

ORDINANCE 2020-06-18-0418

APPROVING A FUNDING AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, CPS ENERGY, AND PORT AUTHORITY OF SAN ANTONIO TO DESIGN AND BUILD OUT THE FACILITY FOR WHICH THE ALAMO REGIONAL SECURITY OPERATIONS CENTER (“ARSOC”) WILL BE LOCATED, AND A SUBLEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND CPS ENERGY TO BE ENTERED INTO UPON COMMENCEMENT OF THE PRIMARY LEASE AGREEMENT. FUNDING IS AVAILABLE THROUGH THE FY 2020 – FY 2025 CAPITAL IMPROVEMENT PROGRAM AND CPS ENERGY.

* * * * *

WHEREAS, the Alamo Regional Security Operations Center (“ARSOC”) vision is for a centralized security operations facility to provide real-time, collaborative, cyber-security information sharing among municipally owned entities in the San Antonio Area; and

WHEREAS, the ARSOC will provide a 24/7 operational facility committed to protecting San Antonio’s infrastructure and critical systems from threats using advanced and emerging technology; and

WHEREAS, the ARSOC will develop public-private partnerships in support of cyber security, collaborative skills development and regular training exercises for regional municipal organizations; and

WHEREAS, the ARSOC will be located at 638 Davy Crockett, Building 940 under a 15-year lease term with a 5-year renewal option and zero rent between Port Authority of San Antonio as landlord and the City as tenant (“Primary Lease Agreement”); and

WHEREAS, the City will enter into a rent-free sublease with CPS for a term concurrent with the term of the Primary Lease Agreement; and

WHEREAS, Port Authority of San Antonio will provide and be responsible for all equipment, personnel, and related services necessary to design and build out the ARSOC (the “Project”) for a total cost of up to \$2,705,895.00, which includes an interest payment of \$10.00; and

WHEREAS, CPS Energy has agreed to contribute funds in the amount of \$1,500,000.00 to the City to be utilized towards the Project; and

WHEREAS, the City will contribute the remaining \$1,205,895.00 toward the Project; and

WHEREAS, the City will reimburse Port Authority of San Antonio \$2,205,885.00 within 30 calendar days of the commencement date of the Primary Lease Agreement and \$500,010.00 no later than December 31, 2021; **NOW THEREFORE:**

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

SECTION 1. The City Council authorizes the City Manager or designee to enter into a Funding Agreement substantially in the form as shown in **Attachment I** with CPS Energy and Port Authority of San Antonio for the design and build out of the ARSOC facility and a sublease agreement between the City of San Antonio as tenant and CPS Energy as subtenant to be entered into upon commencement of the Primary Lease Agreement for the lease of space at the ARSOC facility.

SECTION 2. Funds are authorized to be received from CPS Energy to SAP Fund 40099000 Other Capital Projects, SAP Project Definition 09-00127 Alamo Regional Security Operations Center, WBS element 09-00127-90-09-01, GL Account 4502280, and the budget shall be revised by increasing WBS element 09-00127-01-06, General Ledger Account 5201140 in the amount of \$1,500,000.00.

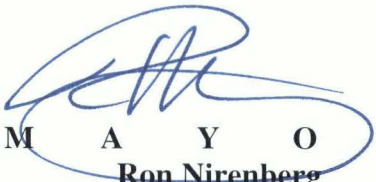
SECTION 3. Funding in the annual amount of \$2,705,895.00 for reimbursement to Port of San Antonio for tenant improvements is contingent upon City Council approval of subsequent budgets that fall within the duration of this agreement.

SECTION 4. Funding in the annual amount of \$150,000.00 for the future operating costs is contingent upon City Council approval of subsequent budgets that fall within the duration of this contract.

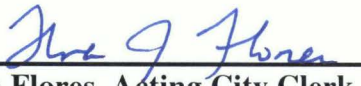
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance becomes effective immediately upon its passage by eight (8) votes or more and 10 days after passage upon its approval by less than eight (8) votes.

