

ORDINANCE 2018-06-21-0512

AUTHORIZING A FUNDING AGREEMENT WITH H-E-B IN AN AMOUNT NOT TO EXCEED \$800,000.00 FOR THE ENGINEERING AND DESIGN IMPROVEMENTS TO FOSTER ROAD.

* * * * *

WHEREAS, Foster Road is adjacent to the H-E-B Distribution Center in City Council District 2, an area that was recently nominated by the City as an Enterprise Zone due to H-E-B's commitment to expand the Center; and

WHEREAS, H-E-B has requested to be allowed to commence engineering and design work on those improvements in order to expedite construction to coincide with the expansion of their distribution center; and

WHEREAS, H-E-B is willing to provide up-front funding for the engineering and design work for the segment of Foster Road that affects the distribution center (the "Project") and the City would reimburse H-E-B for the work either through a reimbursement of taxes paid up to \$800,000.00 or through the appropriation of funds in the 2019 and 2020 budget; **NOW THEREFORE:**

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

SECTION 1. The City Council approves the terms and conditions of a Funding Agreement with H-E-B.

SECTION 2. The City Manager or her designee is authorized to execute a Funding Agreement with H-E-B in accordance with this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution.

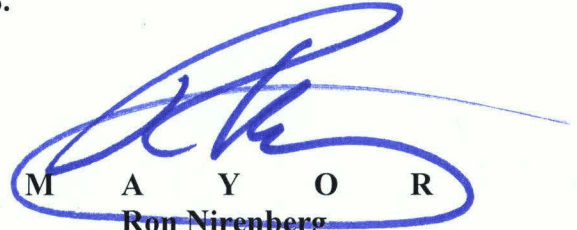
SECTION 3. Payments for services are contingent upon the availability of funds for the City of San Antonio, in accordance with the adopted capital budget. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with and are contingent upon the adoption of the proposed FY 2019 and FY 2020 Operating and/or Capital Budget and future fiscal years.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

RR
06/21/18
Item No. 55

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

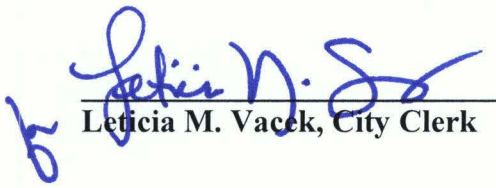
PASSED AND APPROVED this 21st day of June, 2018.



M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk



Andrew Segovia, City Attorney

Agenda Item:	55						
Date:	06/21/2018						
Time:	10:05:47 AM						
Vote Type:	Other: Remove Option 1						
Description:	Ordinance approving a Funding Agreement with H-E-B Grocery in the amount not to exceed \$800,000.00 for the engineering and design of potential street improvements to Foster Road, in Council District 2. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
Result:	Failed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor				x		
Roberto C. Treviño	District 1			x			
William Cruz Shaw	District 2			x			
Rebecca Viagran	District 3			x			
Rey Saldaña	District 4				x		
Shirley Gonzales	District 5			x			
Greg Brockhouse	District 6			x			x
Ana E. Sandoval	District 7			x			
Manny Pelaez	District 8		x				
John Courage	District 9			x			
Clayton H. Perry	District 10		x			x	

Agenda Item:	55						
Date:	06/21/2018						
Time:	10:06:05 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a Funding Agreement with H-E-B Grocery in the amount not to exceed \$800,000.00 for the engineering and design of potential street improvements to Foster Road, in Council District 2. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor				x		
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4				x		
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

RR
06/21/18
Item No. 55

ATTACHMENT I

STATE OF TEXAS
PROGRAM
COUNTY OF BEXAR

§
§
§

CAPITAL IMPROVEMENTS
FUNDING AGREEMENT

THIS CAPITAL IMPROVEMENTS FUNDING AGREEMENT (hereinafter referred to as this “**Agreement**”) is made and entered into by and between the City of San Antonio (hereinafter referred to as “**CITY**”), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and HEB GROCERY COMPANY, L.P. (hereinafter referred to as “**CONTRACTOR**”). Together, CITY and CONTRACTOR may be referred to herein as the “**Parties**,” or individually as a “**Party**.”

