

<b>STATE OF TEXAS</b> § § <b>COUNTY OF BEXAR</b>	<b>DEVELOPER PARTICIPATION AGREEMENT</b> <b>BROADWAY INFRASTRUCTURE</b> <b>IMPROVEMENT PROJECT</b>
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This Developer Participation Agreement (hereafter referred to as "Agreement") is hereby made and entered into by and between the City of San Antonio (hereafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 20 \_\_, and Silver Ventures Inc., as agent for Credit Human Federal Credit Union, a Texas limited liability company, acting by and through its officers, successors and permitted assigns (hereafter referred to as "Developer"), acting by and through its officers, hereto duly authorized. City and Developer are individually referred to herein as a "party" and collectively referred to herein as the "Parties."

**WHEREAS**, Developer is undertaking the development and construction of an office complex for Credit Human to include two office towers and a five-level parking garage on the land described on Exhibit B located along Broadway Street between Grayson Street and Pearl Parkway in the City of San Antonio, Texas (hereafter referred to as "Project"); and

**WHEREAS**, City desires infrastructure improvements to and along Broadway Street to include mill and overlay, sidewalks, landscaping, curbing and gutter, street lights, utility and communications infrastructure relocation and duct bank, and storm sewer piping and inlet installation from Grayson Street to Pearl Parkway – in and around the Project (hereafter referred to as "the Infrastructure Improvement Project"); and

**WHEREAS**, City had earmarked a maximum of **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 (\$400,000.00)** (hereafter referred to as "City's Share") for use by Developer to construct the Infrastructure Improvement Project in and around Developer's Project; and

**WHEREAS**, City has identified Developer as the appropriate party with which to contract for the fulfillment of the public purpose of the construction of public infrastructure improvements along Broadway Street from Grayson Street to Pearl Parkway in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

**WHEREAS**, the infrastructure improvements to Broadway from Grayson Street to Pearl Parkway shall include mill and overlay, sidewalks, landscaping, curbing and gutter, street lights, utility and communications infrastructure relocation and duct bank, and storm sewer piping and inlet installation; and

**WHEREAS**, Developer is the fee simple owner of the property referenced in the location of the Project; and

**WHEREAS**, the public benefit to be gained from the Infrastructure Improvement Project is the provision of safe walkways for use by the residents of Developer's Project and citizens of San Antonio; and

**WHEREAS**, Texas Local Government Code, Sections 212.071 – 212.074 (hereafter referred to as the "Authorizing Statutes") allow the municipality to contract with a Developer for the construction of public improvements in Developer Participation Contracts; and

**WHEREAS**, the Authorizing Statutes limit the participation of the municipality to a level not to exceed 30 percent (30%) of the total contract price for the Infrastructure Improvement Project; and

**WHEREAS**, the Developer's total estimated cost of the Project is **TWO MILLION SEVEN HUNDRED ONE THOUSAND FIVE HUNDRED EIGHT DOLLARS AND NO/100 (\$2,701,508.00)**; and

**WHEREAS**, City's participation in this Agreement for the Project shall not exceed City's Share of **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 (\$400,000.00)**; and

**WHEREAS**, City's Share will fund infrastructure improvements to and along Broadway Street to include mill and overlay, sidewalks, landscaping, curbing and gutter, street lights, utility and communications infrastructure relocation and duct bank, and storm sewer piping and inlet installation from Grayson Street to Pearl Parkway; and

**WHEREAS**, Developer will complete the construction of the Project not later than December 31, 2021, subject to a one-year extension as approved by the Director of the Public Works Department;

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

## **I. DEFINITIONS**

1.01 "Agreement" or "Contract" means this Developer Participation Agreement between the City of San Antonio, Texas and Developer.

1.02 "Appropriation" shall mean the amount appropriated by the San Antonio City Council for the Project, or the not-to-exceed amount of **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 (\$400,000.00)**,

1.03 "City" means the City of San Antonio, Texas, a Texas municipal corporation.

1.04 "City's Representative" means the Director of the Public Works Department or such other person as the City Representative may designate in writing to Developer from time to time.

1.05 "City Share" or "City's Share" means, for the purposes of determining reimbursements due to Developer pursuant to this Agreement, an amount not to exceed thirty percent (30%) of total estimated contract price for the Infrastructure Improvement Project. City's Share shall be a total not-to-exceed City participation of **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 (\$400,000.00)**, as authorized by the Authorizing Statutes.

1.06 "Contract Documents" means this Agreement and its **Exhibit A** through **Exhibit E** attached hereto, incorporated herein by reference and made a part hereof for all purposes.

1.07 "Construction Documents" means the plans, specifications and estimates for the Infrastructure Improvement Project, which shall be provided by the Developer pursuant to the terms of this Agreement. The Construction Documents shall illustrate the dimensions, project materials, methods of construction, methods of excavation and other details of the Infrastructure Improvement Project.

1.08 "Developer's Representative" means the person executing this Agreement on behalf of the Developer, or such other person as Developer may designate to City in writing from time to time.

1.09 "Developer's Share" means all costs of the Project and Infrastructure Improvement Project in excess of the City Share.

1.10 "Director" means the Director of the Public Works Department of the City of San Antonio.

1.11 "Infrastructure Improvement Project" means the infrastructure improvements to and along Broadway Street to include mill and overlay, sidewalks, landscaping, curbing and gutter, street lights, utility and communications infrastructure relocation and duct bank, and storm sewer piping and inlet installation from Grayson Street to Pearl Parkway (described and labeled as "**Exhibit A**" attached hereto, incorporated herein by reference and made a part hereof for all purposes).

1.12 "Project Costs" means all Eligible Expenses (as defined in **Section 10.01** herein) incurred by Developer with respect to the construction of the Infrastructure Improvement Project, in accordance with this Agreement.

1.13 "Project Engineer" means the individual working for Developer who prepares, signs and seals the Construction Documents.

1.14 "Work" means the installation and construction of the Infrastructure Improvement Project by Developer, in accordance with the Construction Documents and as provided herein.

## II. CONTRACT PROVISIONS

201 Background. This Agreement qualifies as a "Developer Participation Contract" pursuant to Sections 212.071-212.074 of the Texas Local Government Code. City shall pay the City's Share and Developer shall pay the Developer's Share.

- 2.01.01 Purpose. The Infrastructure Improvement Project provides for the infrastructure improvements to and along Broadway Street to include mill and overlay, sidewalks, landscaping, curbing and gutter, street lights, utility and communications infrastructure relocation and duct bank, and storm sewer piping and inlet installation from Grayson Street to Pearl Parkway for use by the citizens of San Antonio
- 2.01.02 Performance of Obligations by Developer's Contractor. Notwithstanding anything herein to the contrary, City acknowledges and agrees all or a portion of Developer's performance obligations herein may be satisfied by Developer's Contractor(s) hired to construct the Infrastructure Improvement Project including, without limitation, those requirements for delivery of surety, insurance, provision of plans and Construction Documents to Director, prevailing wage payments, SBEDA reporting, construction of the Infrastructure Improvement Project and compliance with all federal, state and local laws. Developer agrees the performance of such obligations by Developer's Contractor does not modify the terms and conditions of this Agreement.

2.02 Additional Requirements. Developer shall design and construct the Infrastructure Improvement Project in accordance with the requirements of Chapter 35 of the San Antonio City Code (hereafter referred to as the "Unified Development Code" or "UDC"). Developer submitted its Infrastructure Improvement Project design to City for its review and approval. City has approved Developer's Infrastructure Improvement Project design. No changes shall be accepted to the Infrastructure Improvement Project design without City's prior written approval.

2.03 Progress Payments to Developer. As the Infrastructure Improvement Project is constructed, Developer shall submit requests to City for payment of portions of City's Share as may be attributable to the completed engineering and construction of the Infrastructure Improvement Project. Any such requests for the payment of City's Share of construction expenses shall be accompanied by a certificate from the Project Engineer certifying, by percentage, the amount of the Work performed and confirming such Work was performed in accordance with the Construction Documents, stating the amount of City's Share attributable thereto and Developer's Share and shall include a breakdown of labor, names of contractors and materials used. Upon approval of the draw request, City shall pay City's Share due within thirty (30) days following City's receipt of such approved progress payment request, subject to the terms and conditions of this Agreement. Developer initially shall pay all costs incurred from time to time with respect to the Work. The Parties acknowledge that the Infrastructure Improvement Project is currently underway and that notwithstanding any other provision contained herein, Developer may seek reimbursement for the City's Share of expenses for allowable expense incurred prior to the Effective Date of this Agreement.

2.04 Performance and Payment Bonds Required. Prior to the any reimbursement to Developer for the construction of the Infrastructure Improvement Project, Developer shall provide (or cause its Contractor to provide) City with:



- 2.04.01 a Performance Bond and a Payment Bond, both submitted on City’s approved Payment and Performance Bond forms, in accordance with and in satisfaction of Section 212.073 of the Texas Local Government Code in the estimated amount of the construction costs for the Infrastructure Improvement Project, reflecting City as beneficiary there under (hereafter referred to as the “Provision of Bonds”); and
- 2.04.02 Insurance certificates showing City as a named insured in types and amounts described herein (hereafter referred to as the “Provision of Insurance”). The foregoing shall remain in force and effect throughout the course of construction of the Infrastructure Improvement Project.
- 2.04.03 City agrees bond and insurance expenses incurred by Developer or Developer’s contractors related to the Infrastructure Improvement Project and pursuant to this Agreement shall be eligible for reimbursement as Eligible Expenses, subject to the terms and conditions herein.

2.05 No Third-Party Beneficiaries. Developer shall ensure that the following with respect to the Infrastructure Improvement Project:

- 2.05.01 No third party shall assert rights as a third party beneficiary with respect to the Infrastructure Improvement Project;
- 2.05.02 The construction contract for the Infrastructure Improvement Project shall not be assigned; and
- 2.05.03 The City shall have access to the Infrastructure Improvement Project at all reasonable times for inspection purposes following reasonable advance notice to Developer and Contractor.

2.06 Transfer of Title. Developer warrants title to all Infrastructure Improvement Project Work covered by a reimbursement request shall pass to City no later than the time of final payment and upon acceptance by City. Developer further warrants, upon submittal of a reimbursement request, all Work for which prior reimbursements were received from City shall, to the best of Developer’s knowledge, information and belief, be free and clear of any and all liens, claims, security interests or encumbrances in favor of Developer’s contractors, any subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and/or equipment relating to the Work. **DEVELOPER SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY DEVELOPER’S CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER DEVELOPER’S CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY CITY TO DEVELOPER.** Subject to **Section 2.15** herein, upon the transfer of title of Work to City, City shall assume all ownership and maintenance responsibilities for the Project.

207 Certification of Contractor and Vendor Payments. For each reimbursement request, Developer (or Developer's Contractor) shall certify:

- 2.07.01 there are no known liens or bond claims outstanding at the date of the reimbursement request;
- 2.07.02 all due and payable bills with respect to the Infrastructure Improvement Project Work have been paid to date or are included in the amount requested in the current reimbursement request;
- 2.07.03 except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Infrastructure Improvement Project Work; and
- 2.07.04 releases from all Developer's contractors, subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Infrastructure Improvement Project Work performed; provided if any of the foregoing is not true and cannot be certified, Developer shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

208 Payment of Reimbursement Request. City shall, within thirty (30) calendar days after receipt of Developer's progress payment request, either pay the progress payment request in such amount as City determines is properly due or shall notify Developer in writing of City's reasons for withholding payment in whole or in part, as provided in this **Article II**.

209 Verification of Work by City for Payment. The payment of each progress payment request shall constitute City's understanding, based on City's evaluation of the Work and the data comprising the progress payment request, the Work or a portion thereof has been completed and, to the best of City's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents. The foregoing representations are subject to:

- 2.09.01 an evaluation of the Work for conformance with the Construction Documents;
- 2.09.02 results of subsequent tests and inspections;
- 2.09.03 correction of minor deviations from the Construction Documents prior to completion; and
- 2.09.04 any specific qualifications herein.

The payment of each progress payment for Work further will constitute a representation Developer is entitled to payment in the amount paid. However, the issuance of a payment will not be a representation City has:

- 2.09.05 made exhaustive or continuous on-site inspections to check the quality or quantity of the Work covered by the reimbursement request;
- 2.09.06 reviewed construction means, methods, techniques, sequences or procedures;  
or
- 2.09.07 reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Developer's right to payment.

2.10 City may withhold Payment in whole or in part, to the extent reasonably necessary to protect City, if City determines the requirements of **Section 2.09** herein cannot be achieved. If City is unable to make payment in the amount of the reimbursement request, City shall notify Developer, as provided in **Section 2.08** herein. If Developer and City cannot agree on a revised payment request amount, Developer shall submit a progress payment request on those items the Parties agree and City promptly shall issue payment to Developer for the agreed upon amount reflected in the revised payment request. City and Developer shall continue discussions over the disputed items not included in a previous progress payment request. City also may withhold any payment to Developer because of subsequently discovered evidence as a means to protect City from loss for which Developer is responsible, including loss resulting from acts and omissions because of Developer's default. City shall pay the undisputed portions of such request for reimbursement within the time frames established in this **Article II**.

2.11 If the above reasons for withholding payment are resolved to the benefit of Developer, payment by City shall be made for amounts previously withheld. City shall not be deemed in default by reason of withholding payment as provided for in **Section 2.10** herein.

2.12 Payment of Contractor, Subcontractors and Vendors. Developer shall require Developer's contractor to pay all bills for labor and materials performed and furnished by others, in connection with the construction, furnishing and equipping of the improvements and the performance of the Work related to the respective reimbursement request, no later than ten (10) calendar days following receipt of payment from City and shall, if requested, provide City with evidence of such payment. Developer's failure to require such payments by its contractor within such time shall constitute a material breach of this Agreement, unless the Developer is able to demonstrate to City bona fide disputes associated with the unpaid subcontractor and/or supplier and its/their work. Developer's contractor shall ensure each of its subcontracts imposes the same payment obligations on its subcontractors as are applicable to Developer's contractor hereunder and, if City so requests, contractor shall provide copies of such subcontractor payments to City. If City requests, Developer's contractor shall provide to City evidence of such subcontractor payments. If Developer's contractor has failed to make payment promptly to its subcontractors or for materials or labor used in the Work for which City has made payment to Developer, City shall be entitled to withhold subsequent payment to Developer to the extent necessary to protect City against claims or liens on the Project.

- 2.12.01 City shall, on request, furnish to Developer's contractor or subcontractor, if practicable, information regarding percentages of completion or amounts

applied for by Developer and action taken thereon by City on account of portions of the Work done by such contractor or subcontractor.

- 2.12.02 City shall have no obligation to pay or to see to the payment of money to a contractor or subcontractor, except as otherwise may be required by law.
- 2.12.03 Payments to material suppliers shall be treated in a manner similar to that provided in this **Section 2.12**, regarding contractors and subcontractors.
- 2.12.04 A progress payment, the use or occupancy of the Project or portion thereof by the City shall not constitute acceptance of Work not performed or furnished in accordance with the Construction Documents.

2.13 Inspections. The Infrastructure Improvement Project shall be accessible at all reasonable times to City's Representative or his/her designee for inspection. Developer acknowledges any inspections performed by City during the course of construction for purposes of this Agreement (as opposed to routine building and construction inspections performed by City for permitting and acceptance purposes common to all similar construction projects) are for the benefit of City only and may not be relied upon by others, be claimed by Developer as an approval by City, a permit granted by City, a waiver by City or used for any purpose by Developer, its contractor or any third party. Developer further acknowledges Developer and its contractor are required to perform their own inspections and inspections conducted by City do not relieve any obligations of Developer or others. Subject to the foregoing, City promptly shall notify Developer of any defects or non-conformances discovered during any City inspection.