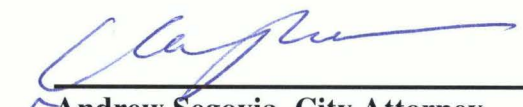
PASSED AND APPROVED this 18th day of June, 2020.


M A Y O R
Ron Nirenberg

ATTEST:


Tina Flores, Acting City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney



City of San Antonio

City Council

June 18, 2020

Item: 14B

File Number: 20-3719

Enactment Number:

2020-06-18-0418

Ordinance approving a Funding Agreement between the City, CPS Energy, and Port Authority of San Antonio to design and build out the facility for which the Alamo Regional Security Operations Center (“ARSOC”) will be located; and authorizing a Sublease Agreement with CPS Energy. Funding is available through the FY 2020 - FY 2025 Capital Improvement Program and CPS Energy.

Councilmember John Courage made a motion to approve. Councilmember Rebecca Viagran seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Courage and Perry

Absent: 1 Pelaez

JG
06/18/20
Item No. 14B

Attachment I

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**FUNDING AGREEMENT FOR THE
SAN ANTONIO ALAMO REGIONAL
SECURITY OPERATIONS CENTER**

This **FUNDING AGREEMENT FOR THE SAN ANTONIO ALAMO REGIONAL SECURITY OPERATIONS CENTER** (“Agreement”) is hereby made and entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City"), CPS Energy, a Texas electric and gas utility owned by City (“CPS”), and Port Authority of San Antonio, a Texas Defense-Base Development Authority ("Port SA"). City, CPS, and Port SA are referred to herein as “Parties” collectively and as a “Party” individually.

I. RECITALS

WHEREAS, the Parties desire to create a centralized security operations facility, to be called the Alamo Regional Security Operations Center (“ARSOC”) to, among other things as further described in the attached and incorporated **Exhibit A**, provide real-time, collaborative, cyber-security information sharing among entities in the San Antonio Area; and

WHEREAS, the ARSOC will serve as a 24/7 operational facility committed to protecting San Antonio’s infrastructure and critical systems from threats using advanced and emerging technology; and

WHEREAS, the ARSOC will allow the San Antonio region to monitor, train, defend, and respond together to cybersecurity threats; and

WHEREAS, Port SA will take all actions necessary to design and build out the ARSOC at the Project Facility (as defined below) in accordance with the terms and conditions of this Agreement (collectively, the “Project”); and

WHEREAS, Port SA will provide and be responsible for all equipment, personnel, and related services necessary to complete the Project and will exercise its best judgment in the completion of the Project; and

WHEREAS, subject to the terms of this Agreement, Port SA shall complete the Project by April 30, 2021; and

WHEREAS, the total cost of the Project is estimated at **TWO MILLION SEVEN HUNDRED FIVE THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS AND NO/100 (\$2,705,895.00)**, which includes an interest payment of **TEN DOLLARS AND NO/100 (\$10.00)**; and

WHEREAS, City has agreed to contribute funds toward the completion of the Project in the amount of **ONE MILLION TWO HUNDRED FIVE THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS AND NO/100 (\$1,205,895.00)**; and

WHEREAS, CPS has agreed to contribute funds toward the built-out costs of the Project in the amount of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100**

(\$1,500,000.00); and

WHEREAS, the Parties desire to enter into this Agreement, through which City will provide the total combined funding of **TWO MILLION SEVEN HUNDRED FIVE THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS AND NO/100 (\$2,705,895.00)** to Port SA to oversee and administer the Project; and

WHEREAS, Port SA is the fee simple owner of the proposed location of the Project located at 638 Davy Crockett, Port San Antonio, San Antonio, Texas 78226 (the "Project Facility"); and

WHEREAS, City will enter into a 15-year lease agreement with one 5-year renewal option with Port SA for the Project Facility described more fully in the attached and incorporated **Exhibit B** ("Primary Lease"); and

WHEREAS, City will enter into a rent-free sublease with CPS for a term concurrent with the term of the Primary Lease for the Project Facility (the "Sublease").

