

AN ORDINANCE 2017-11-09-0879

FOR THE NEIGHBORHOOD PLACE CULTURAL/COMMUNITY CENTER, A 2017-2022 BOND FUNDED PROJECT LOCATED IN COUNCIL DISTRICT 5, AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT WITH FAMILY SERVICES ASSOCIATION IN THE AMOUNT OF \$1,500,000.00 OF LEVERAGED FUNDING FOR FACILITY UPGRADES, AUTHORIZING THE EXECUTION OF A 30 YEAR LEASE AGREEMENT OF A 64,000 SQUARE FOOT FACILITY LOCATED AT 3014 RIVAS STREET AND AUTHORIZING THE EXECUTION OF AN ASSOCIATED LICENSE AND OPERATING AGREEMENT.

* * * * *

WHEREAS, on May 6, 2017, San Antonio residents voted and approved the 2017-2022 General Obligation Bond Program totaling \$850 million; and

WHEREAS, the Neighborhood Place Cultural/Community Center, located at 3014 Rivas Street, is a 64,000 square foot facility, that sits on a 4 acre lot located in Council District 5, with \$1,500,000.00 allocated from the Bond Program for improvements; and

WHEREAS, the Neighborhood Place services include a comprehensive array of more than 40 programs and services designed to address troublesome community needs and improve outcomes for children and families; and

WHEREAS, bond funds will leverage other contributions and investments totaling over \$6,000,000.00; and

WHEREAS, the overall project scope thus far has included replacement and upgrades to roofing, HVAC, electrical, and lighting; and

WHEREAS, the new scope of work, to be funded by the City will include upgrades to the gymnasium and cafeteria, renewal of the back parking lot to include grading, drainage, resurfacing, landscaping, and lighting, increased presence of ADA elements to include improved access to the buildings via ramps and a way finding system with directory, water conservation efforts to include rainwater harvesting via a rain catchment system and a community garden, new front entry/pathway, signage, flooring, and window replacement along one corridor of the building; and

WHEREAS, this agreement will be executed in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in

an effort to maximize the amount of small, minority, and women-owned business participation on the contract; and

WHEREAS, the Goal Setting Committee set a 19% Minority/Women Business Enterprise (M/WBE) subcontracting goal and a 3% African-American Business Enterprise (AABE) subcontracting goal. Family Service of San Antonio, Inc., has committed to 19% SBE and 3% M/WBE subcontractor; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the Transportation and Capital Improvements Department or his designee, is authorized to execute a Funding Agreement with Family Services Association in an amount up to \$1,500,000.00 for facility upgrades to the Neighborhood Place Cultural Community Center. A copy of the funding agreement in final form is attached hereto as **Attachment I**.

SECTION 2. The City Manager or her designee or the Director of the Transportation and Capital Improvements Department or his designee, is authorized to execute a 20 year lease agreement for The Neighborhood Place, a 64,000 square foot facility located at 3014 Rivas Street at a rate of \$1.00 per year. A copy of the Lease Agreement is attached hereto as **Attachment II**.

SECTION 3. The City Manager or her designee or the Director of the Transportation and Capital Improvements Department or his designee, is authorized to execute an associated License and Operating Agreement. A copy of the License and Operating Agreement is attached hereto as **Attachment III**.

SECTION 4. A Payment in an amount not to exceed \$1,500,000.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 23-01729, The Neighborhood Place Cultural/Community Center, is authorized to be encumbered and made payable to Family Service Association of San Antonio, Inc., for a funding agreement for facility upgrades. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 5. Payment in an amount not to exceed \$1.00 in Fund 29028000, Internal Order 223000000251 and General Ledger 4407725 is authorized to be encumbered and made payable to Family Service Association of San Antonio Inc. for the lease agreement.


SECTION 6. 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

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City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 9th day of November, 2017.




M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for 
Andrew Segovia, City Attorney

Agenda Item:	11 (in consent vote: 6, 7, 8, 9, 11, 13, 14, 15, 19, 20, 21, 22, 26, 27, 29, 30, 32, P-1, Z-1)						
Date:	11/09/2017						
Time:	09:45:32 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance for The Neighborhood Place Cultural/Community Center, a 2017-2022 Bond funded Project, located in Council District 5, authorizing the execution of a Funding Agreement with Family Services Association in the amount of \$1,500,000.00 for facility upgrades that will total \$6 million with leveraged funding, authorizing the execution of a 30 year lease agreement of a 64,000 square foot facility located at 3014 Rivas Street and authorizing the execution of an associated License and Operating Agreement. [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				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				x
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

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ATTACHMENT I

STATE OF TEXAS §
§

**FUNDING AGREEMENT WITH
NEIGHBORHOOD PLACE**

COUNTY OF BEXAR §

This Agreement is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, Family Service Association of San Antonio, Inc. (and hereinafter referred to as "Grantee") a Texas Non-profit Corporation, acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 6, 2017 and received approval from the voters to fund a variety of Library and Cultural Facilities Improvements (Proposition 4 on the ballot); and

WHEREAS, among the Library and Cultural Facilities Improvements projects approved is a project titled "Neighborhood Place Cultural/Community Center" (the "Project"); such project, to be completed in accordance with the plans attached herto as Exhibit A; and

WHEREAS, the official brochure for the Bond Election described this project as follows: The Neighborhood Place Cultural/Community Center for facility improvements to potentially include a gym, related parking lot, cafeteria and kitchen

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

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

WHEREAS, Grantee has a leasehold from its affiliate, The Neighborhood Place, Inc. of the property located at 702 San Pedro Ave, San Antonio, TX, 78212 (Property) and the proposed location of the Project; and

WHEREAS, Grantee will, concurrent with this Funding Agreement, enter into a Lease agreement with the City and Bexar County as cotenants for the Property as well as an Operating Agreement mandating Grantee's operation of the Project consistent with the terms of this Funding Agreement. The Lease Agreement is attached hereto as Exhibit C and the Operating Agreement is attached hereto as Exhibit D; and

WHEREAS, the public benefit to be gained from the Project is the provision of cultural enrichment and community service facilities, operated under non-profit

regulations as indicated in the Determination Letter from the Internal Revenue Service, attached and incorporated herein as Exhibit E, available to the citizens of San Antonio.

WHEREAS, the City has found, by resolution adopted by its City Council, that the programs and services offered by Grantee at the hereinafter-defined and to be completed Project accomplish the public purpose of cultural enrichment of and provision of community services to City residences and, accordingly, the expenditure of proceeds derived from the sale of bonds authorized at the May 6, 2017 City bond election under Proposition 4 to expand and improve the Project represents a valid expenditure of such bond proceeds; and

WHEREAS, the City's issuance of bonds (such initially City bonds, as well as any City bonds from time to time issued to refund these initial City bonds, the "City Bonds") to fund its contribution obligations hereunder is authorized by applicable Texas law, including the City's Home Rule Charter and the City voters' approval of Proposition 4 at the May 6, 2017 City bond election, and such contribution shall satisfy in full the City's funding obligation for the project identified in Proposition 4 of the City's May 6, 2017 bond election as "The Neighborhood Place Cultural/Community Center; and

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

I. TERM

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The Term shall expire upon the earlier to occur of: (a) final payment by the City of all funding under this Agreement, or (b) termination of this Agreement as otherwise provided herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in Section V of this Agreement, and subject to the other terms and conditions of this Agreement, including, but not limited to, force majeure provisions, Grantee hereby accepts full responsibility for the performance of all services and activities to complete the Project by December 2018, as described in this Agreement.

2.02 The current budget estimates of the Project are approximately \$7,039,358.57. Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$1,500,000.00, minus \$30,000.00 which shall be retained by the City per Section 5.01, for a total of \$1,470,000.00. Grantee shall provide evidence to City that all Project funds have been secured prior to the receipt of any funding under this Funding Agreement. In the event that the scope of the Project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not

responsible for any costs over the estimated amount of the Project unless agreed to in writing in the form of an amendment to this Funding Agreement. The City shall fund its commitment hereunder from proceeds derived from its sale of the City Bonds

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

2.04 The Director of Transportation & Capital Improvement(TCI) or designee shall be responsible for the administration of this Agreement on behalf of the City until the completion of the City funded portion of the Project.

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

2.06 Grantee has provide to City its plans and specifications for the Project, including a construction schedule, ("Plans") and such Plans have been reviewed and approved by City, acting in its capacity as grantor under this Funding Agreement. he Plans shall be attached and incorporated into this Funding Agreement as Exhibit A and Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions and the State of Texas Commission on Environmental Quality (Article 9102). Nor does City's approval of the Plans release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.07 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans and to request copies of construction inspections performed by Grantee and third parties. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the Director of TCI or designee at the completion of the Project construction. Grantee shall notify City and City shall have the right to attend all scheduled construction meetings.

2.08 Beginning on January 31, 2017, and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall provide Director of TCI or designee an annual report ("Annual Report"). The Annual Report shall include the following:

2.08.1 Description of all activities that occurred during the previous calendar year

that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.

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

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

2.09 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President/CEO shall be Grantee designated representative responsible for the management of this Funding Agreement and the point of contact for City on all matters regarding this Funding Agreement.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

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

3.02 To the extent applicable, Grantee agrees to abide by Chapters 252, and 271 of the Texas Local Government Code, and Chapters 2254 and 2267 of the Texas Government Code or other open competitive contracting processes which are advertised to the public in a legal and appropriate manner

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

3.04 Prevailing Wage Rate and Labor Standards

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

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City will provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The Grantee

is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. The Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Funding Agreement.

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

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

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

3.07 Compliance with Bond Covenants. The City's commitment hereunder is funded with City Bonds, which are obligations the interest on which is excluded from the gross income calculations of the holders thereof for the purpose of determining income tax liability under applicable federal law. Maintaining the eligibility of the City Bonds for this tax treatment requires the City's compliance with applicable federal tax law and regulations, which includes agreements regarding the use of City Bonds' proceeds and the use and operation of facilities financed with those proceeds. As the expenditure of the City Bonds' proceeds once delivered to the Grantee, and the use and operation of the completed Project, is under the control of the Grantee, Grantee agrees that it shall not use, or permit the use of, proceeds of the City Bonds, or earnings thereon, or any other amounts or any property, the acquisition, construction, or improvement of which is to be financed directly or indirectly with proceeds of the City Bonds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest in City Bonds to be includable in the gross income of the bond owners for federal income tax purposes. In addition, purposes which are not permissible include, but are not limited to religious activities, restaurants, cafes, and retail stores.

3.08 No Boycotting of Isreal. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

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

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

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

By signing this Agreement with the City of San Antonio, Grantee hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Grantee's verification. If found to be false, City may terminate the contract for material breach.

IV. OWNERSHIP, USE OPERATIONS

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

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

4.03 The Project shall, in accordance with the Plans, facilitate the construction of a gym, parking lot, cafeteria, entry and ADA improvements, and kitchen.

4.04 For the entire term that the City Bonds remain outstanding, Grantee shall operate the Project continuously and in a manner that accomplishes on the City's behalf

the public purposes that form basis for the City's contribution to the Project. Grantee shall satisfy this obligation by assuring that, for the duration immediately hereinbefore specified, the cultural enrichment and community services provided at the Project, once completed, as a ratio of all services provided at the completed Project, shall be at least proportionate to the percentage of the total Project cost funded by the City (assuming a City contribution of \$1,500,000 and an overall Project cost of \$7,039,358.57).

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$1,470,000.00.

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

5.03 Funding shall consist of reimbursements paid to Grantee for construction cost of the Project, not to exceed \$1,500,000.00, with \$30,000.00 to be retained by the City, for total funding by City of \$1,470,000.00. The City funding provided under this Funding Amendment may only be used for the portions of the Project which are dedicated to public use/public purpose. No City funds may be used for Grantee's personal office space or other non-public aspects of the Project

5.04 Except as otherwise set forth herein, it is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement, including a detailed accounting of the

expenditure of amounts received by the City hereunder, for so long as the City Bonds that fund such City commitment hereunder remain outstanding (but not less than four (4) years from the completion of the Project).

6.03 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIMElink) within thirty (30) days after receipt of an approved invoice.

6.04 All requests for reimbursement shall be submitted through the COSA PRIMElink. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMElink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMElink and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the portal.

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

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

- (A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

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

VII. ALLOWABLE EXPENDITURES

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

Grantee's operations hereunder. All funds paid by City shall be for permanent public improvements. Only the following categories of costs shall be considered allowable:

- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design Contract and Amendments

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

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

- Personnel costs, salaries or wages paid directly by Grantee or an affiliated organization of Grantee
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project (including but not limited to costs and fees of the Architect)
- Costs or fees associated with attendance of Grantee at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation of Grantee
- Fundraising
- Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's general contractor and shown on the approved Plans and specifically approved by City.
- Advertising

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

(A) All information, data or report heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

(B) It is financially stable and capable of fulfilling its obligations under this Agreement (whether with internal staff or through third-party outsourcing) and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.

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

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

IX. ACCESSIBILITY OF RECORDS

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

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

X. MONITORING AND EVALUATION

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

XI. INDEMNITY

11.01 Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of resulting from or related to Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, consultant or subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity

provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

11.03 NOTWITHSTANDING THE FOREGOING, TO THE EXTENT PROVIDED BY LAW, CITY SHALL BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST CITY ARISING IN FAVOR OF ANY PERSON, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY, OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF CITY AND/OR ITS EMPLOYEES.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Transportation & Capital Improvements (TCI) Department, which shall be clearly labeled "Neighborhood Place" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City 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 the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TCI Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 The City reserves the right to review the insurance requirements of this 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.

12.03 Grantee's financial integrity is of interest to the City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, 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	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *g. Explosion, Collapse, Underground h. Damage to property rented by Grantee	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 h. \$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 City, 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

*if applicable	

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

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

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

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

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

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

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

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

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

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

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

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

12.13 Grantee shall ensure that its general contractor complies with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. NONDISCRIMINATION

13.01 As a party to this contract, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIV. CONFLICT OF INTEREST

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

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

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

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

XV. POLITICAL ACTIVITY

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City (provided that the Grantee shall be entitled to maintain copies of all of the foregoing materials).

XVII. CONTRACTING

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

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

XVIII. CHANGES AND AMENDMENTS

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

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

XIX. ASSIGNMENTS

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

XX. SEVERABILITY OF PROVISIONS

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

as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NON-WAIVER OF PERFORMANCE

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

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

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

XXII. ENTIRE AGREEMENT

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

XXIII. NOTICES

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

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

And

Grantee: Nancy L. Hard
President/CEO
Family Service Association
702 San Pedro
San Antonio, Texas 78212

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

XXIV. PARTIES BOUND

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. TEXAS LAW TO APPLY

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

XXVII. GENDER

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

XVIII. CAPTIONS

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

XXIX. DEFAULT

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

29.02 In no event shall this Agreement or City's use of the Leased Premises be terminated prior to the final payment or discharge of the City Bonds. As long as City Bonds have not been paid, the City's failure to perform any required actions under this Agreement shall give rise to Grantee's right, upon 60 days written notice to City, to undertake to perform any such actions and to receive reimbursement from City for the cost of performing such actions. After the City Bonds have been finally paid, any breach or violation by City to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of Grantee, at its option, upon thirty (30) days' written notice to City, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

XXX. LEGAL AUTHORITY

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

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

XXXI. FORCE MAJEURE

31.01 If City or Grantee is delayed or prevented from performing any of their respective obligations under this Agreement by reason of strike, labor troubles, or any cause whatsoever beyond such party's reasonable control, the period of such delay or prevention shall be deemed added to the time herein provided for the performance of any such obligation by the delayed party.

XXXII. CONDITIONS TO AGREEMENT

32.01 This Agreement, and all obligations of the parties hereunder, is expressly made conditioned on the mutual final agreement to the terms and conditions of the Funding Agreement attached hereto.

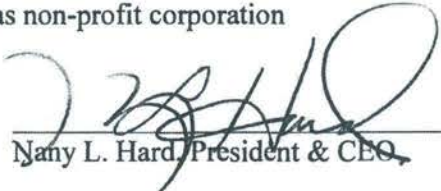
(Signatures Appear on the Following Page)

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

CITY OF SAN ANTONIO

By: _____
Mike Frisbie, Director and City Engineer
Transportation & Capital Improvements Department

FAMILY SERVICE ASSOCIATION OF SAN ANTONIO, INC.,
a Texas non-profit corporation

By: 
Nancy L. Hard, President & CEO

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A

SCOPE

Project Location:

3014 Rivas Street

San Antonio, Texas 78228

NCB 8857 BLK 1 Lot 42 HK Williams Elem. UT1A

NCB 8857 BLK 1 Lot N IRR 98.79 Ft of Lot 40 H K Williams Elementary

Project Description and Scope:

Family Service Association of San Antonio, Inc. (Family Service) had leased the former H.K. Williams Elementary School Campus from Edgewood Independent School District since 2006. As was allowed under the lease that was due to expire in 2017, Family Service exercised its option to purchase the 64,000 sq ft facility and 4-acre campus to continue operating The Neighborhood Place.

The repurposed facility is a collaborative community concept providing a comprehensive array of more than 40 programs and services designed to address troublesome community needs and improve outcomes for children and families. This facility also represents a new and unique model for revitalizing an impoverished urban community, by focusing on services that strengthen families. The multi-tied collaboration at the Neighborhood Place leverages resident leadership and public-private partnerships to deliver program services that help families work, earn and save their way toward self-sufficiency. This model places a specific emphasis on improving the overall health of children within the family, through programs aimed at stemming child abuse providing healthy food alternatives and helping families better prepare children to succeed in school.

The majority of the people who visit and receive services at the Neighborhood Place each year come from the surrounding neighborhoods, which are predominately Latino and are extremely impoverished: 32% of all residents, and nearly 44% of households with children, live below the federal poverty line. Among adults in the targeted zip codes, fully 47% do not have a high school education.

It is the intent of Family Service to extend the current investment of \$6 million that was used to purchase and upgrade the roof, HVAC, electrical and lighting by the \$1.5 million from the City of San Antonio's Bond program. This additional investment will focus primarily on five areas:

- Upgrades to the Gymnasium and campus to improve access to the community for physical exercise and sports programming including ADA access;

- Grading, adding drainage, resurfacing, adding landscaping and lighting, and water conservation elements to the back parking lot;
- Repairing and upgrading the cafeteria kitchen for healthy food preparation education and classes;
- Upgrading ADA elements to the campus; and
- Supporting water conservation and education elements to the landscaped campus.