2.14 Construction Documents. As-Built Plans. Developer has provided City's Development Services Department with a complete set of Construction Documents meeting the requirements of this Agreement and in conformance with all applicable local, state and federal codes and regulations and customary engineering practices. The Construction Documents were prepared by and bear the seal of the Project Engineer. City shall acquire a non-exclusive license to the Construction Documents for the Infrastructure Improvement Project upon payment by City of City's Share and Developer shall thereupon obtain and provide Infrastructure Improvement Project engineer's assignment of its interest to City. By execution of this Agreement, Developer hereby assigns its interest in the Construction Documents for the Infrastructure Improvement Project to City, to become effective upon receipt by Developer of the total amount of the City Share. City shall own the Construction Documents for all purposes and may duplicate them, license them, use them and re-use them for any and all purposes. Notwithstanding the foregoing, Developer shall be authorized to use the Construction Documents and modify the Construction Documents (subject to the requirements under this Agreement) to allow Developer's contractor and subcontractors to complete the Infrastructure Improvement Project. Record drawings/As-Built Plans of the completed Infrastructure Improvement Project shall be provided to City by Developer no later than sixty (60) calendar days after completion of the Project, as jointly certified by the Project Engineer and City's Representative.

2.15 Construction Warranty. If the Work is found to be defective, either wholly or in part, and/or found to be non-conforming with the Construction Documents during the twelve (12) month period following completion and written acceptance of the Infrastructure Improvement Project or

portion thereof as defined in the Contract, City immediately shall give Developer written notice thereof; specifying the defect and/or non-conforming Work with particularity. (For purposes of this Agreement, "completion" shall mean written acceptance of the Project or portion thereof by City.) Developer shall cause the correction of such defective or nonconforming Work within thirty (30) calendar days of written notice thereof given by City, or within such longer time as may be reasonably necessary, provided Developer is working diligently and continuously towards a cure. If Developer fails to correct the specified defective or non-conforming Work, then City may, at its own expense, correct such defective or non-conforming Work by City's own crews or by outside contractor, at City's option, and the reasonable cost of such correction shall be deemed to be sums due City by Developer, and may be offset against any outstanding amounts due by City to Developer under this Agreement. If no amounts are due by City to Developer, Developer shall reimburse City in full for the costs incurred by City in correcting such defective or non-conforming Work within thirty (30) calendar days of receipt of City's itemized cost breakdown. The cost of City crews shall be determined by prevailing market rates for correcting such specified defects and/or nonconforming work. At the end of said 12-month period, all available product and workmanship material warranties, including all warranties given by Developer, shall be assigned to City, to the extent assignable. This provision shall survive termination of this Agreement.

2.16 Representations and Warranties. Developer and City represent, warrant, certify and agree neither this Agreement nor the Contract Documents, nor any part of the relationship between the parties hereto, shall be construed in any way or operate as creating a joint venture, partnership or other business entity between Developer and City.

### **III. TERM**

The term of this Agreement shall commence upon execution of the Agreement by both Parties (hereafter referred to as the "Effective Date") and continue until the Infrastructure Improvement Project is complete and accepted in writing by City (hereafter referred to as the "Term"). The Developer must complete the Project not later than December 31, 2021, subject to a one-year extension as approved by the Director of Public Works Department without further action by the San Antonio City Council.

### **IV. GENERAL RESPONSIBILITIES OF DEVELOPER**

4.01 Developer Obligation to Construction Project. Developer hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the design and construction of the Infrastructure Improvement Project on or before December 31, 2021, subject to a one-year extension as approved by the Director of the Public Works Department. Construction of the Infrastructure Improvement Project shall be in accordance with the Project's Construction Documents.

4.02 Developer Infrastructure Improvement Project Performance Guarantee. Developer hereby guarantees it shall perform its obligations under this Agreement. Developer, upon the Effective Date, shall deposit with City either a bond, irrevocable letter of credit or cash in an amount

equal to five percent (5%) of the estimated cost to complete the Infrastructure Improvement Project (hereafter referred to as the "Performance Guarantee"). In lieu of a Developer Performance Guarantee, Developer's construction contractor shall submit Payment and Performance Bonds to the City, as required pursuant to **Section 2.04** herein, upon execution of this Agreement.

4.03 The estimated cost to complete the Infrastructure Improvement Project is **TWO MILLION SEVEN HUNDRED ONE THOUSAND FIVE HUNDRED EIGHT DOLLARS AND NO/100 (\$2,701,508.00)**. Developer shall provide (or cause to be provided) all necessary funding for the Project Costs beyond City's Share towards the cost of the Infrastructure Improvement Project contained herein and provide evidence to City Developer's Share of the Project Costs has been secured.

4.04 Unless written notification by Developer to the contrary is received by City, Developer's Representative shall be responsible for the administration of this Agreement on behalf of Developer until the completion of the Infrastructure Improvement Project.

4.05 Unless written notification by City to the contrary is received by Developer, City's Representative shall be responsible for the administration of this Agreement on behalf of City until the completion of the Infrastructure Improvement Project.

4.06 Communications between City and Developer shall be directed to the designated representatives of each as set forth in **Section 4.03** and **Section 4.04** hereinabove.

4.07 Pursuant to **Section 2.14**, Developer shall provide City its Construction Documents for the Infrastructure Improvement Project. After approval by City, Developer shall not make any substantial changes to the Construction Documents without the prior written approval of City. This **Section 4.06** does not relieve Developer of the burden of obtaining all necessary governmental approvals and permits, 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).

- A. Developer shall obtain as part of the Project Costs all required environmental permits for the Infrastructure Improvement Project.
- B. Developer shall coordinate all required environmental permits for the Infrastructure Improvement Project with the Director.

4.08 City shall have authority to inspect the Infrastructure Improvement Project throughout the construction process to ensure compliance with the Construction Documents. Developer shall cause its design professional to provide periodic certifications of construction certifying construction has been conducted in compliance with the Construction Documents. Developer shall submit said certification to the Public Works Director or his/her designee at the completion of the Infrastructure Improvement Project construction. City shall have the right to withhold funding until certification is provided.

4.09 Any construction of the Project affecting the floodplain shall comply with the UDC and other applicable State or Federal regulations.

4.10 Developer shall coordinate with all utilities affected by the Project and Developer shall pay all required costs for utility removal, replacement and relocation in connection with the Project.

4.11 Developer, upon receiving the necessary approvals from City, shall construct and complete the Infrastructure Improvement Project as reflected on “**Exhibit A**”, attached hereto, incorporated herein by reference.

## V. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

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

5.02 Developer agrees to abide by the following laws, Ordinances, Rules and regulations in its expenditures of the City’s Share:

5.0201 Government Code provisions regarding performance and payment bonds as set forth in **Section 2.04** herein.

5.0202 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.

- A. The requirements of Chapter 2258 of the Texas Government Code, entitled “Prevailing Wage Rates,” shall apply to this Agreement. Developer agrees its construction contractor shall comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20- 1045.
- B. Developer is required and shall require same of its construction contractor, all subcontractors, consultants and sub-consultants to comply with each updated schedule of the general prevailing rates in effect at the time Developer seeks proposals or bids for construction of a given phase of the Infrastructure Improvement Project. Developer is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City shall audit certified payroll records as City deems necessary, in accordance with this Agreement.
- C. Upon audit of the records and certified payrolls under this section, should City or its auditors find any violations, Developer shall cause its construction contractor to forfeit, as a penalty to City, \$60.00 for each laborer, workman or mechanic employed, for each calendar day, or

portion thereof, such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer 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 Agreement.

5.0203 Developer shall comply with the requirements of the City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, as amended), as further described in **Exhibit E** hereto (also referred to as the “SBEDA Requirements”). Subcontracting goals for this Agreement shall apply only to the City Share of allocated funds in the amount of **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 (\$400,000.00)**. Subcontractor utilization may be applied to the total contract amount for purposes of meeting subcontracting goals based on the City Share.

5.03 Construction Documents 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 Developer.

## VI. PAYMENT BY CITY

City shall pay Developer City’s Share not to exceed **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 (\$400,000.00)** or up to thirty percent (30%) of the total estimated contract price of the Infrastructure Improvement Project costs, whichever is less, only to be utilized for the construction of the Infrastructure Improvement Project.

## VII. FUNDING AND ASSISTANCE BY CITY

7.01 City shall reimburse Developer only for Project Costs incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made to Developer hereunder shall not exceed the City’s appropriation of funds and the City Share.

7.02 City shall not be obligated or liable under this Agreement to any party, other than Developer, for payment of any monies or provision of any goods or services.

7.03 It is further expressly understood and agreed by City and Developer that City’s payment obligations under this Agreement are limited to City’s Share of the Infrastructure Improvement Project. Additionally, it is expressly understood and agreed by City and Developer this Agreement in no way obligates payment of City’s General Fund monies.



## VIII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY DEVELOPER

8.01 Developer shall maintain readily identifiable records providing accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Developer further agrees:

8.01.01 the 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

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

8.02 In order to be reimbursed for Work completed, Developer shall submit to City a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation (i.e. copies of paid itemized invoices) as requested by City. Prior to reimbursement, City will have the right to inspect Work completed to ensure conformance with the approved Construction Documents.

8.03 City agrees to provide Developer written notice regarding any expenditure in a reimbursement request City cannot confirm is an eligible Project Costs under this Agreement or related to the Construction Documents. Said notice will provide Developer thirty days from receipt of said notice to provide additional information. Failure to provide sufficient information may result in City's denial of the reimbursement for the expenditure under review. Within thirty (30) days following written demand by City, Developer shall refund to City any sum of money for the expenditure in question previously paid by City to Developer determined to:

8.03.01 have not been spent by Developer strictly in accordance with the terms of this Agreement; or

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

8.04 Upon termination of this Agreement, should any expense or charge for Infrastructure Improvement Project Work be subsequently disallowed or disapproved using the same criteria as set out in **Article 10** herein as a result of any auditing or monitoring by City, Developer 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.

## IX. RIGHT OF REVIEW AND AUDIT

901 Developer grants City or its designees, the right to audit, examine or inspect, at the City's election, Developer's Records (as defined below) relating to the performance of the Work under the Contract during the Term of the Contract and retention period herein. Such audit,

examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Developer agrees to retain its records in an electronic format for a minimum of four (4) years following termination of the Contract (and forward the electronic records to City at the end of the four year period), unless there is an ongoing dispute under the Contract, then, such retention period shall extend until final resolution of the dispute. For purposes of this Agreement, "Developer's Records" means any and all information, materials and data of every kind and character generated as a result of the Work under this Agreement. Examples of Developer records include but are not limited to billings, books, records, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, written accounting policies, procedures, federal and state filings for issue in question, and any and all other relevant materials, agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents.

9.02 Notwithstanding the foregoing, City agrees Developer's retention and authorized audit of the Developer's Records shall not include the retention, disclosure, review or audit of records of the Developer or its affiliates unrelated to the Contract or the Work performed by or for Developer relating to performance of Work under this Agreement and Developer shall have a right to redact any Developer's Records to the extent of information contained therein is not related in any way to the Contract or the Work. It is expressly agreed by the City Developer shall not be required to disclose or retain the following:

- 9.02.1 timesheets, personnel or payroll records of Developer's employees;
- 9.02.2 private information about the employees or directors or partners of Developer;
- 9.02.3 information pertaining to the revenues, assets, liabilities, securities, or position of Developer;
- 9.02.4 contributions or distributions of partner entities of the Developer;
- 9.02.5 financial records of the Developer, other than those related to the performance of Work under this Agreement,
- 9.02.6 financial records of partner entities of Developer, other than those related to performance of Work under this Agreement;
- 9.02.7 federal or State tax filings of any sort;
- 9.02.8 organization formation documents of any sort;
- 9.02.9 private plans, engineering drawings or analyses, architectural drawings or analyses, financial projections, marketing materials, real estate agreements of

any type, or other documents or records of any kind, without limitation, pertaining to the development, sale, leasing or construction of the Project (other than those related to performance of Work under this Agreement);

9.02.10 memoranda or correspondence between Developer and its attorneys;

9.02.11 memoranda or correspondence of any sort between partner entities of Developer unrelated to the Developer's performance of Work under this Agreement; or

9.02.12 information pertaining to insurance coverage of Developer or its partner entities, other than that which is required for Developer's performance of Work under this Agreement.

903 City agrees it will exercise the right to audit, examine or inspect only during regular business hours and following five (5) days prior written notice to Developer. Developer agrees to allow City or its designee access to Developer's Records deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Developer also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

## **X. ALLOWABLE EXPENDITURES**

1001 Attached hereto as Exhibit F is an estimated construction schedule and budget to complete the Infrastructure Improvement Project (hereafter referred to as the "Budget"), including contingency amounts to City's Representative for prior approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in the Budget, or otherwise approved in advance by City's Representative 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 Developer's operations hereunder. Only the following categories of Project Costs shall be considered allowable (hereafter referred to as the "Eligible Expenses"):

- Construction costs, including bonds and insurance expenses
- Project Management fees/expenses
- Construction contingencies with approved change orders
- Traffic and engineering studies and drawings
- Advertising and outreach expenses of Developer to comply with contractor solicitation and SBEDA Ordinance, as required by this Agreement.

1002 Expenditures of the funds provided under this Agreement only shall 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.

1003 The following shall not be considered allowable Project Costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Developer or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for traffic and engineering studies and drawings directly related to the Infrastructure Improvements 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
- Advertising, other than those expenses specified above
- Right of Way

## **XI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

Developer further represents and warrants:

- 11.01.01 all information, data or reports heretofore or hereafter provided to City is, shall be and shall remain complete and accurate as of the date shown on the information, data or report and, since said date shown, shall not have undergone any significant change without written notice to City.
- 11.01.02 it is financially stable and capable of fulfilling its obligations under this Agreement and Developer shall provide City immediate written notice of any adverse material change in the financial condition of Developer materially and adversely affecting its obligations hereunder.
- 11.01.03 no litigation or proceedings are presently pending or to Developer's knowledge, threatened against Developer affecting its ability to fulfill its obligations specified herein.
- 11.01.04 none of the provisions contained herein contravene or in any way conflict with the authority under which Developer is doing business or with the provisions of any existing indenture or agreement of Developer.

## **XII. ACCESSIBILITY OF RECORDS**

12.01 At any time and as often as City may deem necessary, upon five (5) calendar days written notice (but in no case more than once monthly), Developer shall make Records available to City or any of its authorized representatives, at no charge to the City, pursuant to **Article IX** herein, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

12.02 To the extent required by law, Developer agrees to cooperate with City to satisfy requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

### **XIII. DEFAULT/TERMINATION**

13.01 Default. Each failure of a Party to perform its obligations in accordance with the terms and conditions of this Agreement shall be deemed a “Default.”