WHEREAS, CONTRACTOR is expanding upon a large tract of land on S. Foster Road on the east side of San Antonio to create a major new hub for distribution, manufacturing and food processing activities; and

WHEREAS, other projects have located on S. Foster Road, congestion in this industrial area has worsened and improvements to S. Foster Road have been implemented into the CITY’s Master Thoroughfare Plan (MTP) for the benefit of all industrial and non-industrial users who travel the area; and

WHEREAS, CONTRACTOR, in preparation for improvements that will be made by CITY as described in the MTP, has committed to paying the upfront costs for engineering/design of the improvements so long as CITY commits to reimbursing CONTRACTOR for the expenditure up to \$800,000.00; and

WHEREAS, CITY has agreed to either provide CONTRACTOR with the funds, up to \$800,000.00, either through the City’s annual budget process or through reimbursement of taxes paid on the newly expanded site in excess of the taxes paid on the property in tax year 2018; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, CITY is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and, pursuant to City Ordinance No. 100684, CITY adopted an economic development program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

WHEREAS, the CITY Council of CITY has authorized the CITY Manager or her designee to enter into this Agreement with CONTRACTOR in accordance with CITY Ordinance No. 2018-06-21-_____, passed and approved on June 21, 2018 to grant said funds; **NOW THEREFORE**:

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

SECTION 1. AGREEMENT PURPOSE

The purpose of this Agreement is to provide funding either: 1) through the CITY’s annual budget process; or 2) through an economic development grant to CONTRACTOR as an incentive for CONTRACTOR to undertake procuring the engineering and design of improvements to S. Foster Rd. as described in Exhibit B for the CITY’s benefit.

SECTION 2. PROJECT FUNDING CONDITIONS

In order to receive the funding provided for in Section 3 below of this Agreement, CONTRACTOR must satisfy the following conditions:

A. CONTRACTOR must enter into an agreement with a CITY-approved engineering/design firm to undertake and complete the design of improvements to the area of Foster Road generally described as between North 1346 to the north and US Hwy 47 to the South, in accordance with the CITY's MTP.

B. CONTRACTOR must deliver to CITY the following:

- Right-of-way and Design Survey
- Subsurface Utility Engineering
- Geotechnical Investigation
- Environmental (Water of the US, Habitat Compliance, Cultural Resources, Archeology)
- Roadway Design
- Bid Packages

Engineering design services include preparation and delivery of the following items: opinion of probable costs, anticipated project schedule, typical sections, horizontal alignment, roadway profile, street cross sections at 50' increments, driveway summary sheets, drainage area map, culvert crossing design/detail, utility adjustments, traffic control plan, intersection layouts, signal plans.

C. CONTRACTOR shall conduct or cause to be conducted a project kick-off/scoping meeting and provide biweekly updates to CITY staff.

D. CONTRACTOR must provide CITY with an invoice for the completed deliverables in an amount equivalent to but not to exceed EIGHT HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$800,000.00).

E. Delivery of the plans/design by Contractors shall not obligate the City to construct any improvements to Foster Road.

SECTION 3. AGREEMENT PERIOD

This Agreement shall commence upon full execution of this Agreement and shall terminate upon final payment by CITY of an amount equivalent to the total cost of the completed deliverables so long as such payment does not exceed EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00).

SECTION 4. SOURCE OF FUNDING

In exchange for CONTRACTOR undertaking and completing the engineering/design of improvements to Foster Road as described in Section 2(B) above, CITY will provide funding to CONTRACTOR in an amount not to exceed EIGHT HUNDRED THOUSAND DOLLARS AND 0 CENTS from the following sources:

A) Budget Appropriations. CITY will request budget allocations from fiscal years 2019 and 2020 to provide payments of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) to CONTRACTOR in successive years; or

B) Real Property Tax Reimbursement. Should City fail to allocate funds through the City's annual

budget process, City shall reimburse CONTRACTOR that portion of its real property taxes that are above the 2018 tax year real property valuation. City shall continue to reimburse CONTRACTOR annually until such payments cumulatively equate to EIGHT HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$800,000.00).

SECTION 5. CONTINUING OBLIGATIONS AND CROSS DEFAULT.