Exhibit B

SBEDA

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

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

B. Contract Requirements and Commitment

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

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

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

Exception Request - A Respondent to the GRANTEE'S solicitation associated with the scope of work included in this Agreement may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response to the GRANTEE. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000.00 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

C. Definitions

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

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

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

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

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

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

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

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small

Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

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

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

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

accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

Graduation – an SBE firm permanently graduates from the City of San Antonio SBE program when it meets the criteria for graduation set forth in Section III.E.7 of this Ordinance. A firm's graduation or temporary suspension from the SBE program does not necessarily affect its eligibility to be certified and to participate in the City's S/M/WBE Program as an M/WBE. An M/WBE firm permanently graduates from the M/WBE program when it meets the criteria for graduation as set forth in this Ordinance in Section III.E.7. An M/WBE firm that graduates from the M/WBE program is no longer eligible to participate in the Race-Conscious APIs as described herein at Sections III D.2, D.4, D.6, D.8 & D.10 and is also ineligible to participate in the SBE program APIs at Sections III D.1, D.3, D.5, D.7 & D.9 of this Ordinance. However, a graduated M/WBE firm may continue to participate in and benefit from other Race-Neutral non-industry-specific remedies of the S/M/WBE Program as described in Section III.C of this Ordinance.

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

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

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

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

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein.

Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

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

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

Payment – dollars actually paid to GRANTEE, Prime Contractors and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the GRANTEE for purposes of providing goods or services for the City.

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

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

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

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

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

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

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

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

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

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

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

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

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

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

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

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

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that

meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

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

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

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

5. GRANTEE shall immediately notify the Originating Department and SBO of any transfer or assignment of its Agreement with the CITY, as well as any transfer or change in its ownership or business structure.
6. GRANTEE shall retain all records of its Subcontractor payments for this Agreement for a minimum of four years, or as required by state law, following the conclusion of this Agreement or, in the event of litigation concerning this Agreement, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a GRANTEE's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or Joint Venture Partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the GRANTEE and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. GRANTEE acknowledges that the CITY will not execute a Agreement or issue a Notice to Proceed for this project until the GRANTEE and each of its Subcontractors for this project have registered and/or maintained active status in

the CITY's Centralized Vendor Registration System, and GRANTEE has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this Agreement.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. GRANTEE agrees to subcontract at least *nineteen percent (19%)* of the contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA) and

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. GRANTEE agrees to subcontract at least *three percent (3%)* contract value to certified African American Business Enterprise (AABE) firm(s) headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This *three percent (3%)* subcontracting goal will also count toward the aforementioned *nineteen percent (19%)* M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that GRANTEE submitted to CITY for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by GRANTEE on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of GRANTEE to attain this subcontracting goal for SBE, M/WBE and AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE, M/WBE and AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each firm to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 19% and AABE Subcontracting goal of 3% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2015, African-American owned firms represent approximately 2.76% of available subcontractors, Hispanic-American firms represent approximately 16.47%, Asian-American firms represent approximately 1.14%, Native American firms represent approximately 0.13%, and Women-owned firms represent approximately 4.91% of available construction subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

Upon execution of this Agreement by GRANTEE, GRANTEE shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the GRANTEE's reported subcontract participation is accurate. GRANTEE shall pay its

Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of GRANTEE's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to GRANTEE, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

H. Violations, Sanctions and Penalties

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

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

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

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

SW
11/9/17
Item No. 11

ATTACHMENT II

FACILITY LEASE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §
 §
 §
CITY OF SAN ANTONIO §

This Facility Lease Agreement (this "Lease") is entered into effective as of January 24, 2017 (the "Effective Date"), by and between FAMILY SERVICE ASSOCIATION OF SAN ANTONIO, INC., a Texas non-profit corporation (herein called "Landlord"), and BEXAR COUNTY, TEXAS, a political subdivision of the State of Texas, acting by and through its Commissioners Court (herein called the "County"), and CITY OF SAN ANTONIO, TEXAS, a home rule municipality and political subdivision of the State of Texas, acting by and through its City Council (herein called the "City," and collectively with the County the "Tenant"); with each of the foregoing parties acting herein by and through its hereunto duly authorized representative.

WITNESSETH:

WHEREAS, the County is authorized by Section 122.001 of Chapter 122, Texas Health and Safety Code, as amended ("Chapter 122"), to appropriate and spend money from Tenant general revenues for public health and other purposes in the County; and

WHEREAS, the Landlord provides, among other things, community services for public health and other purposes, which include, social services and resources to families in economically disadvantaged communities in the County (the "Landlord Services"); and

WHEREAS, pursuant to Chapter 122, Landlord receives money from the County general revenues for public health and other purposes to assist Landlord in the provision of the Landlord Services ; and

WHEREAS, City held a Bond Election on May 6, 2017 and received approval from the voters to fund a variety of Library and Cultural Facilities Improvements (Proposition 4 on the ballot); and

WHEREAS, among the Library and Cultural Facilities Improvements projects approved is a project titled "The Neighborhood Place Cultural/Community Center" which is the same as the Project defined in Section 2.02 below; and

WHEREAS, the official brochure for the Bond Election described this project as follows: "The Neighborhood Place Cultural/Community Center LF, \$1,500,000: Leverage funding for facility improvements to potentially include a gym, related parking lot, cafeteria and kitchen"; and

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

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

WHEREAS, Landlord has acquired a leasehold interest in, manages, maintains, operates, supervises, and desires to make improvements and renovations to, the land, buildings, equipment, facilities, and improvements which serve as a community service facility out of which Landlord provides, among other things, the Landlord Services to families in the economically disadvantaged communities that it serves in the City of San Antonio, Texas and in Bexar County, Texas (the "Landlord Facility");

WHEREAS, pursuant to that certain Premises Lease, dated as of December 15, 2016, by and between The Neighborhood Place, Inc., a Texas nonprofit corporation, as lessor, and Landlord, as lessee (the "Premises Lease"), Landlord is the owner of a leasehold interest in that certain tract of land on which the Landlord Facility is situated, which tract of land is comprised of approximately 3.0 acres, more or less, situated in the City of San Antonio and in Bexar County, Texas, and being more particularly described in Exhibit A attached hereto and made a part hereof for all purposes (the "Land");

WHEREAS, the County is further authorized by Chapter 1301, Texas Government Code, as amended ("Chapter 1301"), to establish county facilities for needy or indigent persons in the county, and by Chapter 1433, Texas Government Code, as amended ("Chapter 1433"), to acquire, by construction, purchase, devise, gift, or lease a county facility project, which includes the land, buildings, equipment, facilities, and improvements found by the governing body of the County to be required for public health, research, and medical facilities; and

WHEREAS, County is further authorized by Subchapter C, Chapter 271, Texas Local Government Code, as amended ("Chapter 271"), to issue certificates of obligation for the payment of contractual obligations to be incurred (i) for the construction of any public work or constructing, renovating, or otherwise improving a County-owned building, and (ii) for the purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes; and

WHEREAS, in addition to the services heretofore described, Landlord also conducts activities and provides services at the Landlord Facility that target cultural enrichment within the City and provision of community services, which activities and services include parenting skills and personal financial training, youth outreach to promote college and career success and prevent gang involvement, English as a second language instruction, and behavior and mental health counseling, among other programs from time to time established; and

WHEREAS, the City has found, by resolution adopted by its City Council, that the programs and services offered by Landlord at the Landlord Facility accomplish the public purpose of cultural enrichment of and provision of community services to City residents and, accordingly, the expenditure of proceeds derived from the sale of bonds authorized at the May 6, 2017 City bond election under Proposition 4 to expand and improve the Landlord Facility represents a valid expenditure of such bond proceeds; and

WHEREAS, the City's issuance of bonds to contribute to improvement of the Landlord Facility (such improved facility hereinafter defined and referred to as the Community Facility) is authorized pursuant to applicable Texas law, including the City's Home Rule Charter and the City voters' approval of Proposition 4 at the May 6, 2017 bond election, and such contribution shall satisfy in full the City's funding obligations for the project identified in Proposition 4 of the City's May 6, 2017 bond election as "The Neighborhood Place Cultural/Community Center"; and

WHEREAS, in furtherance and to assure accomplishment of the public purposes heretofore described, Landlord and the Tenant desire to enter into (a) this Lease for the Landlord Facility to become and function as a public services community facility as acquired by the County as a County facility to provide the community public health services described above to needy or indigent persons in Bexar County and to serve as a cultural enrichment and community services center to the residents of the City, with such community facility being more particularly described in Exhibit C attached hereto and made a part hereof for all purposes (the "Community Facility"), and (b) that certain Operating and License Agreement with Tenant (the "License and Operating Agreement"), relating to the occupancy, use, management, operation and maintenance of the Community Facility by the Landlord as the occupant and Operator (as such term is defined in the License and Operating Agreement) of the Community Facility for and on behalf of the Tenant; and

WHEREAS, Landlord and Tenant desire further to enter into this Lease to provide for the Tenant's acquisition by lease of the Landlord Facility, including any improvements, facilities and equipment situated thereon (as further defined and described in Section 2.01 herein, the "Premises"), and for the right of the Tenant to provide for the construction by Landlord, for and on behalf of Tenant, of improvements and renovations to the Premises for the purpose of establishing a County public health services community facility for indigent and needy persons in Bexar County, as an administrative, public health and medical facility to be developed by Landlord, for and on behalf of County, and as a cultural enrichment and community services center for the residents of the City, and to be occupied and used by Landlord for the delivery and operation of a Community Facility by Landlord pursuant to the License and Operating Agreement, and subject to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant hereby agree as follows:

ARTICLE 1

DEFINITIONS

As used in this Lease, the following terms (in addition to the terms defined elsewhere herein), and whether singular or plural thereof, shall have the respective meanings indicated below when used herein with initial capital letters, unless context requires otherwise:

"Additional Rent" shall have the meaning ascribed to it in Section 3.02 hereof.

"Affiliate" shall mean, when used with respect to any person, any other person (i) which

directly controls, or is controlled by, or is under common control with, such person, and (ii) which beneficially owns, holds, or controls fifty percent (50%) or more of the interest of such person, or (iii) which is beneficially owned (to the extent of at least fifty percent (50%)), or is controlled by such person. As used in this definition of Affiliate, the term "control" (including the terms "controlled by" and "under common control with") means the possession of the power to exclusively direct or cause the direction of the management policies of a person, whether through the direct or indirect ownership of voting securities, by contract, through the holding of a position as a director or officer of such person, or otherwise.

"Base Rent" shall have the meaning ascribed to it in Section 3.01 hereof.

"Community Facility" shall have the meaning ascribed to it in the recitals to this Lease.

"Default" shall have the meaning ascribed to it in Section 14.01 hereof.

"Force Majeure" shall mean any delay due to strikes, lockouts, or other labor, civil disturbance, future order of any government, governmental act, failure of government to act, inability to obtain consent of government, court or regulatory body claiming jurisdiction, act of public enemy, war, riot, sabotage, blockade, embargo, act of God, and unusually adverse weather conditions. If a party is delayed, hindered or prevented from the performance of any obligation hereunder by reason of an event of Force Majeure (and such party shall not otherwise be in default of its obligations hereunder) the time for performance of the obligation shall be extended for the period during which the event is in existence.

"Governmental Authority" shall mean the federal government of the United States of America, the State of Texas, County of Bexar, City of San Antonio and any other governmental body, subdivision, agency, authority now or hereafter in existence that has jurisdiction over the Land, the Landlord Facility, the Community Facility, or any use or activity with respect to the Land.

"Impositions" shall have the meaning ascribed to it in Section 5.01 hereof.

"Improvements" shall have the meaning ascribed to it in Section 6.02 hereof.

"Land" shall have the meaning ascribed to it in the recitals to this Lease.

"Landlord" shall mean the Family Service Association, a Texas non-profit corporation created and operating under the Texas Non-Profit Corporation Act, and acting by and through its Board of Directors, identified in the preamble of this Lease.

"Landlord Facility" shall have the meaning ascribed it in the recitals and Section 2.01 in this Lease.

"Lease Year" shall mean, throughout the Term, the period commencing on the Effective Date and each anniversary of the Effective Date and ending on the day prior to the anniversary of the Effective Date during the next succeeding calendar year, except that the last Lease Year shall end on the expiration or earlier termination of the Term of this Lease. All payments required to be made under this Lease for any Lease Year which does not contain exactly twelve months shall,

to the extent necessary, be appropriately prorated based upon the actual number of days in such Lease Year as compared to a calendar year of 365 (or 366, if appropriate) days.

“Legal Requirements” shall mean all orders, injunctions, writs, statutes, rulings, rules, regulations, requirements, permits, certificates or ordinances of any Governmental Authority applicable to (and as enforced from time to time with respect to) the Land, the Landlord Facility, the Community Facility, the procurement of goods and services and the expenditure of public funds by the Tenant, the Premises or the Tenant.

“NMTC Deed of Trust” shall mean that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of December 15, 2016, by The Neighborhood Place, Inc., a Texas nonprofit corporation, for the benefit of Enhanced Capital New Market Development Fund 80, LLC, a Delaware limited liability company, and Wells Fargo Community Development Enterprise Round 12 Subsidiary 11, LLC, a Delaware limited liability company, related to the Premises.

“Obligations” shall have the meaning ascribed to it in that certain License and Operating Agreement between Bexar County, Texas, City of San Antonio, Texas, and Family Service Association of San Antonio, Inc., dated effective as of January 1, 2017.

“Operating Agreement” shall have the meaning ascribed to it in the recitals to this Lease.

“Permitted Encumbrances” shall have the meaning ascribed to it in Section 4.03 hereof.

“Person” shall mean an individual, a corporation, a limited partnership, a limited liability company, a partnership, a joint stock association, a trust, or any other legal entity.

“Premises” shall have the meaning ascribed to it in Section 2.01 hereof.

“Project” shall have the meaning ascribed to it in Section 2.02 hereof.

“Rent” shall have the meaning ascribed to it in Section 3.02 hereof.

“Taking” shall mean the taking, damaging or destroying of all or any portion of the Premises by or on behalf of any Governmental Authority or any other Person pursuant to its power of eminent domain, condemnation or similar right.

“Tenant” shall mean the City and the County identified in the preamble of this Lease, as tenants in common and its permitted and approved successors and assigns.

“Tenant’s Interest” shall have the meaning ascribed to it in Section 11.01 hereof.

“Term” shall have the meaning ascribed to it in Section 2.04 hereof.

“Transfer” shall have the meaning ascribed to it in Section 11.01 hereof.

ARTICLE 2

LEASE OF PROPERTY; TERM

Section 2.01. Premises Leased. Landlord, in consideration of the rents and agreements herein set forth that Tenant hereby agrees shall be paid and performed, does hereby lease unto Tenant as tenants in common, and Tenant does hereby rent and lease from the Landlord, the Land, and the Landlord Facility, together with all rights and interests appurtenant thereto (the "Premises"), as tenants in common, subject to the Permitted Encumbrances, being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes.

Section 2.02. Project Defined. All of the property, rights, and interests leased to Tenant pursuant to Section 2.01, together with the Community Facility, Landlord and all other improvements, renovations, facilities, and equipment now or hereafter constructed or installed on the Land and the Landlord Facility for the purpose of establishing the Community Facility are hereinafter collectively referred to as the "Project".

Section 2.03. Habendum. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges, and appurtenances thereunto attaching or in anywise belonging, unto Tenant, as tenants in common, their permitted successors and permitted assigns, for the Term set forth and defined in this Article 2, subject to and upon the covenants, agreements, terms, and provisions herein set forth.

Section 2.04. Term. Unless sooner terminated as herein provided, this Lease shall be and continue in full force and effect for a term commencing on the Effective Date and ending upon the later to occur of (i) the date that all amounts due and owing on any of the Obligations are paid in their entirety, or payment duly provided therefor, or (ii) thirty (30) years after the Commencement Date under the License and Operating Agreement (the "Term"). Notwithstanding anything to the contrary herein, this Lease shall terminate upon termination of the Premises Lease; provided, however, that in the event that this Lease shall terminate, for whatever reason, prior to January 1, 2037, the Landlord shall be required to refund the respective pro rata amounts of the County Contribution and the City Contribution identified in the Operating Agreement equal to the proportionate balance of each Contribution, based on a twenty (20) year amortization of the Contributions, after the date of such termination.

ARTICLE 3

RENT

Section 3.01. Base Rent. Commencing on the Effective Date and continuing throughout the balance of the Term, Tenant shall pay to Landlord, as annual base rent hereunder the sum of One and No/100 Dollar (\$1.00) ("Base Rent"). Landlord and Tenant may change the amount of Base Rent at any time by mutual written agreement.

Section 3.02. Additional Rent. Any amounts required to be paid by Tenant under the terms of this Lease other than Base Rent, which excludes Impositions and Utilities, may be referred to as "Additional Rent". Base Rent and Additional Rent are herein collectively referred to as "Rent".

Section 3.03. Payment of Rent. Rent shall be payable to Landlord in lawful money of the United States of America without notice or demand (except as otherwise set forth herein), at the original or changed address of Landlord as set forth in Section 16.01 or to such other persons or at such other addresses as Landlord may designate from time to time in writing to Tenant. Base Rent shall be payable on an annual basis, and Base Rent shall be due on the first (1st) business day of each year commencing on the first business day of the first full year following the Effective Date, and continuing through the Term. Additional Rent shall be payable on demand from Landlord. The Tenant has lawfully available funds from current revenues to make any Rent payments pursuant to the provisions of this Lease.

ARTICLE 4

AS IS

Section 4.01. As-Is, Where-Is. Landlord is leasing the Premises to Tenant, and Tenant is leasing the Premises from Landlord, AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS OR WARRANTIES (OTHER THAN AS TO LANDLORD'S TITLE SUBJECT TO PERMITTED ENCUMBRANCES AND THE LIMITED REPRESENTATIONS IN ARTICLE 15 HEREOF) AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, LAYOUT, FOOTAGE, PHYSICAL OR GEOLOGICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT) OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PREMISES.

ARTICLE 5

IMPOSITIONS

Section 5.01. Impositions Defined. The term "Impositions" shall mean all ad valorem taxes and use and occupancy taxes that during the Term shall be assessed, levied, or imposed by any Governmental Authority upon the Premises, the Project, or any part thereof. Impositions shall not include: any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Tenant; any franchise tax imposed upon Landlord; any tax imposed with respect to the sale, exchange or other disposition by Landlord of all or any portion of Landlord's interest in the Premises or the proceeds thereof; or any income, profits, or revenue tax, assessment, or charge imposed upon the Rent or other benefit received by Landlord under this Lease by any Governmental Authority.

Section 5.02. Rendition. Landlord shall render the Premises for each Governmental Authority imposing Impositions thereon.

Section 5.03. Payment of Impositions. Landlord shall timely pay all Impositions directly to the Governmental Authority imposing same (in installments if permitted) and shall, within sixty (60) days after payment, deliver to Tenant copies of the receipted bills or other evidence reasonably satisfactory to Tenant showing such payment.

