lone Star neighborhood that may include land acquisition." The City must comply with official brochure terms and conditions including fulfillment of a public purpose in accordance with all applicable laws of public funding and authorizing instruments for the public funding. The City identified the The Boys and Girls Clubs of San Antonio, Inc. as the appropriate party to partner with. The City has committed funding for the construction of a recreation facility which will be provided to The Boys and Girls Clubs of San Antonio, Inc. according to the terms of a funding agreement separate from this ground lease. The public benefit to be provided is recreational facilities, operated under non-profit regulations, available to the citizens of San Antonio.

1. Demise of Premises.

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements, rights, and privileges of Landlord, existing now or at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Landlord as owner of the Premises by the closing of any street, sidewalk, or alley.

2. Lease Term.

2.01. The Term is as stated above.

2.02. *Termination.* This lease terminates without further notice when the Term expires. Tenant's holding over expiration is not a renewal of the lease and does not give Tenant rights under the Lease in or to the Premises.

3. Rent.

3.01. In consideration of Tenants financial support for the construction of the improvements, there is no rent.

4. Taxes.

Payment by Landlord

4.01. Landlord must pay and discharge all taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, whether belonging to Landlord or to Tenant. Landlord must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency. Landlord hereby indemnifies Tenant and holds it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments. Landlord may, in good faith at its own expense, contest taxes, charges, and assessments. However, it must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

5. Utilities.

Landlord must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the lease term, including any connection fees. Landlord understands and agrees that this provision applies to any existing as well as contemplated facilities.

6. Use of Premises.

Permitted Use of Premises

6.01. Following final completion of the improvements, Tenant shall have the right to use the Premises for City activities and events for up to ten (10) days in any calendar year during the term of this **Agreement ("City Days")**. Tenant's right to City Days shall be subject to the availability of the Premises based on Landlord's use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups

as outlined in the Funding Agreement. Tenant shall not be charged additional rent or fees for City Days. Tenant shall use its best efforts to avoid any damage to the Premises, and any damage caused as a result of Tenant's use shall be promptly repaired by Tenant, at Tenant's expense. Tenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing. Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

Prohibited Use

6.02. Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation.

7. Construction by Tenant.

7.01. Tenant shall have the right to make improvements to the Premises with the prior written approval of Landlord.

7.02. Any buildings, improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the lease term become part of the real property of the Premises and must remain on the Premises and become Landlord's property when the lease terminates.

8. Repairs, Maintenance, and Restoration.

Landlord's Duty to Maintain and Repair

8.01. Landlord must keep and maintain all buildings and improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Landlord's own expense.

Damage or Destruction

8.02. If any building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Landlord must, within one year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement at its own cost. Landlord must pursue the repair, reconstruction, or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty. However, if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond Landlord's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

9. Mechanic's Liens.

Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action

to do so at Tenant's sole expense. If Tenant contests the lien, Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Tenant loses the contest, Tenant must cause the lien to be discharged and removed before any judgment is executed.

10. Condemnation.

Parties' Interests

10.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this lease.

Total Taking—Termination

10.02. If the entire Premises are taken or so transferred, this lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. Tenant shall receive a portion of the proceeds of the condemnation award sufficient to repay the pro rate share of the bond funds provided by Tenant for construction of the improvements.

Partial Taking—Termination

10.03. If only part of the Premises is taken or transferred, this lease terminates if, in Tenant's opinion, the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Landlord's business cannot be effectively and practicably operated on it. In such case, this lease and all rights, title, and interest under it cease on the date that title vests in the condemning authority. Tenant shall receive a portion of the proceeds of the condemnation award sufficient to repay the pro rate share of the bond funds provided by Tenant for construction of the improvements.

Partial Taking

10.04. If part of the Premises is taken or transferred and, in Landlord's opinion, the remainder of the Premises is in such that Landlord's business can be effectively and practicably operated on the remaining Premises, this Lease terminates only as to the portion of the Premises taken or transferred. The termination is as of the date title vests in the condemning authority. The Lease continues as to the portion not taken or transferred All proceeds of condemnation are Landlord's.

11. Insurance

Tenant is a self insured. Landlord shall maintain the insurance policies required under the Sublease.