13.02 Other Defaults by Developer. In addition to the foregoing, the following occurrences may be deemed a Default of the Developer:

- 13.02.01 Failure or refusal of Developer and/or Developer’s contractor to start the Work to meet the Infrastructure Improvement Project delivery set forth in this Agreement.
- 13.02.02 City’s reasonable belief the progress of the Work being made by Developer and/or Developer’s contractor is insufficient to complete the Work within the specified time.
- 13.02.03 Failure or refusal of Developer and/or Developer’s contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner, following receipt of written notice by the City of such concerns.
- 13.02.04 City’s determination Developer and/or Developer’s contractor has abandoned the Work, Infrastructure Improvement Project or the Project, following written request of Developer to provide documentation to the contrary.
- 13.02.05 City’s determination Developer and/or Developer’s contractor has become insolvent, bankrupt or otherwise financially unable to carry on the Work, following a written request of Developer to provide evidence to the contrary.
- 13.02.06 Failure or refusal of Developer, following receipt of written notice from City, to observe any material requirements of the Construction Documents.
- 13.02.07 Failure or refusal of Developer and/or Developer’s contractor promptly to make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by City.
- 13.02.08 A reasonable belief by City collusion exists or has occurred for the purpose of illegally procuring the contract, contractor or a subcontractor, or a fraud is being perpetrated on City in connection with the construction of Work under the Contract.

- 13.02.09 Repeated and flagrant violation of safe working conditions by Developer's and/or Developer's contractor following receipt of written notice by the City of such violations.
- 13.02.10 The willful and persistent violation of Developer and/or Developer's contractor to carry out the Work in accordance with the Construction Documents.

13.03 Cure Period, Termination. Upon the occurrence of a Default by either Party in the performance of its obligations hereunder and the failure to cure such Default within thirty (30) calendar days following receipt of written notice of default from the non-defaulting party (or such reasonably longer time as may be necessary, provided the defaulting party commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion), the non- defaulting party shall have the right to terminate this Agreement.

- 13.03.01 Cure Period for Failure to Achieve SBEDA Requirements. Notwithstanding the foregoing, upon the occurrence of a Default by Developer for failure to perform the SBEDA Requirements, pursuant to **Section 5.02.03** herein, and the failure of Developer to cure such Default within fifteen (15) calendar days following receipt of written Notice of Default from City (or such reasonable time period required to cure such Default), City may terminate this Agreement as its sole remedy for such Default.

13.04 Suspension of Payments to Developer. In the event of an uncured Default by Developer and written Notice to Developer thereof, City may withhold payments, in whole or in part, until such Default is cured. The withholding of payments by City may occur to protect City from loss for which Developer is responsible, including losses resulting from acts and omission because of:

- 13.04.01 defective Work not remedied;
- 13.04.02 third party claims filed or reasonable evidence indicating probable filing of such claims for which Developer is responsible hereunder unless security acceptable to City is provided by Developer;
- 13.04.03 failure of Developer to make payments properly to contractors, subcontractors, consultants and/or sub-consultants or for labor, materials or equipment under Section 2.13 herein;
- 13.04.04 reasonable evidence the Work cannot be completed in the Contract Term and Developer has failed to provide City adequate assurance of its continued performance;
- 13.04.05 damage to City property or a City contractor;

When the above reasons for withholding payment are remedied, payment shall be made by City for amounts previously withheld. Developer acknowledges and accepts City shall not be deemed in default by reason of withholding payment as provided for herein.

13.05 Completion of Project Following Termination by City.

13.05.01 In the event this Agreement is terminated by City and City elects to enforce the performance bond for the Project and/or construct the Project (or portion(s) thereof), City shall access the Project from adjacent public street right-of-way to complete the construction of the Project. This Agreement shall operate as an agreement by Developer to allow City access to the Property as necessary to complete the Infrastructure Improvement Project in accordance with the Construction Documents.

13.05.02 In the event this Agreement is terminated by City and City elects to enforce the performance bond for the Infrastructure Improvement Project and/or construct the Infrastructure Improvement Project, Developer shall, as of the date specified by City, discontinue the Work or portion of the Work as City shall designate, whereupon the entity issuing Developer's performance bond (hereafter referred to as the "Surety") shall, within fifteen (15) calendar days after the receipt of written notice of termination has been served upon Developer and Surety or its authorized agents, assume the obligations of Developer for the Infrastructure Improvement Project Work or that portion of the Work which City has ordered Developer to discontinue and Surety may:

- 13.05.02.1 perform the Work with forces employed by Surety;
- 13.05.02.2 at City's sole option and with the written approval consent of City, tender a replacement contractor to take over and perform the Work, in which event Surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work in excess of the amount of City's Share remaining under the Contract as of the time of the termination; or
- 13.05.02.3 at City's sole option and with the written approval and consent of City, tender and pay to City in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work, and compensate the City for any other loss sustained as a result of Developer's Default, less City's Share remaining under the Contract at the time of termination.

13.05.03 In the event of termination of this Agreement, Surety shall assume Developer's obligations in all respects, and the amount of funds remaining unpaid to Developer under the Contract shall be paid by City to Surety for all Work performed by Surety or the replacement contractor in accordance with the terms of the Construction Documents, subject to any rights of City to deduct any costs, damages or actual damages City may have

incurred including, but not limited to, additional fees, expenses and attorneys' fees, as a result of such termination.

13.05.04 Any balance of City's Share remaining at the time of the Contract termination shall become due and payable to Surety as the Infrastructure Improvement Project Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If Surety does not, within the time specified, exercise its obligation to assume the performance obligations of Developer under the Contract (or that portion of the Work which City has ordered Developer to discontinue) then City shall have the power to complete the Work in accordance with the Construction Documents, by contract or otherwise, as it may deem necessary. Developer accepts and agrees City shall have the right to take possession of or use any or all of the materials, plants, tools, equipment, supplies and property of every kind provided by Developer for the purpose of the Work (or to procure other tools, equipment, labor and materials for the completion of the Work) and to charge to the account of Developer the expenses of completion and labor, materials, tools, equipment and incidental expenses, up to an amount not to exceed the contract price for the Infrastructure Improvement Project. The expenses incurred by City to complete the Work shall be deducted by City out of any balance of City's Share remaining unpaid to or unearned by Developer. Developer and Surety shall be liable to City for any costs incurred in excess of the balance of City's Share available for the completion and correction of the Work and for any other costs, damages, expenses (including but not limited to additional fees and attorney's fees), and actual damages, as the case may be, incurred as a result of the termination, up to an amount not to exceed the contract price for the Infrastructure Improvement Project.

13.06 City shall not be required to obtain the lowest bid for the Work of completing the Infrastructure Improvement Project in accordance with the Construction Documents, but the expenses to be deducted from City's Share shall be the actual cost of such Work and the other damages and City shall use its best efforts to minimize the cost of completing the Work. Notwithstanding the foregoing, City agrees it shall not enter into contracts or incur unreasonable charges to complete the Work and agrees to look first to Surety in all cases to complete the Work, prior to engaging in self-help to remedy any default by Developer hereunder. In case City's costs and damages are less than City's Share, which would have been payable under the Contract if the same had been completed by Developer, then City may pay to Developer or Surety, as appropriate, the difference, provided Developer (or Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In the event the actual cost for completion and damages exceeds the amount which would have been payable to Developer under the Contract, if the same had been completed by Developer, then Developer or its Surety shall pay the amount of the excess costs to City following receipt of notice from City for the excess amount owed, up to an amount equal to the contract price for the Infrastructure Improvement Project, less City's Share. When only a particular portion of the Work is being completed by City under the provisions of this **Article XIII**, Developer shall continue the remainder of the Work in conformity with the terms of the Agreement and in such manner as not to hinder or interfere with the performance of workmen employed and provided by City.

13.07 Developer's Remedy Following City Default. City acknowledges Developer is entering into this Agreement to construct the Infrastructure Improvement Project, relying on City's performance of its obligations hereunder, including the payment of City's Share to Developer.



Notwithstanding the provisions under this **Article XIII**, should City fail to make timely payments of City's Share as required under this Agreement and fail to cure such Default in accordance with **Section 13.03** herein, Developer may terminate this Agreement and, upon such termination, shall be entitled to seek all remedies and damages from City permitted under law.

1308 Limited Remedies of Both Parties. Except for the express remedies set forth above, the Parties agree no other remedies are available in the event of a Default. It expressly is agreed neither Party shall have the right to seek consequential, special or punitive damages against the other for any default under this Agreement.

#### **XIV. INDEMNITY**

1401 Developer covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS; City and City's elected officials, agents, employees, officers, directors, officially designated volunteers, and representatives of City individually or collectively, (collectively, the "City Parties") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury, death and property damage (the "Damages") made upon City, arising out of or resulting from Developer's negligent activities or omissions under this Agreement, including any negligent acts or omissions of any agent, officer, director, representative, employee, consultant, volunteer, sub-consultant, licensee, sub-licensee, contractor or subcontractor of Developer or subcontractor of Developer, and their respective officers, agents, employees, directors and representatives, volunteers consultant, (collectively "Developer Parties") while in the exercise of the performance of the rights or duties under this Agreement. THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, OR THE CITY PARTIES IN SUCH INSTANCE WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH OR PROPERTY DAMAGE. IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; WITHOUT, HOWEVER, CITY WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

1402 The provisions of this INDEMNITY solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer shall promptly advise City in writing within three (3) business days of any claim or demand against City or Developer known to Developer and related to or arising out of Developer's negligent activities or omissions under this Agreement and shall see to the investigation and defense of such claim or demand at Developer's cost. Notwithstanding any condition imposed by a policy of insurance to which Developer and City are named, City shall retain the right, at its option and at its own expense, to participate in such defense provided by any insurance or self-insurance of Developer under this **Article XIV** without relieving Developer of any of its obligations under this **Article XIV**.

## XV. INSURANCE

1501 Prior to any reimbursement hereunder, Developer shall furnish (or cause to be furnished) copies of all required endorsements and an original completed Certificate(s) of Insurance (hereafter referred to as the "Certificate") to City's Public Works Department, which shall be clearly labeled "**DEVELOPER PARTICIPATION AGREEMENT: SILVER BROADWAY STREET IMPROVEMENTS**" 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. 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, if agent is authorized to bind the insurance company, 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 City. City shall have no duty to pay or perform under this Agreement until such Certificate and endorsements have been received and approved by City's Public Works Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

1502 City reserves the right to review the insurance requirements of this **Article XV** 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.

1503 Developer's financial integrity is of interest to City. Therefore, subject to Developer's right to maintain reasonable deductibles in such amounts as are approved by City, Developer shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Developer'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 on the following table:

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

<p>3. Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>*b. Independent Developers</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> </ul>	<p>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</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> <li>a. Owned leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>	<p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p>
<p>* if applicable</p>	

1504 Developer agrees to obtain (or cause to be obtained) all insurance coverages with minimum limits of not less than those limits delineated in **Section 15.03** (Insurance Table) herein from each contractor and provide a Certificate of Insurance and Endorsement naming Developer and City as an additional insured.

1505 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 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). Developer 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 calendar days of the requested change. Developer shall pay any costs incurred resulting from said changes.

City of San Antonio  
 Public Works Department  
 Attn: Contract Services Division  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

1506 Developer agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

1506.01 Name City, its officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, with respect to operations and activities of, or on behalf of, the named insured performed

under contract with City, with the exception of the workers' compensation and professional liability policies;

- 15.06.02 Provide for an endorsement stating the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;
- 15.06.03 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City.
- 15.06.04 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.

15.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Developer shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to stop construction of the Project 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.

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

15.09 It is agreed Developer's insurance shall be deemed primary and noncontributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

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

## **XVI. WARRANTIES**

16.01 Developer guarantees the design and construction of the Infrastructure Improvement Project shall meet the requirements of City's Unified Development Code (including plat variances permitted by the City's Planning Commission) and be constructed in strict compliance with the Construction Documents, subject to change orders and modifications permitted by the Director.

16.02 Representations and Warranties. Developer and City represent, warrant, certify and agree neither this Agreement, nor the Contract Documents, nor any part of the relationship between the parties hereto shall be construed in any way or operate as creating a joint venture, partnership or other business entity between Developer and City.

## XVII. NONDISCRIMINATION

As a party to an Agreement with City, Developer 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. Developer represents and warrants it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Developer shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of consultants, sub-consultants, contractors, subcontractors, vendors, suppliers or commercial customers, nor shall Developer retaliate against any person for reporting instances of such discrimination. Developer shall provide equal opportunity for consultants, sub-consultants, contractors, subcontractors, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Developer acknowledges it understands and agrees a material violation of this **Article XVII** shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Developer from participating in City contracts or other sanctions. This **Article XVII** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Developer's certification of its compliance with this *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Developer shall incorporate this clause into its general contractor agreement and its general contractor shall ensure that all consultants, sub-consultants, subcontractors and suppliers comply with these nondiscrimination requirements.

## XVIII. CONFLICT OF INTEREST

18.01 Developer covenants neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Developer further covenants, 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.

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

18.03 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:

- 18.03.01 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;
- 18.03.02 Have any direct or indirect interest in this Agreement or the proceeds thereof.

### **XIX. POLITICAL ACTIVITY**

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.

### **XX. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

All 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 Developer pertaining to the Infrastructure Improvement Project (but excluding information marked as proprietary or confidential information of Developer, to the extent permitted by law), shall, upon receipt, become the property of City, subject to any rights retained by any architect, engineer or other party producing such material.

### **XXI. CONTRACTING**

21.01 Any work or services subcontracted hereunder shall be subcontracted 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 Developer. Developer is responsible to ensure all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

21.02 City shall in no event be obligated to any third party, including any contractor, subcontractor or vendor of Developer, for performance of or payment for work or services.

### **XXII. CHANGES AND AMENDMENTS**

22.01 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 Developer under authority granted by formal action of the Parties' respective governing bodies. Notwithstanding the foregoing, the Public Works Director shall have the authority, without further action by the City Council, to enter into administrative amendments for minor changes that do

not significantly modify the scope of the work or the funding amounts for the purpose of, but not limited to, correcting errors, updating contact points, and minor clarifications or corrections.

22.02 It is understood and agreed by the Parties hereto changes in local, state and federal rules, regulations or laws applicable hereto may occur during the Term of this Agreement and 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.

### **XXIII. ASSIGNMENTS**

Developer 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. Any such assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, without the prior written consent of City shall, at City's option, be of no force and effect whatsoever. Any consent to any such assignment or transfer shall not constitute a waiver of any of the restrictions of this Section and the provisions of this Section shall apply to each successive assignment or other transfer hereunder, if any.

### **XXIV. SEVERABILITY OF PROVISIONS**

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 such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and 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, in lieu of each clause or provision of this Agreement determined to be 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.

### **XXV. NON-WAIVER OF PERFORMANCE**

25.01 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.

25.02 Any failure of either Party to insist in anyone 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.

25.03 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.

25.04 No representative or agent of City may waive the effect of the provisions of this Article XXV without formal action from the San Antonio City Council; provided, however, that the Public Works Director shall have the authority, without further action by the City Council, to enter into administrative amendments for minor changes that do not significantly modify the scope of the work or the funding amounts for the purpose of, but not limited to, correcting errors, updating contact points, and minor clarifications or corrections.

## **XXVI. ENTIRE AGREEMENT**

26.01 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.

26.02 The terms of this Agreement are intended to be a final expression of the Parties agreement and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings, whether written or oral. The Parties expressly agree no such statements, representations, agreements or understandings exist. The Parties further intend this Agreement to constitute the complete and exclusive statement of the Parties' intent and no extrinsic evidence may be introduced in any proceeding involving the Contract Documents. No addition to, deletion from, or modification of any term or provision of this Agreement shall be effective unless it is made in a writing signed by the Parties hereto.