A. In consideration of full and satisfactory performance of activities required by Section 4 of this Agreement, CITY will apply rebates not to exceed EIGHT-HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$800,000.00) as described in Section 2 to Contractor in the amounts and at the times specified by Section 4 of this Agreement, and subject to the limitations set forth in this Section 5 and in Sections 17 and 18 below. Notwithstanding any other provision of this Agreement, the total of all grant payments and other obligations incurred by CITY under this Agreement will not exceed the sum of EIGHT-HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$800,000.00).

B. Notwithstanding receipt of the Maximum Benefit prior to the expiration of the Term of this Agreement, should CONTRACTOR receive disbursement of grant funds under this Agreement, then CONTRACTOR's obligations hereunder (including, without limitation, CONTRACTOR's Required Public Improvements completion obligations) shall continue in full force and effect through the Term of this Agreement.

C. CONTRACTOR is only entitled to rebate funds for the costs of actual expenses incurred and not in any amounts exceeding the rebate allocations in Section 2 of this Agreement. Allowable costs will be determined in accordance with this Agreement by CITY's Transportation and Capital Improvements Department and are defined as direct costs incurred in the construction and improvement of infrastructure related to the distribution center and the costs of permitting fees for construction activities at the Roadway. Should CITY determine after payment that a cost is unallowable under this Agreement CONTRACTOR shall reimburse CITY for such payment not later than 30 days after notification by CITY.

D. Except as set forth in this Agreement, CITY shall not be liable to CONTRACTOR or any other entity or third party for any costs incurred by CONTRACTOR in connection with this Agreement.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. CONTRACTOR shall maintain written and/or digital records and supporting documentation (the "Records") relating to and sufficient to reasonably determine: (1) the fulfillment of all obligations of CONTRACTOR under this Agreement. CONTRACTOR shall provide copies of the applicable Records to CITY (other than those: (i) pertaining to the Required Capital Investment and any supporting documentation; and (ii) which CONTRACTOR is prohibited by law from disclosing) when it delivers the Semi-Annual Certification to CITY. Within ninety (90) days following receipt of the Records applicable to the first Semi-Annual Certification delivered hereunder to CITY, CITY shall notify CONTRACTOR of any additional information required to reasonably satisfy CONTRACTOR's obligation to provide Records hereunder. CONTRACTOR acknowledges and agrees that retention of the Records by CONTRACTOR and CITY's right to inspect the Records as set forth below, are required in order to permit CITY's representatives to determine with certainty CONTRACTOR's compliance with all of CONTRACTOR'S obligations under this Agreement, including, without limitation, job creation and retention requirements, wage requirements, healthcare benefits requirements and residency requirements.

B. Upon at least five (5) business days' prior notice to CONTRACTOR, CONTRACTOR shall allow designated representatives of CITY access to the Records at the Project Site or such other location

in Bexar County where the Records are kept during normal business hours for inspection to determine if the obligations of CONTRACTOR hereunder and the terms and conditions of this Agreement are being met by CONTRACTOR. If the Records are kept in any location outside of Bexar County, CONTRACTOR shall provide access to CITY to inspect the Records within Bexar County. Any information that is not required by law to be made public shall be kept confidential by CITY. CONTRACTOR shall not be required to disclose to CITY any information that by law CONTRACTOR is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data inspected, CITY reserves the right to require CONTRACTOR to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of CONTRACTOR. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized CITY representatives shall give CITY the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise CITY's right to recapture all abated taxes. CONTRACTOR may require CITY's representatives to be accompanied by CONTRACTOR representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of Business Activities at the Project Site, and (b) comply with CONTRACTOR's reasonable security requirements.

SECTION 7. MONITORING

CITY reserves the right to confirm Contractor's compliance with the terms and conditions of this Agreement. CITY will provide Contractor with a written report of the monitor's findings. If the monitoring report notes deficiencies in Contractor's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Contractor and a reasonable amount of time in which to attain compliance. Failure by Contractor to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 16 and 17 herein.

SECTION 8. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that CITY is contracting with CONTRACTOR as an Independent Contractor, and that CONTRACTOR, its employees and subcontractors are not employees of the CITY.