Section 5.04. Utilities. As required by the Development Agreement and the License and Operating Agreement, Landlord shall pay all charges for gas, electricity, light, heat, air conditioning, water, sewer service, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Premises and the Community Facility (collectively, the "Utilities") during the Term hereof. Landlord shall timely pay all Utilities directly to the utility provider.

ARTICLE 6

IMPROVEMENTS

Section 6.01. No Encumbrances Nor Pledges of Tenant's Interest. Tenant will not encumber Tenant's Interest, the Land, and/or the Community Facility or any part thereof with any restrictions or conditions, nor shall Tenant pledge as collateral or place a lien or mortgage on the Tenant's Interest, the Land, and/or the Community Facility or any part thereof without the prior written consent of Landlord.

Section 6.02. Ownership of Improvements. Tenant shall at all times during the Term own an undivided leasehold interest in the Community Facility. Landlord shall at all times during the Term own an undivided leasehold interest in all improvements now existing or hereafter constructed on the Land excluding the Community Facility but including, without limitation, all other equipment, trade fixtures, furnishings, and signs (collectively, the "Improvements"), and, each as set forth in the Operating Agreement. **Upon the expiration of this Lease pursuant to Section 2.04, the Community Facility shall become the property of Landlord. Tenant agrees to execute all documentation necessary to effect such transfer, as provided in the License and Operating Agreement.**

Section 6.03. Alterations and Additions. Landlord shall have the right, from time to time, to make non-structural additions, alterations and changes in or to the Premises and the Community Facility.

ARTICLE 7

USE, MAINTENANCE, AND REPAIRS

Section 7.01. Use.

(a) Subject to the terms and provisions hereof, Tenant shall have the right to use and enjoy the Premises for any purpose that the Landlord could use the Premises for under applicable law. In the event of a conflict regarding use of the Premises, the terms and conditions set forth in the License and Operating Agreement shall control.

(b) Landlord shall not use or occupy the Premises in a manner which would make void or voidable any insurance then in force with respect thereto, or which would make it impossible to obtain the insurance required to be furnished by Tenant hereunder (if any), or which would constitute a public nuisance, or which would violate any applicable Legal Requirement.

Section 7.02. Maintenance and Repairs. Subject to the provisions of the License and Operating Agreement, Landlord shall take good care of the Premises, make all repairs thereto, and

shall maintain and keep the Premises and the sidewalks and curbs around the Premises in a good condition.

Section 7.03. New Markets Tax Credit Covenants and Tenant Excluded Businesses. Tenant shall not operate and shall not allow any sublessee to operate on the Premises any trade or business consisting of any of the following (each, a "Tenant Excluded Business"): (a) the rental to others of "Residential Rental Property" (as such term is defined in § 168(e)(2)(A) of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), or any corresponding provision or provisions of prior or succeeding law, including any temporary or final regulations promulgated under the Code, as such regulations may be amended from time to time, including corresponding provisions of succeeding regulations thereunder, in addition to administrative and judicial interpretations thereof); (b) the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, or suntan facility, any race track or other facility used for gambling, any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (c) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (d) farming (within the meaning of Code §§ 2032A(e)(5)(A) or (B)); (e) the operation of any a bank, credit union or other financial institution; (f) any type of sexually oriented business, adult entertainment or adult bookstore; including but not limited to any facility selling or displaying adult or pornographic books, literature, videotapes or materials in any medium, or any facility providing adult entertainment or other adult services (for purposes of this limitation, materials or activities shall be considered "adult" or "pornographic" if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); (g) escort services, dating services, or similar matchmaking or companion services; (h) without limitation of (b) above, bingo or similar games of chance, including, without limitation, the sale of lottery tickets; (i) the sale of any firearms, ammunition or weapons, or a shooting gallery of any type; (j) the sale of fireworks, except as an incidental part of another primary business; (k) pay day lending activities, pay day advances, pay check advances, or any similar type of lending activity; (l) pawn shops, pawn brokers, car title lenders (which, for purposes of this limitation, will not include auto loans made by a state or federally chartered bank or thrift), or any similar type of lending activity; (m) check cashing services, except as an incidental part of another primary business or incident to the banking activities of a state or federally chartered bank or thrift; (n) debt collection activities, debt consolidation services, credit repair or credit restoration activities, except as such activities are incidental to banking activities conducted by a state or federally chartered bank or thrift; (o) bail bond services of any kind, or any activities of a bail bond agent; (p) the sale, distribution, marketing, or production of medical marijuana, medical cannabis or any constituent cannabinoids such as THC, as well as any substances considered to be synthetic cannabinoids (this limitation applies broadly, regardless of whether the activity is conducted by collectives, collective caregivers, co-ops, growers, or any other entity or organization); (q) the sale, distribution, or manufacture of any type of drug paraphernalia; (r) tattoo parlors or any establishment that performs tattooing; (s) a bar, restaurant or other establishment, the principal business of which is the sale of alcohol for consumption on-premises (for purposes of this limitation, an establishment shall be considered to have the sale of alcohol for consumption on-premises as a principal business if (1) alcohol sales amount to fifty percent (50%) or more of the establishment's gross receipts in any month, (2) there is no independent, full service kitchen to service in restaurant dining, (3) there are no waiters and table service for dining, (4) minors are prohibited from entry during all or at specified times of the day, or (5) more than 30% of the square footage of the

premises is devoted principally to the sale and consumption of alcohol on premises); (t) businesses based predominantly on inbound or outbound telemarketing activities, except as such calls are an incidental part of another primary business; or (u) multi-level marketing activities, the sale of multi-level business opportunities or network marketing activities. Tenant shall comply with the terms of any financing documents related to the Premises and applicable to a lessee of the Premises, including without limitation, all requirements relating to the operation of a "qualified business" under Section 45D of the Code and the Treasury Regulations thereunder.

ARTICLE 8

INSURANCE

Section 8.01. Builder's Risk Insurance. Landlord will, at its cost and expense, keep and maintain (or cause to be kept and maintained) in force All-Risk Builder's Risk insurance in an amount equal to 100% of the replacement cost of the Community Facility and Improvements, providing all-risk coverage on the Improvements and materials stored on the Land and elsewhere, and including collapse, damage resulting from error in design or faulty workmanship or materials, water damage, and permission to occupy, for the benefit of Landlord the parties required by the NMTC Deed of Trust and Tenant as named insured and/or loss payees.

Section 8.02. Casualty Insurance. Landlord will, at its cost and expense, keep and maintain (or cause to be kept and maintained) in force insurance on the Community Facility and related improvements with deductibles and in an amount which Tenant may reasonably require or approve, against loss or damage by fire and against loss or damage by any other risk now and from time to time insured against by "extended coverage" policies generally in force on facilities of like type in Bexar County, Texas, in amounts sufficient to provide coverage for the full insurable value of the Community Facility and Improvements; the policy for such insurance shall have a replacement cost endorsement or similar provision. "Full insurable value" shall mean actual replacement value.

Section 8.03. Liability Insurance. Landlord shall secure and maintain in force general public liability insurance protecting and indemnifying Tenant and Landlord with primary coverages against any and all claims for damages to person or property or for loss of life or of property occurring upon, in, or about the Premises and the adjoining streets and sidewalks, such insurance to afford protection in amounts not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury to or death of any one person, and Two Million Dollars (\$2,000,000.00) with respect to bodily injury to or death of any number of persons in any one occurrence, and Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to damage to property of others.

Section 8.04. Policies. All insurance maintained in accordance with the provisions of this Article 8 shall be issued by companies as required by the NMTC Deed of Trust and reasonably satisfactory to Tenant. All liability insurance policies shall name Tenant as an additional named insured. Landlord shall furnish and maintain with Tenant at all times, a certificate of the insurance carrier certifying that such insurance shall not be canceled or materially changed without at least thirty (30) days advance written notice to Landlord. If Landlord fails to maintain such insurance, Tenant may, at its election (without obligation) upon prior written notice to Landlord, procure such insurance as may be necessary to comply with these requirements, and Landlord agrees to

repay the cost of same to Tenant on demand. Any and all insurance policies on the Premises that are required pursuant to this Lease shall be endorsed to reflect waivers of subrogation in favor of either Landlord or Tenant each against the other.

Section 8.05. Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or the Premises or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of insurance that are maintained by Landlord or Tenant or that Landlord or Tenant is required to provide hereunder, regardless of cause or origin, including negligence of either party hereto, its agents, officers, or employees, and each party covenants that no insurer shall hold any right of subrogation against the other.

ARTICLE 9

CASUALTY LOSS

Section 9.01. Landlord's Obligation to Restore.

(a) Should the Community Facility and/or Improvements be wholly or partially destroyed or damaged by fire or any other casualty and subject to Section 9.01(b) hereof, subject to the provisions of the NMTC Deed of Trust and the loan documents related thereto, Landlord shall promptly repair, replace, restore, and reconstruct the same in substantially the form in which it existed prior to such casualty, with at least as good workmanship and quality as the improvements being repaired or replaced.

(b) Notwithstanding the foregoing provisions of Section 9.01(a) hereof, if during the last three (3) Lease Years of the Term, the Community Facility and Improvements are wholly destroyed by fire or any other casualty, or destroyed to such extent that Landlord and Tenant determine that it would be uneconomic to cause the same to be restored and replaced, then Landlord shall not be obligated to restore, rebuild, or replace the Community Facility and Improvements and this Lease shall terminate as though the date of such destruction was the date of the expiration of the Term. Subject to the provisions of the NMTC Deed of Trust and the loan documents related thereto, in the event of a casualty loss where the Community Facility and Improvements will not be restored or replaced, all insurance proceeds attributable to the Community Facility and to the related Improvements shall (i) first be applied to pay all remaining amounts owing on the Obligations and (ii) second be applied to pay the cost of razing the Community Facility and Improvements and leveling, clearing and otherwise putting the Premises in good order (which Landlord hereby agrees to do, regardless of the availability of insurance proceeds). Any remaining insurance proceeds shall be distributed to Tenant.

Section 9.02. Use of Insurance Funds for Restoration. In the event of destruction or damage to the Community Facility and/or Improvements by casualty where Landlord is obligated or where Landlord elects to repair, replace, restore and reconstruct the Community Facility and/or Improvements, subject to the provisions of the NMTC Deed of Trust and the loan documents related thereto, all fire and extended coverage insurance proceeds may be used by Landlord in

connection with such restoration.

Section 9.03. Notice of Damage. Tenant or Landlord shall immediately notify the other party of any destruction or damage to the Premises, Community Facility or Improvements in an amount, in each case, in excess of \$10,000.

ARTICLE 10

CONDEMNATION

Section 10.01. Total Taking. Upon the taking of the entire Premises, this Lease shall terminate as of the date the condemning authority is entitled to possession and the Rent shall be apportioned and paid to the date of the Taking, and subject to the provisions of the NMTC Deed of Trust and the loan documents related thereto, the award therefor will be distributed to Tenant with respect to the value of the Community Facility and to the Landlord with respect to the value of the Landlord Facility.

Section 10.02. Partial Taking. Upon the Taking of a portion of the Premises (including without limitation the Community Facility, the Improvements and the equipment, machinery, and fixtures comprising a part thereof), this Lease shall nevertheless continue in effect as to the remainder of the Premises unless, in Tenant's reasonable judgment, so much of the Premises shall be subject to the Taking as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate (as of the date the condemning authority is entitled to possession) in the same manner as if the whole of the Premises had thus been subject to the Taking, the Rent shall be apportioned and paid to the date of the Taking, and the award therefor shall be distributed as provided in Section 9.01. In the event of a partial Taking where this Lease is not terminated, and subject to the provisions of the NMTC Deed of Trust and the loan documents related thereto, then to the extent of the condemnation proceeds made available to Tenant for restoration, Landlord shall proceed promptly to restore the remaining portion of the Premises to an integral unit, and the Rent payable during the remainder of the Term after the condemning authority is entitled to possession shall be reduced on a just and proportionate basis having due regard to the relative value of the portion of the Premises subject to the Taking as compared to the remainder thereof and taking into consideration the extent, if any, to which Tenant's use of the remainder of the Premises shall have been impaired or interfered with by reason of the partial Taking.

Section 10.03. Temporary Taking. Upon a Taking of all or any portion of the Premises for temporary use or occupancy the Term shall not be reduced or affected and Tenant shall continue to pay the Rent in full. Except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. In the event of any temporary Taking, subject to the terms of the NMTC Deed of Trust, Tenant shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the stated Term, in which case such award, after payment to Landlord therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between Landlord and Tenant as of the day of expiration of the Term in the same ratio that the part of the

entire period for such compensation is made falling before the day of expiration and that part of falling after, bear to such entire period.

Section 10.04. Notice of Taking. Tenant shall immediately notify Landlord and Landlord shall immediately notify Tenant (whichever receives notice of or becomes aware of such activity), of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Premises.

Section 10.05. Voluntary Dedication. Tenant shall have no right to voluntarily devote or dedicate any portion of the Premises to a public use other than the Project without Landlord's prior written consent, except for the granting and dedicating of such utility, drainage and other easements or rights-of-way as are reasonably necessary for the operation of the Premises. Tenant shall inform Landlord of any intended dedications at least sixty (60) days in advance.

ARTICLE 11

SALE, ASSIGNMENT AND SUBLETTING

Section 11.01. No Right to Sell or Assign. Except as specifically provided in Section 11.02, below, Tenant shall not voluntarily or involuntarily sell, assign or otherwise transfer (collectively "Transfer") all or any portion of its interests under this Lease and in or to the Premises and the leasehold estate hereby created ("Tenant's Interest") or to sublease the Premises, without Landlord's prior written consent. The term "sublease" shall include any leases, licenses, occupancy agreements, franchises or other similar rights, agreements, or arrangements of whatever nature relating to the use or occupancy of any part of the Premises.

Section 11.02. Transfers. Tenant may, but only with Landlord's prior written consent, transfer all or any portion of Tenant's Interest to any unrelated third party; provided, however, Landlord will not unreasonably withhold or delay its consent to any such transfer so long as any such proposed transferee is another political subdivision of the State of Texas authorized to own a community facility of the type such as the Community Facility; provided, further, that Landlord will be deemed to have provided such consent unless Landlord provides to Tenant specific written notice of objection (setting out the basis for any such objection to such transfer) within fifteen (15) days after Tenant delivers to Landlord a request for such approval (which request shall provide to Landlord information on the proposed transferee which is reasonably sufficient for Landlord to make its determination hereunder). Notwithstanding the anything to the contrary herein, any such transferee under this section shall agree to be bound by the terms of this Lease which will at all times be subject to the NMTC Deed of Trust so long as the NMTC Deed of Trust has not been terminated.

Section 11.03. Tenant Remains Liable. In the event of any permitted Transfer hereunder, Tenant shall remain fully liable for all obligations of the assignee, sublessee or the transferee, hereunder, except to the extent such obligations are increased by a subsequent amendment hereto entered into without Tenant's consent or until Landlord releases Tenant from such obligations in writing. In addition, each and every assignee, whether as assignee or as successor in interest of any assignee of Tenant, shall, except as otherwise provided for herein, immediately be and become and remain liable for the payment of the Rent, Impositions, and other charges payable under this

Lease (or its pro rata portion thereof), and for the due performance of all the covenants, agreements, terms and provisions of this Lease, on Tenant's part to be performed, and each and every provision of this Lease applicable to Tenant prior to such assignment shall also apply to and bind every such assignee with the same force and effect as though such assignee were the party named originally as Tenant in this Lease. No transfer to such assignee shall be binding upon Landlord unless such assignee shall deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee to such effect.

Section 11.04. Landlord's Assignment. Subject to the provisions of the NMTC Deed of Trust and the loan documents related thereto, Landlord shall have the right to transfer and assign its interest in this Lease in whole or in part, by operation of law or otherwise, including all of its rights, benefits, privileges, duties and obligations hereunder, whenever Landlord in its sole judgment deems it appropriate, and Tenant shall attorn to any such transferee upon being furnished notice of the assignment. Such transfer or assignment shall relieve Landlord of any liability or obligation, other than those accrued hereunder prior to the date of such transfer or assignment, it being the intention of Landlord and Tenant that Tenant shall look solely to Landlord's successor in interest for performance of all obligations accruing from and after the date of such transfer or assignment. Tenant shall not be required to divide the Rent due under this Lease among more than one assignee at a time, and in the event more than one assignee exists, the assignees shall appoint one agent in writing to whom Tenant is hereby fully authorized to make payment, without further liability therefore.

ARTICLE 12

RELEASE AND INDEMNIFICATION

Section 12.01. Release and Indemnification.

(a) Landlord hereby agrees, warrants, and covenants to **RELEASE, ACQUIT, and FOREVER DISCHARGE** Tenant from any and all losses, costs, expenses, claims, demands and causes of action of whatsoever nature, including without limitation all claims, demands, and causes of action for contribution, indemnity, strict liability, or negligence on the part of the Tenant and all attorneys' fees, court costs, experts' fees, environmental consulting and engineering fees, and costs of remediation (collectively, "Damages"), relating to or in any way arising out of (i) the acts, omissions or negligence of Landlord or any of its agents, employees, representatives, invitees or contractors, (ii) any property damage or personal injury arising out of or in connection with Landlord's use or occupancy of the Premises, (iii) the breach or violation of any of the Environmental Regulations by Landlord or any of its agents, employees, representatives, invitees or contractors, (iv) any noncompliance under the Environmental Regulations of the Premises that first exists or is directly attributable to an event arising from and after the Effective Date (but prior to the expiration of the Term), or (v) any property damage or personal injury alleged to be caused by environmental conditions of the Premises first existing from and after the Effective Date, but prior to the expiration of the Term.

(b) Landlord hereby agrees to **INDEMNIFY, DEFEND AND HOLD HARMLESS** Tenant from and against any and all Damages that in any way relate to or

arise out of (i) the acts, omissions or negligence of Landlord or any of its agents, employees, representatives, invitees or contractors, (ii) any property damage or personal injury arising out of or in connection with Landlord's use or occupancy of the Premises, (iii) the breach or violation of any of the Environmental Regulations by Landlord or any of its agents, employees, representatives, guests, invitees or contractors, (iv) any noncompliance under the Environmental Regulations of the Premises that first exists or is directly attributable to an event arising from and after the Effective Date (but prior to the expiration of the Term), or (v) any property damage or personal injury alleged to be caused by environmental conditions of the Premises first existing from and after the Effective Date, but prior to the expiration of the Term.

Section 12.02. Environmental Regulations. As used herein, the term "Environmental Regulations" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §11001 et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. §4321, the Rivers and Harbors Act of 1899, 33 U.S.C. §401 et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. §651, et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §300(f) et seq., the Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7, the Texas Water Code Chapters 26 and 27; and the Texas Clean Air Act, Tex. Rev. Civ. Stat. Ann. art. 4477-5, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation, relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling or disposal of polychlorinated biphenyls (PCB's), asbestos or urea formaldehyde, to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), to exposure to toxic, hazardous, or other controlled, prohibited or regulated substances, to the transportation, storage, disposal, management or release of gaseous or liquid substances, and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

Section 12.03. Survival. The provisions of this Article 12 shall survive the expiration or termination of this Lease.

