



and the City voters' approval of Proposition 3 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 3 of the City's May 6, 2017 bond election as "Aquatic Center at Palo Alto College"; 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. The Director of the Public Work Department may administratively approve extension of agreement term up to an additional year if deemed necessary by City.

1.02 Notwithstanding the foregoing, the obligations of Grantee to operate and maintain the Aquatic Center at Palo Alto College, the renovation of which is the Project, for use by the general public in keeping with Article IV of this Agreement shall survive until the later of 1) twenty years from the commencement date of the Financing and Joint Use Agreement attached hereto as Exhibit E, or such successor agreement as the City and Grantee may enter into for the financing and maintenance of the Facility, or 2) the repayment and discharge by the City of any City Bonds the proceeds from which are used by the City to satisfy City's contribution to the Project or any City bond issued to re-finance such initial issuance of bonds remain outstanding, whichever date is later. The term of the Financing and Joint Use Agreement attached hereto as Exhibit E is hereby extended for the shorter period of the term of this covenant or the effective date of any successor agreement as the City and Grantee may enter into for the financing and maintenance of the Facility.

### **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 31, 2022, as described in this Agreement, but failure to meet that completion date target shall not be a material breach of this Agreement.

2.02 The current budget estimates of the Project are approximately \$11,000,000. Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$5,194,000, plus \$106,000 which shall be retained by the City per Section 5.03, for a total of \$5,300,000 ("City Funding"). 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 in cost, the City shall have the option of adjusting its commitment downward accordingly. Grantee is solely responsible for the completion of the Project and any costs in excess of City Funding. Under no circumstances shall the City be responsible for or contribute any funds in excess of the City Funding unless agreed to in writing in the form of an amendment to this Funding Agreement. The City shall fund its commitment to the City funding hereunder from proceeds derived

from its sale of bonds authorized under Proposition 3 of the City's May 6, 2017 bond election (such City bonds, as well as any City bonds from time to time issued to refund the same, the "City Bonds").

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Interim Associate Vice Chancellor for G.O. Bond Construction Improvement Program shall be Grantee's Designated Representative responsible for the management of this Agreement.

2.04 The Director of the Public Works Department 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 shall provide to City a narrative Scope for the Project, including a background, project summary and timeline, ("Scope") as Exhibit A.

2.07 Grantee shall provide to City its plans and specifications for the Project, including a construction schedule, ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. After approval by City, the Plans shall be attached and incorporated into this Funding Agreement as Exhibit B and Grantee shall not make any substantial changes to the Plans without the prior written approval of City, which shall not be unreasonably withheld or unduly delayed. 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.

2.08 Grantee shall provide to City a Budget for the Project illustrating where City Bond Funds are to be utilized in accordance with this agreement, as well as illustrating all funding for the entire Project if applicable as Exhibit C.

2.09 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Scope and Plans and to receive upon 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 Public Works Department 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. Grantee shall provide City with a copy of the Certificate of Occupancy upon completion of the Project.

2.10 Beginning on January 31<sup>st</sup> of the year immediately following the year in which Project is completed, and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall

provide Director of the Public Works Department, or successor department, or designee, an annual report (“Annual Report”). The Annual Report shall include the following:

- 2.10.1 A list of annual attendance, total swim lessons, and open swim attendance (including council district breakdown), as well as monthly demographic reporting (by zip code) on open swim attendance which is open to the general public.
- 2.10.2 Evidence of insurance coverage as outlined in the Financing and Joint Use Agreement or such successor agreement as the City and Grantee may enter into for the financing and maintenance of the Facility .
- 2.10.3 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.

2.11 Unless written notification by Grantee to the contrary is received and approved by City, Grantee’s Designated Representative shall be 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 2269 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

3.04.1 The requirements of Chapter 2258 of the Texas Government Code, entitled “Prevailing Wage Rates,” shall apply to the portion of the Project that is being funded with City Funding. Grantee agrees that its construction contractor will comply with City Ordinance No. 71312 and its successor Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successor Ordinance No. 2008-11-20-1045 for that portion of the project being funded with City Funding and shall not accept affidavits.

3.04.2 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.

3.04.3 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 D** for the portion of the Project that is being funded with City Funding.

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 on 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. The forgoing obligations shall survive any expiration of this Funding Agreement and shall survive

until the repayment and discharge by the City of any City Bonds the proceeds from which are used by the City to satisfy City's contribution to the Project.

3.08 No Boycotting of Israel. 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 such verification is found to be false, City may terminate the contract for material breach.

3.09 Texas Government Code § 2252.152 Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §2270.0201 or §2252.153 "Listed Companies". Grantee hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Grantee's certification. If found to be false, or if Grantee is identified on such list during the course of its contract with City, City may terminate this Agreement 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 as set out in the Financing and Joint Use Agreement, or such successor agreement as the City and Grantee may enter into for the financing and maintenance of the Facility. 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 The parties agree to operate and maintain the Project facility and bear all associated costs as provided by the Financing and Joint Use Agreement, or such successor agreement the City and Grantee may enter into for the financing and maintenance of the Facility .

4.03 The Project improvements shall facilitate the construction of the Aquatic Center at Palo Alto College in accordance with the Plans and provide for its continued operation during the entire term that the City Bonds issued to finance the City's contribution to the Project remain outstanding.

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, Grantee shall permit designated time on the schedule of Project Facility for public access and use of the Facility in accordance with the Financing and Joint Use Agreement, or such successor agreement the City and Grantee may enter into for the financing and maintenance of the Facility, which public access time shall under no circumstances be less as a ratio of all services provided at the completed Project than the percentage of the total Project cost funded by the City (assuming a City contribution of \$5,194,000 and an overall Project cost of \$11,000,000).