## **XXVII. NOTICES**

27.01 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:	City of San Antonio Attn.: Director Public Work Department P.O. Box 839966 San Antonio, Texas 78283-3966
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With Copies to: Office of the City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

DEVELOPER: Silver Ventures, Inc.  
303 Pearl Parkway, Suite 300  
San Antonio, Texas 78215  
Attn: William G. Shown

With copies to:

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

27.03 Any communication so addressed and mailed shall be deemed to be given on the earliest of:

27.03.1 when actually received or delivered;

27.03.2 when proof of return of certified mail is received; or

27.03.3 on the first business day after deposit with an overnight air courier service, if proof to the address of the intended addressee is provided. A change of address may be given by written notice, as provided herein.

## XXVIII. MISCELLANEOUS

28.01 Conflicts Between Documents. In the event of any conflict between the Exhibits hereto and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

28.02 Waiver. It is understood and acknowledged City exercises no control over the means of accomplishing the Work. No approval by City shall impose any liability on City for any risk or damage to persons or property or City property or shall imply or guarantee any drainage implications or the operation of the drainage facilities to the parties, any other party or otherwise.

28.03 Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

28.04 Counterparts. The Contract Documents may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

28.05 Force Majeure. In the event Developer or City is unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Agreement, the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for the period of such delay, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, (i.e. Fire, flood, natural disasters ) and permit and government-caused delays, by Endangered Species Act, or Army Corps of Engineers review, acts of terrorism, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to overcome. If the Developer suffers any event of "force majeure", such event shall likewise constitute force majeure with respect to Developer.

## **XXIX PARTIES BOUND**

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

## **XXX. RELATIONSHIP OF PARTIES**

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 ventures or any other similar such relationship between the Parties hereto.

## **XXXI. TEXAS LAW TO APPLY**

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. Exclusive venue shall lie in Bexar County, Texas.

## **XXXII. GENDER**

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.

### **XXXIII. CAPTIONS**

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.

### **XXXIV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

34.01 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the Term of the contract.

34.02 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

34.03 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

34.04 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the Term of the Contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

### **XXXV. LEGAL AUTHORITY**

35.01 The person executing this Agreement for City represents, warrants, assures, and guarantees he/she possess 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.

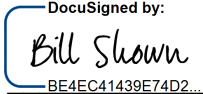
35.02 The signer of this Agreement for Developer represents, warrants, assures and guarantees he/she has full legal authority to execute this Agreement on behalf of Developer and to bind Developer to all terms, performances and provisions herein contained.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF SAN ANTONIO**

By: \_\_\_\_\_  
Roderick Sanchez  
Assistant City Manager

**SILVER VENTURES, INC., AS AGENT FOR CREDIT HUMAN  
FEDERAL CREDIT UNION**

By:  \_\_\_\_\_  
William G. Shown, Managing Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

## **EXHIBIT A**

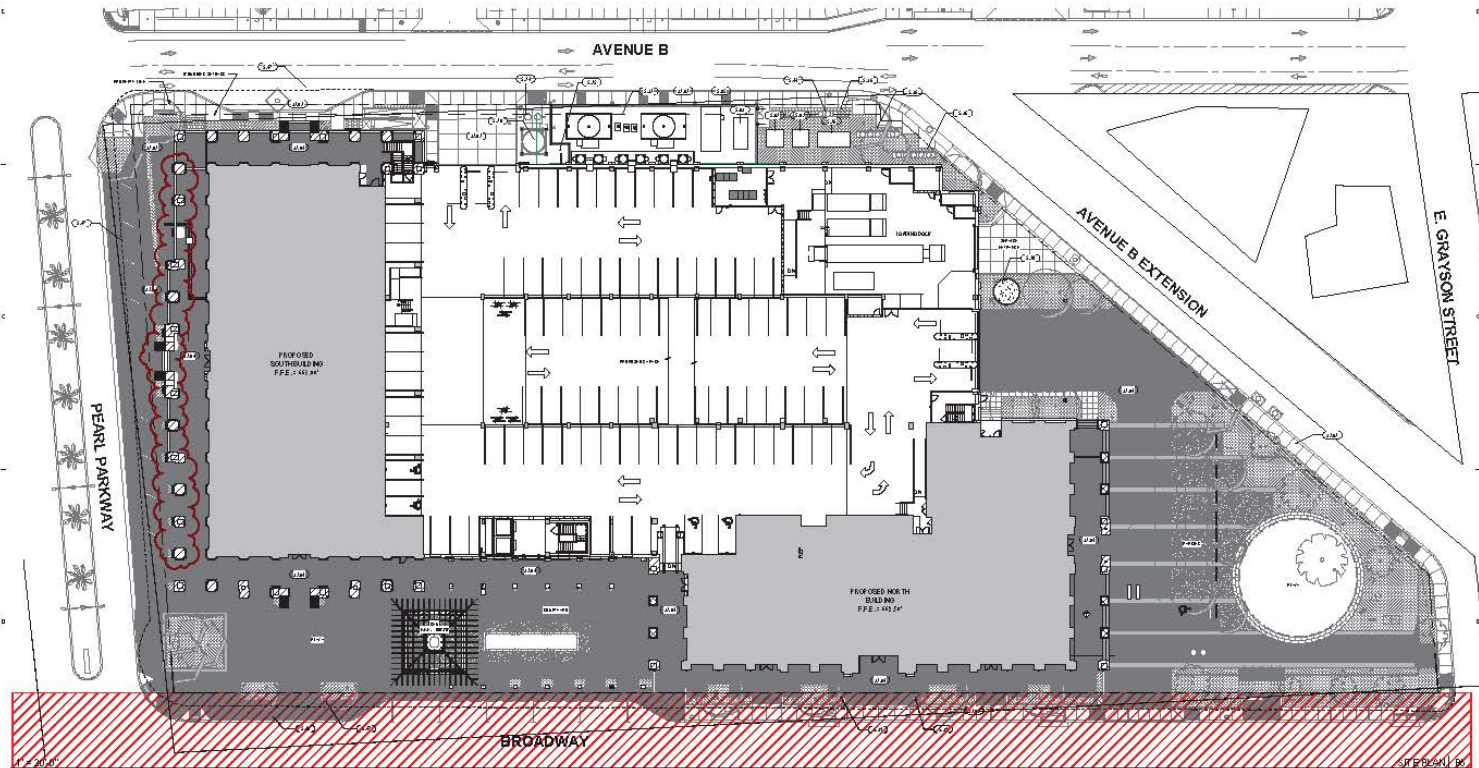
### **DESCRIPTION AND SCOPE OF INFRASTRUCTURE IMPROVEMENT PROJECT**

Improvements to Broadway from Grayson Street to Pearl Parkway to include mill and overlay, sidewalks, landscaping, curbing and gutter, street lights, utility and communications infrastructure relocation and duct bank, and storm sewer piping and inlet installation.



**Kirksey**  
ARCHITECTURE

6909 Portwest Drive  
Houston Texas 77024  
713 850 9600  
kirksey.com



This site plan and building layout is intended to be a preliminary design. It is not intended to be used for construction. The design is subject to change without notice. The design is not intended to be used for construction. The design is not intended to be used for construction.

**THIS DRAWING HAS BEEN SUBMITTED FOR REVIEW UNDER PERMIT NO. 20160077. APPROVAL IS NOT GUARANTEED. REFER TO THE PERMIT FOR MORE INFORMATION.**

NO.	DATE	REVISIONS
1	01/15/16	DATE ISSUED
2	01/15/16	REVISED PER COMMENTS FROM CITY
3	01/15/16	REVISED PER COMMENTS FROM CITY
4	01/15/16	REVISED PER COMMENTS FROM CITY
5	01/15/16	REVISED PER COMMENTS FROM CITY
6	01/15/16	REVISED PER COMMENTS FROM CITY
7	01/15/16	REVISED PER COMMENTS FROM CITY
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100	01/15/16	REVISED PER COMMENTS FROM CITY

**PARKING COUNT SCHEDULE**

**SHEET NOTES**

**GENERAL NOTES**

PROJECTNAME  
BROADWAY OFFICE DEVELOPMENT

PROJECTADDRESS  
BROADWAY AT PEARL PARKWAY

PERMIT NO. 20160077

DATE

SHEET TITLE  
SITE PLAN

SHEET NUMBER  
A1.20

SCALE

Kirksey Architecture, Inc. 12/15/16 10:00 AM









**LEGAL DESCRIPTION:**  
 LOT 18  
 BLOCK 1  
 RICE ROAD  
 PLAT NO. 17B149

**ADDRESS:**  
 125 BROADWAY ST.  
 SAN ANTONIO, TX 78215

**PLAT:**  
 BROADWAY OFFICE DEVELOPMENT  
 PLAT NO. 49

**NOTE:** REFER TO SHEET C605 FOR  
 STREETS AND TRUCKS LOCATION MAP

**GENERAL NOTES**

1. NOTICE OF WORK SHALL BE PROVIDED TO ALL ADJACENT PROPERTY OWNERS AND ALL UTILITIES PRIOR TO THE START OF WORK.
2. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. ALL EXISTING UTILITIES SHALL BE MAINTAINED AND PROTECTED AT ALL TIMES.
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8. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN ANTONIO AND THE TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT).
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20. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF SAN ANTONIO AND THE TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT).



**Kirksey**  
 ARCHITECTURE

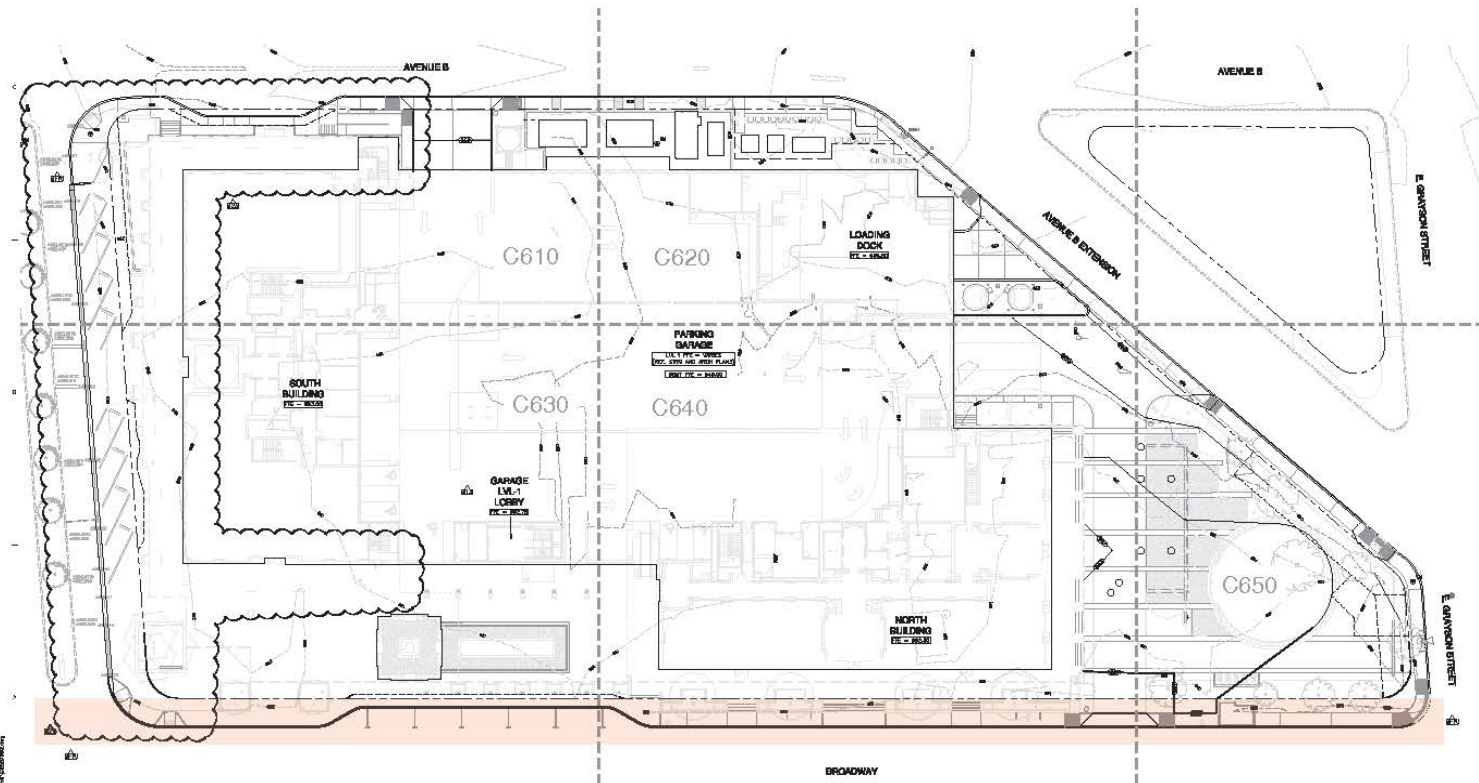
6909 Portwest Drive  
 Houston Texas 77024  
 713 850 9600  
 kirksey.com



**MIKE DAWSON**  
 ENGINEER

**LEGEND**

EXISTING 1" CONCRETE	---
EXISTING 4" CONCRETE	---
PROPOSED 4" CONCRETE	---
PROPOSED 8" CONCRETE	---
PROPOSED 12" CONCRETE	---
PROPOSED 18" CONCRETE	---
PROPOSED 24" CONCRETE	---
PROPOSED 30" CONCRETE	---
PROPOSED 36" CONCRETE	---
PROPOSED 42" CONCRETE	---
PROPOSED 48" CONCRETE	---
PROPOSED 54" CONCRETE	---
PROPOSED 60" CONCRETE	---
PROPOSED 66" CONCRETE	---
PROPOSED 72" CONCRETE	---
PROPOSED 78" CONCRETE	---
PROPOSED 84" CONCRETE	---
PROPOSED 90" CONCRETE	---
PROPOSED 96" CONCRETE	---
PROPOSED 102" CONCRETE	---
PROPOSED 108" CONCRETE	---
PROPOSED 114" CONCRETE	---
PROPOSED 120" CONCRETE	---



SYMBOL	DESCRIPTION
△	EXIST. EDGE
---	EXISTING 1" CONCRETE
---	EXISTING 4" CONCRETE
---	PROPOSED 4" CONCRETE
---	PROPOSED 8" CONCRETE
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---	PROPOSED 108" CONCRETE
---	PROPOSED 114" CONCRETE
---	PROPOSED 120" CONCRETE

PROJECT NAME  
 BROADWAY OFFICE DEVELOPMENT

PROJECT ADDRESS  
 125 BROADWAY AT PEARL PARKWAY

PROJECT NO.  
 5676-02

REV. NO.  
 01

SHEET TITLE  
 GRADING PLAN

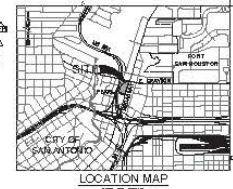
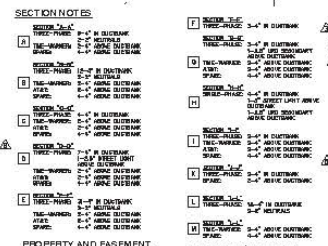
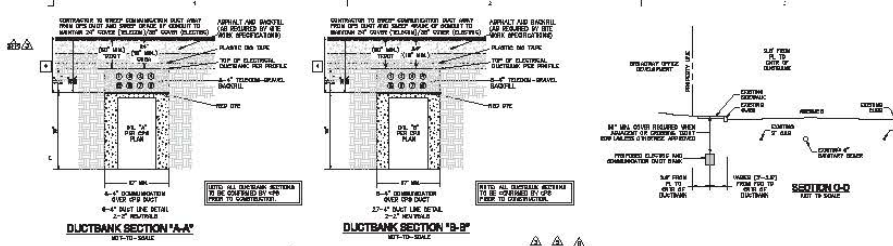
SHEET NUMBER  
 C600

DATE  
 11/2/2018

THIS PLAN IS THE PROPERTY OF KIRKSEY ARCHITECTURE AND SHALL NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF KIRKSEY ARCHITECTURE.