ARTICLE 13

WARRANTY OF PEACEFUL POSSESSION

Subject to Landlord's rights and obligations under the Development Agreement and the License and Operating Agreement and Section 6.02 hereof, Landlord covenants that Tenant, on paying the Rent and performing and observing all of the covenants and agreements herein

contained and provided to be performed by Tenant, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable Legal Requirements; and Landlord agrees to warrant and forever defend Tenant's right to such occupancy, use, and enjoyment and the title to the Premises against the claims of any and all persons whomsoever lawfully claim the same, or any part thereof, subject only to the provisions of this Lease, all applicable Legal Requirements and the Permitted Encumbrances.

ARTICLE 14

DEFAULT AND REMEDIES

Section 14.01. Default. Each of the following shall be deemed a "Default" by Tenant hereunder and a material breach of this Lease:

(a) Whenever Tenant shall fail to pay any installment of Base Rent when due, and the failure shall continue for ten (10) days after Tenant shall have been given a written notice specifying the same by Landlord;

(b) Whenever Tenant shall fail to pay the Additional Rent when due, and the failure continues for thirty (30) days after Tenant shall have been given written notice specifying the same by Landlord; provided, however, if any such amount shall be disputed in good faith, and the non-payment of such amount does not result in the imposition by a Governmental Authority of a lien against the Land, then Tenant shall not be in default of its obligation hereunder until final resolution of such dispute; or

(c) Whenever Tenant shall fail to materially keep, perform, or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Tenant other than with respect to payment of Rent, and Tenant shall fail to commence and take such steps as are necessary to remedy the same within thirty (30) days after Tenant shall have been given a written notice specifying the same, or having so commenced, shall thereafter fail to proceed diligently and with continuity to remedy the same; unless such occurrence is of a nature that remedy is possible but will take longer than thirty (30) days, in which event Tenant will not be in Default so long as it promptly commences and diligently pursues such cure to completion.

Section 14.02. Remedies. Upon the occurrence and continuance of a Default, Landlord may do any one of more of the following:

(a) Landlord may terminate this Lease by giving Tenant written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest hereunder of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Section 2.04 hereof for the expiration of the Term; and Landlord, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof.

(b) Landlord may terminate Tenant's right to possession of the Premises and enjoyment of the rents, issues, and profits therefrom without terminating this Lease or the leasehold estates created hereby, reenter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof, and lease, manage, and operate the Premises and collect the rents, issues, and profits therefrom all for the account of Tenant, and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of re-entering and repossessing the Premises, including but not limited to attorneys' fees and expenses actually incurred, as well as the reasonable expenses of leasing, managing, and operating the Premises).

ARTICLE 15

LANDLORD'S REPRESENTATIONS AND WARRANTIES

Section 15.01. Obligation of Landlord. Notwithstanding anything in this Lease to the contrary, Landlord makes the specific representations, warranties and commitments provided for in this Article 14.

Section 15.02. Title. Landlord does hereby represent and warrant to Tenant that Landlord owns a leasehold interest in the Land and the Landlord Facility, subject only to the Permitted Encumbrances.

Section 15.03. Available Utilities. Landlord, at its expense, will provide or cause to be provided to the perimeter of the Land, all Utilities, sized to be adequate for development and operation of the Community Facility, provided that in no event shall Tenant be responsible for the payment of any costs for any Utility used in connection with the Community Facility or the Improvements (such costs shall be the responsibility of Landlord).

Section 15.04. Possession. No person other than Landlord is in possession of the Land.

Section 15.05. Agreements. Except for the NMTC Deed of Trust and the loan documents or subsequent agreements or amendments related thereto, during the Term, Landlord will not enter into any oral or written agreements affecting the Premises, or permit any other agreements, encumbrances, liens, or restrictions to attach to the Premises, without Tenant's prior written approval, which shall not be unreasonably withheld or delayed.

Section 15.06. No Leases. Except as disclosed to Tenant as of the date hereof, the Land is not now in whole or in part under lease to any person.

Section 15.07. Pending Actions. Landlord has not received any notice of any actual or pending action, suit, claim, litigation, or proceeding by any entity, individual or governmental agency affecting the Land that would in any way constitute a lien, claim or obligation of any kind against the Land.

Section 15.08. Condemnation. Landlord has not received any notice of any condemnation or similar proceedings or assessments affecting the Land or any part thereof.

Section 15.09. Notices from Agencies. Landlord has not received any notice of any breach of any law or regulation of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, with respect to the Land.

ARTICLE 16

MISCELLANEOUS

Section 16.01. Notices. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section 15.01; or (ii) delivering the same to the party to be notified, so addressed. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice the addresses of the parties hereto shall, until changed, be as follows:

If to Landlord:	Family Service Association of San Antonio, Inc. 702 San Pedro San Antonio, Texas 78212 Attn: Chairperson, Board of Directors
With copy to:	Family Service Association of San Antonio, Inc. 702 San Pedro San Antonio, Texas 78212 Attn: President and CEO
If to Tenant (County)	Bexar County Judge Paul Elizondo Tower, 10 th Floor 101 W. Nueva Street San Antonio, Texas 78205
With copy to:	County Manager Bexar County 101 W. Nueva Street San Antonio, Texas 78205
If to Tenant (City):	Transportation & Capital Improvements Department P.O. Box 839966 San Antonio, Texas 78283-3966

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder by giving a notice to such effect in accordance with the provisions of this Section 15.01.

Copies of all notices provided hereunder shall be sent to the fee owner by the party providing such notice at the following address:

The Neighborhood Place, Inc.
c/o Family Service Association of San Antonio, Inc.
702 San Pedro
San Antonio, Texas 78212
Attn: President

Section 16.02. Modification and Non-Waiver. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent.

Section 16.03. Governing Law. This Lease has been made and is performable in Bexar County, Texas, and shall be construed and enforced in accordance with the laws of the State of Texas.

Section 16.04. Construction. Unless the context of this Lease clearly requires otherwise, (a) pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character; (b) the singular shall include the plural wherever and as often as may be appropriate; (c) the term "includes" or "including" shall mean "including without limitation"; and (d) the word "or" has the inclusive meaning represented by the phrase "and/or"; and (e) the words "hereof" or "herein" refer to this entire Lease and not merely the Section or Article number in which such words appear. Article and section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Lease.

Section 16.05. Estoppel Certificate. Landlord and Tenant shall execute and deliver to each other, promptly upon any request therefor by the other party, a certificate stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably requested by either party.

Section 16.06. Severability. If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

Section 16.07. Surrender of Premises; Holding Over. Upon termination or the expiration

of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Premises to Landlord free of all claims and encumbrances except for the Permitted Encumbrances. Upon such termination or expiration Landlord may, without further notice, enter upon, reenter, possess, and repossess itself of the Premises by force, summary proceedings, ejectment, or otherwise, and may have, hold, and enjoy the Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. If Tenant does not surrender possession of the Premises at the end of the Term, such action shall not extend the Term, Tenant shall be a tenant at sufferance, and during such time of occupancy Tenant shall pay to Landlord, as damages, an amount equal to 150% of the amount of Base Rent that was being paid immediately prior to the end of the Term. Landlord shall not be deemed to have accepted a surrender of the Premises by Tenant, or to have extended the Term, other than by execution of a written agreement specifically so stating.

Section 16.08. Relation to Parties. It is the intention of the parties to hereby create the relationship of Landlord and Tenant, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make the parties hereto partners or joint venturers or to render either party hereto liable for any obligation of the other.

Section 16.09. Non-Merger. Notwithstanding the fact that the fee title or the leasehold estate in the tracts or parcels of land described in Article 2 hereof and the leasehold estate hereby created may, at any time, be held by the same party, there shall be no merger of the leasehold estate hereby created with fee title unless the owner thereof executes and files for record in the Office of the County Clerk of Bexar County, Texas a document expressly providing for the merger of such estates.

Section 16.10. Entireties. This Lease, including the Exhibits hereto, constitute the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. Without in any manner limiting the foregoing, in the event of a conflict between the provisions of this Lease and any other documents executed in connection with this Lease, then the provisions of this Lease shall govern and control.

Section 16.11. Memorandum of Lease. Landlord and Tenant will file a Memorandum of Lease in the Office of the County Clerk of Bexar County, Texas promptly after the execution hereof.

Section 16.12. Successors and Assigns. This Lease shall constitute a real right and covenant running with the Premises, and this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereunder. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

Section 16.13. No Third Parties Benefitted. The terms and provisions of this Lease are for the sole benefit of Landlord and Tenant, and no third party whatsoever.

Section 16.14. Authority.

(a) Each Tenant, separately, hereby represents and warrants to Landlord that Tenant, respectively, has full right and authority to execute, deliver and perform this Lease and the other

documents executed in connection herewith.

(b) Landlord hereby represents and warrants to Tenant that Landlord has full right and authority to execute, deliver and perform this Lease and the other documents executed in connection herewith.

Section 16.15. Americans with Disabilities Act and Texas Architectural Barriers Act. Landlord agrees to comply with all requirements of the Americans with Disabilities Act (Public Law 101-336 (July 26, 1990) and the Texas Architectural Barriers Act (Article 9102, Tex. Rev. Civ. St. (1991)) applicable to the Premises and the conduct of Landlord's business thereon, as amended or modified from time to time.

Section 16.16. Broker's Commissions. Tenant represents and warrants that no broker has represented Tenant, and that no broker is owed a commission or fee due to any action of Tenant, in connection with the transaction evidenced by this Lease. Tenant hereby indemnifies and holds Landlord harmless against any loss, claim, expense or liability with respect to any commissions or brokerage fees claimed on account of this Lease due to any action of Tenant. The provisions of this Section shall survive the expiration of the term of this Lease, including any renewal or extension thereof, or the earlier termination of this Lease for any reason.

[Signature of Landlord on Next Page]

Executed as of the date and year first above written.

LANDLORD:

FAMILY SERVICE ASSOCIATION OF
SAN ANTONIO, INC.,
a Texas non-profit corporation

By: 
Nancy L. Hard
President and Chief Executive Officer

[Signature of Tenant on Next Page]

Executed as of the date and year first above written.

TENANT (COUNTY):

COUNTY OF BEXAR By:

NELSON W. WOLFF County Judge

Date: _____

ATTEST:

GERARD C. RICKHOFF County Clerk

APPROVED AS TO LEGAL FORM:

BRACEWELL LLP

Bond Counsel



William T. Avila, Partner

APPROVED AS TO FINANCIAL CONTENT:

SUSAN T. YEATTS, C.P.A.

County Auditor

DAVID L. SMITH

County Manager

Executed as of the date and year first above written.

TENANT (CITY):

CITY OF SAN ANTONIO, TEXAS BY:

MIKE FRISBIE, Director and City Engineer
Transportation and Capital Improvements
Department

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

ANDREW SEGOVIA, City Attorney

Exhibit A

Legal Description

[Provided by Landlord]

The Property

Tract I

Lots 73, 74, 75 and 76, Block 10, New City Block 8298, Villa Aldama, an addition to the City of San Antonio, Bexar County, Texas, according to map or plat recorded in Volume 1625, Page 240, Deed and Plat Records of Bexar County, Texas

Tract II

FIELD NOTES
FOR
A 4.196 ACRE TRACT

A 4.196 acre tract of land, situated in the City of San Antonio, Texas and being all of Lot 42, Block 1, N.C.B. 8857 of the H.K. Williams Elementary Unit – 1A Subdivision Plat of record in Volume 9540 Page 93 of the Deed and Plat Records of Bexar County, Texas, the remaining portion of Lot 40, Block 1, N.C.B. 8857 of the H.K. Williams Elementary Subdivision Plat of record in Volume 9509 Page 39 of the Deed and Plat Records of Bexar County, Texas and the south 3.25 feet of Lot 8, all of Lots 9 and 10, Block 1, N.C.B. 8857 of the Villa Del Norte Subdivision Plat of record in Volume 1625 Page 206 of the Deed and Plat Records of Bexar County, Texas. Said 4.196 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" in the south right-of-way line of Rivas Street, a called 50' public right-of-way, as shown on the Villa Aldama Subdivision Plat of record in Volume 1625 Page 240 of the Deed and Plat Records of Bexar County, Texas, for the northwest corner of a 5' R.O.W. Dedication as shown on the Holy Cross High School Subdivision Plat of record in Volume 9536 Page 71 of the Deed and Plat Records of Bexar County, Texas, for the northeast corner of Lot 40 and the tract described herein, from which a found 1" iron pipe in the south right-of-way line of Rivas St., for the northeast corner of said 5' R.O.W. Dedication and the northwest corner of a called 3.90 acre tract of land as conveyed to Holy Cross Community Services of Texas, Inc., of record in Volume 7632 Page 1654 of the Official Public Records of Bexar County, Texas bears, S 84° 01' 14" E, a distance of 273.07 feet;

THENCE: Departing the south right-of-way line of Rivas St. and along and with the common line between Lot 41 of the Holy Cross High School Subdivision Plat of record in Volume 9536 Page 71 of the Deed and Plat Records of Bexar County, Texas and Lot 40, the following two (2) courses:

1. S 06° 15' 12" W, a distance of 435.55 feet to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for an interior corner of Lot 41, the southeast corner of Lot 40 and the tract described herein, from which a found ½" iron rod for an interior corner of Lot 42 bears, N 56° 44' 11" W, a distance of 353.10 feet, and

2. N 84° 04' 01" W, a distance of 400.01 feet to a found ½" iron rod for an interior corner of Lot 41, the southwest corner of Lot 40 and the tract described herein, and

THENCE: N 06° 15' 12" E, along and with the common line of Lot 41 and Lot 40, at a distance of 56.58 feet passing a northeast exterior corner of Lot 40 and the southeast corner of Lot 15, Block 1, N.C.B. 8857 of the Villa Del Norte Plat, along and with the common line between Block 1 of the Villa Del Norte Plat and Lot 40, at a distance of 71.37 feet passing the southwest corner of Lot 42, and along and with the common line between Block 1 of the Villa Del Norte Plat and Lot 42, a total distance of 181.78 feet to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for the northeast corner of Lot 11 and the southeast corner of Lot 10, both of the Villa Del Norte Plat and for an interior corner of the tract described herein;

THENCE: N 84° 04' 01" W, along and with the common line between Lot 10 and 11, a distance of 114.42 feet to a set pk nail with a washer stamped "KFW SURVEYING" in the east right-of-way line of N. San Felipe Ave., a called 50' public right-of-way, as shown on the Villa Del Norte Plat, for the northwest corner of Lot 11, the southwest corner of Lot 10 and a southwest exterior corner of the tract described herein;

THENCE: N 06° 15' 12" E, along and with the east right-of-way line of N. San Felipe Ave. and the west line of Lots 10-8 of the Villa Del Norte Plat, a distance of 53.25 feet to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for the southwest corner of a 5' wide R.O.W. Dedication as shown on the H.K. Williams Elementary Subdivision Plat of record in Volume 9540 Page 93 and for a northwest exterior corner of the tract described herein;

THENCE: S 84° 04' 01" E, along and with the south line of the 5' wide R.O.W. Dedication, a distance of 5.00 feet to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" for a southwest exterior corner of Lot 42 and an interior corner of the tract described herein;

THENCE: N 06° 15' 12" E, along and with the common line between Lot 42 and the 5' wide R.O.W. Dedication, a distance of 21.75 feet to a pk nail with a washer stamped "KFW SURVEYING" in for the northeast corner of said R.O.W. Dedication, in the south line of Lot 7 of the Villa Del Norte Plat, for a northwest exterior corner of Lot 42 and the tract described herein;

THENCE: S 84° 04' 01" E, along and with the south line of Lot 7 and a northerly line of Lot 42, a distance of 109.42 feet to a found ½" iron rod with a plastic cap stamped "PCI" for the southeast corner of Lot 7, an interior corner of Lot 42 and the tract described herein, from which a found ½" iron rod for an interior corner of Lot 42 bears, S 42° 45' 31" E, a distance of 113.11 feet;

THENCE: N 06° 15' 12" E, along and with the common line between Block 1 of the Villa Del Norte Plat and Lot 42, at a distance of 91.12 feet passing a found ½" iron rod for the most northerly northwest corner of Lot 42, and continuing along and with the common line between Block 1 of the Villa Del Norte Plat and Lot 40, a total distance of 179.09 feet to a set ½" iron rod with a blue plastic cap stamped "KFW SURVEYING" in the south right-of-way line of Rivas St., for the northeast corner of Lot 1 of the Villa Del Norte Plat, the northwest corner of Lot 40 and the most northerly northwest corner of the tract described herein;

THENCE: S 84° 01' 14" E, along and with the south right-of-way line of Rivas St. and the north line of Lot 40, a distance of 400.00 feet to the POINT OF BEGINNING and containing 4.196 acres, more or less, in Bexar County, Texas. Said tract being described in accordance with a survey prepared by KFW Surveying. Bearings are based on NAD83 (2011) Texas State Plane South Central Zone, 4204. Distances recited herein are surface distances using an average combined scale factor of 0.9998300289.

Exhibit B

Permitted Encumbrances

[Provided by Landlord]

Tract I and Tract II:

1. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing to secure indebtedness in the amount shown below:

Amount: \$6,000,000.00 which includes loans in the aggregate principal amount of \$2,000,000.00 from ECD Lender and in the principal amount of \$4,000,000.00 from WF Lender.

Dated: December 15, 2016

Grantor: The Neighborhood Place, Inc., a Texas non-profit corporation

Trustee: Douglas W. Becker

Beneficiary: Enhanced Capital New Market Development Fund 80, LLC

Recording Date: December 15, 2016

Recording No: 20160246884, Volume 18259, Page 728, Real Property Records of Bexar County, Texas

2. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing to secure indebtedness in the amount shown below:

Amount: \$6,000,000.00 which includes loans in the aggregate principal amount of \$2,000,000.00 from ECD Lender and in the principal amount of \$4,000,000.00 from WF Lender.

Dated: December 15, 2016

Grantor: The Neighborhood Place, Inc., a Texas non-profit corporation

Trustee: Douglas W. Becker

Beneficiary: Wells Fargo Community Development Enterprise Round 12, Subsidiary II, LLC

Recording Date: December 15, 2016

Recording No: 20160246884, Volume 18259, Page 728, Real Property Records of Bexar County, Texas

3. Subordination, Non-Disturbance Attornment Agreement by and between The Neighborhood Place, Inc., a Texas non-profit corporation (Landlord) and Family Service Association of San Antonio, Inc., a Texas non-profit corporation (Tenant), filed for record on December 15, 2016, in Volume 18259, Page 776, Official Public Records of Bexar County, Texas.