12. Default and Remedies.

Termination on Default

12.01. If Tenant defaults in performing any obligation arising out of this lease and does not correct the default within 60 days after receipt of written notice to Tenant, Landlord may terminate this lease, provided however, Landlord may not terminate this lease during any period in which there is outstanding debt owed by Tenant for bonds issued for the financing of the construction of improvements on the Premises.

12.02. If Landlord defaults in performing any obligation arising out of this lease and does not correct the default within 60 days after receipt of written notice to Landlord, Tenant may terminate this lease. Any such termination for Landlord default during any period in which there is outstanding debt owed by Tenant for bonds issued for the financing of the construction of improvements on the Premises shall result in Landlord owing Tenant an amount equal to the such outstanding debt.

12.03. Termination of this lease does not relieve either party from paying (A) money owing under the lease at the time of termination, or (B) any claim for damages against under this lease. Either party may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by either party of a breach of any covenant or condition of this lease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this lease.

Subleases Not Affected
12.04. Landlord's exercising any remedy does not affect the existence of subleases entered into according to this lease.

13. General Protective Provisions.

Right of Entry and Inspection
13.01. Tenant must permit Landlord or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Tenant is complying with this lease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

No Partnership or Joint Venture
13.02. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

Force Majeure
13.03. If constructing the building, curing any default (other than failure to pay rent, insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

Release of Landlord

13.04. If Landlord sells or transfers all or part of the Premises and as a part of the transaction assigns its interest in this lease, of the effective date of the assignment, Landlord has no further liability under this lease, except with respect to matters that have accrued and are unsatisfied as of that date. Landlord's covenants and obligations under this lease will bind Landlord and its successors and assigns only during their respective, successive periods of ownership of the fee.

Joint and Several Liability
13.05. If the Lease names more than one Tenant or Landlord; the obligations of all Tenants and Landlords are joint and several.

14. Prohibited Interests in Contracts

Prohibited Interest
14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as 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:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Tenant's Warranties
14.02. Tenant warrants and certifies as follows:

(i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

(ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

City's Reliance is Reasonable
14.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Miscellaneous.

Rights and Remedies Cumulative

15.01. The rights and remedies under this Lease are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Time of Essence

15.02. Time is of the essence under this Lease.

Yielding Up

15.03. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted.

Applicable Law

15.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Lease And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Severability

15.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

Successors

15.06. This Lease inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

Integration

15.07. **This Written Lease Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

Modification

15.08. This Lease may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries

15.09. This Lease benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Notices

15.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. If the addressee is a corporation, notices must be addressed to the attention of its CEO. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

Captions

15.11. Paragraph captions in this Lease are for ease of reference only and do not affect the interpretation hereof.

Counterparts

15.12. This Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Lease, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Further Assurances

15.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Lease

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

In Witness whereof, the parties have hereunto caused their representatives to set their hands.

By: _____
Mike Frisbie, P.E.,
City Engineer/ Director, TCI

By: Angie Mock
Angie Mock
CEO

Date: _____

Date: 3/4/15

By: _____
Luis De La Torre
Board Chairman

Date: 03/04/15

APPROVED AS TO FORM

_____
CITY ATTORNEY

Date: _____

Attest:

_____
City Clerk

EXHIBIT B
Sublease
Lone Star Recreational Center

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Authorizing Ordinance:

Lease:	That certain Lease agreement by and between The City of San Antonio and the Boys and Girls Clubs of San Antonio, Inc. ("Lease") coterminous with this Sublease Agreement ("Sublease"). The Boys and Girls Clubs of San Antonio, Inc. is the Landlord under the Lease and the Subtenant under the Sublease. The City is the Tenant in both the Lease and Sublease agreements.
Tenant:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Address for Rent Payment:	P.O. Box 839966, San Antonio, Texas 78283-3966

Subtenant:	**The Boys and Girls Clubs of San Antonio, Inc. (the Subtenant is the same entity as the Landlord in the underlying Lease)**
Subtenant's Address:	600 S.W. 19th Street, San Antonio, TX 78207
Premises:	A parcel containing approximately 1.979 acres of gross area located at 829 Nogalitos, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A,** which is incorporated herein for all purposes.
Permitted Use:	Community recreational facility ("Facility").
Sublease Commencement Date:	The effective date of the Authorizing Ordinance
Term:	Until the expiration of 20 years from the Lease Commencement Date
Rent:	In consideration of Subtenant's construction and operation of the Facility, there will be no rent.
Construction Completion Date:	September of 2016.