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed including the Recitals set forth above, the Parties agree as follows:

II. AGREEMENT

1. Term

1.01 This Agreement begins upon the date the last Party signs this Agreement and ends upon completion of all obligations described herein (the "Term"), unless terminated earlier in accordance with the provisions of this Agreement.

2. Performance by City and CPS

2.01 City shall contribute ONE MILLION TWO HUNDRED FIVE THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS AND NO/100 (\$1,205,895.00) ("City Funds") towards the Project.

2.02 CPS shall pay City ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$1,500,000.00) ("CPS Funds") upon the later of (i) fifteen (15) calendar days following CPS' receipt of written notice from City indicating that the Commencement Date (as defined in the Primary Lease) has occurred, or (ii) the date the Sublease has been fully executed. CPS' obligation to pay City the CPS Funds shall be contingent on full execution of the Sublease.

2.03 City Funds and CPS Funds shall be paid by City to Port SA for the Project in an amount not to exceed TWO MILLION SEVEN HUNDRED FIVE THOUSAND EIGHT HUNDRED NINETY-FIVE DOLLARS AND NO/100 (\$2,705,895.00) ("Project Funding"). Project Funding will be paid as follows:

- (A) \$2,205,885.00 by City to Port SA within thirty (30) calendar days of the Commencement Date (as defined in the Primary Lease) of the Primary Lease; and
- (B) \$500,010.00 by City to Port SA no later than December 31, 2021, which includes an interest payment of \$10.00.

2.04 The Parties acknowledge and agree that: (i) this Agreement does not obligate City's General Fund monies or any other monies or credits of City unless budgeted and appropriated by City, provided, however, Port SA is not obligated to proceed with construction of the Project unless and until City has confirmed in writing that the Project Funding has been budgeted and appropriated by City; (ii) the CPS Funds shall be the only financial contribution required of CPS relating to the Project and shall be used solely for buildout costs of the Project; (iii) except as expressly provided in the Sublease, CPS shall not be required to pay operating or maintenance costs relating to the Project Facility; and (iv) upon payment of the CPS Funds to City, CPS shall have (A) the right to participate in all aspects of the ARSOC to the same extent as the rights of City, and (B) the same access rights to the Project Facility that City has as tenant under the Primary Lease. Notwithstanding anything to the contrary in the Primary Lease, at the expiration of the Term or earlier termination of this Agreement pursuant to the terms hereof, City and CPS shall in good faith inventory the ARSOC equipment and agree as to the specific items of ARSOC equipment each Party owns, and Port SA acknowledges and agrees that City and CPS shall have the right to remove their respective ARSOC equipment, provided, however, after such removal of the ARSOC equipment, City will properly restore the leased premises in accordance with the terms of the Primary Lease.

2.05 Promptly following the date of this Agreement, City and CPS shall enter into the Sublease by which City will sublease to CPS rights to the Project Facility (equivalent to City's rights as tenant under the Primary Lease), for a term concurrent with the term of the Primary Lease, and such Sublease will contain, *inter alia*, provisions regarding the following: (i) the right to access and use common space and equipment purchased by City for shared use as generally described in the attached and incorporated **Exhibit E**; (ii) the process for allowing third parties to participate in the ARSOC, which shall include joint approval by City and CPS for subtenants (other than SAWS, VIA, and Bexar County, which are hereby pre-approved), third-party participants, and the scope and nature of any third-party participant's rights; (iii) security requirements; (iv) the process for information sharing; (v) the allocation of ownership of intellectual property rights, if any; and (vi) contribution by CPS for its pro rata share of the maintenance costs contemplated by Section 10 of the Primary Lease, provided that CPS shall not be required to contribute to such costs prior to the third (3rd) anniversary of the Commencement Date (as defined in the Primary Lease) of the Primary Lease. Joint approval will not be required for City's and CPS' interns, contractors providing services to City or CPS, the Federal Bureau of Investigation, United States Secret Service, vendors, and staff.