Tract I:

None

Tract II:

1. Restrictive covenants recorded in:

Volume 3605, Page 391, Deed Records, Bexar County, Texas, and in deed of even date herewith from Edgewood Independent School District, a Texas public school district to Family Service Association of San Antonio, Inc., a Texas non-profit corporation recorded in Volume 18258, Page 2080, Real Property Records of Bexar County, Texas, but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

2. Building setback line, 25 feet wide, along the front lot line, as shown in Volume 9509, Page 39 of the Deed and Plat Records of Bexar County, Texas.
3. Electric, gas, telephone and cable television easement 14 feet wide, along the front lot line, as shown in Volume 9509, Page 39 of the Deed and Plat Records of Bexar County, Texas.
4. Easement by dedication granted to the City of San Antonio for the purpose(s) provided in instrument dated September 16, 1986, recorded in Volume 3905, Page 842, Real Property Records, Bexar County, Texas.
5. Building setback line, 20 feet wide, along San Felipe Street, as shown in Volume 9540, Page 93 of the Deed and Plat Records of Bexar County, Texas.
6. Telephone and cable television easement 12 feet wide, along the most westerly portion of lot, as shown in Volume 9540, Page 93 of the Deed and Plat Records of Bexar County, Texas.
7. Electric, gas, telephone and cable television easement 14 feet wide, along San Felipe Street, as shown in Volume 9540, Page 93 of the Deed and Plat Records of Bexar County, Texas.
8. 28 foot gas, electric, telephone and cable television easement, as shown in Volume 9536, Page 71, of the Deed and Plat Records of Bexar County, Texas.

Exhibit C

Community Facility Description

The Neighborhood Place provides services to the most vulnerable and needful citizens of San Antonio and Bexar County. Family Service Association of San Antonio, Inc. provides some of the services but other agencies and non-profits provide a great deal of the services. The location is in the most impoverished census tracts for the City but services are available to and provided to anyone with a need.

The services and service providers include, Family Service Association of San Antonio, Inc., for counseling, Head Start operations, a pantry operation for emergency supplies, financial counseling for what had been a Bloomberg Foundation grant, and the Teen Tech Center a mostly after school program for what had been a grant from many sources; The State of Texas, for Child Protective Service and Adult Protective Service field offices; The City of San Antonio, for financial assistance; other smaller non-profits for the Fatherhood Initiative and dance therapy; and Johnny Hernandez Foundation for a new food services related non-profit. The Neighborhood Place also includes an Auditorium and the Gymnasium that are utilized by neighborhood organizations and non-profits for services to similar groups.

W:\RE\SCF\FSA (Family Service Association)\2017\Neighborhood Place\Bond\Community Description.docx

SW
11/9/17
Item No. 11

ATTACHMENT III

LICENSE AND OPERATING AGREEMENT

BETWEEN

BEXAR COUNTY, TEXAS,

CITY OF SAN ANTONIO, TEXAS

AND

**FAMILY SERVICE ASSOCIATION OF SAN
ANTONIO, INC.**

January 1, 2017

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**LICENSE AND OPERATING AGREEMENT BETWEEN
BEXAR COUNTY, TEXAS, CITY OF SAN ANTONIO, TEXAS AND
FAMILY SERVICE ASSOCIATION OF SAN ANTONIO, INC.**

This **LICENSE AND OPERATING AGREEMENT** (“License and Operating Agreement”) is made and entered into as of the effective date of January 1, 2017 (“Effective Date”) by and between **COUNTY OF BEXAR**, a political subdivision of the State of Texas (the “COUNTY”), **CITY OF SAN ANTONIO** (the “CITY”), a home rule municipality and political subdivision of the State of Texas, and **FAMILY SERVICE ASSOCIATION OF SAN ANTONIO, INC.**, a non-profit corporation created and operating under the laws of the State of Texas (the “OPERATOR”). The COUNTY and the CITY (collectively, the “LICENSOR”), and the OPERATOR shall collectively be referred to as the “Parties”.

DEFINITIONS AND INTERPRETATIONS. Each term or phrase used in this License and Operating Agreement in which the first letter of each word is capitalized has the meaning set forth in the attached Exhibit “A”, unless the context in which such term or phrase is used in this License and Operating Agreement clearly indicates otherwise.

RECITALS

WHEREAS, COUNTY is authorized by Section 122.001 of Chapter 122, Texas Health and Safety Code, as amended (“Chapter 122”), to appropriate and spend money from the COUNTY general revenues for public health and other purposes in the County; and

WHEREAS, OPERATOR provides, among other things, community services for public health and other purposes, which include, among other things, social services and resources to families in economically disadvantaged communities in the county (the “Operator Services”); and

WHEREAS, pursuant to Chapter 122, OPERATOR receives money from COUNTY general revenues for public health and other purposes to assist OPERATOR in the provision of the Operator Services in the COUNTY; and

WHEREAS, CITY held a Bond Election on May 6, 2017 and received approval from the voters to fund a variety of Library and Cultural Facilities Improvements (Proposition 4 on the ballot); and

WHEREAS, among the Library and Cultural Facilities Improvements projects approved is a project titled “The Neighborhood Place Cultural/Community Center LF” which is the same as the Project defined in Section 2.02 below; and

WHEREAS, the official brochure for the Bond Election described this project as follows: “The Neighborhood Place Cultural/Community Center LF, \$1,500,000: Leverage funding for facility improvements to potentially include a gym, related parking lot, cafeteria and kitchen”; and

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

WHEREAS, the City has found, by resolution adopted by its City Council, that the programs and services offered by OPERATOR at the hereinafter-defined Community Facility accomplish the public purpose of cultural enrichment of and provision of community services to City residences and, accordingly, the expenditure of proceeds derived from the sale of bonds authorized at the May 6, 2017 City bond election under Proposition 4 to expand and improve the Community Facility represents a valid expenditure of such bond proceeds; and

WHEREAS, CITY has identified OPERATOR as the appropriate party to contract with for the fulfillment of the public purposes identified in the official bond brochure (and hereinbefore identified as provision of cultural enrichment and community services to City residents) in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, OPERATOR has acquired a leasehold interest in, manages, maintains, operates, supervises, and desires to make improvements and renovations to, such land, buildings, equipment, facilities, and improvements which currently serve as a community public health and betterment service facility out of which OPERATOR provides, among other things, the Operator Services to families in the economically disadvantaged communities that it serves in the City of San Antonio, Bexar County, Texas (the "Operator Facility");

WHEREAS, pursuant to that certain Premises Lease, dated as of December 15, 2016, by and between The Neighborhood Place, Inc., a Texas nonprofit corporation, as lessor, and OPERATOR, as lessee (the "Premises Lease"), OPERATOR is the owner of a leasehold interest in that certain tract of land on which the Operator Facility is situated, which tract of land is comprised of approximately 3.0 acres, more or less, situated in the City of San Antonio, Bexar County, Texas, and being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (the "Land");

WHEREAS, the City's issuance of bonds (the "City Obligations") to contribute to improvement of the Community Facility is authorized pursuant to applicable Texas law, including the City's Home Rule Charter and the City voters' approval of Proposition 4 at the May 6, 2017 City bond election, and such contribution shall satisfy in full the City's funding obligations for the project identified in Proposition 4 of the City's May 6, 2017 bond election as "The Neighborhood Place Cultural/Community Center; and

WHEREAS, COUNTY is further authorized by Chapter 1301, Texas Government Code, as amended ("Chapter 1301"), to establish county facilities for needy or indigent persons in the county, and by Chapter 1433, Texas Government Code, as amended ("Chapter 1433"), to acquire, by construction, purchase, devise, gift, or lease county facilities, which includes the land, buildings, equipment, facilities, and improvements found by the governing body of the COUNTY to be required for public health, research, and facilities for needy or indigent persons in the county; and

WHEREAS, COUNTY has identified OPERATOR as the appropriate party to contract with for the fulfillment of a portion of the public purpose described in Chapter 1301 and Chapter 1433, to wit: the establishment of a county public health facility for needy or indigent persons in the county, in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and; and

WHEREAS, COUNTY is further authorized by the Certificate of Obligation Act of 1979, Subchapter C, Chapter 271, Texas Local Government Code, as amended ("Chapter 271"), to issue certificates of obligation for the payment of contractual obligations to be incurred (i) for the construction of any public work or construing, renovating, or otherwise improving a county-owned building, and (ii) for the purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes; and

WHEREAS, COUNTY, CITY and OPERATOR believe that a COUNTY/CITY public health, cultural enrichment, and community service center (the "Community Facility"), located on the Land in Bexar County, and depicted in Exhibit "B" attached hereto, which has been developed by OPERATOR for the purpose of providing for the establishment of a COUNTY public health facility for needy and indigent person in the COUNTY and provision of a CITY facility for cultural enrichment and the provision of community services to CITY residents through the acquisition by lease, construction, devise and gift of the land, buildings, equipment, facilities, and improvements of the Operator Facility found by the Commissioners Court of the COUNTY and the City Council of CITY to be required to serves as the Community Facility for public health and facilities for needy or indigent person in the County through the delivery public health social services to the citizens of Bexar County and a cultural enrichment and community services facility for CITY residents, respectively, that will, together, enhance the communities and neighborhoods surrounding the Community Facility; and

WHEREAS, in furtherance of the public purposes hereinbefore described, COUNTY, the CITY and OPERATOR have further entered into that certain Facility Lease Agreement (the "Lease Agreement"), relating to the issuance by COUNTY of obligations designated as "Bexar County, Texas Combination Tax and Revenue Certificates of Obligation, Series 2016" (the "County Obligations"), which Obligations were issued by COUNTY for the purposes of making permanent public improvements, including, among other things, (i) designing, acquiring, constructing, renovating, improving, and equipping, Bexar County-leased county facilities, and (ii) acquiring land, easements, rights-of-way and other interests in real property for authorized needs and purpose related to the foregoing, a portion of the proceeds of which are to be used, pursuant to Chapter 1301 and Chapter 1433, to pay a portion of the costs required to establish a county public health facility for needy or indigent persons in the COUNTY to be accomplished by the COUNTY'S acquisition by lease, gift and devise and by construction of the land, buildings, equipment, facilities, and improvements found by the governing body of the COUNTY to be required for public health and facilities for needy or indigent persons in the county, which will include the construction, renovation, improvement and equipping by OPERATOR, for and on behalf of COUNTY, of improvements and renovations to the Operator Facility to become and function as a public health services community facility acquired, constructed, and improved by COUNTY as a COUNTY administrative, public health and facilities for needy or indigent persons in the county for the purpose of establishing a COUNTY public health facility and a facility for needy or indigent persons in the county to provide the

community public health services described above to needy or indigent persons in Bexar County, with such community facility being more particularly described in Exhibit C attached hereto and made a part hereof for all purposes (the "Community Facility"); and

WHEREAS, in furtherance of the public purposes hereinbefore described, COUNTY, CITY and OPERATOR have further entered into the Lease Agreement relating to the issuance by the City of the City Obligations, together with the County Obligations, the "Obligations") to accomplish the City public purpose of providing to its residents a facility that offers cultural enrichment and other community services; and

WHEREAS, through its issuance of the County Obligations, the COUNTY shall provide funding to the OPERATOR of \$1,500,000.00 pursuant to a financing program to support the Community Facility ("County Contribution") and CITY, through its issuance of the City Obligations, shall provide funding to OPERATOR for "The Neighborhood Place Cultural/Community Center LF," in the amount of \$1,500,000: Leverage funding for facility improvements to potentially include a gym, related parking lot, cafeteria and kitchen" (the "City Contribution" and collectively with the County Contribution, the "Contributions") pursuant to a financing program to support the Community Facility; and

WHEREAS, the OPERATOR shall provide the necessary land as the site of the Community Facility plus at least THREE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$3,700,000.00) for the Community Facility ("OPERATOR Contribution");

WHEREAS, the Community Facility has been designed, constructed, renovated, improved and equipped by the OPERATOR, as provided in the Lease Agreement executed by the Parties, to support the provision of public health and social services by the OPERATOR of the local community for and on behalf of the COUNTY, as authorized by Chapter 122, chapter 1301, and Chapter 1433, and a facility that provides cultural enrichment and other community services to City residents, as authorized by applicable Texas law and the City's Home Rule Charter (the "Project"); and

WHEREAS, LICENSOR and OPERATOR desire to enter into this License and Operating Agreement to provide for the occupancy, use, management, operation and maintenance of the Community Facility by the OPERATOR as the occupant and Operator (as such term is defined herein) of the Community Facility as an administrative, public health and medical facility and cultural enrichment and community services facility to be used and occupied by OPERATOR for the delivery and operation of hereinbefore described public purposes for and on behalf of the LICENSOR to this License and Operating Agreement, and subject to the terms and conditions of this License and Operating Agreement and the Lease Agreement; and

WHEREAS, the Community Facility will be exclusively managed and operated for and on behalf of the LICENSOR by the OPERATOR pursuant to this thirty (30) year License and Operating Agreement.

NOW, THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this License and Operating Agreement, and for other good and valuable

consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE I
TERM

1.01. Commencement and Term. This License and Operating Agreement becomes binding on the Parties on the Effective Date; however, unless expressly stated that the Effective Date governs, the rights and obligations of the Parties under this License and Operating Agreement begin on the Commencement Date as set out herein. The term of this License and Operating Agreement (the "Term") shall commence on the Effective Date and shall terminate thirty (30) years after the Commencement Date (the "Termination Date").

ARTICLE II
PARTIES' REPRESENTATIVES

2.01. OPERATOR'S Control. The OPERATOR shall be the sole occupant, user and operator of the Community Facility during the Term hereof for, on behalf, and in furtherance of the public purposes of, LICENSOR, with sole responsibility and full control and discretion in the use, occupancy, operation, direction, management and supervision of the Community Facility, and its staff, subject to the terms of this License and Operating Agreement.

2.02. Authority of OPERATOR. The OPERATOR, with the prior express written consent of the LICENSOR, shall have the exclusive right and authority to exercise, or may delegate the exercise of, all rights, powers and duties conferred or imposed on the OPERATOR in this License and Operating Agreement; provided, however, that the right to delegate such rights, powers and duties shall not relieve the OPERATOR of its duties and responsibilities hereunder.

2.03. Duty and Liability. The OPERATOR shall conduct the use, occupancy, management and operation of the Community Facility at all times with integrity and good faith in a manner which is consistent with the terms of this License and Operating Agreement.

2.04. OPERATOR Representative. The OPERATOR hereby designates its President and CEO to be the OPERATOR Representative, with full authority to execute any and all instruments and to otherwise act on behalf of the OPERATOR with respect to its activities with and obligations owed to the LICENSOR arising out of this License and Operating Agreement. From time to time following the execution hereof, the OPERATOR may change or replace the OPERATOR Representative by giving the LICENSOR written notice thereof. Any consent, approval, decision or determination hereunder by the OPERATOR Representative shall be binding on the OPERATOR, provided, however, that the OPERATOR Representative shall not have any right to modify, amend or terminate this License and Operating Agreement. The LICENSOR, and any Person dealing with the OPERATOR in connection with this License and Operating Agreement or any matter governed by this License and Operating Agreement, may rely and shall be fully protected in relying upon the authority and capacity of the OPERATOR Representative to act for and bind the OPERATOR in any such matter, except with respect to any modification, amendment or termination of this License and Operating Agreement.

2.05. LICENSOR Representative. The COUNTY designates the Director of the Bexar County Management and Finance Office as the COUNTY Representative. CITY designates the Department of Human Services as the CITY Representative. The COUNTY or CITY shall have the right, from time to time, to change the Person designated as its Representative by giving the OPERATOR written notice thereof. With respect to any action, decision or determination which is to be taken or made by COUNTY or CITY under this License and Operating Agreement, its Representative may take such action or make such decision or determination or shall notify the OPERATOR in writing of the Person(s) responsible for such action, decision or determination and shall forward any communications and documentation to such Person(s) for response or action. Any consent, approval, decision or determination hereunder by any COUNTY or CITY Representative shall be binding on the COUNTY or CITY, respectively; provided, however, that the COUNTY Representative shall not have any right to modify, amend or terminate this License and Operating Agreement. The OPERATOR, and any Person dealing with the COUNTY in connection with this License and Operating Agreement or any matter governed by this License and Operating Agreement, may rely and shall be fully protected in relying upon the authority and capacity of the COUNTY or CITY Representative to act for and bind the COUNTY or CITY in any such matter, except with respect to any modification, amendment or termination of this License and Operating Agreement.

2.06. OPERATOR Pre-Operations Start Date Duties. After the Commencement Date, the OPERATOR shall have such rights and shall discharge such duties as are reasonable and necessary to ensure that the Community Facility is equipped, staffed and managed to commence operations upon the Operations Start Date.

ARTICLE III **OPERATOR'S RIGHTS AND OBLIGATIONS**

3.01. Use and Occupancy; Rent. The LICENSOR, for and in consideration of the mutual benefits to the LICENSOR and the OPERATOR and the observance of the terms and conditions set forth hereinafter, hereby grants to OPERATOR permission to enter, use, and occupy the Community Facility for the purposes set forth in Section 3.02 below. In further consideration of the mutual benefit derived between the LICENSOR and OPERATOR, neither LICENSOR nor OPERATOR shall not owe any rent or other fees or charges to each other under this Operating Agreement.

3.02. Permitted Uses. The Community Facility shall be used and occupied by OPERATOR in compliance with the NMTC Deed of Trust and documents related thereto, as a public health services, cultural enrichment, and community services facility in and for the LICENSOR, and for the support, maintenance, operation and delivery of public services in and for the LICENSOR including the provision of public health, cultural enrichment, and other community services to include, but not limited to, services employment, crime prevention, child care, health, drug abuse, education, fair housing, energy conservation, and general welfare and recreational needs to families in the economically disadvantaged communities that OPERATOR serves in the City of San Antonio and Bexar County, and the delivery of the governmental services and public purposes described herein by the OPERATOR for, and on behalf, and in furtherance of the governmental functions of the LICENSOR. In addition to the foregoing, OPERATOR shall at all times assure that the services provided at the Community Facility to accomplish the

respective public purposes on behalf of COUNTY (public health services) and CITY (cultural enrichment and community services) that represent the legal basis for LICENSOR'S making the County Contribution and the City Contribution, respectively, as a ratio of all services provided at the Community Facility, shall be at least proportionate to the percentage of the costs of Community Facility improvement partially funded by such Contributions (assuming a City Contribution and County Contribution of \$1,500,000 each and an overall cost of Community Facility improvement of \$7,039,358.57).