SECTION 9. CONFLICT OF INTEREST

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

B. Pursuant to Section 9(A) above, CONTRACTOR warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. CONTRACTOR further warrants and certifies that it has tendered to the CITY a Contracts Disclosure Form in compliance with the CITY Ethics Code.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Contractor shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.
- B. None of the performances rendered by Contractor under this Agreement shall involve, and no portion of the funds received by Contractor under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Contractor shall include the substance of this Section 10 in all sub-grant or sub-contractor agreements.

SECTION 11. LEGAL AUTHORITY

- A. Legal Authority. Each Party assures and guarantees to the other that it possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their respective obligations hereunder.
- B. Signatories. Each Party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such Party has been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.
- C. CITY will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either Contractor or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Contractor is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Section 11.

SECTION 12. GOVERNING LAW AND VENUE

- A. Notice to CITY. CONTRACTOR shall give CITY immediate notice in writing of: (i) any OSHA investigation of CONTRACTOR concerning the Business Activities at the Project Site; (ii) bankruptcy of CONTRACTOR; and (iii) any notice given by CONTRACTOR to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at the Project Site. CONTRACTOR shall submit a copy of each such notice required hereunder to CITY within fifteen (15) calendar days after receipt or issuance, as applicable.
- B. Texas Torts Claims Act. CONTRACTOR acknowledges that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement is performable in Bexar County, Texas and shall be interpreted according to the Constitution and the laws of the State of Texas. Venue and jurisdiction of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event CONTRACTOR or CITY should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees to pay to the other Party its reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party so ordered by a court having jurisdiction over the Parties.

SECTION 14. LITIGATION AND CLAIMS

A. Contractor shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Contractor arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, Contractor shall furnish immediately to CITY copies of all pertinent papers received by Contractor with respect to such action or claim. Contractor shall notify the CITY immediately of any legal action filed against the Contractor or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Contractor shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. CITY and Contractor acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 15. CHANGES AND AMENDMENTS

A. Except as specifically provided in Section 13(C) of this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of Contractor.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth this date, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 16. DEFAULT

A. Notice and Cure Period. If CONTRACTOR fails to comply with any of the terms of this Agreement, then such non-compliance shall be deemed an "event of default." Upon the occurrence of an

event of default, CITY shall provide CONTRACTOR with written notification as to the nature of the default, whereupon CONTRACTOR shall have sixty (60) calendar days following the date of CONTRACTOR's receipt of CITY's written notification (the "**Cure Period**") to cure such event of default. Subject to Section 16(B)(3) below, as applicable, if CONTRACTOR fails to cure an event of default within its applicable Cure Period, or such longer period of time as may be reasonably necessary for CONTRACTOR to cure the default in question if the same cannot reasonably be cured within such sixty (60) calendar day period, CITY may, upon written notice of suspension to CONTRACTOR, suspend this Agreement in whole or in part and withhold further payments to CONTRACTOR until the default is cured. Such notice of suspension shall include: (1) the reason for such suspension; (2) the effective date of such suspension; and (3) in the case of partial suspension, the portion of this Agreement to be suspended.

B. Lifting of Suspension. A suspension under this Section shall be lifted upon a showing by CONTRACTOR that the event of default has been cured or by a written waiver of CITY of the term(s) in question.

C. No Liability. CITY shall not be liable to CONTRACTOR or to CONTRACTOR's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 17. TERMINATION

A. CITY shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the termination date of this Agreement or the last property tax rebate application whenever CITY determines that Contractor has failed to comply with any term of any Agreement with the CITY. CITY will provide Contractor with written notification as to the nature of the non-compliance, and grant Contractor a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such Agreement. Should Contractor fail to cure any default within this period of time, the CITY may, upon issuance to Contractor of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that Contractor shall: (1) immediately upon receipt of Notice of Termination advise CITY of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Awards may be terminated in whole or in part only as follows:

1. By the CITY (with the consent of the Contractor) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the Contractor upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose

for which the award was made, the CITY may terminate the award in its entirety under Section 15(A).

