JRP
06/18/2015
Item No. 66B

AN ORDINANCE 2015-06-18-0589

APPROVING A FUNDING AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND BROOKS DEVELOPMENT AUTHORITY FOR INFRASTRUCTURE IMPROVEMENTS WITHIN BROOKS CITY BASE RELATED TO BROOKS NORTH CAMPUS.

* * * * *

WHEREAS, on December 13, 2012 City Council approved a Tax Abatement Agreement with Nexolon America, LLC, now Mission Solar Energy, a manufacturer of solar panels; and

WHEREAS, the Mission Solar Energy facility is located on the Brooks City-Base Campus and within the Brooks City-Base Tax Increment Reinvestment Zone; and

WHEREAS, the City made a verbal commitment to Brooks Development Authority to provide $12 million in funding for public infrastructure improvements at Brooks City-Base to facilitate future economic development projects; and

WHEREAS, the funding for the Brooks infrastructure was proposed to come from several sources including CPS Energy revenue generated from Mission Solar Energy and funding from future Bond elections; and

WHEREAS, it has been determined that the City's 14% return on investment from CPS Energy sales related to Mission Solar Energy will generate $2,750,000.00 in revenue for debt service; and

WHEREAS, the $2,750,000.00 will allow the City to issue Certificates of Obligation to fund several public infrastructure projects within the Brooks City-Base; and

WHEREAS, $1,200,000.00 of Bond revenues will be utilized for the Brooks North Campus Drainage Project (the "Project) which will include reconstruction of Sidney Brooks Street west of South New Braunfels Avenue, including street drainage, utility, landscaping and irrigation improvements; and

WHEREAS, the improvements will facilitate the development of a planned, mixed-use, high density town center area that will include a full service hotel and retail development; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Funding Agreement with Brooks Development Authority for the Project in the amount of $1,200,000.00 in Certificates of Obligation are approved.

SECTION 2. The City Manager or her designee is authorized to execute the Funding Agreement, a copy of which in substantially final form, is attached to this Ordinance as **Exhibit A**. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

SECTION 3. This Ordinance authorizes a one-time capital expenditure of $1,200,000.00 payable to Brooks Development Authority. Funds will be available from revenue generated from the issuance of Certificates of Obligation, the debt service for which will be paid from the City's 14% return on investment of CPS Energy sales related to Mission Solar Energy.

SECTION 4. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective ten (10) days after passage.

PASSED AND APPROVED this 18th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**66B (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a Funding Agreement with Brooks Development Authority for Brooks North Campus Drive Project in the amount of $1,200,000.00 in Certificates of Obligation.
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				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

STATE OF TEXAS	§	**FUNDING AGREEMENT OF THE CITY OF**
	§	**SAN ANTONIO – Brooks Development**
COUNTY OF BEXAR	§	**Authority: Brooks North Campus Drainage**

This Funding Agreement is hereby made and entered into by and between the CITY OF SAN ANTONIO (referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. 2015-___-___-____ dated June 11, 2015, and BROOKS DEVELOPMENT AUTHORITY, a Texas Defense Base Authority established under 379B of the Texas Local Government Code (referred to as "Grantee"), acting by and through its duly authorized board of directors, and together referred to as the Parties.

WHEREAS, through City of San Antonio City Council by Ordinance 2012-12-12-0968 the City has committed to use its best efforts to provide up to $12 million to BDA for public infrastructure improvements; and

WHEREAS, City of San Antonio City Council by Ordinance 2015-____-___-_____ approved $2,100,000.00 in Certificates of Obligation to be sourced from the City's 14% return on investment from CPS Energy sales generated from Mission Solar Energy, LLC Project at Brooks City-Base; and

WHEREAS, through this Funding Agreement, the City's Transportation and Capital Improvement Department ("TCI") is designated as the managing City department for the oversight of the Funding Agreement; and

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

I. TERM

1.01 The term of this Funding Agreement shall commence upon execution of the Funding Agreement by the City Manager or designee ("Effective Date") and continue until the earliest of the following: (a) November 30, 2016 (the "completion date"); or (b), termination of this Funding Agreement as otherwise provided in this Funding Agreement (the "Term").

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.