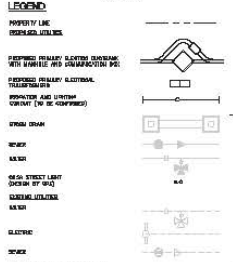
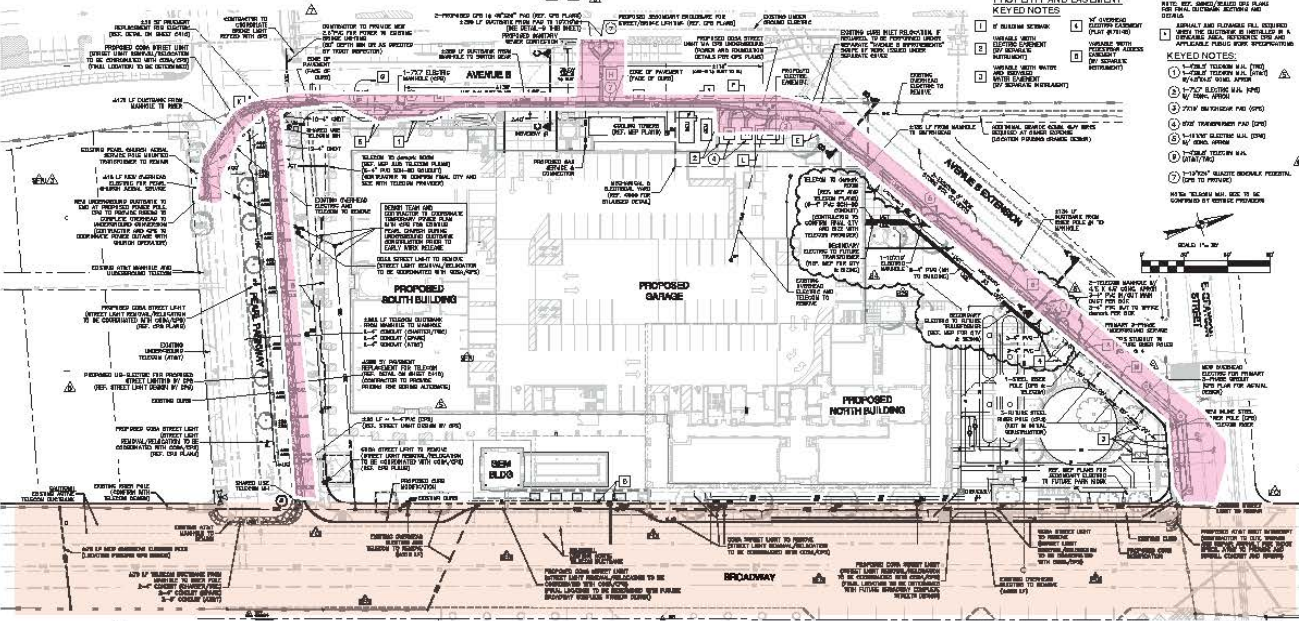






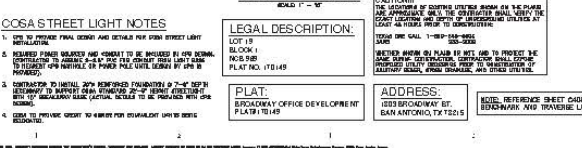
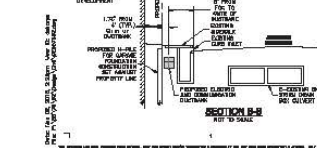
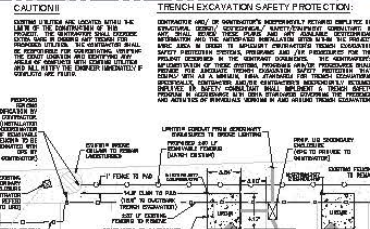
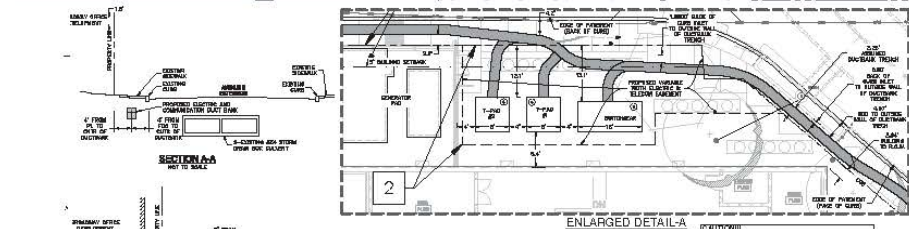
**Kirksey**  
ARCHITECTURE

6909 Portwest Drive  
Houston Texas 77024  
713 850 9600  
kirksey.com



**J. M. DAWSON**  
ENGINEER

1	EXISTING
2	PROPOSED
3	CONTRACTOR TO VERIFY
4	AS-BUILT
5	AS-BUILT
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99	AS-BUILT
100	AS-BUILT



**PROJECT NAME:**  
BROADWAY OFFICE DEVELOPMENT

**PROJECT ADDRESS:**  
8 ROADWAY AT PEARL PARKWAY

**PROJECT NO.:**  
1833 BROADWAY

**DATE:**  
11/2/2018

**SCALE:**  
AS SHOWN

**PROJECT TITLE:**  
OVERALL ELECTRIC AND COMMUNICATION PLAN

**SCALE:**  
C510



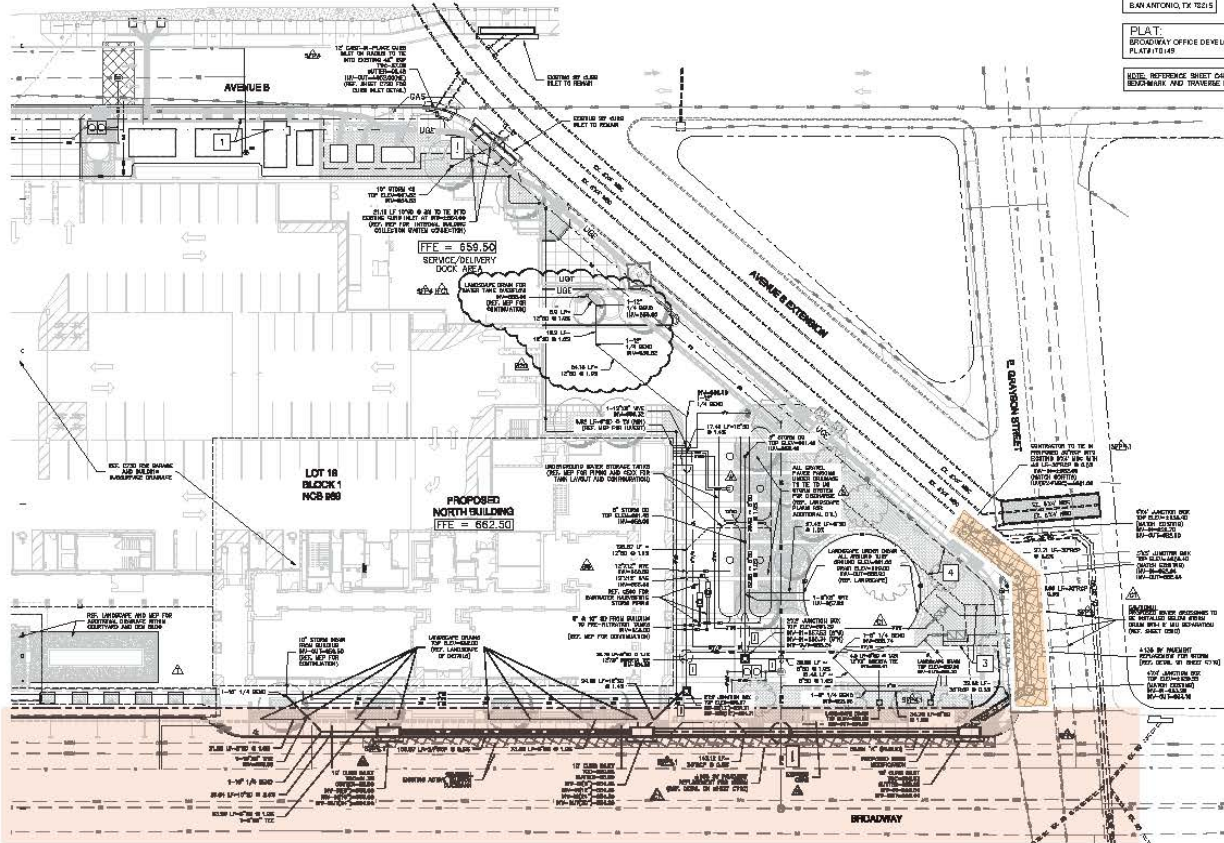










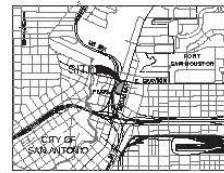


**LEGAL DESCRIPTION:**  
 LOT 18  
 BLOCK 1  
 NCB 859  
 PLAT NO. 1781-0

**ADDRESS:**  
 1283 BROADWAY BY  
 SAN ANTONIO, TX 78215

**PLAT:**  
 BROADWAY OFFICE DEVELOPMENT  
 PLAT 1781-0

**NOTE:** REFERENCE SHEET C885 FOR  
 BOUNDARY AND SURVEY LOCATION MAP



**LEGEND**

PROPERTY LINE	---
EASEMENT LINE	---
UTILITIES	
WATER	---
SANITARY SEWER	---
ELECTRIC	---
GAS	---
STORM SEWER	---
EXISTING UTILITIES	---
WATER	---
SANITARY SEWER	---
ELECTRIC	---
GAS	---
STORM SEWER	---

**CAUTION!!!**  
 BEFORE ALL WORK BEGINS, CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES OR EASEMENTS. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES OR EASEMENTS.

**TRENCH EXCAVATION SAFETY PROTECTION:**  
 CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING SAFETY PROTECTION FOR ALL TRENCHES EXCAVATED ON THE SITE. CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING SAFETY PROTECTION FOR ALL TRENCHES EXCAVATED ON THE SITE.

**CAUTION!!!**  
 CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO EXISTING UTILITIES OR EASEMENTS.

- PROPERTY AND EASEMENT KEYS**
- 1 1' BUILDING SETBACK
  - 2 12" DIA. STORM SEWER
  - 3 18" DIA. SANITARY SEWER
  - 4 12" DIA. GAS
  - 5 12" DIA. ELECTRIC
  - 6 12" DIA. WATER



**STORM DRAIN NOTES**

1. ALL STORM DRAIN LINES SHALL BE INSTALLED AND GRADES SHALL BE CHECKED AT ALL POINTS. STORM DRAIN LINES SHALL HAVE SLOPES THAT RESULT IN ALL FLOWS.
2. CONTRACTOR SHALL VERIFY ALL STORM DRAIN LOCATIONS, SIZES AND DEPTHS.
3. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING STORM DRAIN LINES.
4. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING STORM DRAIN LINES.

**GENERAL NOTES**

1. ALL MATERIALS AND CONSTRUCTION PROCEDURES SHALL BE SUBJECT TO THE APPROVAL OF THE CITY ENGINEER. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY ENGINEER.
2. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS.
3. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS.
4. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS.
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18. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS.
19. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS.
20. CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES AND EASEMENTS.



6909 Portwest Drive  
 Houston Texas 77024  
 713 850 9600  
 kirksey.com



1	EXISTING WATER
2	EXISTING SANITARY SEWER
3	EXISTING STORM SEWER
4	EXISTING GAS
5	EXISTING ELECTRIC
6	EXISTING WATER
7	EXISTING SANITARY SEWER
8	EXISTING STORM SEWER
9	EXISTING GAS
10	EXISTING ELECTRIC
11	EXISTING WATER
12	EXISTING SANITARY SEWER
13	EXISTING STORM SEWER
14	EXISTING GAS
15	EXISTING ELECTRIC

PROJECT NAME:  
 BROADWAY OFFICE DEVELOPMENT

PROJECT ADDRESS:  
 8 BROADWAY AT PEARL PARKWAY

PROJECT NO.: 5676-92

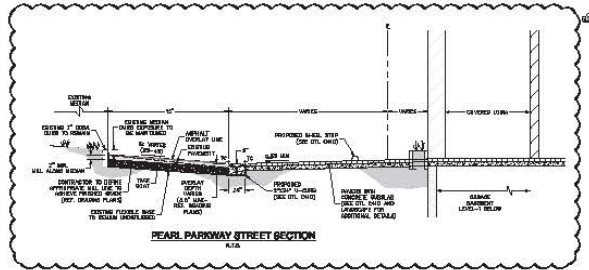
SHEET TITLE:  
 OVERALL DRAINAGE PLAN

SHEET NUMBER:  
 C700









**LEGAL DESCRIPTION:**  
 LOT 19  
 BLOCK 1  
 ROCKWELL  
 PLAT NO. 178149

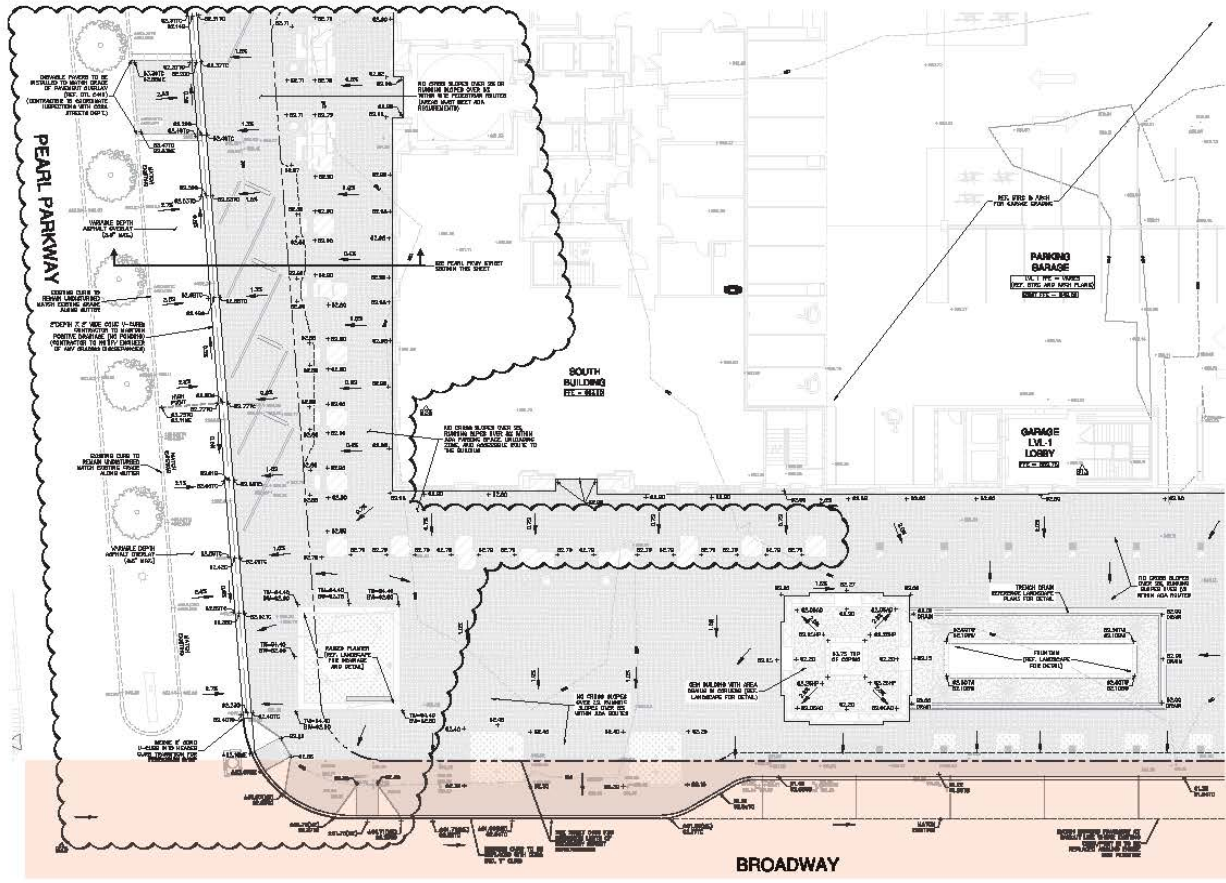
**ADDRESS:**  
 1025 BROADWAY ST.  
 SAN ANTONIO, TX 78215

**PLAT:**  
 BROADWAY OFFICE DEVELOPMENT  
 PLAT NO. 1419

**NOTE:** REFERENCE SHEET CASE FOR BROADWAY AND TRAVELER LOCATION MAP

**GENERAL NOTES**

1. NOTICE OF WORK SHALL BE PROVIDED BY THE CONTRACTOR TO ALL ADJACENT PROPERTY OWNERS AND TO THE CITY OF SAN ANTONIO.
2. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED TO 18" BELOW FINISHED GRADE.
4. ALL MATERIALS AND CONSTRUCTION METHODS SHALL BE APPROVED BY THE CITY OF SAN ANTONIO.
5. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED TO 18" BELOW FINISHED GRADE.
6. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
7. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED TO 18" BELOW FINISHED GRADE.
8. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
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19. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
20. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.