3.03. Expenses of Ownership. The OPERATOR shall assume the risks of all costs of maintenance and operation of the Community Facility. The OPERATOR shall fully equip, operate and maintain the Community Facility and shall have and perform all obligations of the owner, including (but not limited to) all obligations under the Premises Lease; maintenance, repair and replacement of the structural components, infrastructure improvements, and the operating systems (including replacements required by physical or functional obsolescence); payment of insurance premiums for insurance maintained at levels necessary to replace all improvements; payment of all utilities; and other duties commonly associated with ownership of the Community Facility. All expenses of the OPERATOR shall be subordinate to the obligations under the Premises Lease.

3.04. Maintenance and Repairs.

- A. OPERATOR'S Obligation. The OPERATOR shall throughout the Term do the following:
- (1) Perform all Maintenance and perform all Capital Repairs, or cause the performance of all Maintenance and all Capital Repairs, necessary to keep and maintain the Community Facility in a manner reasonably consistent with the Safety and Quality Standards; and
 - (2) Maintain and keep, or cause to be maintained and kept, the Community Facility in a clean, neat, safe, and orderly condition given the nature and use of the Community Facility.

3.05. Management. Subject to the NMTC Deed of Trust, the LICENSOR shall own an exclusive leasehold interest in the Community Facility and the OPERATOR shall be the exclusive occupant, user and operator of the Community Facility. Subject to the NMTC Deed of Trust, the OPERATOR shall have the exclusive right to enter, use, and occupy the Community Facility during the Term in a manner that will promote and further the purposes for which the Community Facility has been constructed. The OPERATOR shall have the sole responsibility and full control in the operation, direction, management and supervision of the Community Facility and its staff. In performing its duties and responsibilities hereunder, the OPERATOR shall use, occupy, maintain, operate and manage the Community Facility at all times with integrity and good faith in a manner consistent with the Safety and Quality Standards. Without limiting the generality of the foregoing, the OPERATOR is authorized to and shall:

- A. collect all Community Facility Operating Revenues, and in connection therewith, use all reasonable efforts to obtain all fees, rents and other amounts due from

Licenses, and other users of the Community Facility with all Community Facility Operating Revenues to be deposited in an Operating Fund;

- B. distribute funds from the Operating Fund to pay Community Facility Operating Expenses, payable by the OPERATOR in the ordinary course of business when they become due;
- C. the OPERATOR shall commence, defend and settle such legal actions and proceedings concerning the operation of the Community Facility as are necessary or required in the opinion of the OPERATOR and retain counsel in connection therewith;
- D. employ, pay and supervise all personnel that the OPERATOR determines to be necessary for the operation of the Community Facility, including such personnel as shall be necessary to maintain and ensure public order and safety in and around the Community Facility; determine all matters with regard to its employees, including, without limitation and the provision of the governmental services and function described herein, compensation, hiring and replacement; not knowingly employ Persons who do not have the proper legal credentials for employment in the United States; and prepare, on its own behalf and file when due, all forms, reports and returns required by law relating to the employment or hiring of such personnel;
- E. purchase or rent materials, tools, machinery, equipment, spare parts and supplies necessary for the operation of the Community Facility;
- F. arrange for all utility and other services for the Community Facility and pay, or cause to be paid, when due all charges for water, sewer, gas, light, heat, telephone, electricity and other utilities and services rendered to or used on or about the Community Facility;
- G. maintain, or cause to be maintained, all necessary licenses, permits and authorizations for the operation of the Community Facility;
- H. procure and negotiate contracts with all service providers and suppliers of the Community Facility;
- I. use reasonable efforts to investigate and make a full timely written report to the insurance carriers as to any accident at the Community Facility and prepare and file any and all reports required by any insurance carriers in connection with the accident and provide copies of the reports, upon request, to the LICENSOR;
- J. maintain at its regular business office separate, true and complete books, records, accounts, journals and files regarding the management and operation of the Community Facility;

- K. promptly notify the LICENSOR of any suit, proceeding or Action filed against the OPERATOR and/or the LICENSOR that is initiated or threatened in connection with the Community Facility;
- L. provide sufficient security during Events to protect the attendees and the participants from injury and the Community Facility grounds from damage; and
- M. if necessary, provide security measures during periods in which the Community Facility is not being utilized for events to adequately protect the Community Facility from vandalism and theft.

3.06. Use Agreements. Subject to the NMTC Deed of Trust and documents related thereto, the OPERATOR shall have the exclusive right to negotiate, execute and perform all short term special events use agreements with entities who desire to schedule Events at the Community Facility. The OPERATOR shall have the exclusive control over the negotiation and execution of contracts with users of the Community Facility. In so doing, the OPERATOR shall negotiate for rental rates with the goal of maximizing use of the Community Facility and the generation of revenues therefrom. The OPERATOR shall also have the right to negotiate and enter into agreements with users of the Community Facility whereby the OPERATOR and such user co-promote an Event at the Community Facility. Each of these co-promotion contracts shall specifically set forth the arrangement between the OPERATOR and the co-promoter with respect to sharing of revenues and expenses attributable to co-promoter's use of the Community Facility in connection with an Event.

3.07. Temporary Advertising. The OPERATOR shall have the right to sell, license, and/or grant Temporary Advertising. Temporary Advertising shall be signage placed at the Community Facility before an Event and taken down following the conclusion of the Event and shall be subject to the naming rights parameters as set out in Section 3.11 below.

3.08. Booking. The OPERATOR shall have the sole right and duty to arrange for and otherwise book Events at the Community Facility. The OPERATOR shall develop and maintain a scheduling system for Events at the Community Facility.

3.09. Security and Traffic Control. The OPERATOR shall develop and implement a traffic management plan to facilitate the ingress and egress of traffic to and from Events at the Community Facility.

3.10. Significant Event Reports. Should any Force Majeure or Casualty or other event occur that could have a material impact on the Community Facility, the OPERATOR will immediately prepare a written "Significant Event Report" (herein so called) detailing all available information and the steps being taken to correct the problem and forward the same to the COUNTY Representative and the City Representative within five (5) Business Days after the OPERATOR'S discovery of such Force Majeure, Casualty or other event.

3.11. Naming Rights Parameters. The OPERATOR will have the sole and exclusive right, following the Effective Date, to grant license agreements for the naming rights to the Community Facility, subject to the following limitations:

- (i) The licensed name shall not include a name or reference that:
 - (1) Is defamatory, libelous, obscene, vulgar or offensive to the general public;
 - (2) May violate the rights of any person, institution, group or entity;
 - (3) Identifies or is identified with distilled liquor or spirits, habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses or publications, pornography, massage parlors, erectile dysfunction, birth control or sexually transmitted diseases, firearms or firearm ammunition, tattoo parlors, pawn shops, check-cashing establishments, or any product or service which is prohibited by Applicable Law;
 - (4) Advocates or opposes any political candidate, issue, cause, or belief;
 - (5) Identifies, or is identified with, a person or organization that has been convicted of a criminal offense; or
 - (6) Advocates violence, criminal activity or immorality.

3.12. County Plaque. The COUNTY will provide a plaque to the OPERATOR recognizing the support of the members of the Bexar County Commissioners Court for the Project. The OPERATOR shall pay out of the Capital Budget up to NINE HUNDRED DOLLARS (\$900.00) for the cost of purchasing the plaque. The plaque will contain language similar to that set out in Exhibit "D" attached hereto. The COUNTY shall provide a list of locations at the Project which would be suitable to place the plaque and the OPERATOR shall select the location for the plaque from the COUNTY'S list.

3.13. Delegation of Authority. Subject to the NMTC Deed of Trust and documents related thereto, the OPERATOR, with the express prior written consent of the LICENSOR, shall have the exclusive right and authority to exercise, or may delegate the exercise of, all rights, powers and duties conferred or imposed on the OPERATOR in this Operating Agreement; provided, however, that the right to delegate such rights, powers and duties shall not relieve the OPERATOR of its duties and responsibilities hereunder.

3.14. Pre-Operations Start Date Duties. After the Effective Date, the OPERATOR shall have such rights and shall discharge such duties as are reasonable and necessary to ensure that the Community Facility is equipped, staffed and managed to commence operations upon the Operations Start Date.

ARTICLE IV **FINANCIAL OBLIGATIONS**

4.01. Business Plan. The OPERATOR shall submit to the LICENSOR no later than ninety (90) days after the Commencement Date a Business Plan which shall be automatically attached

hereto as Exhibit "D" and be incorporated herein. When approved in writing by the LICENSOR, the Business Plan will automatically become incorporated in this License and Operating Agreement. The Business Plan will be based on a five (5) year rolling plan and incorporate an Operating Budget also based on a five (5) year rolling plan. The Business Plan shall be updated annually and shall be subject to the review of the COUNTY Representative and the CITY Representative under Subsection 5.01B below.

4.02. The Capital Improvement and Repair Fund and the Reserve Fund. The OPERATOR shall establish, and use its best efforts to maintain, the Capital Improvement and Repair Fund on or prior to the Operations Start Date, and shall commence the funding of same during the first year of operation of the Community Facility with the goal of the OPERATOR to have funded the Capital Improvement and Repair Fund in the amount to adequately satisfy the OPERATOR'S maintenance and repair obligation provided in Section 3.04 above. The Capital Improvement and Repair Fund will be a funding source for the maintenance, repair, refurbishment, upgrades, improvements, and replacement of the components comprising the Community Facility, including (without limitation) all infrastructure, fixtures, equipment, surfaces, and structures used in the operation of the Community Facility in order that the Community Facility will meet the Safety and Quality Standards. The OPERATOR shall maintain complete Records reflecting the sources and uses of the Capital Improvement and Repair Fund, including, but not limited to, the manner in which the OPERATOR has allocated Community Facility Operating Revenues to the Capital Improvement and Repair Fund. The COUNTY, and its authorized representative(s), including the COUNTY Representative, and the CITY and its authorized representative(s), including the CITY Representative, shall have the right to examine, inspect and audit such Records to determine the OPERATOR'S compliance with the requirements of this License and Operating Agreement as part of the LICENSOR'S annual inspection of the Community Facility and examination of the Records. The LICENSOR may copy all or part of such Records and may retain such copies. The cost and expense of such examinations, inspections and audits will be the sole responsibility of the LICENSOR.

ARTICLE V

COMMUNITY OVERSIGHT COMMITTEE

5.01. Oversight Rights of LICENSOR Representative. The COUNTY hereby appoints, through Bexar County Commissioners Court, the COUNTY Representative during the Term to: (i) conduct an annual general site inspection of the Community Facility grounds; (ii) receive and approve the annual Maintenance program described in Subsection 3.02A(3); (iii) conduct a review of the financial statement, and backup, set out in Section 6.02 below with the OPERATOR Representative; (iv) conduct a review of all accident reports filed with insurance carriers; and (v) conduct a review of the previous year's practice and competition calendar and the bookings for the coming year. The annual inspection of the Community Facility grounds and review of the financial statement are for the purpose of confirming the OPERATOR'S compliance with the terms of this License and Operating Agreement, and the CITY through the CITY Representative during the Term to: (i) conduct an annual general site inspection of the Community Facility grounds; (ii) receive and approve the annual Maintenance program described in Subsection 3.02A(3); (iii) conduct a review of the financial statement, and backup, set out in Section 6.02 below with the OPERATOR Representative; (iv) conduct a review of all accident reports filed with insurance carriers; and (v) conduct a review of the previous year's

practice and competition calendar and the bookings for the coming year. The annual inspection of the Community Facility grounds and review of the financial statement are for the purpose of confirming the OPERATOR'S compliance with the terms of this License and Operating Agreement.

- A. The COUNTY Representative and the CITY Representative shall have the right to enter the Community Facility during regular business hours once per Fiscal Year upon reasonable notice, but not less than seventy-two (72) hours, in order to inspect the Community Facility, the grounds, structures, equipment, furnishings, and fixtures provided that: (i) the COUNTY Representative and the CITY Representative shall not interfere with the operations of the Community Facility; and (ii) the COUNTY Representative and the CITY Representative shall not disturb the license rights of others. The OPERATOR will be provided with the name of the COUNTY Representative and the CITY Representative conducting the inspection at the time the OPERATOR is notified of the annual inspection date and time.
- B. In addition, the COUNTY Representative and the CITY Representative shall meet once per Fiscal Year with the OPERATOR Representative to review the financial documentation set out in Section 6.02 below and to examine the backup documentation, if necessary, to confirm the information contained in the financial documentation. Copies may be made of such documentation at the LICENSOR'S request and expense.
- C. Within thirty (30) days of the COUNTY Representative's and the CITY Representative's conclusion of its inspection of the Community Facility and review of the financial statement for the relevant Fiscal Year, the Committee shall develop and deliver to the COUNTY Representative and the CITY Representative a report detailing the results of the Committee's on-site inspection of the Community Facility and examination of the OPERATOR'S financial documentation.
- D. The COUNTY Representative and the CITY Representative shall deliver to the OPERATOR Representative a copy of the COUNTY and CITY Representative's report within thirty (30) days of the LICENSOR'S receipt of the report. The Committee report shall be accompanied by a summary letter from the COUNTY Representative and the CITY Representative advising the OPERATOR as to whether the LICENSOR is in agreement with the LICENSOR Representative report regarding the non-compliance issues. The OPERATOR shall have the right to contest the findings set out in the COUNTY Representative's and the CITY Representative's report as well as the COUNTY'S and the CITY'S summary letter. The COUNTY Representative, the CITY Representative and the OPERATOR Representative shall work together to resolve any issues regarding compliance and determine solutions for bringing the Community Facility into compliance if the Community Facility is not in compliance. If the LICENSOR and the OPERATOR are unable to resolve issues regarding compliance of the

Community Facility under this License and Operating Agreement, the Parties shall use the dispute resolution provisions under Article XV below.

- E. Once any disputed issues are agreed upon by the Parties, the OPERATOR shall have three (3) months to resolve the non-compliance and/or safety issues and provide a report to the COUNTY Representative and the COUNTY Manager and the CITY Representative as to the manner in which the issues were brought into compliance. The COUNTY Representative and the CITY Representative shall determine, in his sole discretion, whether a follow-up inspection to determine compliance of the Community Facility shall take place during the annual inspection for the next Fiscal Year or sooner. If the inspection to determine compliance will occur earlier than the next annual inspection, the OPERATOR shall be given a minimum of thirty (30) days' notice of the inspection.

ARTICLE VI **RECORDS AND AUDITS**

6.01. Records. For a period of four (4) years after the end of the Fiscal Year to which they pertain, the OPERATOR shall keep and maintain complete and accurate Records for the Community Facility and for the OPERATOR separate and identifiable from its other records and such Records shall be sufficient to verify the Community Facility Operating Revenues and Community Facility Operating Expenses. The COUNTY, through its representatives including the COUNTY Representative, and the CITY, through the CITY Representative shall be entitled to inspect and audit, at the COUNTY'S expense, the books, Records and accounts relating to the Community Facility to the extent they could have an effect upon the Community Facility Operating Revenues, the Community Facility Operating Expenses, and the Capital Improvement and Repair Fund during the Term of this License and Operating Agreement and three (3) years thereafter.

6.02. Financial Reports. The OPERATOR shall furnish to the LICENSOR, as soon as practicable and, in any event within one hundred and twenty (120) days after the end of each Fiscal Year, a financial statement as of the end of such Fiscal Year prepared in accordance with GAAP, which reflects: (i) the Community Facility Operating Revenues and Community Facility Operating Expenses for such Fiscal Year; (ii) the calculation of Net Operating Income for such Fiscal Year; and (iii) contributions to, and expenditures from, the Capital Improvement and Repair Fund. The OPERATOR shall also provide the LICENSOR with an updated Business Plan, a report of major tournaments revenues, and a copy of the IRS Form 990, Return of Organization Exempt from Income Tax, filed for such Fiscal Year.

ARTICLE VII **CHANGES, ALTERATIONS, AND IMPROVEMENTS**

7.01. Changes, Alterations, and Improvements. Subject to the limitations and requirements contained elsewhere in this License and Operating Agreement, the OPERATOR shall have the right from time to time to construct replacement improvements to the Community Facility and to make changes and alterations in, or to, the Community Facility. The OPERATOR shall not make any improvements to the Community Facility which would be reasonably expected to have

a material adverse effect upon the operations of the Community Facility or that materially alter the nature or character of the Community Facility. All improvements shall: (i) be approved by the LICENSOR; and (ii) once commenced, be made with due diligence and shall be completed in a good and workmanlike manner and in compliance with all Applicable Laws. Upon installation, all improvements shall become a part of the Community Facility.

ARTICLE VIII
PROVISIONS CONCERNING FEDERAL INCOME TAX EXCLUSION

8.01. General Tax Covenants. The OPERATOR hereby acknowledges and recognizes that the COUNTY and the CITY intend to finance all or a portion of their respective Contribution with the proceeds of obligations the interest on which is excludable from gross income for purposes of federal income taxation pursuant to sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable Treasury Regulations promulgated thereunder (the "Regulations"). During any period that such tax-exempt obligations or any tax-exempt obligations issued to refinance such tax-exempt obligations (collectively, the "Tax-Exempt Obligations") are outstanding, the OPERATOR covenants and agrees not to take any action, or knowingly omit to take any action within its control, that if taken or omitted, respectively, would (i) cause the interest on the Tax-Exempt Obligations to be includable in the gross income, as defined in section 61 of the Code, of the holders thereof for purposes of federal income taxation or (ii) result in the violation of or failure to satisfy any provision of Section 103 and 141 through 150 of the Code and the applicable Regulations. If the OPERATOR is notified by the COUNTY or the CITY that the OPERATOR must take an action or cease to take an action, as applicable, to maintain the tax-exempt status of the Tax-Exempt Obligations, the OPERATOR will promptly take such action, unless the OPERATOR delivers to the COUNTY and the City an opinion of nationally-recognized bond counsel that (i) the failure to take such action or cease to take such action, as applicable will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Obligations or (ii) compliance with some other requirement fulfilled by the OPERATOR will satisfy the applicable requirements of the Code.

8.02. Record Retention. Further, the OPERATOR will retain all pertinent and material records relating to the use and expenditure of the proceeds of the Tax-Exempt Obligations until three years after the last Tax-Exempt Obligation is redeemed, or such shorter period as authorized by subsequent guidance issued by the Department of Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the OPERATOR to retrieve and reproduce such books and records in the event of an examination of the Obligations by the Internal Revenue Service.

ARTICLE IX
PROGRAM RECORDS AND REQUIREMENTS

9.01. OPERATOR shall maintain all financial records in accordance with Cost Principles for Non-profit Organizations, OMB Circular A-122, Audits Other Non-profit Organizations, OMB

Circular A-133, and Administrative Requirements for Grants and Agreements with other Non-profit Organizations, OMB Circular A-110. These circulars will be made part of all agreements pertaining to the Program, as defined in the Annual Services Supplement.

9.02. COUNTY and CITY shall have the right to review OPERATOR's annual independently-administered comprehensive fiscal audit.