2.02 The project, for which Grantee is responsible, includes the construction of Brooks North Campus Drainage Project ("Project") as described in Exhibit A. Grantee will complete the design and construction of the Project by approximately September 30, 2016 (the "completion date"). The project shall consist of the reconstruction of Sidney Brooks west of South New Braunfels street including street, drainage and utility improvements. If grantee fails to complete the Project as described in Exhibit A and by the completion date, then City may either terminate this Agreement in accordance with Article X of this Agreement or the City may at its discretion extend the completion date up to three years from the completion date. Approval of an extension of the completion date shall be in writing and authorized by the Director of TCI.

2.03 Current budget estimates of the Project are $5,843,100.00, exclusive of City administrative fees and legal costs. Grantee shall provide all necessary funding for the Project beyond the City's commitment of $1,200,000.00 less $24,000.00 which will be retained by the City per Section 5.01. Grantee will provide evidence to City that all Project funds have been secured prior to the receipt of any funding under this Funding Agreement. In the event that the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any costs over the estimated amount of the Project unless agreed to in writing in the form of an amendment to this Funding Agreement.

2.04 Grantee will provide to City their plans and specifications for the Project, including a construction schedule ("Plans"), and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. After approval by City, the Plans shall be attached and incorporated into this Funding Agreement as **Exhibit A**, and 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). Nor does City's approval of the Plans release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.05 Grantee understands that all funds must be expended to achieve the stated public purpose of constructing the Project for public use. Grantee understands that the funding provided through this Funding Agreement cannot be expended on private administrative/office space. Grantee is responsible for tracking the use of funds accordingly. Any improvements that are not for public use and in accordance with this agreement will not be funded.

2.06 Grantee shall submit all future changes to the TCI Director or his or her designee for review and written approval to ensure their compatibility with the Plans.

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 or construction professional to provide periodic certifications of construction certifying that construction has

been conducted in compliance with the Plans. Upon request by City, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas and must conform to all applicable federal, state and local laws and regulations. Grantee shall submit said certification to the TCI Director or his or her designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

2.08 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Office of Project Management, ATTN: Jaime Lawhn shall be Grantee's designated representative responsible for the management of this Funding Agreement and the point of contact for City on all matters regarding this Funding Agreement.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

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

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

3.03 Plans 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.

3.04 Prevailing Wage Rate and Labor Standards

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

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, 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. The Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. The Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to

ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Funding Agreement.

C. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any 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 from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Funding Agreement.

3.05 Environmental - Construction shall be in accordance with all Federal, State, and local environmental requirements including all City applicable construction and development regulations.

3.06 Small Business Economic Development Advocacy Program - Grantee shall comply with all Small/Minority and Woman Owned Business Terms and Conditions as attached hereto as **Exhibit B.**

3.07 Compliance with Bond Covenants – Grantee 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 of 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, restaurants, cafes, and retail stores.

IV. OWNERSHIP AND MAINTENANCE

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 Project will facilitate frequent use by the general public and that the Project will be open to the general public indefinitely and beyond the Term of this Funding Agreement. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project improvements. If in the event Grantee fails to have Project open to the general public, City shall have the right to terminate this agreement and or demand repayment of funding for the Project.

4.02 Grantee shall at its own cost and expense, maintain or cause to be maintained all Public Improvements associated with the Project.

4.03 The Project improvements shall facilitate the construction of the Brooks North Campus Drainage Project during the entire term on the Bonds issued in connection with the Project.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Funding Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of $1,176,000.00, plus the sum of $24,000.00 that City shall retain for fiscal and project oversight, for total funding by City of $1,200,000.00. The City commits to $1,200,000.00 in Certificates of Obligation funding for allowable expenditures as defined in this Agreement. City's funding shall be sourced from CPS Energy sales generated from the Mission Solar Energy, LLC Project at Brooks City-Base.

5.02 City shall not be obligated nor liable under this Funding 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 design and construction of the Project, not to exceed $1,176,000.00 with $24,000.00 to be retained by the City, for total funding by City of $1,200,000.00. The City funding provided under this Funding Amendment may only be used for the portions of the Project which are dedicated to public use/public purpose. No City funds may be used for Grantee's personal office space or other non-public aspects of the Project.

5.04 All funding provided by City shall come from available debt proceeds. City shall not be responsible for the payment of any eligible expenses until sufficient funds are available. In addition, all funding in this agreement that is included in future Fiscal Years shall be subject to the funding and appropriation of said funds.