**LEGEND**

EXISTING 1" FINISH	---
EXISTING 2" FINISH	---
PROPOSED 1" FINISH	---
PROPOSED 2" FINISH	---
EXISTING FLOOD AREA	---
PROPOSED FLOOD AREA	---
PROPOSED FLOOD MARK	---
PROPOSED SPOT ELEVATION (ELEV.)	---
PROPOSED SPOT ELEVATION (ELEV.)	---
EXISTING SPOT ELEVATION	---

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 ARCHITECTURE

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**MIKE DAWSON**  
 ENGINEERS

10000 FORT WORTH AVENUE, SUITE 1000, FORT WORTH, TEXAS 76134  
 TEL: 817.335.1111 FAX: 817.335.1112  
 WWW.MIKEDAWSONENGINEERS.COM

△	ELEV. EDGE
---	EXISTING 1" FINISH
---	EXISTING 2" FINISH
---	PROPOSED 1" FINISH
---	PROPOSED 2" FINISH
---	EXISTING FLOOD AREA
---	PROPOSED FLOOD AREA
---	PROPOSED FLOOD MARK
---	PROPOSED SPOT ELEVATION (ELEV.)
---	PROPOSED SPOT ELEVATION (ELEV.)
---	EXISTING SPOT ELEVATION

PROJECT NAME  
 BROADWAY OFFICE DEVELOPMENT

PROJECT ADDRESS  
 8 BROADWAY AT PEARL PARKWAY

PROJECT NUMBER  
 5676-02

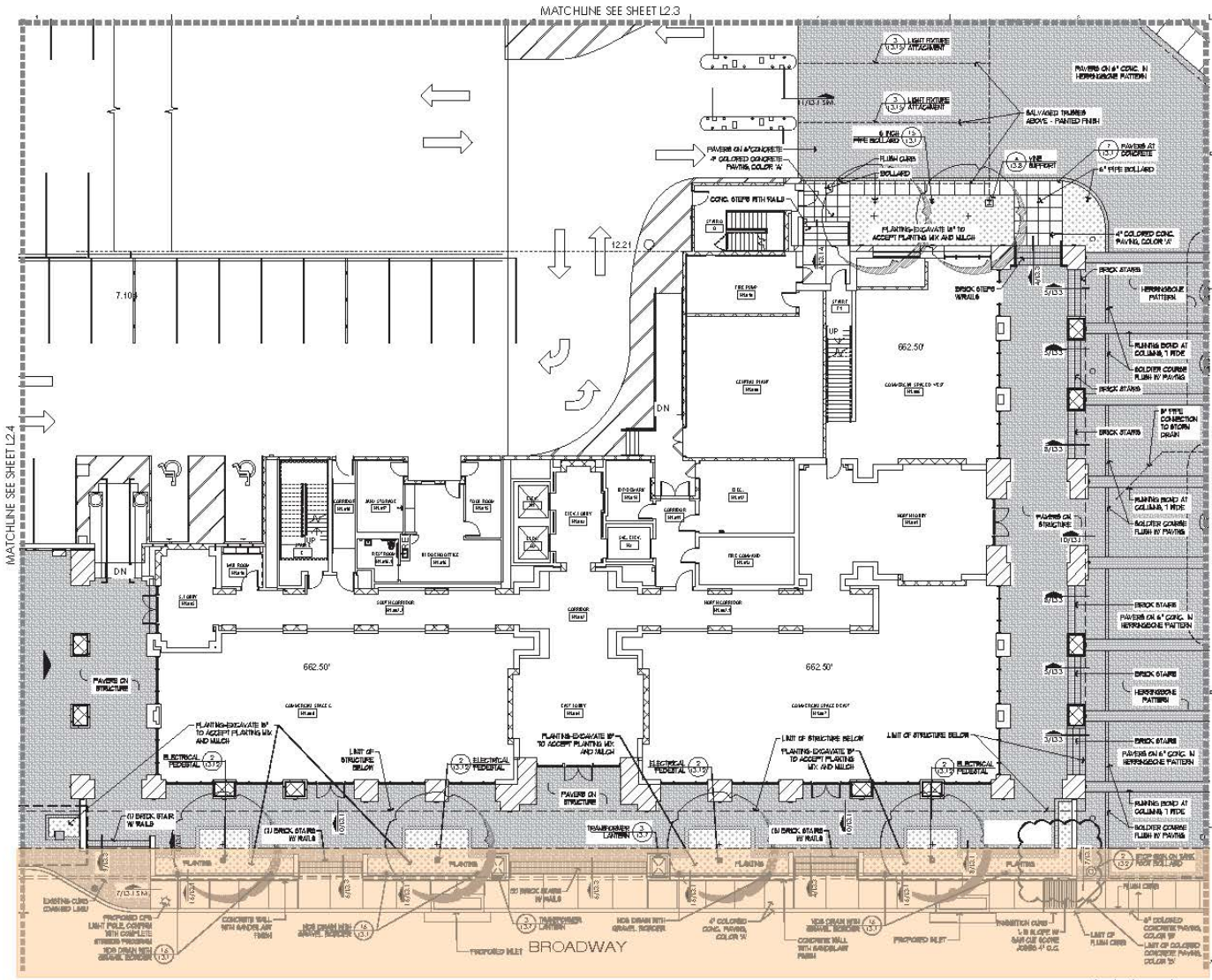
REV. PLAN

SHEET TITLE  
 DETAILED GRADING PLAN

SHEET NUMBER  
 C630

DATE





**Kirksey**  
ARCHITECTURE

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Houston Texas 77024  
713 850 9600  
kirksey.com



This seal is not valid unless it is accompanied by a copy of the professional engineer's or architect's license. It is not valid for the practice of engineering or architecture in any state other than the state in which it was issued. It is not valid for the practice of engineering or architecture in any state other than the state in which it was issued.



SYMBOL	EXPLANATION
△	EXIST. ELEV.
□	EXIST. ROOM
○	EXIST. COLUMN
○	EXIST. WALL
○	EXIST. DOOR
○	EXIST. WINDOW
○	EXIST. STAIR
○	EXIST. ELEVATOR
○	EXIST. MECHANICAL
○	EXIST. ELECTRICAL
○	EXIST. PLUMBING
○	EXIST. FIRE
○	EXIST. OTHER

PROJECT NAME  
BROADWAY OFFICE DEVELOPMENT

PROJECT ADDRESS  
8 BROADWAY AT PEARL PARKWAY

KIRKSEY PROJECT NO. 2016027

REV. PLAN



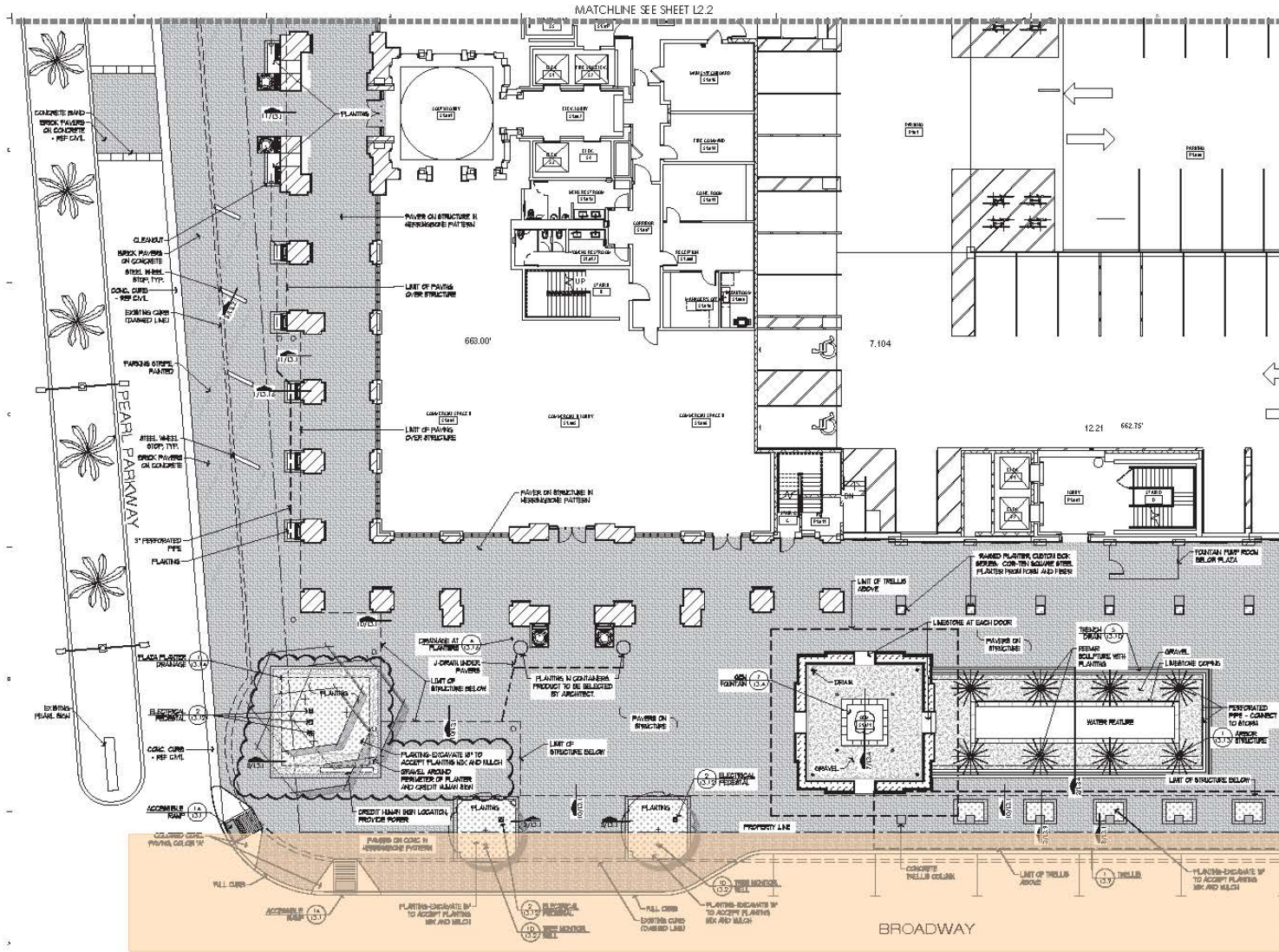
SHEET TITLE  
LAYOUT PLAN

SHEET NUMBER  
L2.5

PROJECT NAME  
8 BROADWAY

ALL WORK SHOWN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF KIRKSEY ARCHITECTURE.





**Kirksey**  
ARCHITECTURE

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Houston Texas 77024  
713 850 9600  
kirksey.com



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SYMBOL	DESCRIPTION
△	EXIST. ELEVATION
□	EXIST. FLOOR FINISH
○	EXIST. CEILING FINISH
○	EXIST. WALL FINISH
○	EXIST. FLOOR FINISH
○	EXIST. WALL FINISH
○	EXIST. FLOOR FINISH
○	EXIST. WALL FINISH
○	EXIST. FLOOR FINISH
○	EXIST. WALL FINISH

PROJECT NAME	PROJECT ADDRESS	PROJECT NO.	DATE
BROADWAY OFFICE DEVELOPMENT	8 BROADWAY AT PEARL PARKWAY	2016027	11/10/2017

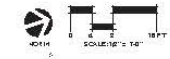
PROJECT NAME  
BROADWAY OFFICE DEVELOPMENT

PROJECT ADDRESS  
8 BROADWAY AT PEARL PARKWAY

KIRKSEY PROJECT NO. 2016027  
REV. PLAN

SHEET TITLE  
LAYOUT PLAN

SHEET NUMBER  
L2.4  
8 BROADWAY















**Kirksey**  
ARCHITECTURE

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△	LINE	NOTE
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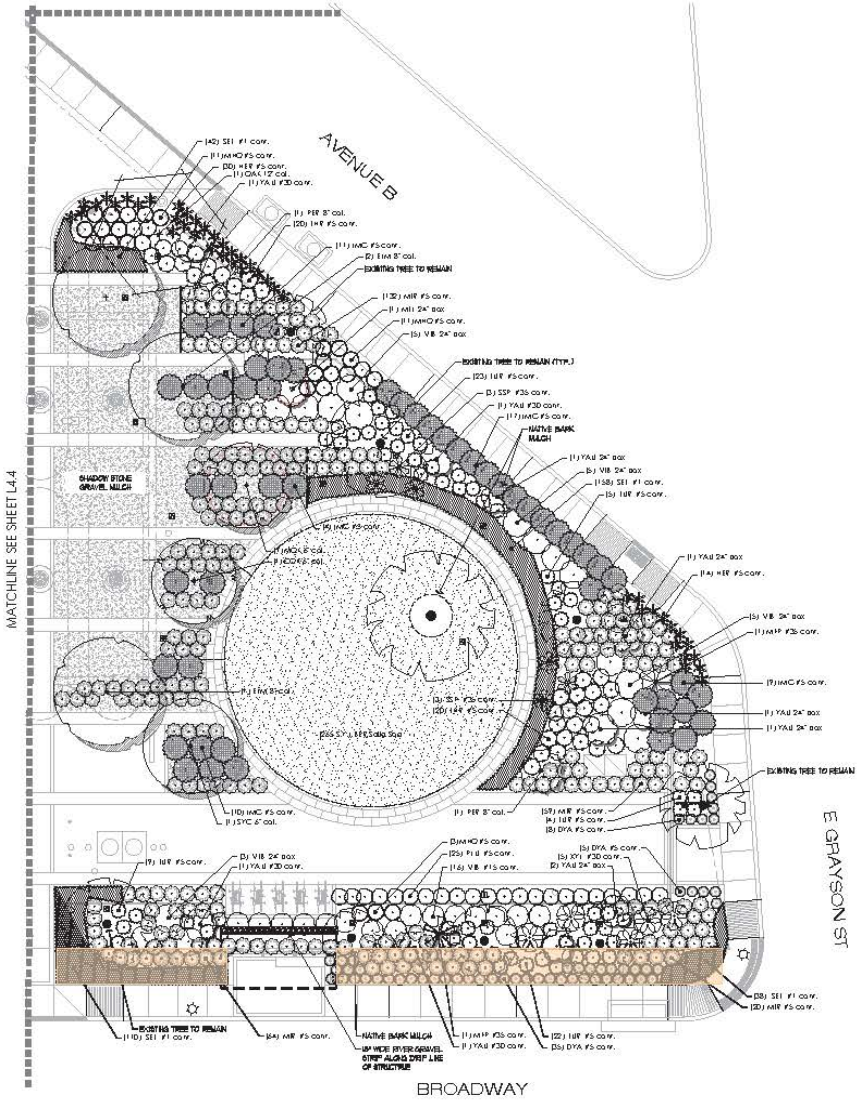
PROJECT NAME  
ROADWAY OFFICE  
DEVELOPMENT

PROJECT ADDRESS  
8 ROADWAY AT PEARL  
PARKWAY

KIRKSEY PROJECT NO. 20110027  
REV PLAN

SHEET TITLE  
PLANTING PLAN

SHEET NUMBER  
L4.5  
8 of 10



THIS DOCUMENT IS THE PROPERTY OF KIRKSEY ARCHITECTURE. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF KIRKSEY ARCHITECTURE.