Background:

In 2012, the City of San Antonio (City) held a Bond Election and received voter approval to fund a variety of Parks, Recreation & Open Space Improvements pursuant to such bonds. Among the Parks, Recreation & Open Space Improvements projects approved is the "Lone Star Recreational Facility" project, described in the official bond brochure as "Lone Star Recreational Center LF: Development of a recreation facility in the Lone Star neighborhood that may include land acquisition." The City must comply with official brochure terms and conditions including fulfillment of a public purpose in accordance with all applicable laws of public funding and authorizing instruments for the public funding. The City identified the The Boys and Girls Clubs of San Antonio, Inc. as the appropriate party to partner with. The City has committed funding for the construction of a recreation facility which will be provided to The Boys and Girls Clubs of San Antonio according to the terms of a funding agreement separate from this ground lease. The public benefit to be provided is recreational facilities, operated under non-profit regulations, available to the citizens of San Antonio.

1. Demise of Premises.

Tenant subleases the Premises to Subtenant and Subtenant subleases the Premises from Tenant under the terms of this Sublease. Subtenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements, rights, and privileges of Subtenant, existing now or at any time during the Lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Tenant by the closing of any street, sidewalk, or alley.

2. Sublease Term.

2.01. The Term is as stated above.

Termination

2.02. This Sublease terminates without further notice when the Term expires.

3. Rent.

3.01. In consideration of Subtenant's construction and operation of theFacility, there will be no rent.

4. Taxes.

Payment by Subtenant

4.01. Subtenant must pay and discharge all taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the Sublease term. Subtenant hereby indemnifies Tenant and holds it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments.

5. Utilities.

Subtenant must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the Sublease term, including any connection fees.

6. Use of Premises.

Permitted Use of Premises

6.01. Subtenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing.

Prohibited Use Of Premises

6.02. Subtenant must not use or permit the Premises to be used:

a. for any activity violating any applicable local, state, or federal law, rule, or regulation; or
b. for any activity which shall violate the terms of the bonds used to finance the improvements, including any bond covenants and any applicable federal regulations regarding tax exempt debt.

7. Construction by Subtenant.

7.01. Conditions

General Conditions: Subtenant may erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the Premises and may change the contour of the Premises, subject to the following:

a. Subtenant bears the cost of the work.

b. Subtenant keeps the Premises free of mechanics' and material men's liens.

c. Except for routine maintenance of existing buildings and improvement, Subtenant notifies Tenant, before work begins, of the time work will begin and the general nature of the work.

d. Subtenant has secured Tenant's approval of all plans in the manner provided for later in this Sublease.

Specific Conditions: Subtenant may construct a minimum 20,000 square foot multi-function recreation center, the total cost of the Facility is estimated to be $3,800,000.00. Construction costs are to be paid by Subtenant in the amount of approximately $2,000,000.00 and Tenant in the amount of up to $1,792,000.00. Subtenant has committed to raising its share of the funds necessary to construct the Facility and agreed to fund on-going operations, once completed. This Sublease is subject to the Funding Agreement entered into between Subtenant and Tenant. Subtenant shall provide evidence to Tenant that $2,000,000.00 in project funds have been expensed prior to the receipt of any City funding under the Funding Agreement. In the event the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly.

Beginning Construction

7.03. Subtenant expects to begin construction of the Facility not later than the Construction Commencement Date of September 2015 or after all necessary permits and other authorizations are issued, whichever is later.

Tenant's Approval of Plans

7.04. The following rules govern Tenant's approving construction, additions, and alterations of buildings or other improvements on the Premises:

a. Written Approval Required. No building or other improvement may be constructed on the Premises unless the plans, specifications, and proposed location of the building or other improvement have received Tenant's written approval. All buildings or other improvements must comply with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the Premises may be begun until plans and specifications covering the exterior of the proposed addition or alteration have been first submitted to and approved by Tenant.

b. Submission of Plans. Subtenant must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing the Facility or for constructing any other buildings or improvements or additions or alterations to any buildings or, improvements that require Tenant's approval under subparagraph a above. Subtenant must submit three copies of detailed working drawings, plans, and specifications for all improvements for Tenant's approval within 30 days after this Sublease is executed, but not later than 30 days before construction is to begin. If Subtenant wishes to construct any other buildings or improvements or make any additions or alterations to buildings or improvements for which Tenant's approval is required under Subsection (a) above, Subtenant must submit copies of detailed working drawings, plans, and specifications for Tenant's approval before the project begins.