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

5.06 All obligations of City under this Funding Agreement are funded subject to the action of City Council. If City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further obligation or liability under this agreement.

5.07 As required by City Ordinance No. 2011-09-08-0743, and as amended by Ordinance No. 2015-04-02-0238, Grantee shall spend 1% of the funds provided under this Agreement ("Public Art Funds") on public art projects ("Projects"). Grantee shall coordinate all Projects with Public Art San Antonio and shall follow the guidelines and procedures set forth in these

Ordinances, including design approval by City's Public Art Subcommittee of the San Antonio Arts Commission and final approval by the San Antonio Arts Commission. Should the City determine that Grantee is not adhering to these Ordinances, City may, in its sole discretion, require that Grantee return these Public Art Funds to the City within 30 calendar days of notice.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

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

B. 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 Funding Agreement for a minimum of four years from the termination of this Funding Agreement. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four-year period.

6.03 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Funding Agreement and further agrees 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 Funding Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIME*link*) or any other updated program used by City for this purpose.

6.05 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.

6.06 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.

6.07 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Funding Agreement. Said notice will provide Grantee 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 Funding Agreement; or

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

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

VII. ALLOWABLE EXPENDITURES

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

A. Construction Contract
B. Construction change orders
C. Architectural/Engineering Design contract, studies and amendments

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

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

A. Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization

B. Travel and travel-related expenses

C. Costs or fees for consultant and/or professional services, except for those directly related to the project

D. Costs or fees associated with attendance at meetings, seminars, or conferences

E. Costs or fees associated with regular maintenance and operation

F. Fundraising

G. Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's General Contractor and shown on the approved Plans and specifically approved by City.

H. Advertising except related to procurement of the contracts for the project or outreach related to the Small Business Development Advocacy Program requirements.

I. Construction of non-public aspects of the Project

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

A. All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate, to the best of Grantee's knowledge, 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 Funding 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 affect its obligations hereunder.

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

D. No provision contained herein contravenes or in any way conflicts with the authority

under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

IX. ACCESSIBILITY OF RECORDS & MONITORING

9.01 At any time and as often as City may deem necessary, upon three days written notice, Grantee shall make all of its records pertaining to this Funding 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 Funding Agreement.

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

X. TERMINATION

10.01 City shall have the right to terminate this Funding Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Grantee has failed to comply with any term of this Funding Agreement with the City. City will provide Grantee with written notification as to the nature of the non-compliance, and give Grantee a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, City may terminate this Funding Agreement immediately by providing written notice to Grantee, withhold further payments to GRANTEE and seek repayment of any and all funds disbursed by City.

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

XI. LIABILITIES

11.01 City and Grantee acknowledge that they are an agency of the State of Texas and a political subdivision, respectively, and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §§

101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

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

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Funding Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Transportation & Capital Improvements (TCI) Department, which shall be clearly labeled **Brooks North Campus Drainage Project** – Brooks Development Authority" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Funding Agreement until such certificate and endorsements have been received and approved by the City's Capital Improvements Management Services 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 Article during the effective period of this Funding Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Funding Agreement. In no instance will City allow modification whereby City may incur increased risk.

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000

3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/ Impact sufficiently broad to cover disposal liability. h. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage h. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

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

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

City of San Antonio
Attn: 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 policies;

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

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

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

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

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

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

12.10 It is 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 Funding Agreement.

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

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

12.14 Grantee shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. NONDISCRIMINATION

13.01 As a party to this contract, Grantee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religious, 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 Funding Agreement. Grantee further covenants that in the performance of this Funding Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Grantee further covenants 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 Funding Agreement shall:

A. Participate in any decision relating to this Funding Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; nor

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

XV. POLITICAL OR RELIGIOUS ACTIVITY

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for

public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

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

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

XVII. CONTRACTING

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

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

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

XVIII. CHANGES AND AMENDMENTS

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

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

XIX. ASSIGNMENTS

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

XX. SEVERABILITY OF PROVISIONS

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

XXI. NON-WAIVER OF PERFORMANCE

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

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

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

XXII. ENTIRE AGREEMENT

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

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

Exhibit A – Scope of Work/Construction Schedule/Project Plan
Exhibit B – Small/Minority and Woman Owned Business Terms and Conditions Plans

XXIII. NOTICES

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

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

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

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

XXIV. FORCE MAJURE

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. VENUE AND GOVERNING LAW

This Funding Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas and venue of any court action brought directly or indirectly by reason of this Funding Agreement shall be in Bexar County, Texas.