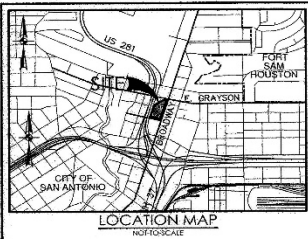




**EXHIBIT B**  
**DEVELOPER'S PROPERTY**

PLAT NUMBER 170149  
REPLAT & SUBDIVISION PLAT  
ESTABLISHING  
BROADWAY OFFICE  
DEVELOPMENT (IDZ)

A 3.127 ACRE OR 136,204 SQUARE FEET MORE OR LESS TRACT OF LAND BEING COMPRISED OF ALL OF LOTS 2-6 AND ALL OF LOTS 11-15 NEW CITY BLOCK (N.C.B.), 969, A REMAINING PORTION OF THE 12 FOOT ALLEY LOCATED WITHIN BLOCK 1, N.C.B. 969; DESCRIBED BY ORDINANCE CLOSING, VACATING AND ABANDONING RECORDED IN VOLUME 13984, PAGE 1732 OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS, THE REMAINING PORTIONS OF LOTS 8 AND 9, N.C.B. 970, AND ALL OF LOT 17, BLOCK 1, REPUBLIC BANK SUBDIVISION RECORDED IN VOLUME 7300, PAGE 139 IN THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, ALL CONVEYED TO BROADWAY SA INVESTORS GP, LLC, RECORDED IN VOLUME 16315, PAGE 1354 OF THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS.



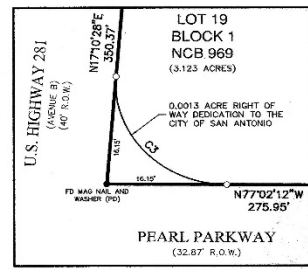
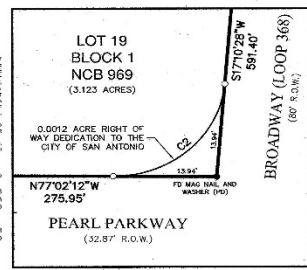
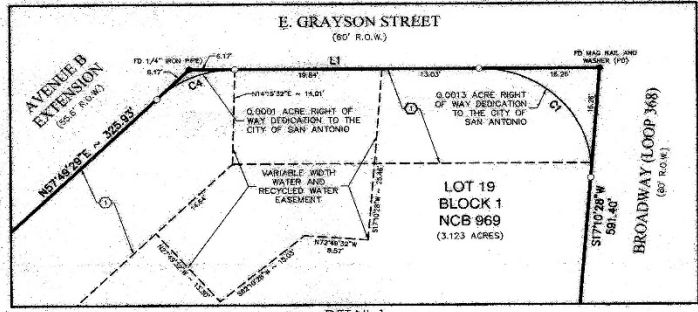
LINE TABLE

LINE #	BEARING	LENGTH
L1	S77°29'31"E	56.37
L2	S78°42'31"E	7.76
L3	N74°17'39"E	8.67

CURVE TABLE

CURVE #	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C1	15.00'	89°43'59"	S30°07'32"E	22.06'	24.77'
C2	15.00'	68°04'39"	S69°04'08"W	20.42'	22.46'
C3	15.00'	59°12'14"	N29°55'52"W	21.96'	24.65'
C4	15.00'	54°44'58"	N69°11'59"E	11.48'	11.72'

- LEGEND
- DPR DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS
  - CELESTY GAS, ELECTRIC, TELEPHONE AND CABLE TELEVISION
  - NCB NEW CITY BLOCK (SURVEYOR)
  - OPR ORIGINAL PUBLIC RECORDS (OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS)
  - 1140 EXISTING CONTOURS
  - 1140 PROPOSED CONTOURS
  - EFFECTIVE ELEVATION FROM VE-ANNUAL CHANGE (50-76 FLOODED AIN)
  - 15 ANNUAL CHINANCE 100-YR FLOOD CONDITIONS FLOODPLAIN ORIGINAL SURVEY/COUNTY INF. CENTERLINE
  - 1/4" DRAINAGE BASINMENT (VOL. 7300, PG. 139-139F)
  - 1/4" SWIRLING DRAINAGE (VOL. 7300, PG. 139-139F)
  - 1/4" OVERHEAD ELECTRIC CABLE-SHED
  - LOT 19, BLOCK 1, NCB 969 (VOL. 7300, PG. 139-139F)
  - LOT 19, BLOCK 1, NCB 969 (VOL. 7300, PG. 139-139F)
  - REMAINDER OF LOT 19, BLOCK 1, NCB 969 (VOL. 7300, PG. 139-139F)
  - REMAINDER OF LOT 19, BLOCK 1, NCB 969 (VOL. 7300, PG. 139-139F)



C.P.S. NOTES

1. THE PROPERTY SHOWN ON THIS PLAT IS THE PROPERTY OF BROADWAY SA INVESTORS GP, LLC, A TEXAS LIMITED LIABILITY COMPANY, WHICH IS A SUBSIDIARY OF BROADWAY SA INVESTORS GP, LLC, A TEXAS LIMITED LIABILITY COMPANY. THE PROPERTY IS BEING OFFERED FOR DEVELOPMENT AS A BROADWAY OFFICE DEVELOPMENT (IDZ). THE PROPERTY IS BEING OFFERED FOR DEVELOPMENT AS A BROADWAY OFFICE DEVELOPMENT (IDZ). THE PROPERTY IS BEING OFFERED FOR DEVELOPMENT AS A BROADWAY OFFICE DEVELOPMENT (IDZ).
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SURVEYING NOTES

1. PROPERTY CORNERS ARE UNCLAMORED WITH CAP OR DISC MARKED WITH CHAINS OR PIPES (NON-OBSERVED).
2. COORDINATES SHOWN ARE BASED ON THE NAD 83 AMERICAN DATUM OF 1983 (NAD83) (NAD83) EPOCH 2011.5 FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE NORTH CENTRAL ZONE, DILATED IN GRID VALUES DERIVED FROM THE TEXAS COORDINATE SYSTEM.
3. DIMENSIONS SHOWN ARE SURFACE.
4. BEARINGS ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (NAD83) (NAD83) EPOCH 2011.5 FROM THE TEXAS COORDINATE SYSTEM ESTABLISHED FOR THE NORTH CENTRAL ZONE.

STATE OF TEXAS  
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT CONFORMS TO THE MINIMUM STANDARDS SET FORTH BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND BY PAPE-DAWSON ENGINEERS, INC.

REGISTERED PROFESSIONAL LAND SURVEYOR

SCALE: 1" = 50'

STATE OF TEXAS  
COUNTY OF BEXAR

THE OWNER OF LAND SHOWN ON THIS PLAT, IN PERSON OR THROUGH A duly authorized agent, declares to the use of the public, except areas reserved as private or park or an enclave or planned use development, forever all streets, alleys, parks, walkways, drains, easements and public places thereon shown on this plat, and consents to the construction thereon expressed.

OWNER/DEVELOPER: BROADWAY SA INVESTORS GP, LLC, A TEXAS LIMITED LIABILITY COMPANY  
303 GARDEN PLACE, SUITE 300  
SAN ANTONIO, TEXAS 78215  
(214) 883-2987

STATE OF TEXAS  
COUNTY OF BEXAR

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DATE PERSONALLY APPEARED William C. Mackhoff, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated. Given under my hand and seal of office this 19 day of January, A.D. 2019.

Notary Public, Bexar County, Texas

THIS PLAT OF BROADWAY OFFICE DEVELOPMENT (IDZ) HAS BEEN SUBMITTED TO THE CITY OF SAN ANTONIO, TEXAS, AND HAVING BEEN REVIEWED BY THE DIRECTOR OF DEVELOPMENT SERVICES, IS HEREBY APPROVED IN ACCORDANCE WITH STATE OR LOCAL LAWS AND REGULATIONS AND/OR WHERE ADMINISTRATIVE LICENSING HAS BEEN OBTAINED.

DATED THE 19 DAY OF January, A.D. 2019

BY: William C. Mackhoff  
DIRECTOR OF DEVELOPMENT SERVICES

STATE OF TEXAS  
COUNTY OF BEXAR

I, Debra C. Mackhoff, COUNTY CLERK OF BEXAR COUNTY, DO HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE AND ONLY RECORDED IN THE PLAT RECORDS OF BEXAR COUNTY ON 20 FEBRUARY 2019 IN PLAY VOLUME 20001 PAGE 112. AMOUNT \$22.00.

I IN TESTIMONY WHEREOF, WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE.

COUNTY CLERK, BEXAR COUNTY, TEXAS

BY: Debra C. Mackhoff DEPUTY COUNTY CLERK

THIS PLAT INCLUDES AMENDMENTS APPROVED BY THE DIRECTOR OF DEVELOPMENT SERVICES DEPARTMENT. DATE ON \_\_\_\_\_

PLAT NOTES APPLY TO EVERY PAGE OF THIS MULTIPLE PAGE PLAT

SHEET 2 OF 2

DOC. NUMBER: 20180099733



BROADWAY OFFICE DEVELOPMENT (IDZ) Civil Lib. No. 5576391, Survey Job No. 9244-16



**EXHIBIT C**  
**CITY'S BOND/SURETY FORMS**



**PAYMENT BOND**

**STATE OF TEXAS** )  
**COUNTY OF BEXAR** )  
**CITY OF SAN ANTONIO** )

The City of San Antonio, a municipal corporation in the State of Texas (hereafter referred to as "City") and

\_\_\_\_\_, a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ (hereafter referred to as "Contractor" or "Principal") have entered into a Contract (hereafter referred to as "the Contract") dated

\_\_\_\_\_, 20\_\_ for the \_\_\_\_\_ Project (hereafter referred to as "the Project"). Said Contract is incorporated by reference into this Statutory Payment Bond, pursuant to Chapter 2253 of the Texas Government Code (hereafter referred to as "this Bond").

By virtue of this Bond, Contractor as Principal and \_\_\_\_\_, with its physical address at \_\_\_\_\_, a mailing address of \_\_\_\_\_

\_\_\_\_\_ and a business telephone number of \_\_\_\_\_ as Surety (hereafter referred to as "Surety") do hereby acknowledge each to be bound to City as an Obligee in the maximum amount of \_\_\_\_\_ Dollars (\$XXXXXXXX) (hereafter referred to as the "Bond Sum"). Contractor and Surety hereby further bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally for payment of this Bond, as provided herein.

- 1. GENERAL CONDITIONS.** It is a condition of this Bond that if Contractor promptly makes payment of all sums for all labor, services, materials and equipment furnished for use in the performance of the Scope of Work required by the Contract, Surety's obligations pursuant to this Bond are null and void. Otherwise, Surety's obligations shall remain in full force and effect. Surety waives any requirement to be notified of alterations or extensions of time, or any other duly authorized modifications, made by City to the Contract.
- 2. SURETY OBLIGATION.** Surety's obligation under this Bond is for the benefit and sole protection of all persons supplying labor, services, materials and equipment in the prosecution of said Contract. Surety's obligation to the Claimant(s) shall not exceed the Bond Sum.

**THIS BOND** is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SURETY (seal)

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Title)

[ATTACH POWER OF ATTORNEY]

ATTEST: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Print Title)

[Additional signatures, if any,  
appear on attached page]

ATTEST: \_\_\_\_\_

**PERFORMANCE BOND**

**STATE OF TEXAS            )**  
**COUNTY OF BEXAR        )**  
**CITY OF SAN ANTONIO )**

The City of San Antonio, a municipal corporation in the State of Texas (hereafter referred to as "City") and

\_\_\_\_\_, a \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ (hereafter referred to as "Contractor" or "Principal") have entered into a Contract (hereafter referred to as "the Contract") dated

\_\_\_\_\_, 20\_\_ for the \_\_\_\_\_ Project (hereafter referred to as "the Project"). Said Contract is incorporated by reference into this Statutory Performance Bond, pursuant to Chapter 2253 of the Texas Government Code (hereafter referred to as "this Bond").

By virtue of this Bond, Contractor as Principal and \_\_\_\_\_ with its physical address at \_\_\_\_\_, a mailing address of \_\_\_\_\_

\_\_\_\_\_ and a business telephone number of \_\_\_\_\_ as Surety (hereafter referred to as "Surety") do hereby acknowledge each to be bound to Owner as an Obligee in the maximum amount of \_\_\_\_\_ Dollars (\$XXXXXXXX) (hereafter referred to as the "Bond Sum"). Contractor and Surety hereby further bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally for payment of this Bond, to City as provided herein.

1. **GENERAL CONDITIONS.** It is a condition of this Bond that if Contractor promptly performs its Contract obligations (hereafter referred to as the "Work"), Surety's obligations pursuant to this Bond are null and void. Otherwise, Surety's obligations shall remain in full force and effect. Surety waives any requirement to be notified of alterations or extensions of time, or any other duly authorized modifications, made by City to the Contract. Upon making demand on this Bond, City shall make the Contract balance (equal to the total amount payable by City to Contractor pursuant to the Contract less amounts paid by City to Contractor) available to Surety for completion of the Work.
  