c. Tenant's Approval. Tenant will promptly review and approve all plans submitted to it or note in writing any required changes or corrections. Subtenant must comply with changes or corrections required by Tenant, and Subtenant must resubmit plans showing the changes and corrections within 15 days after the corrections or changes have been noted. Minor changes in work or materials not affecting the general character of the building project may be made at any time without Tenant's approval, but a copy of the altered plans and specifications must be furnished to Tenant.

d. Exception to Tenant's Approval. The following items do not require submission to, and approval by, Tenant:

i. Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.

ii. Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements to comply with legal requirements.

e. Effect of Approval. Tenant's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises. It does not excuse Subtenant from any governmental permits, licenses, or other requirements of general applicability, including adherence to City adopted building/construction codes. Further, Tenant's approval does not constitute approval of the architectural or engineering design. By approving the plans and specifications, Tenant assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications.

Ownership of Buildings, Improvements, and Fixtures
7.05. Any buildings, improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the Sublease term become part of the real property of the Premises and must remain on the Premises when the Sublease terminates.

Right to Remove Improvements
7.06. Subtenant may, at any time while it occupies the Premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Subtenant in, under, or on the Premises. Before the Sublease terminates, Subtenant must repair any damage to any buildings or improvements on the Premises resulting from removal. Any such items not removed by termination become Landlord's property.

8. Encumbrance of Leasehold Estate.

8.01. Subtenant may not encumber its leasehold interest.

9. Repairs, Maintenance, and Restoration.

Subtenant's Duty to Maintain and Repair
9.01. Subtenant must keep and maintain all buildings and improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Subtenant's own expense.

Damage or Destruction
9.02. If any building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Subtenant must, within one year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement at its own cost. Subtenant must pursue the repair,

reconstruction, or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty. However, if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond Subtenant's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

10. Mechanic's Liens.

Subtenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Subtenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Subtenant must either cause it to be removed, or if Subtenant in good faith wishes to contest the lien, take timely action to do so at Subtenant's sole expense. If Subtenant contests the lien, Subtenant must indemnify Tenant and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Subtenant loses the contest, Subtenant must cause the lien to be discharged and removed before any judgment is executed.

11. Condemnation.

The rights of the parties with regard to condemnation are wholly determined by the provisions contained in the Lease.

12. Insurance

Allocation of Claims

12.01. Tenant disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Subtenant. Any and all claims resulting from any obligation for which Subtenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Subtenant.

Required Insurance

12.02. Subtenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Sublease and for the duration of this Sublease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Tenant, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord

2. Employer's Liability	$500,000/$500,000/$500,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises	
(f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of $1,000,000.00 per occurrence
(a.) Owned/Leased Automobiles	
(b.) Non-owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to the property of the Subtenant, including improvements and betterments	Coverage for replacement cost of Tenant's improvements.

Required Clauses

12.04. Each insurance policy required by this Lease must contain the following clauses:

> "This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:
>
> (a) City Clerk, City of San Antonio
> City Hall/2nd Floor
> P. O. Box 839966

San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Parks & Recreation Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director

"The insurance provided by Subtenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Sublease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Sublease with the City of San Antonio."

Required Deliveries
12.05. Subtenant must require its insurance carrier(s) to deliver to Tenant's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Tenant. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will provide 30 days' prior notice to Subtenant and an opportunity to discuss the changes. If Tenant still wants the changes after discussion, Subtenant must make the changes and pay the cost thereof.

Additional Insurance for Improvement Work
12.06. Throughout the time period of any construction activity on the Premises, Subtenant shall provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by Tenant's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Subtenant must procure and maintain the insurance, as well as other insurance coverage enumerated above, in full force and effect during such construction. Also, payment and performance

bonds naming Tenant as indemnitee must be provided by Subtenant or its contractors or subcontractors. If the construction is minor, Subtenant may send a written request to the City's Director of Transportation and Capital Improvements to waive the requirements in this Section.

Certificates
12.07. Prior to the Commencement Date, Subtenant must deliver certificates to Tenant's Risk Manager and the City Clerk from Subtenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Subtenant must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

Address for Delivery
12.08. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancelation.

Liability Not Limited
12.09. Nothing herein contained limits in any way Subtenant's liability for damages to persons or property resulting from Subtenant's activities or the activities of Subtenant's agents, employees, sublessees, or invitees under this Sublease.