3. Performance by Port SA

3.01 Subject to the appropriation of the Project Funding by City as set out in Section 2.04 above, and subject to the terms and conditions of this Agreement, Port SA hereby accepts full responsibility for the performance of all services and activities required to design, build out, and complete the Project by April 30, 2021.

3.02 Port SA shall use the Project Funding only for work directly related to the Project. City shall not be obligated nor liable to any party other than Port SA for payment of any monies or the provision of any goods or services pursuant to this Agreement.

3.03 Port SA shall provide to City and CPS its plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of City and CPS. After approval by City and CPS, the Plans shall be attached and incorporated into this Agreement as **Exhibit C** and Port SA shall not make any substantial changes to the Plans without the prior written approval of City and CPS. The approval authority given in this Section does not relieve the Parties of the burden of obtaining all other necessary governmental approvals. Approval of the Plans by City and CPS does not release Port SA of the responsibility for the correction of Port SA's mistakes, defects, errors, or omissions contained in the Plans, including any mistakes, defects, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. City and CPS shall have authority to inspect the Project throughout the Term of this Agreement to ensure compliance with the Plans.

3.04 In connection with the procurement of contractors and subcontractors for the construction of the Project, Port SA 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 the Small Business Economic Development Advocacy ("SBEDA") Program Requirements, attached hereto and incorporated herein for all purposes as **Exhibit D**, for Project Funding used for the Project.

4. Compliance with Local, State, and Federal Laws

4.01 Port SA warrants and represents that (i) the Project will be constructed in compliance with all federal, state, and local laws and regulations; and (ii) it will ensure such compliance by all contractors and subcontractors who work on the Project.

4.02 If applicable, the Plans shall conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin.

4.03 As a Party to this contract, Port SA 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.

5. Authority

5.01 Each Party represents, warrants, assures and guaranties it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

5.02 Unless written notification by Port SA to the contrary is received and approved by City, Curtis Casey, Director of Finance and Asset Management is the authorized representative responsible for the management of this Agreement on the part of Port SA.

5.03 City's Information Technology Services Department Director or his/her designee is responsible for the administration of this Agreement on behalf of City.

5.04 CPS' Vice President & Chief Integrated Security Officer or his/her designee shall be responsible for the administration of this Agreement on behalf of CPS.

6. Notice

6.01 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:

If to City: City of San Antonio
Information Technology Services Department
Attn: Craig Hopkins, Chief Information Officer
P.O. Box 839966
San Antonio, Texas 78283-3966

If to CPS: Vice President & Chief Integrated Security Officer
CPS Energy
P.O. Box 1771
San Antonio, Texas 78296

With a copy to:

CPS Energy
Attn: General Counsel
P.O. Box 1771
San Antonio, Texas 78296
LegalNotices@cpsenergy.com

If to Port SA: Port Authority of San Antonio
907 Billy Mitchell Road
San Antonio, Texas 78226
Attn: James E. Perschbach, President & CEO

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

7. Receipt, Disbursement, and Account of Funds

7.01 Port SA shall maintain a numbered account for the receipt and disbursement of all Project Funding. All checks and withdrawals from such account will have itemized documentation in support thereof, pertaining to the use of Project Funding provided under this Agreement. No later than thirty (30) calendar days following completion of the Project, Port SA shall provide to City and CPS an itemized breakdown of all costs of the Project.

7.02 Port SA shall maintain records that provide accurate, current, separate, and complete disclosure of the status of any Project Funding. Port SA's maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting principles.

7.03 Port SA shall retain all books, records, documents, written accounting policies and procedures, and all other relevant materials pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

8. Accessibility of Records

8.01 At any time during normal business hours and as often as City or CPS may deem necessary, upon three (3) days written notice, Port SA shall make all of its records pertaining to this Agreement available to City, CPS, and any of their authorized representatives, and shall permit City, CPS, and any of their authorized representatives to audit, examine, and make excerpts and/or copies of same.