9.03. COUNTY and CITY may conduct monitoring visits to OPERATOR's Program site to determine performance and compliance with the terms of this Operating Agreement.

9.04. OPERATOR shall allow any duly authorized representative of LICENSOR, at all reasonable times, to have access to and the right to inspect, copy, audit, and examine all books, records and other documents respecting this Operating Agreement, until final settlement and conclusion of all issues arising out of this activity are completed.

9.05. OPERATOR shall have an independent auditor perform an annual audit. The audit must be performed in accordance with the requirements of OMB Circular A-133. The audit report will include OPERATOR's expenditures and revenues for the same time period as OPERATOR's fiscal year. LICENSOR shall be provided with the audit within 10 days of the OPERATOR receiving the completed report.

9.06. As often and in such form as LICENSOR may reasonably require, OPERATOR shall furnish to LICENSOR within five business days such performance records and reports as deemed by LICENSOR as pertinent to matters covered by this Operating Agreement.

ARTICLE X **DAMAGE OR DESTRUCTION**

10.01. Damage or Destruction. If, at any time during the Term, there is any Casualty to the Community Facility, or any part thereof, then the OPERATOR shall: (i) use all reasonable efforts to promptly secure the area of damage or destruction to safeguard against injury to persons or property and, promptly thereafter, remediate any hazard and restore the Community Facility to a safe condition whether by repair or by demolition, removal of debris; and (ii) to the extent allowed by law and subject to the terms of the NMTC Deed of Trust, promptly commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss) to repair, restore or replace the Community Facility as nearly as practicable to a condition which is at least substantially equivalent to that existing immediately prior to such damage or destruction. Subject to the NMTC Deed of Trust, all insurance proceeds paid pursuant to the policies of insurance for loss of, or damage to, the Community Facility shall be applied to the payment of the costs of the repair work. The OPERATOR shall maintain during the Term normal and customary liability and casualty insurance for facilities of this type.

ARTICLE XI **CONDEMNATION**

11.01. Condemnation. Subject to the Subject to the NMTC Deed of Trust and the loan documents related thereto, in the event that the portion of the Premises on which the Community

Facility is located is taken by any governmental authority, then this License and Operating Agreement shall be terminated effective on the date the condemning authority takes possession of the condemned property and the Parties shall be relieved of any further obligation under this License and Operating Agreement.

ARTICLE XII

ASSIGNMENT AND TRANSFER

12.01. Assignment and Transfer. The OPERATOR shall have no right to assign or transfer its rights and obligations under this License and Operating Agreement without prior written approval of the LICENSOR.

12.02. Sublicense. The OPERATOR shall have no right to grant, convey, permit, or license any rights to the use or occupancy of for all or any portion of the Community Facility without prior written approval of the LICENSOR. The LICENSOR hereby consents to the rights granted to the NMTC Lenders pursuant to the NMTC Deed of Trust.

ARTICLE XIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

13.01. COUNTY Representations, Warranties and Covenants. The COUNTY represents, warrants and covenants to the OPERATOR the following:

- A. Organization. The COUNTY is a public body corporate and politic and a political subdivision of the State of Texas. The COUNTY has all requisite power and authority to enter into this License and Operating Agreement.
- B. Authorization; No Violation. The execution, delivery and performance by the COUNTY of its rights and obligations under this License and Operating Agreement are within the power of the COUNTY and have been duly authorized by all necessary action. This License and Operating Agreement has been duly executed and delivered by the COUNTY and this License and Operating Agreement constitutes a valid and binding obligation of the COUNTY.
- C. No Conflicts. This License and Operating Agreement is not prohibited by, and does not conflict with, any other agreements, instruments, resolutions or judgments to which the COUNTY is a party or is otherwise subject or which affect the use of the Community Facility.
- D. No Violation of Laws. The COUNTY has received no notice, as of the date of this License and Operating Agreement, asserting any noncompliance in any material respect by the COUNTY with applicable statutes, rules and regulations of the United States, the State of Texas, or of any other state or municipality or any agency having jurisdiction over and with respect to the transactions contemplated in and by this License and Operating Agreement.
- E. Litigation. No suit is pending before or by any court or governmental body seeking to restrain or prohibit or seeking damages or other relief in connection

with the execution and delivery of this License and Operating Agreement or the consummation of the transactions contemplated hereby or which might materially and adversely affect the use and operation of the Community Facility as contemplated herein.

13.02. CITY Representations, Warranties and Covenants. The CITY represents, warrants and covenants to the OPERATOR the following:

- A. Organization. The CITY is a public body corporate and politic and a political subdivision of the State of Texas. The CITY has all requisite power and authority to enter into this License and Operating Agreement.
- B. Authorization; No Violation. The execution, delivery and performance by the CITY of its rights and obligations under this License and Operating Agreement are within the power of the CITY and have been duly authorized by all necessary action. This License and Operating Agreement has been duly executed and delivered by the CITY and this License and Operating Agreement constitutes a valid and binding obligation of the CITY.
- C. No Conflicts. This License and Operating Agreement is not prohibited by, and does not conflict with, any other agreements, instruments, resolutions or judgments to which the CITY is a party or is otherwise subject or which affect the use of the Community Facility.
- D. No Violation of Laws. The CITY has received no notice, as of the date of this License and Operating Agreement, asserting any noncompliance in any material respect by the CITY with applicable statutes, rules and regulations of the United States, the State of Texas, or of any other state or municipality or any agency having jurisdiction over and with respect to the transactions contemplated in and by this License and Operating Agreement.
- E. Litigation. No suit is pending before or by any court or governmental body seeking to restrain or prohibit or seeking damages or other relief in connection with the execution and delivery of this License and Operating Agreement or the consummation of the transactions contemplated hereby or which might materially and adversely affect the use and operation of the Community Facility as contemplated herein.

13.03. OPERATOR Representations, Warranties and Covenants. The OPERATOR represents, warrants and covenants to the LICENSOR the following:

- A. Organization. The OPERATOR is a non-profit corporation created and operating under the laws of the State and shall remain as such and is tax-exempt under section 501(c)(3) of the Code and shall remain as such.
- B. Authorization; No Violation. The execution, delivery and performance by the OPERATOR of this License and Operating Agreement have been duly authorized by all necessary action and will not violate the organizational documents of the

OPERATOR or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which the OPERATOR is a party or by which the OPERATOR may be bound or affected. This License and Operating Agreement has been duly executed and delivered by the OPERATOR and this License and Operating Agreement constitutes a valid and binding obligation of the OPERATOR.

- C. Litigation. No suit is pending against or affects the OPERATOR which could have a material adverse effect upon the OPERATOR'S performance under this License and Operating Agreement or the financial condition of the OPERATOR. There are no outstanding judgments against the OPERATOR which would have a material adverse effect upon its assets, or properties.
- D. No Payments. The OPERATOR has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this License and Operating Agreement, other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, consultants and attorneys.
- E. No Conflicts. This License and Operating Agreement is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which the OPERATOR is a party or is otherwise subject.
- F. No Violation of Laws. The OPERATOR, the members of its Board of Directors, and its officers have not received notice, as of the Effective Date, asserting any noncompliance in any material respect by the OPERATOR with applicable statutes, rules and regulations of the United States, the State of Texas, or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this License and Operating Agreement. The OPERATOR, the members of its Board of Directors, and its officers are not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.
- G. Environmental Conditions. After the Effective Date: (i) the OPERATOR shall maintain, keep current and comply in full with any and all permits, consents and approvals required by the Environmental Laws; and (ii) the OPERATOR shall comply with all Environmental Laws and shall not conduct or allow any use of or activity on or under the Community Facility that will violate or threaten to violate any Environmental Law.
- H. Survival of Covenants and Warranties. All covenants, representations and warranties contained in this License and Operating Agreement shall remain in effect during the Term of this License and Operating Agreement.
- I. No Encumbrances. The OPERATOR shall not permit the encumbrance, whether voluntary or involuntary, of the Community Facility for any purpose whatsoever.

- J. Mechanic's Liens and Claims. If any lien or claim of lien, whether choate or inchoate (collectively, any "Mechanic's Lien") shall be filed against the interest of the OPERATOR in the Community Facility by reason of any labor or services performed or claimed to have been performed or materials supplied or claimed to have been supplied by or on behalf of the OPERATOR, or any of its agents or contractors, the OPERATOR shall, at its sole cost and expense, cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure thereof against the Community Facility by injunction, payment, deposit, bond, order of court or otherwise. The provisions of this Subsection 13.02 J shall survive the Termination Date and the OPERATOR shall indemnify, defend and hold harmless the LICENSOR, its officials, employees and agents from and against any and all such Mechanic's Liens (including, without limitation, all costs, expenses and liabilities, including reasonable attorney's fees and costs, so incurred in connection with such Mechanic's Liens), for which the OPERATOR is responsible under this Subsection 13.02 J, and in accordance with the indemnification provisions set forth in Article XIII hereof.

ARTICLE XIV
TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES

14.01. Automatic Termination Events. The Parties acknowledge that certain obligations and requirements of this License and Operating Agreement are of fundamental importance to the Parties, such that one Party's default in the performance of such obligations and requirements would justify the automatic termination of this License and Operating Agreement. The Parties agree that each of A-D below shall constitute an event such that, if it occurs, the non-defaulting Party may elect to terminate this License and Operating Agreement ("Automatic Termination Event"). If the non-defaulting Party elects not to enforce its right to terminate this License and Operating Agreement following an Automatic Termination Event by the defaulting Party, but rather to treat the Automatic Termination Event as an Event of Default, the defaulting Party shall be entitled to the cure process set out in Subsection 14.03 B below:

- A. If, at any time during the term of this License and Operating Agreement, the OPERATOR is not a non-profit corporation existing and operating under the laws of the State of Texas;
- B. The Community Facility is not used for the Public Purpose after the Commencement Date;
- C. The entry of a non-appealable ruling by a court of competent jurisdiction that the action of the LICENSOR pursuant to this License and Operating Agreement is beyond the authority conferred upon the LICENSOR by any applicable governmental rules and that the LICENSOR did not have authority to enter into this License and Operating Agreement;
- D. Any legal proceeding contesting the validity of any matter affecting the ability of the LICENSOR to fund its obligations, or the validity or enforceability of this License and Operating Agreement, which proceeding: (i) is concluded by a final

non-appealable determination adverse to the LICENSOR; or (ii) prevents the Operations Start Date to occur in accordance with this License and Operating Agreement; or

E. The Premises Lease is terminated.

14.02. Events of Default. Each of the following will be an Event of Default:

- A. A Party fails to perform or observe any of the obligations, covenants or agreements to be performed or observed by such Party under this License and Operating Agreement, which failure continues for more than sixty (60) days following notice of such failure to such Party.
- B. Any material representation or warranty of a Party is untrue when made or becomes untrue thereafter.
- C. A Party submits a report, application, certificate or other information required under the terms of this License and Operating Agreement which contains any materially false or misleading statements.
- D. The OPERATOR transfers, attempts to transfer, encumbers, or attempts to encumber the Community Facility in breach of this License and Operating Agreement.
- E. The OPERATOR fails to fund the Capital Improvement and Repair Fund in accordance with this License and Operating Agreement.
- F. The OPERATOR makes a general assignment for the benefit of creditors.
- G. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state thereof is filed by or against the OPERATOR and is not dismissed, withdrawn or otherwise concluded without adjudication within seventy-five (75) days after being filed.
- H. The OPERATOR admits in writing its inability to pay its debts when due.
- I. A bill in equity or other proceeding for the appointment of a receiver of the OPERATOR or other custodian for the OPERATOR'S business or assets is filed and consented to by the OPERATOR.
- J. A receiver or other custodian (permanent or temporary) of the OPERATOR'S assets or property, or any part thereof, is appointed by any court of competent jurisdiction.
- K. A final judgment representing a claim or charge against the assets of the OPERATOR in an amount in excess of ONE MILLION DOLLARS (\$1,000,000.00) remains of record or remains unsatisfied or is not resolved

through a settlement agreement for one hundred twenty (120) days or longer (unless a supersedeas or other appeal bond is filed).

- L. The OPERATOR is dissolved.
- M. Suit to foreclose any lien or mortgage against any property owned or held by the OPERATOR is instituted against the OPERATOR and not dismissed within one hundred twenty (120) days.
- N. A majority of the property owned or held by the OPERATOR is sold after levy thereupon by any sheriff, marshal or constable.

14.03. Procedures and Remedies.

- A. Automatic Termination Event. In the event of the occurrence of an Automatic Termination Event which the non-defaulting Party elects to treat as such, the non-defaulting Party shall notify the defaulting Party in writing within five (5) Business Days of the non-defaulting Party becoming aware of the Automatic Termination Event of its election to terminate this License and Operating Agreement ("Termination Notice"). The License and Operating Agreement will be deemed to have automatically terminated on the date of receipt of the notice of the occurrence of the Automatic Termination Event by the defaulting Party and the non-defaulting Party may pursue the remedies set out in Subsection 14.03 C. If a Party sends a Termination Notice as provided above and it is later determined that an Automatic Termination Event had not occurred, then the Party that received the Termination Notice may pursue all rights and remedies provided by law or in equity against the Party sending the Termination Notice including reinstatement of this License and Operating Agreement.
- B. Event of Default. In the event of the occurrence of an Automatic Termination Event which is treated as an Event of Default, or the occurrence of an Event of Default under Section 14.02, the non-defaulting Party shall give the defaulting Party written notice of the Event of Default. The defaulting Party shall have sixty (60) days from receipt of the notice of the default to cure such default. If the default is not cured within the sixty (60) day period, the non-defaulting Party may pursue the remedies set out in Subsection 14.03 C.
- C. Remedies. In the event of an Automatic Termination Event under Subsection 14.03 A, or an Event of Default under 14.03 B which is not cured, the non-defaulting Party may pursue all rights and remedies provided by law or in equity. The rights and remedies provided in this License and Operating Agreement shall be in addition to, and cumulative of, all other rights and remedies available to a Party, and the pursuit of one (1) remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

- D. Non-waiver. Any failure of the LICENSOR to exercise any right or remedy as provided in this License and Operating Agreement shall not be deemed a waiver by the LICENSOR of any claim for actual damages it may have by reason of the OPERATOR Default.

14.04. Contingency Obligation. Any termination of this License and Operating Agreement shall not relieve the OPERATOR from the payment of any sums that are due and payable prior to the Termination Date or are attributable to the OPERATOR after the Termination Date.

14.05. It is expressly understood and agreed that in the event that OPERATOR commits an Automatic Termination Event treated as an Event of Default under Section 14.03 B or an Event of Default that is not cured in the applicable cure period or in the event that an Automatic Termination Event under Section 14.03 A occurs, the LICENSOR'S remedies from the OPERATOR will be limited to monetary damages, injunctive relief and/or other rights and remedies provided by law or in equity.

ARTICLE XV **INSURANCE**

15.01. OPERATOR shall procure, pay for, and maintain during the term of this Operating Agreement:

- A. Comprehensive general liability insurance of ONE MILLION DOLLARS (\$1,000,000.00), aggregate coverage, with FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for bodily injury, each occurrence, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for property damage, each occurrence. Sexual abuse endorsement shall be required. LICENSOR shall be named as an additional insured on this policy.
- B. Comprehensive automobile liability insurance of ONE MILLION DOLLARS (\$1,000,000.00), aggregate coverage, with ONE MILLION DOLLARS (\$1,000,000.00) for bodily injury, each occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property damage, each occurrence. LICENSOR shall be named as an additional insured on this policy.
- C. Professional Liability Errors and Omissions insurance of ONE MILLION (\$1,000,000.00) each claim and ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
- D. Statutory worker's compensation insurance for all employees of OPERATOR with a waiver of subrogation in favor of LICENSOR.
- E. OPERATOR shall provide LICENSOR with Declaration of Coverage and copies of endorsements prior to the execution of this Supplement evidencing that the stated coverages have been obtained.

15.02. OPERATOR is responsible for all premiums and deductibles under all of the insurance policies required by Section 15.01.

15.03. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by LICENSOR, OPERATOR shall notify the LICENSOR of such and shall give such notices not less than thirty (30) days prior to the change, if OPERATOR knows of said change in advance, or ten (10) days' notice after the change, if OPERATOR did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the LICENSOR at the following addresses with a copy of this Operating Agreement:

Bexar County Risk Manager
Bexar County Manager's Office
101 W. Nueva, Suite 900
San Antonio, Texas 78205

Gilbert Gonzales
Director, Mental Health Department
Paul Elizondo Tower
101 W. Nueva, Suite 315
San Antonio, Texas 78205

City of San Antonio
TDI Department
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

15.04. If OPERATOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, LICENSOR may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Operating Agreement; however, procuring of said insurance by the LICENSOR is an alternative to other remedies COUNTY may have, and is not the exclusive remedy for failure of OPERATOR to maintain said insurance or secure such endorsement. In addition to any other remedies, LICENSOR may have upon OPERATOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, LICENSOR shall have the right to order OPERATOR to stop work hereunder until OPERATOR demonstrates compliance with the requirements hereof.

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

15.06. It is agreed that OPERATOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by LICENSOR for liability of OPERATOR arising out of operation under this Operating Agreement.

15.07. OPERATOR agrees to require, by written contract, that all subcontractors providing Services under this Operating Agreement obtain the same insurance coverage's required of

OPERATOR, and provide a certificate of insurance and endorsement that names the OPERATOR and the LICENSOR as additional insureds.

ARTICLE XVI
PUBLICITY

16.01. Requirements. When appropriate, as determined by and upon written approval of LICENSOR, OPERATOR may publicize the activities conducted by OPERATOR pursuant to the terms of this Operating Agreement. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for OPERATOR, however, mention shall be made of COUNTY and CITY participation having made this Program possible.

ARTICLE XVII
DISPUTE RESOLUTION

17.01. Mediation. Any claim, dispute, or other matter in question arising out of or related to this License and Operating Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either Party. Any legal proceedings shall be stayed pending mediation for a period of thirty (30) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. The Parties agree to split the mediator's fee and any filing fees equally. The mediation shall be held in Bexar County, Texas.

ARTICLE XVIII
CHANGES AND AMENDMENTS

18.01. Writing Required. Except when the terms of this Operating Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof will be by amendment in writing, dated subsequent to the date hereof, and executed by both Parties.

18.02. Amendments By Operation of Law. Changes in local, state and federal rules, regulations or laws applicable hereto that occur during the term of this Operating Agreement will be automatically incorporated into this Operating Agreement without written amendment hereto, as of the effective date of the rule, regulation or law.