2. **SURETY OBLIGATION.** If Contractor does not faithfully construct and complete said work, as defined in the Scope of Work under its contract with City, and City invokes its contractual rights and declares Contractor in default, Surety promptly shall remedy the default and, at City's sole option, Surety shall:
  - A. within a reasonable time (but not later than thirty (30) days after Surety receives written notice of Contractor's/Principal's Default), with written notice to City, step into and assume the role, all rights and all obligations of the defaulting Contractor/Principal under

the Contract. Upon assumption of this role, Surety and all sureties directly shall contract with a Completion Contractor hired/engaged by Surety and all sureties to complete the structure(s), Work and improvements, pursuant to the Scope of Work in the Contract with Contractor/Principal. The selection of the Completion Contractor must be approved in writing by City and such approval shall not unreasonably be withheld. Surety and all sureties solely shall be responsible for any and all costs incurred, up to the Bond Sum, to complete the structure(s), Work and improvements, pursuant to the Scope of Work in the Contract with Contractor/Principal; or

- B. in the event Surety fails to contract with a Completion Contractor within ninety (90) days of receipt of City’s written notice of Default, City may, at City’s sole discretion, select a Completion Contractor in accordance with Texas Law. In this event of Surety and all sureties failing to contract with a Completion Contractor within ninety (90) days of receipt of City’s written notice of Default, Surety and all sureties then shall pay City any and all costs, up to the Bond Sum, for City’s selected Completion Contractor to complete the structure(s), Work and improvements, as defined in the Scope of Work in the Contract with Contractor/Principal; or
- C. at City’s sole discretion, Surety and all sureties shall pay to City City’s estimated amount for City to execute a Project Completion Contract with a Completion Contractor, selected by City in accordance with Texas Law, solely to complete the structure(s), Work and improvements, pursuant to the Scope of Work in the Contract with Contractor/Principal. Surety and all sureties shall pay City any and all costs, up to the Bond Sum, for the City-selected Completion Contractor to complete the structure(s), Work and improvements, as defined in the Scope of Work in the contract with Contractor/Principal.

3. **VENUE.** The obligations of the parties under this Bond shall be performable in Bexar County, Texas. If legal action, such as civil litigation, is necessary in connection with this Bond, exclusive venue shall be in Bexar County, Texas.

**THIS BOND** is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SURETY (seal)

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

[ATTACH POWER OF ATTORNEY]

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
(Print Title)

[Additional signatures, if any,  
appear on attached page]

ATTEST: \_\_\_\_\_

## EXHIBIT D

### SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

#### A. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on City’s Economic Development (hereafter referred to as “EDD”) website page and also is available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this Exhibit D are governed by the terms of said Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City, pursuant to said Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual in effect as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this Exhibit D 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. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

**M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to the M/WBE Subcontracting Program. GRANTEE agrees to subcontract at least **forty percent (40%)** of the City's appropriation of this project to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).

The Subcontractor / Supplier Utilization Plan that 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 M/WBE 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 M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor’s scope of work and confirmation of each M/WBE Subcontractor’s commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below

the agreed upon M/WBE subcontracting 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.

C. Contract Requirements and Commitment

GRANTEE understands and agrees the following provisions shall be requirements of this Funding Agreement and GRANTEE, in acknowledging these requirements, commits to comply with these provisions.

**Waiver Request** - GRANTEE may request, for good cause, a full or partial Waiver of **specified subcontracting goal(s)** by submitting the *Respondent/ Vendor Subcontracting Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>). GRANTEE's Waiver request fully must document Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier unavailability despite GRANTEE's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by GRANTEE including, but not limited to, which Consultants, Sub-Consultants, Contractors, Subcontractors and/or Suppliers were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

D. SBEDA Program Compliance – General Provisions

GRANTEE acknowledges and accepts the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines and procedures set forth in City's SBEDA Policy & Procedure Manual, are in furtherance of City's efforts at economic inclusion and, moreover, such terms are part of GRANTEE's Scope of Work, as referenced in City's Funding Agreement, forming the basis for a Funding Agreement award and subsequent execution of this Agreement. These SBEDA Ordinance requirements, guidelines and procedures hereby are incorporated by reference into this Agreement and are considered by the Parties hereto to be material terms. GRANTEE's agreement fully to comply with these SBEDA program terms is a material condition for being awarded this Funding Agreement by City. Without limitation, GRANTEE further agrees to the following terms as part of its contract compliance responsibilities under City's SBEDA Program:

1. GRANTEE shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding GRANTEE's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. GRANTEE shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of GRANTEE or its subcontractors or suppliers;
3. GRANTEE shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. GRANTEE shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to GRANTEE's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by GRANTEE to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by GRANTEE of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. GRANTEE shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. GRANTEE shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a GRANTEE's Subcontractor / Supplier Utilization Plan, the GRANTEE shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the GRANTEE and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. GRANTEE acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the GRANTEE for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and GRANTEE has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

For more information please see link: <http://www.sanantonio.gov/SBO/Compliance>

#### E. Violations, Sanctions and Penalties

In addition to the above terms, GRANTEE acknowledges and agrees it is a violation of the SBEDA Ordinance and shall be deemed to have committed a material breach of this Agreement if GRANTEE:

1. fraudulently obtains, retains, attempt to obtain, or aids 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 falsifies, conceals or covers up by a trick, scheme or device, a material fact or makes any false, fictitious or fraudulent statements or representations, or makes use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statements or entries pursuant to the terms of the SBEDA Ordinance;



3. willfully obstructs, impedes or attempts to obstruct or impede any authorized official or employee investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. fraudulently obtains, attempts to obtain or aids 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. makes 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 of entity violating the provisions of this **clause** 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
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).

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, GRANTEE represents and warrants it has complied with, throughout the course of this solicitation and contract award process and will continue to comply with, 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 Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers vendors or commercial customers, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and vendors to participate in all of GRANTEE's 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 City's Relevant Marketplace. GRANTEE understands and agrees 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 GRANTEE 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 City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. GRANTEE shall incorporate this Commercial Nondiscrimination Policy clause into each of its Consultant(s), Sub-Consultant(s), Contractor(s) Subcontractor(s) and Supplier agreements entered into pursuant to City contracts.

## G. Prompt Payment

Upon execution of this Agreement, GRANTEE shall be required to submit to City accurate progress payment information with each invoice, with regard to each of its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers, including HUBZone Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers, to ensure GRANTEE's reported subcontract participation is accurate. GRANTEE shall pay its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers in compliance with Chapter 2251, Texas Government Code (known as the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of GRANTEE's noncompliance with these prompt payment provisions, no new City contracts shall be issued to GRANTEE until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

## H. Definitions

**Affirmative Procurement Initiatives (hereafter referred to as "API")** – refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (hereafter referred to as "S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater prime contract 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 (hereafter referred to as "CVR")** – refers to a mandatory electronic system wherein City requires all prospective Consultants, Sub-Consultants, Contractors and Subcontractors ready, willing and able to sell goods or services to 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 City. The CVR-assigned identifiers also are used by City's Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE (as defined herein) firms by Industry or commodity codes and for establishing annual aspirational Goals and contract-by-contract Subcontracting Goals.

**Certification or "Certified"** – refers to the process by which City's Small Business Office (hereafter referred to as "SBO") staff determines a firm to be a bona-fide small, minority-, women-owned or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as "ESBEs") automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications covering 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, City accepts any firm that is certified by local government entities and/or 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** – means a 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 also must 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 actually is performing, the S/M/WBE credit claimed for its performance of the work and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation when, in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by GRANTEE to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by 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, GRANTEE shall not be given credit for the participation of its S/M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers or joint venture partner towards attainment of S/M/WBE utilization goals, and GRANTEE and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

**Good Faith Efforts** – means the documentation of GRANTEE’s intent to comply with S/M/WBE Program Goals and procedures including, but are not limited to, the following:

(1) documentation reflecting 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 Consultant’s posting of a bond covering the work of SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by GRANTEE and the solicitation; and documentation of consultations with trade associations and Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers representing the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers). The appropriate form and content of GRANTEE’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** – means a business certified by the 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 all of the following criteria:

1. The business is owned and Controlled by U.S. citizens;
2. At least thirty five percent (35%) of the business's employees must reside in a HUBZone; and
3. The business's 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** – means the 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** – means an adult person that is of legal majority age.

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

**Minority/Women Business Enterprise (hereafter referred to as “M/WBE”)** – refers to a firm certified as a Small Business Enterprise and also is certified as either a Minority Business Enterprise or as a Women Business Enterprise, is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members and/or women and is ready, willing and able to sell goods or services to be purchased by City.

**M/WBE Directory** – refers to a listing of minority- and women-owned businesses certified for participation in City's M/WBE Program APIs.

**Minority Business Enterprise (hereafter referred to as “MBE”)** – means any legal entity, except a joint venture, organized to engage in for-profit transactions, certified a Small Business Enterprise and is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, as defined below, and is ready, willing and able to sell goods or services to be purchased by City. To qualify as a MBE, the enterprise shall meet the Significant Business Presence requirement defined herein. Unless otherwise stated, the term MBE, as used in City's Ordinance, is not inclusive of women-owned business enterprises.

**Minority Group Members** – refers to 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 with origins in any of the black racial groups of Africa.

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 1/16<sup>th</sup> 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** – refers to a City department or authorized representative of City managing the contract.

**Payment** – refers to the dollars actually paid to GRANTEE and/or GRANTEE’s Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and/or vendors for City-contracted goods and/or services.

**Prime Consultant** – refers to a Consultant, under contract to City, to whom a purchase order or contract is issued by City for the purposes of providing goods or services to City. For purposes of this Agreement, this term refers to GRANTEE.

**Relevant Marketplace** – means the geographic market area affecting the S/M/WBE Program, as determined for purposes of collecting data for NERA Economic Consulting and for determining eligibility for participation under various programs established by City’s SBEDA Ordinance, defined as the San Antonio Metropolitan Statistical Area (as defined herein), which currently includes the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent** – refers to an entity submitting a bid, Statement of Qualifications or Proposal in response to a solicitation issued by City. For purposes of this agreement, GRANTEE is Respondent.

**Responsible** – means a firm capable in all respects fully to perform the contractual requirements outlined in City’s solicitation and has the integrity and reliability to assure good faith performance of all project specifications.

**San Antonio Metropolitan Statistical Area (hereafter referred to as “SAMSA”)** – also known as the Relevant Marketplace, referring to the geographic market area from which City’s NERA Economic Consulting analyzed contract utilization and availability data for disparity. City’s SAMSA currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**SBE Directory** – refers to a listing of small businesses certified for participation in City’s SBE Program APIs.

**Significant Business Presence** – defined as an established place of business in one or more of the eight (8) counties making up the SAMSA, from which twenty percent (20%) of the entity’s full-time, part-time and contract employees regularly are 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. To qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one (1) year within the Relevant Marketplace

**Small Business Enterprise (hereafter referred to as “SBE”)** – means a corporation, partnership, sole proprietorship or other recognized legal entity existing for the purpose of making a profit, is independently owned and operated by Individuals legally residing in or are citizens of the United States or its territories, meets the U.S. Small Business Administration (hereafter referred to as “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 (hereafter referred to as “SBO”)** – means the office within City’s EDD Department primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Business Office Manager (hereafter referred to as “SBO Manager”)** – refers to the Assistant Director of EDD 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 also is responsible for enforcement of GRANTEE, Consultant and vendor compliance with contract participation requirements and ensuring that overall SBEDA Program goals and objectives are met.

**Small Minority Women Business Enterprise Program (hereafter referred to as “S/M/WBE Program”)** – refers to the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

**Sub-Consultant** – means any vendor of GRANTEE providing goods or services to GRANTEE in furtherance of GRANTEE’s performance under an agreement, contract or purchase order with City. A copy of each binding agreement between GRANTEE and its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers shall be submitted to City in writing prior to execution of this Agreement and any modification to this Agreement.

**Suspension** – means the temporary stoppage of a SBE or M/WBE firm’s beneficial participation in City’s S/M/WBE Program for a finite period of time, due to the cumulative contract payments the S/M/WBE firm received during a fiscal year exceeding 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 City’s imposition of Penalties and Sanctions, as set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

**Sub-Consultant/Supplier Utilization Plan** – refers to the binding part of this Agreement stating GRANTEE’s commitment for the use of Joint Venture Partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the performance of this Agreement, stating the name,

scope of work and dollar value of work to be performed by each of GRANTEE's Joint Venture partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and/or Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or and Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier names, scopes of work or dollar values of work to be performed requires an amendment to this Agreement approved by the EDD Manager or his/her designee.

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

**EXHIBIT E**  
**SUBCONTRACTOR/SUPPLIER UTILIZATION FORM**  
**(to be attached upon execution)**



## **CITY OF SAN ANTONIO SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN**

PROJECT NAME: **Developer Agreement with Silver Ventures-Broadway Public Improvements Project**

GRANTEE (PRIME) NAME:

**Please review the following information before completing the form:**

1. Grantee must list **ALL** certified Subcontractors/Suppliers that will be utilized towards meeting the subcontracting goal(s).
2. A Subcontractor/Supplier Utilization Plan that does not satisfy City subcontracting goal(s) placed on this agreement and absent an approved Subcontracting Goal- Waiver by the Small Business Office, the agreement with the City will be deemed in NON-COMPLIANCE.
3. These goal(s) apply only to the City's appropriation of this project.
4. To be SBEDA eligible, a Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency ([www.SCTRCA.org](http://www.SCTRCA.org)) AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area. SBEDA eligibility can be verified through the link <http://www.sanantonio.gov/purchasing/vendorinformation/cosavendorlisting>.

**For further clarification, please contact Small Business Office at (210) 207-3922 or refer to the SBEDA language within the agreement.**

To be Completed by City Staff			To be Completed by Grantee		
PROJECT API's	EVALUATION POINTS APPLIED	CITY REQUIRED SUBCONTRACTING GOAL	PERCENT SBEDA ELIGIBLE PARTICIPATION	MEETING THE GOAL? (Y/N)	WAIVER SUBMITTED? (Y/N)
Minority and/or Woman Owned Business Enterprise (M/WBE) Subcontracting Program		40%		<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>
				<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>
				<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>
				<input style="width: 80px; height: 20px;" type="text"/>	<input style="width: 80px; height: 20px;" type="text"/>

**I hereby affirm that the information on this form is true and complete to the best of my knowledge and belief. I possess internal documentation from all proposed Subcontractors/Suppliers confirming their intent to perform the scope of work for the price or percentage indicated. I understand and agree that if approved, this document shall be attached thereto and become a binding part of the contract.**

Grantee's Authorized Agent: Sign and Date  Name  Title

Director or Designee of Economic Development: Sign and Date

APPROVED       DENIED      Version: 1/10/19 pg.1



**EXHIBIT F  
BUDGET**

**Broadway Office Development****Broadway Improvements**

2/7/2020

Description	Total
<b>Street Infrastructure</b>	
Street improvements	
Broadway Complete Streets	375,206
Pavers at Broadway & Pearl Parkway	300,000
Traffic Signal(s) - Broadway Mods	50,000
Bike Station & Scooter Parking	incl
Street Improvements - Repairs	76,161
<b>Utility Infrastructure</b>	
Electric Utility Infrastructure - CPS Fees	331,737
Telecom Utility Infra - ATT/TW/Grande/L3 Fees	104,181
<b>Other Construction</b>	
Construction in the Right of Way	
Storm Sewer - Broadway ROW	339,598
Clean Streets	incl
Traffic Control/Sidewalk Control	137,035
Lane Closures	incl
Curb/Gutter	incl
Sidewalks	incl
Pavers	incl
Board Formed Concrete Walls	incl
New Trees/Landscape	incl
Tree Replacement	incl
Underground Utility Ductbank	321,400
Bike Racks	incl
Mill & Overlay	157,500
<b>General Conditions, Fee, Bond, Insurance, Contingency</b>	
General Conditions	113,062
Fee, Bond, Insurance	51,738
Contingency	56,428
<b>Subtotal</b>	<b>2,414,046</b>
<b>Other costs</b>	
Traffic & Engineering Studies & Drawings	128,423
Impact Fees Prior to ICRIP	156,039
TCI administrative fee - 3%	12,000
<b>Total cost</b>	<b>2,710,508</b>
<b>City contribution</b>	
Broadway Street 2017 Bonds (max 400,000)	(400,000)
<b>Total city contribution</b>	<b>(400,000)</b>
<b>Total Cost</b>	<b>2,310,508</b>