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

9. Insurance

9.01 Prior to the commencement of any work under this Agreement, Port SA shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Information Technology Services Department, which shall be clearly labeled "San Antonio Alamo Regional Security Operations Center" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Information Technology Services Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

9.02 City reserves the right to review the insurance requirements of this Article 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 shall City allow modification whereby City may incur increased risk.

9.03 Port SA's financial integrity is of interest to City; therefore, subject to Port SA's right to maintain reasonable deductibles in such amounts as are approved by City, Port SA shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Port SA's sole expense, insurance coverage written on an occurrence basis, unless

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Damage to property rented by Port SA	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Builder's Risk (if applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Property Insurance:	For physical damage to the property of Lessee including improvements and betterment to the Leased Premises. Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of the Contractor's property
7. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.
8. Explosion, Collapse, Underground Property Hazard Liability	\$2,000,000 per claim

9.04 Port SA agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Port SA herein, and provide a certificate of insurance and endorsement that names the Port SA, CPS, and City as additional insureds. Port SA shall provide City and CPS with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this

agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of this Agreement for all purposes.

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

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

9.06 Port SA agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name City and CPS, their respective officers, officials, trustees, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies.
- Provide for an endorsement that the "other insurance" clause shall not apply to City or CPS where City or CPS are additional insureds shown on the policy.
- Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City and CPS.
- Provide advance written notice directly to City and CPS 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.

9.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Port SA shall provide a replacement Certificate of Insurance and applicable endorsements to City and CPS. City and CPS shall have the option to suspend Port SA's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.08 In addition to any other remedies City or CPS may have upon Port SA's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City and CPS shall have the right to order Port SA to stop work hereunder,

and/or withhold any payment(s) which become due to Port SA hereunder until Port SA demonstrates compliance with the requirements hereof.

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

9.10 It is agreed that Port SA's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City or CPS for liability arising out of operations under this Agreement.

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

9.12 Port SA and any Subcontractors are responsible for all damage to their own equipment and/or property.

9.13 With respect to insurance proceeds under any policy required under this Article 9 payable to City and CPS: (i) if such proceeds are paid to Port SA, Port SA shall, within five (5) days of receipt thereof, pay City and CPS each fifty percent (50%) of the total amount of such proceeds; and (ii) if such proceeds are paid to City or CPS directly, City shall be entitled to fifty percent (50%) of such proceeds and CPS shall be entitled to fifty percent (50%) of such proceeds, and City and CPS agree to promptly remit such share to the other.

10. Changes and Amendments

10.01 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 the Parties.

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

11. Assignments

11.01 Port SA may not sell, assign, pledge, transfer, or otherwise convey this Agreement, any interest in and to same, or any claim arising thereunder, without the prior written consent of City's Information Technology Services Department Director and CPS. Any attempt at transfer, pledge, or other assign without said written approval shall be void ab initio and shall confer no rights upon any third person.

12. Conflicts of Interest

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

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

12.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

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

12.04 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.

13. Default

13.01 Upon default by Port SA in the performance of its obligations hereunder, City and CPS shall give Port SA notice of the same, and Port SA shall have thirty (30) calendar days following receipt of written notice of default from City and CPS (or such reasonably longer time as may be necessary provided Port SA commences the cure within thirty (30) calendar days and continuously and diligently pursues the cure to completion) to cure such default. If Port SA fails to timely cure such default, City and CPS may pursue all remedies available in law or at equity and/or other rights City and CPS may have in this Agreement; provided that it is expressly agreed that no Party to this Agreement shall have the right to seek consequential or punitive damages against any other Party for any default under this Agreement.

14. Severability of Provisions

14.01 If any clause or provision of this Agreement is held invalid, illegal, or unenforceable under present or future federal, state, or local laws including, but not limited to, the City Charter, City Code, or ordinances of City, 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 also is the intention of the Parties hereto, in lieu of each clause or provision of this Agreement that is 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.

15. Non-Waiver of Performance

15.01 No waiver by any Party of a breach of any of the terms, conditions, covenants, or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by any 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.