18.03. OPERATOR'S Change In Location of Operations. OPERATOR shall notify LICENSOR in writing of any proposed change in physical location for work to be performed pursuant to the terms of this Operating Agreement at least 30 calendar days in advance of the proposed change

ARTICLE XIX
MISCELLANEOUS

19.01. Notices. All notices, demands, consents, approvals, statements, requests and invoices to be given under this License and Operating Agreement shall be in writing, signed by the Party or officer, agent of the Party giving the notice, and shall be deemed effective upon receipt if hand delivered, or sent by telecopy with transmission confirmation or overnight courier service; and if sent by the United States mail, postage prepaid, certified mail, return receipt requested, then three (3) Business Days after mailing or the date of refusal, addressed as follows:

If to OPERATOR	Family Service Association of San Antonio, Inc. 3750 Commercial Avenue San Antonio, Texas 78221 Attn: Chair, Board of Directors
With a copy to	Family Service Association of San Antonio, Inc. 3750 Commercial Avenue San Antonio, Texas 78221 Attn: President and CEO
If to COUNTY	Bexar County Judge Bexar County Commissioners Court Paul Elizondo Tower 101 W. Nueva Avenue, 10 th Floor San Antonio, Texas 78205
With a copy to	David Smith County Manager Paul Elizondo Tower 101 W. Nueva Avenue, 10 th Floor San Antonio, Texas 78205
If to CITY	City of San Antonio TCI Department Contract Services Division P.O Box 839966 San Antonio, Texas 78283-3966

Either Party may from time to time by written notice given to the other pursuant to the terms of this Section 17.01 change the address or designees to which notices shall be sent or designate one or more additional Persons to whom notices are to be sent.

19.02. Force Majeure. Failure in performance by either Party hereunder shall not be deemed an Event of Default and the non-occurrence of any condition hereunder shall not give rise to any right otherwise provided herein when such failure or non-occurrence is due to Force Majeure. An extension of time for any such cause shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause, provided that, if notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. Times of performance under this License and Operating Agreement may be extended as mutually agreed upon in writing by the LICENSOR and the OPERATOR. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default hereunder.

19.03. Binding Effect. This License and Operating Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

19.04. Captions. Captions and paragraph headings used herein are for convenience only and are not a part of this License and Operating Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this License and Operating Agreement.

19.05. Entire Agreement. This License and Operating Agreement, and the Exhibits, each of which is incorporated herein, constitute the entire understanding and agreement of the Parties with respect to the subject matter of this License and Operating Agreement. This License and Operating Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof, including the Letter of Intent.

19.06. Applicable Law. The laws of the State of Texas shall govern the interpretation and enforcement of this License and Operating Agreement.

19.07. Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Community Facility. Neither the OPERATOR nor any person claiming under or through it shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of licensees, sublicensees, or vendors using or operating at the Community Facility or any portion thereof.

19.08. Consent. Unless otherwise specifically provided herein, no consent or approval by the LICENSOR or the OPERATOR permitted or required under the terms of this License and Operating Agreement shall be valid or be of any validity whatsoever unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

19.09. Counterparts. This License and Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the Parties hereto have entered in this License and Operating Agreement as of January 1, 2017.

COUNTY OF BEXAR

CITY OF SAN ANTONIO

By: _____
NELSON W. WOLFF
County Judge

By: _____
MIKE FRISBIE
Director and City Engineer

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

GERARD C. RICKHOFF
County Clerk

CITY ATTORNEY

APPROVED AS TO LEGAL FORM:

Andrew Segovia

BRACEWELL LLP
Bond Counsel

By: _____
William T. Avila, Partner

APPROVED AS TO FINANCIAL
CONTENT:

**FAMILY SERVICE ASSOCIATION OF
SAN ANTONIO, INC.**

SUSAN T. YEATTS, C.P.A.
County Auditor

By: _____
Nancy L. Hard
President and Chief Executive Officer

DAVID L. SMITH
County Manager

Date: _____

EXHIBIT "A"

DEFINITIONS

As used in this License and Operating Agreement, capitalized terms shall have the meanings indicated below unless a different meaning is specifically provided or unless the context otherwise requires.

"Action(s)" or **"Proceeding(s)"** means any action, lawsuit, demand, claim, proceeding, arbitration or other alternative dispute resolution process, or Governmental Authority investigation, hearing, audit, appeal, administrative proceeding or judicial proceeding.

"Advertising" means, collectively, all advertising, sponsorship and promotional activity, signage, messages and displays of every kind and nature, including, without limitation, permanent, non-permanent and transitory signage or advertising located on portions of the Community Facility.

"Affiliate(s)" of a specified Person means a Person who (i) is directly or indirectly controlling, controlled by, or under common control with, the specified Person; (ii) owns directly or indirectly thirty-five percent (35%) or more of the equity or voting interests of the specified Person; (iii) is a general partner, officer, director, non-financial institution trustee or fiduciary of the specified Person or of any Person described in (i) or (ii); or (iv) is a son, daughter, spouse, parent, sibling or in-law of the specified Person.

"Applicable Law(s)" means any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority or any board of underwriters (or other body exercising similar functions) or any recorded restrictive covenant or deed restriction affecting the Community Facility or the Premises, including, without limitation, the Americans with Disabilities Act and all applicable zoning ordinances and building codes, flood disaster laws, health laws and Environmental Laws.

"Business Day(s)" means any day other than a Saturday, a Sunday or a public or bank holiday or the equivalent for banks generally in the State of Texas. The use of "day" as opposed to "Business Day," means a calendar day.

"Business Plan" means a summary of the OPERATOR'S operational and financial objectives and how they will be achieved.

"Capital Repair" means any work (including all labor, supplies, materials, and equipment) reasonably necessary to repair, restore, or replace any equipment, structure or any other component (such as lighting, sprinkling systems, or permanent signage) of the Community Facility. The term "Capital Repair" shall not include any maintenance.

"Capital Improvement and Repair Fund" means the fund described in Section 4.02 of this License and Operating Agreement.

"Casualty" means damage, destruction or other property casualty resulting from any fire or any Force Majeure or other sudden, unexpected, and unusual cause.

“**CITY**” has the meaning set forth in the initial paragraph hereof.

“**CITY Representative**” is the person authorized to issue and receive notices on behalf of the CITY with respect to this License and Operating Agreement and shall be the person so designated and shall have the rights, duties and responsibilities described in Section 2.05 hereof.

“**Commencement Date**” occurs on the Effective Date hereof.

“**Community Facility**” means a land, building, structures, equipment related infrastructure, and other improvements reflected in the Master Plan, the Development Plan, and Final Plans.

“**Community Facility Management Firm**” means a firm selected by the OPERATOR pursuant to Section 3.03 hereof to operate and manage the Community Facility on behalf of the OPERATOR.

“**Community Facility Operating Expense(s)**” means all expenses or obligations of whatever kind or nature made or incurred by the OPERATOR, within the scope of the OPERATOR’S authority or responsibility under this Operating Agreement for the management, operation or Maintenance of the Community Facility

“**Community Facility Operating Revenue(s)**” means all revenues of whatever kind or nature received or obtained by the OPERATOR, within the scope of the OPERATOR’S authority or responsibility under this Operating Agreement for the management, operation or maintenance of the Community Facility, including, but not limited to, all other licensing, rent revenues, forfeited security deposits, and equipment rental fees actually received by the OPERATOR, for or from the following: (i) the use of, operation, or admission to, the Community Facility or any portion thereof (including, without limitation, revenues received from temporary advertising and sponsorship for Events); (ii) the right to sell, or in respect to the sale of, and sponsorship or advertisement in Community Facility including all rents from Concessionaires Licensees; (iii) interest on, or proceeds of investment of, any Funds (except the Capital Improvement and Repair Fund) required to be maintained hereunder; and (iv) rental or use of the Community Facility equipment.

“**COUNTY**” has the meaning set forth in the initial paragraph hereof.

“**COUNTY Representative**” is the person authorized to issue and receive notices on behalf of the COUNTY with respect to this License and Operating Agreement and shall be the person so designated and shall have the rights, duties and responsibilities described in Section 2.05 hereof.

“**Emergency**” means any condition or situation which threatens (or if not promptly acted upon will threaten) the health, safety or welfare of users of the Community Facility or the structures or components of the Community Facility, or any portion thereof, including the Parking Areas or which physically or functionally prevents the holding or continuance of an Event.

“Environmental Condition” means any Environmental Event or any recognized environmental condition that occurs subsequent to the Effective Date.

“Environmental Event” means: (i) the spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release of any kind of Hazardous Materials which may cause a threat or actual injury to human health, the environment, plant or animal life; (ii) the occurrence of any Actions or Proceedings pursuant to any Environmental Laws arising out of any of the foregoing; and (iii) any claims, demands, actions, causes of actions, remedial or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of an environmental proceeding.

“Environmental Law(s)” means any and all federal, state and local statutes, laws (including common law tort law, common law nuisance law and common law in general), regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment, or to handling, storage, emissions, discharges, releases or threatened emissions, discharges or releases of Hazardous Materials into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment or disposal of any Hazardous Materials, including, but not limited to, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Federal Solid Waste Disposal Act (including, but not limited to, the Resource Conservation and Recovery Act of 1976), CERCLA, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Emergency Planning and Community Right-to-Know Act, and any other federal, state or local laws, ordinances, rules, regulations and publications and similar restrictions now or hereafter existing relating to any of the foregoing.

“Event(s)” means all revenue or nonrevenue producing sports, entertainment, cultural, civic and other activities and events which are conducted at the Community Facility.

“Fiscal Year” means a twelve (12) month period commencing on January 1st and ending on December 31st of the immediately following year, or any portion thereof; provided, however, that the initial Fiscal Year shall commence on the Operations Start Date and end on the next occurring December 31st.

“Force Majeure” means labor disputes, casualties (which are not the result of negligence or misconduct of a Party or their respective subcontractors, agents, or employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; acts of war or terrorism; act of military authority; sabotage; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by the OPERATOR or its respective subcontractors, agents, or employees; or other delays due to causes beyond its or their control.

“Funds” means any accounts that are required to be maintained by the OPERATOR under the terms of this License and Operating Agreement including, without limitation, the

Operating Fund, the Capital Improvement and Repair Fund, and all other accounts for the deposit of the Community Facility Operating Revenues as provided in Article IV.

“GAAP” means generally accepted accounting principles applied on a consistent basis, in effect in the United States from time to time as set forth in the opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants or the statements of the Financial Accounting Standards Board or their respective successors, adjusted as required for non-profit accounting standards, and which are applicable to the circumstances as of the date in question.

“Governmental Authority(ies)” means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Community Facility or Premises.

“Hazardous Material(s)” means: (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in an Applicable Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any Environmental Law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls or (iii) any substance, emission or material determined to be hazardous or harmful.

“Licensee” means licensees of signage, naming rights, and other users of privileges in or around the Community Facility for a fee.

“Licenses” means licenses with other users of the Community Facility, and all booking and use agreements as described herein.

“Liens” means, with respect to any property, any mortgage, lien, pledge, charge or security interest and with respect to the Community Facility, the term “Lien” shall also include any liens for taxes or assessments, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or other similar liens, including, but not limited to, mechanic’s liens and claims.

“Maintenance” means all work (including all labor, supplies, materials and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning and routine upkeep of property, structures, surfaces, facilities, fixtures, equipment or furnishings, or any other component of the Community Facility in order to preserve such items in a manner reasonably consistent with the Safety and Quality Standards. Maintenance shall include, but not be limited to, the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (ii) periodic testing of structure systems, such as mechanical, fire alarm, lighting, and sound systems; (iii) ongoing trash removal; (iv) regular maintenance procedures for plumbing, and electrical and structural systems such as periodic cleaning, lubrication, and changing air filters; (v) touch up painting; (vi) changing of standard, isolated light bulbs, fuses and circuit breakers, as they burn out; (vii) and (ix) any other work of a routine, regular and generally predictable nature that is

reasonably necessary to keep the Community Facility consistent with the Safety and Quality Standards. Maintenance shall not include any work included within the term "Capital Repairs" whether or not predictable in nature.

"Net Operating Income" means, as to each Fiscal Year during the Term, the net of Community Facility Operating Revenues for such Fiscal Year less the Community Facility Operating Expenses for such Fiscal Year.

"NMTC Deed of Trust" means that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of December 15, 2016, by The Neighborhood Place, Inc., a Texas nonprofit corporation, for the benefit of the NMTC Lenders, related to the Community Facility and the Land.

"NMTC Lenders" means collectively, Enhanced Capital New Market Development Fund 80, LLC, a Delaware limited liability company, and Wells Fargo Community Development Enterprise Round 12 Subsidiary 11, LLC, a Delaware limited liability company.

"Operating Fund" means an account which shall be established by the OPERATOR solely for the deposit of all Community Facility Operating Revenues and from which all Community Facility Operating Expenses shall be paid and from which other distributions shall be made. The OPERATOR shall establish the Operating Fund in a bank or other financial institution with an office located in Bexar County, Texas. The OPERATOR may deposit or otherwise employ the funds in the Operating Fund as deemed appropriate by the OPERATOR and as otherwise required hereunder.

"Operating Budget" means a projection of all anticipated income and expenses based on the OPERATOR'S estimated revenues which reflects that the OPERATOR can operate the Community Facility on a fiscally sound basis in accordance with the Business Plan, while accommodating use of the Community Facility for other uses consistent with the Public Purpose.

"Operations Start Date" means the Effective Date hereof.

"OPERATOR Representative" is the person authorized to issue and receive notices on behalf of the OPERATOR with respect to this License and Operating Agreement and shall be the person so designated and shall have the rights, duties and responsibilities set forth in Section 2.04 hereof.

"OPERATOR" means Family Service Association of San Antonio, Inc., a non-profit corporation created and operating under the laws of the State of Texas, its successors, and permitted assigns.

"Person" means any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, or any other legal entity or business or enterprise.

"Premises" means the land in Bexar County, Texas more particularly described on Exhibit "B", attached hereto and incorporated herein for all purposes.

“Project” means, collectively, the entire conceptual planning, site planning, development, construction and equipage of the Community Facility.

“Public Purpose” means use of the Community Facility for public health, cultural enrichment, and social services related functions for the citizens of Bexar County and the City and the enhancement of the neighborhoods surrounding the Community Facility.

“Records” means those books, records, accounts, journals, files, contracts, rental agreements, insurance policies, Permits, non-proprietary correspondence directly related to the Project, receipts, bills, vouchers, and any audits obtained by the OPERATOR of the Community Facility that the COUNTY is permitted to inspect and audit pursuant to this License and Operating Agreement.

“Safety and Quality Standards” means the standard of quality or performance with respect to the ongoing maintenance, repair, and improvements as well as operation and management of the Community Facility as provided in the Lease Agreement.

“Temporary Advertising” means Advertising in connection with any Event which is to be removed or terminated at the conclusion of any such Event.

“Termination Date” means the date of termination of this License and Operating Agreement as provided in Section XIV.

EXHIBIT "B"

DESCRIPTION OF THE PREMISES

[To be provided from the Survey]

EXHIBIT "C"

DESCRIPTION OF THE COMMUNITY FACILITY

[To be provided by OPERATOR]

[Describe the building improvements and facilities that make up the Community Facility]

EXHIBIT "D"

COUNTY PLAQUE

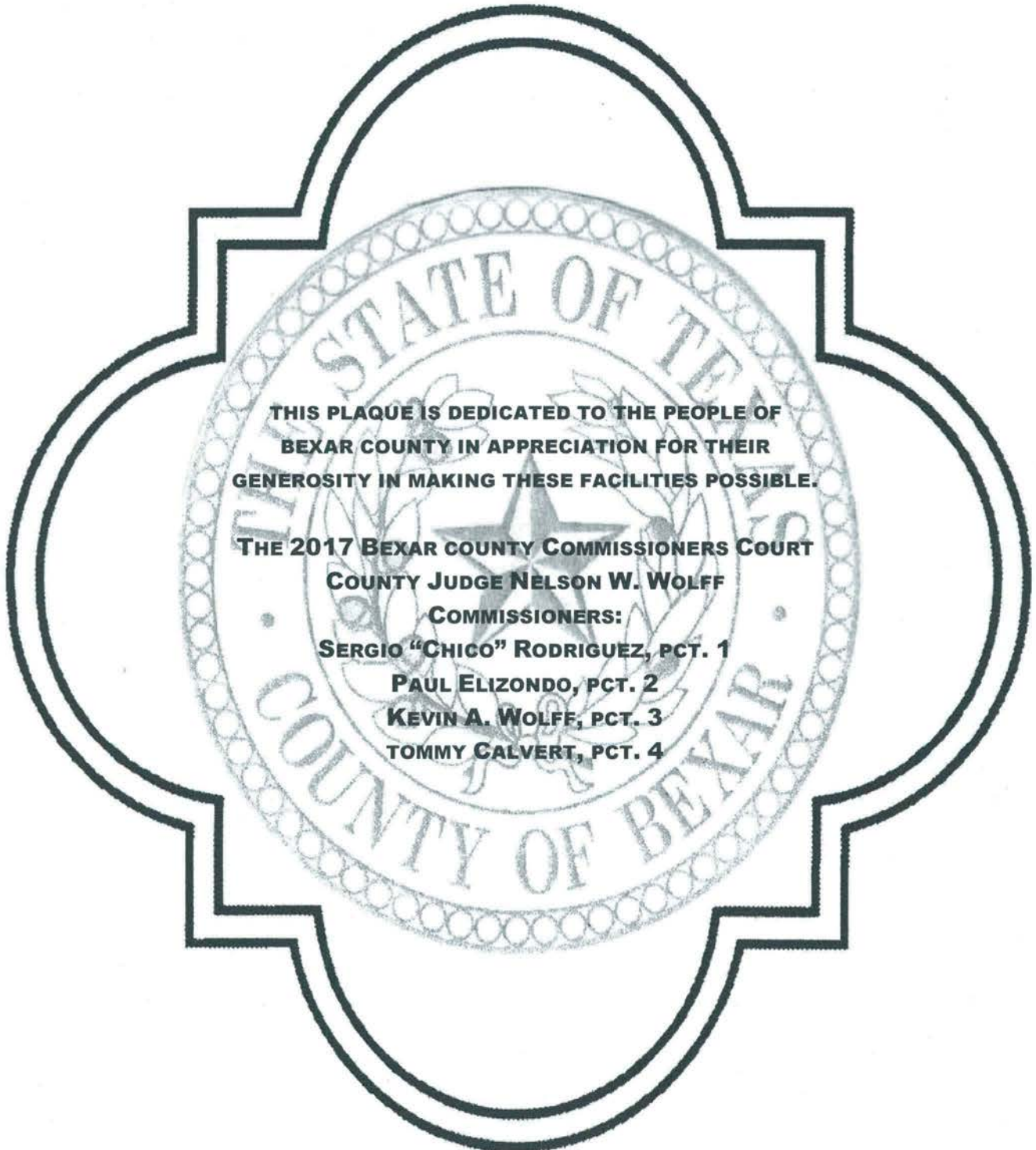


EXHIBIT "E"

BUSINESS PLAN

[To be provided by the OPERATOR]