Waiver of Claims Against Tenant
12.10. Subtenant waives all claims against Tenant for injury to persons or property on or about the Premises, whether or not caused by Tenant's negligence.

13. Indemnification

13.01. These definitions apply to the indemnity provisions of thisSublease:

13.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this Sublease. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

13.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

13.01.03. "Indemnitor" means Subtenant.

13.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

13.03. If an Indemnitee is finally adjudged to be solely negligent or grossly negligent, in whole or in part, Indemnitor need not further indemnify the so-adjudged Indemnitee from its sole or gross negligence. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be solely negligent and must continue to indemnify other Indemnitees.

13.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

13.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

13.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

13.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before

it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

13.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

13.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

14. Assignment and Subletting

Consent Required

14.01. Any attempt at transfer, assignment, or subletting of Subtenant's rights, duties, and obligations hereunder, without the Tenant's prior written consent, is void and, at Tenants option, will terminate the Sublease.

15. Default and Remedies.

Termination on Default

15.01. If Subtenant defaults in performing any obligation arising out of this Sublease and does not correct the default in a reasonable time but in no case longer than 30 days after receipt of written notice to Tenant, Tenant may terminate this Sublease. Tenant or its agent or attorney may resume possession of the Premises and relet them for the remainder of the term. Upon any such early termination Subtenant shall, at Tenant's option, owe to Tenant any amount sufficient to repay any outstanding indebtedness used to finance the construction of improvements on the Premises.

Other Remedies

15.02. Termination of this Sublease does not relieve Subtenant from paying (A) money owing to Tenant under the Sublease at the time of termination, or (B) any claim for damages against Subtenant under this Sublease. Termination does not prevent Tenant from enforcing payment by any remedy provided for by law or from recovering from Subtenant for any default. Tenant's rights, options, and remedies under this Sublease are cumulative, and no one of them is exclusive of the other. Tenant may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by Tenant of a breach of any covenant or condition of this Sublease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this Sublease.

16. General Protective Provisions.

Right of Entry and Inspection

16.01. Subtenant must permit Tenant or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Subtenant is complying with this Sublease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

No Partnership or Joint Venture

16.02. The relationship between Subtenant and Tenant is at all times solely that of subtenant and tenant, not that of partners or a joint venturers.

Force Majeure

16.03. If constructing the building, curing any default (other than failure to pay rent, insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

Joint and Several Liability

16.04. If the Lease names more than one Tenant or Landlord; the obligations of all Tenants and Landlords are joint and several.

17. Prohibited Interests in Contracts

Prohibited Interest

17.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as 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:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

18.08. This Sublease may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries
18.09. This Sublease benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Notices
18.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

Captions
18.11. Paragraph captions in this Subease are for ease of reference only and do not affect the interpretation hereof.

Counterparts
18.12. This Sublease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Sublease, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Further Assurances
18.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Sublease.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

By: _____
Mike Frisbie, P.E.,
City Engineer/ Director, TCI

By: Angie Mock
Angie Mock
CEO

Date: _____

Date: 3/4/15

By: _____
Luis De La Torre
Board Chairman

Date: **03/04/15**

APPROVED AS TO FORM

_____
CITY ATTORNEY

Date: _____

Attest:

_____
City Clerk

Exhibit C

PLANS

EXHIBIT D

SBEDA

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

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

B. Contract Requirements and Commitment

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

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

C. Definitions

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

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

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

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

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1)

documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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

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

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

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

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

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

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

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

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
>
> Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO

Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

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

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

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

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

D. <u>SBEDA Program Compliance – General Provisions</u>

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby

incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

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

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

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

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

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

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

CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least ***twenty percent (20%)*** of its prime contract value to certified S/M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each S/M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least ***three percent (3%)*** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This three percent (3%) subcontracting goal will also count toward the aforementioned twenty percent (20%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the

total prime contract dollar value to be awarded and performed by each AABE Subcontractor, and documentation including a description of each AABE Subcontractor's scope of work and confirmation of each AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 20% and AABE Subcontracting goal of 3% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of February 2015, African-American owned firms represent approximately 2.75% of available subcontractors, Hispanic-American firms represent approximately 16.47%, Asian-American firms represent approximately 1.17%, Native American firms represent approximately 0.27%, and Women-owned firms represent approximately 4.74% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this

Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).