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

15.03 No representative or agent of City or CPS may waive the effect of the provisions of this Section without formal action from the San Antonio City Council or the CPS Board of Trustees, as applicable.

16. Force Majeure

16.01 Performance of obligations under this Agreement by the Parties shall be subject to extension, due to delay by reason of events of force majeure. For purposes of this Agreement, force majeure shall include damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, epidemic, war, unusually adverse weather or flooding, or other causes beyond the Parties' reasonable control, including, but not limited to, any court or judgment resulting from any litigation affecting the Project or this Agreement.

17. Entire Agreement

17.01 This Agreement constitutes the final and entire agreement between the Parties hereto relating to the Project. No other agreements, oral or otherwise, regarding the Project shall be deemed to exist or to bind the Parties.

18. Parties Bound

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

19. Relationship of Parties

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

20. Texas Law to Apply and Venue

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

21. Publicity

21.01 The Parties acknowledge and agree that all public announcements, press releases or statements regarding the Project or ARSOC issued by any Party shall reference City and CPS as being the original participants, or similar nomenclature indicating participatory interest, and the partnership with Port SA in the Project.

22. Counterparts

22.01 This Agreement may be executed in three counterparts, each of which is deemed an original, but all constitute one and the same instrument. Scanned signatures sent by electronic means shall constitute original signatures.

[Signatures on Next Page]

EXECUTED and AGREED as of the dates indicated below.

CITY OF SAN ANTONIO

By: _____

Craig Hopkins
Printed Name

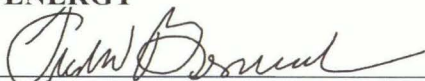
Chief Information Officer
Title

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

CPS ENERGY

By: 

Fred Bonewell
Printed Name

Chief Security, Safety & Gas Solution Officer
Title

Date: June 15, 2020

PORT AUTHORITY OF SAN ANTONIO

By: 
James E Perschbach (Jun 16, 2020 17:31 CDT)

James E. Perschbach
Printed Name

President & CEO
Title

Date: Jun 16, 2020

EXHIBIT A

DESCRIPTION OF ARSOC

The ARSOC facility will be a security focused operations center with co-located teams for the initial purpose of:

1. Real-time intelligence exchange;
2. Identification and response to common security threats to the Parties, the power grid or the community;
3. Collective and/or community preparation, training and incident response;
4. Cross-training and professional development sharing between Parties;
5. Expertise and security resource tool sharing;
6. Collective workforce training and development;
7. Technical and security support for joint projects between the Parties;
8. Other activities that increase the security posture of the Parties, the power grid or the community;
9. Serve as a hub for regional cyber security activity; and
10. Serve as a model for communities on cyber security collaborations between municipal partners.

EXHIBIT B

PRIMARY LEASE

(attached as a separate document)

EXHIBIT C

PLANS

(attached as a separate document)

EXHIBIT D
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM
REQUIREMENTS FOR
ARSOC LEASE & BUILDOUT – PORTSA
(attached as a separate document)

Exhibit D
SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM
REQUIREMENTS FOR
ARSOC LEASE & BUILDOUT – PORT SA

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 1 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 1 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 **thirteen percent (13%)** 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 or 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 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – 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

COMMON SPACE AND JOINT USE EQUIPMENT

At the time of entering into this Agreement, the Parties intend for the following common space to be incorporated into the design plans and for the correlated equipment to be purchased by City for joint use among all future subtenants and participants:

- Training Room – Computer systems, AV equipment
- Break Room and Kitchen
- Conference Rooms – conferencing equipment/AV equipment
- Gym – donated equipment
- Bathrooms – 3 sets total
- Paging system/digital signage system
- Observation Deck
- IDF/MDF closet - routers and switches, cabinets, network equipment (not inclusive of individual organization's routers and switches)
- Parking spaces
- Physical security systems
- Billeting Room, lockers
- Fiber and data cabling for facility-wide internet access
- VoIP phones
- Office furniture
- Radio Maintenance and Issuing Center