XXVII. GENDER

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

XVIII. CAPTIONS

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

XXIX. LEGAL AUTHORITY

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

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

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

[Signatures on the next page]

EXECUTED BY THE PARTIES IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original on this the ___ day of _____, 2015.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl Sculley
CITY MANAGER

ATTEST:

_____
Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney

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

Leo Gomez
Leo Gomez,
PRESIDENT & CEO

ATTEST:

Debbie Perales
Name: Debbie Perales
Title: Board Secretary

Exhibit A

SCOPE OF WORK/PROJECT PLAN/CONSTRUCTION SCHEDULE

FUNDING AGREEMENT – BROOKS NORTH CAMPUS DRAINAGE PROJECT

CONSTRUCTION SCHEDULE

Design Schedule: **July 2015 to December 2015**

Construction Schedule: **Approximately February 2016 – September 2016**

SCOPE OF WORK/PROJECT PLAN

Brooks City-Base
North Campus Drainage Project

Summary Scope Public Infrastructure:

The North Campus Drainage project will make street, drainage, and utility improvements to facilitate the development of a planned, mixed-use, high density town center area that will include a full service hotel and retail development. The scope of work will include securing entitlements such as platting and zoning and extending and/or relocating dry and wet utility services to the development parcels including drainage structures, water, sanitary sewer, telecommunications, and electric.

Elements of Public Infrastructure:

- Reconstruction of Sidney Brooks west of S. New Braunfels including street, drainage, water, electric and telecommunications conduit, landscaping, and irrigation.
- Construction of approximately 3000 LF of underground electric and telecommunications ductbank to support high-density development north and east of the intersection of S. New Braunfels and Sidney Brooks and to increase reliability of electric service within this area of the Brooks City-Base development.
- Construction of underground drainage box culvert structures to intercept and convey storm water from upstream of the hotel site to the existing storm water detention basin.
- Construction of 16" SAWS potable water main required to eliminate an existing water main conflict with the hotel building, support high-density development north and east of the intersection of S. New Braunfels and Sidney Brooks, and increase reliability of electric service within this area of the Brooks City-Base development.
- Construction of 8" sanitary sewer main to provide sanitary sewer service to the multiple lot development.

Projected Project Cost Summary:

Public Street Improvements	$	2,063,600
Public Potable Water (not associated with street improvements)	$	197,300
Public Sanitary Sewer (not associated with street improvements)	$	103,400
Dry Utilities (not associated with street improvements)	$	1,637,400
Public Drainage (not associated with street improvements)	$	636,400
General Conditions & Engineering Costs	$	1,205,000
Total Project Costs:	**$**	**5,843,100**

Exhibit B

SBEDA
FUNDING AGREEMENT – BROOKS NORTH CAMPUS DRAINAGE

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

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

B. Contract Requirements and Commitment

GRANTEE understands and agrees that the following provisions shall be requirements of this Agreement, and by its execution, GRANTEE commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of GRANTEE to commit, through fully-documented and signed SBO-promulgated Commitment and Subcontractor/Supplier Utilization Plan forms, to satisfying the application of the SBE Prime Contracting Points to its evaluation criteria for solicitation or bid documents shall constitute default.

GRANTEE understands and agrees that GRANTEE is required to insert the provisions of this Article (*SBEDA Ordinance Compliance Provisions*, Sections A through H) into the solicitation and contract documents for its Prime Contractors. GRANTEE understands and agrees that GRANTEE is required to, and responsible for, Prime Contractor and Subcontractor compliance with all provisions of the SBEDA Ordinance and this Agreement including, but not limited to, obtaining all Utilization Documentation from GRANTEE's Prime Contractors and securing Prime GRANTEE and Subcontractor registration in City's CVR.

GRANTEE understands and agrees that the following provisions shall be requirements of this solicitation and the resulting Agreement, and by submitting this executed Agreement, GRANTEE commits to comply with these requirements.

Exception Request - A Respondent to the GRANTEE'S solicitation associated with the scope of work included in this Agreement may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form *(available at http://www.sanantonio.gov/SBO/Forms.aspx)* with its solicitation response to the GRANTEE. The Respondent's Exception request must fully document why: (1) the value of the contract is below the $50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

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, Prime Contractors 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.