D. Upon receipt of Notice of Termination for non-compliance, Contractor shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Agreement shall be terminated and CITY will not be liable to Contractor or to Contractor's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by CITY of its right of suspension under this Agreement, or of early termination pursuant to this Agreement, Contractor shall not be relieved of any liability to CITY for damages due to CITY by virtue of any breach by Contractor of any Agreement with CITY. CITY may withhold payments to Contractor until such time as the exact amount of damages due to CITY from Contractor is agreed upon or is otherwise determined.

F. Bankruptcy. If CONTRACTOR, any Related Organization, and/or other CITY-approved assignee permitted under this Agreement files any petition for bankruptcy, then this Agreement shall automatically be deemed to have terminated one (1) day prior to the filing of the petition for bankruptcy and, upon such termination, all funds previously disbursed to CONTRACTOR, and/or for the benefit of CONTRACTOR, under this Agreement which have not been previously recaptured by CITY may be recaptured by CITY according to the schedule set forth in Section 16(C) below

SECTION 18. RESERVED

SECTION 19. RELIEF FROM PERFORMANCE (FORCE MAJEURE)

In addition to relief expressly granted in this Agreement, CONTRACTOR may be granted relief from performance of this Agreement to the extent CONTRACTOR is prevented and/or impaired from compliance and performance by any Force Majeure Event. For purposes of this Agreement, a "**Force Majeure Event**" shall include an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster casualty, condemnation or other event beyond the reasonable control of CONTRACTOR. The burden of proof for such relief shall rest upon CONTRACTOR. To obtain relief based upon this Section 19, CONTRACTOR must file a written notice with CITY's Transportation and Capital Improvements Department for approval, specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

SECTION 20. SUBCONTRACTS

A. Contractor shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by Contractor. Contractor shall bear full responsibility for performance by all subcontractors.

B. Contractor, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to Contractor's subcontractor(s).

C. Contractor assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. CONTRACTOR, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States (“Undocumented Workers”). If CONTRACTOR is convicted of a violation under 8 U.S.C. Section 1324a (f), then CONTRACTOR shall repay CITY the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date CONTRACTOR is notified by CITY of such violation. CITY, in its sole discretion, may extend the period for repayment herein. Additionally, CONTRACTOR shall pay interest on the amounts due to CITY under this Section 18 at the rate of five percent (5%) per annum from the date of such violation notice until paid. CONTRACTOR shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom CONTRACTOR contracts.

SECTION 21. REASONABLENESS

The Parties agree to act reasonably and in good faith when acting under the terms of this Agreement.

SECTION 22. PRESERVATION OF RIGHTS

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any Agreement between Contractor and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 23. NON-ASSIGNMENT

This Agreement is not assignable. Notwithstanding any attempt to assign the Agreement, Contractor shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions herein. Contractor shall be held responsible for all funds received under this Agreement. By signing this Agreement, CONTRACTOR agrees that it will not knowingly award or pay funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by CITY.

SECTION 24. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 25. NOTICE

Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the Party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such Party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such Party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the

custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either Party may designate another address for all purposes under this Agreement by giving the other Party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO CITY:

TO CONTRACTOR:

City of San Antonio
Attn: Transportation and
Capital Improvements
P.O. Box _____
San Antonio, Texas _____

H-E-B
Attn: _____

San Antonio, TX _____

SECTION 26. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be interpreted in the order of priority as appears below:

- Exhibit A: Project Site Map
- Exhibit B: Public Improvements Deliverables

WITNESS OUR HANDS, effective as of _____, 2018 (the “**Effective Date**”):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2018-06-21-_____ and CONTRACTOR pursuant to its authority.

CITY OF SAN ANTONIO,
a Texas municipal corporation

HEB GROCERY COMPANY, L.P.
a _____

Sheryl L. Sculley
City Manager

NAME:
TITLE:

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A
Project Map

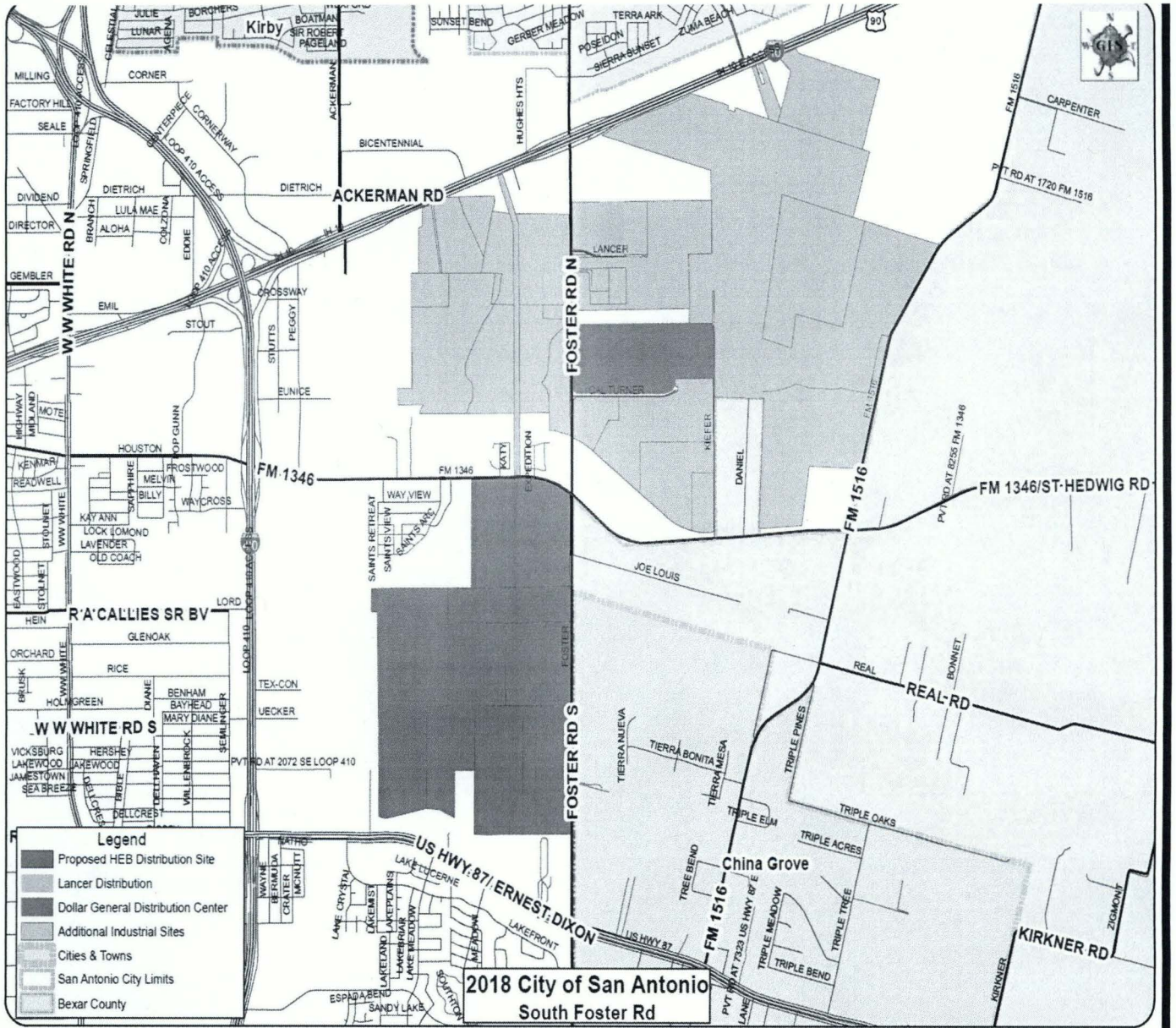


Exhibit B

PUBLIC IMPROVEMENT DELIVERABLES

S. FOSTER ROAD WIDENING
ENGINEERING DELIVERABLES

- Right-of-way and Design Survey
- Subsurface Utility Engineering
- Geotechnical Investigation
- Environmental (Water of the US, Habitat Compliance, Cultural Resources, Archeology)
- Roadway Design
- Bid Packages

Engineering design services to include preparation and delivery of the following items: opinion of probable costs, anticipated project schedule, typical sections, horizontal alignment, roadway profile, street cross sections at 50' increments, driveway summary sheets, drainage area map, culvert crossing design/detail, utility adjustments, traffic control plan, intersection layouts, signal plans. Also, Stantec will conduct a project kick-off/scoping meeting and provide biweekly updates to City staff.

DRAFT