Certification Application – this form shall be completed by vendors when applying for Certification and/or re-Certification status for participation in the City of San Antonio's S/M/WBE Program. This form shall be submitted, to the City's certifying agency, every two years by each certified vendor by the anniversary date of its original Certification.

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

Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE 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, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm that is no more than five years old at the time of its original certification as an Emerging M/WBE that is actively enrolled in the M/WBE or SBE Mentor-Protégé Program for its industry (once established by the City), whose annual revenues

and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Goal Setting Committee (GSC) – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the Small Business Office Manager or designee, and the Director of Purchasing & General Services (P&GS) or Director of Transportation & Capital Improvements Department (TCI) or their designees, and the Director or designee of the Originating Department (if the Originating Department is neither P&GS nor TCI,) all without duplication of designees. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals) based upon Industry Categories, vendor availability and project-specific characteristics. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

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

Graduation – an SBE firm permanently graduates from the City of San Antonio SBE program when it meets the criteria for graduation set forth in Section III.E.7 of this Ordinance. A firm's graduation or temporary suspension from the SBE program does not necessarily affect its eligibility to be certified and to participate in the City's S/M/WBE Program as an M/WBE. An M/WBE firm permanently graduates from the M/WBE program when it meets the criteria for graduation as set forth in this Ordinance in Section III.E.7 An M/WBE firm that graduates from the M/WBE program is no longer eligible to participate in the Race-Conscious APIs as described

herein at Sections III D.2, D.4, D.6, D.8 & D.10 and is also ineligible to participate in the SBE program APIs at Sections III D.1, D.3, D.5, D.7 & D.9 of this Ordinance. However, a graduated M/WBE firm may continue to participate in and benefit from other Race-Neutral non-industry-specific remedies of the S/M/WBE Program as described in Section III.C of this Ordinance.

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 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.

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.

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 GRANTEE, Prime 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 GRANTEE for purposes of providing goods or services for the City.

Race-Conscious – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of "Race-Conscious").

Race-Neutral – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of "Race-Neutral").

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, GRANTEE 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.

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 in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the GRANTEE and its Subcontractors shall be submitted to the CITY prior to execution of this Agreement and any modification of this Agreement.

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

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

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

D. SBEDA Program Compliance – General Provisions

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

1. GRANTEE shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding GRANTEE's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as

applicable, for their performance of Commercially Useful Functions to fulfill the scope of work for this Agreement including, but not limited to, the timely submission of completed forms and/or Utilization Documentation or any other required documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

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

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

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

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

6. GRANTEE shall retain all records of its Subcontractor payments for this Agreement for a minimum of four years, or as required by

state law, following the conclusion of this Agreement or, in the event of litigation concerning thisAgreement, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a GRANTEE's Subcontractor / Supplier Utilization Plan, the 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 GRANTEE and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. GRANTEE agrees to subcontract at least ***twenty-two (22%)*** of the contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA); and

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. GRANTEE agrees to subcontract at least **sixteen percent (16%)** of the contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This sixteen percent (16%) subcontracting goal will also count toward the aforementioned fifteen percent (22%) SBE subcontracting goal; and

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. GRANTEE agrees to

subcontract at least ***one percent (1%)*** contract value to certified African American Business Enterprise (AABE) firm(s) headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This one percent (1%) subcontracting goal will also count toward the aforementioned fifteen percent (16%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that GRANTEE submitted to CITY for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and 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 GRANTEE to attain this subcontracting goal for SBE, M/WBE and 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 SBE, M/WBE and 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 firm 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 SBE subcontracting goal of 22%, the M/WBE subcontracting goal of 16% and AABE Subcontracting goal of 1% 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 March 2015, African-American owned firms represent approximately 2.76% of available subcontractors, Hispanic-American firms represent approximately 16.47%, Asian-American firms represent approximately 1.14%, Native American firms represent approximately 0.13%, and Women-owned firms represent approximately 4.91% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the GRANTEE represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors,

suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. GRANTEE's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. GRANTEE shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

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

H. Violations, Sanctions and Penalties

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

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

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

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

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

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

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

1. Suspension of this Agreement;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

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