#### **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 \$5,194,000.

5.02 City shall not be obligated or liable under this Agreement to any party other than Grantee 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 \$5,194,000, with \$106,000 to be retained by the City for City's capital administration services associated with the Project, for total funding by City of \$5,300,000. 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 Funding 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:

6.01.1 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

6.01.2 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 from the City hereunder, for so long as the City Bonds 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 the Public Works Department. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by the Public Works Department, 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:

6.06.1 Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or

6.06.2 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.

6.08 Grantee shall have a right to challenge the determination of the City by written notice delivered within the aforesaid 30-day period. Before invoking mediation or any other alternative dispute process, the Parties to this Agreement agree that they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both City and Grantee agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute to the other, then the Parties shall proceed with the alternative dispute resolution process. All negotiations pursuant to this Article VI are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. In the event the Parties cannot reach a resolution of a claim or dispute, as a condition preceding to filing a lawsuit, either Party shall request mediation of the dispute with the following requirements:

- a. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.
- b. In the event City and Grantee are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this Article VI shall be deemed to have occurred.
- c. The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Contract is consent to a suit.

## **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. Notwithstanding the foregoing, City may consider for reimbursement costs clearly otherwise reimbursable that were not submitted for prior approval. 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 of Grantee facilities 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, other than as herein required

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (30) days from date necessary for receipt thereof 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:

- 8.01.1 All material 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.
- 8.01.2 It is financially stable, is capable of fulfilling and possesses internally or will outsource duties to acquire the sophistication to fulfill its obligations under this Agreement, and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.
- 8.01.3 No litigation or proceedings are presently pending or, to Grantee's knowledge, threatened against Grantee, affecting the Project or that would materially impair Grantee's financial capacity to meet its obligations hereunder.

8.01.4 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. FINANCIAL RESPONSIBILITY**

**11.01 TO THE EXTENT PROVIDED BY LAW, EACH PARTY, AS TEXAS GOVERNMENTAL UNITS, SHALL BE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR, AND NEITHER PARTY SHALL LOOK TO THE OTHER TO SAVE OR HOLD IT HARMLESS FOR THE CONSEQUENCES OF THE ACTS OR OMISSIONS ONE OF ITS OWN AGENTS, SERVANTS AND/OR EMPLOYEES. NEITHER PARTY ASSUMES ANY LIABILITY FOR ANY LOSSES ARISING OUT OF ANY ACTION OR INACTION BY THE OTHER PARTY, ITS EMPLOYEES, OR CONTRACTORS, OR ANY THIRD PARTY ACTING ON ITS BEHALF. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CLAIMS FOR CONSEQUENTIAL, PUNITIVE, SPECIAL AND INCIDENTAL DAMAGES, CLAIMS FOR LOST PROFITS, OR OTHER INDIRECT DAMAGES NOTHING HEREIN CONTAINED SHALL BE INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY BY EITHER PARTY EXCEPT TO THE EXTENT PROVIDED BY LAW REGARDING CONTRACTING POWERS OF LOCAL GOVERNMENTAL UNITS.**

### **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 Public Works Department, which shall be clearly labeled "Aquatic Center at Palo Alto College" 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 Public Works Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement. Grantee may comply with the insurance requirements set out in this Article XII by providing evidence of self-insurance of the type and to the limits set out herein.

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	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence



c. Hired Vehicles	
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.
*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: Public Works 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, 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.

14.02 No member of Grantee'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.

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. ASSIGNMENT**

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, including Exhibits herein referenced and attached hereto, constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. The terms of the main body of this Agreement shall prevail over any irreconcilably conflicting terms contained in any Exhibit hereto. 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 sent by email or by First Class U.S. registered or certified mail, postage prepaid, to the addresses set forth below:

City: Razi Hosseini, P.E., R.P.L.S.,  
Director  
Public Works Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
[razi.hosseini@sanantonio.gov](mailto:razi.hosseini@sanantonio.gov)

And

Grantee: Lacy Hampton Interim Associate Vice-Chancellor, G.O. Bond Construction  
Improvement Program  
Alamo Colleges District  
2222 North Alamo Street  
San Antonio, Texas 78215  
[lhampton14@alamo.edu](mailto:lhampton14@alamo.edu)

Email notice shall always be a permitted option, and shall be mandatory during the pendency of any epidemic or pandemic affecting the city or county of the notice address of either party, or during any period during which either party has implemented limited office staffing or a temporary work-from-home program by reason of an emergency declared by authorities with jurisdiction over that area. All email notices given pursuant to this Agreement shall be effective upon receipt, rebuttably presumed received with evidence of sending, and irrebuttably presumed received with evidence of email confirmation of receipt.

Notice of change of notice address and parties to whose attention notices shall be directed by either Party must be made in writing to the other Party's most recent notice 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.

#### **XXVIII. 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 Facility 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, epidemic or pandemic, 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 are expressly made conditioned on the mutual final agreement to the terms and conditions of the Funding Agreement attached hereto.

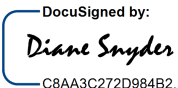
**(Signatures Appear on the Following Page)**

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

**ALAMO COLLEGES DISTRICT**,  
a Texas junior college district and local governmental unit

By:   
C8AA3C272D984B2  
\_\_\_\_\_  
Dr. Diane Snyder  
Vice Chancellor for Finance & Administration

**APPROVED AS TO FORM:**

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

**APPROVED AS TO FORM:**

  
CC63A7C25924436  
\_\_\_\_\_  
GRANTEE GENERAL COUNSEL



## **EXHIBIT A**

### **SCOPE**

#### **Alamo Colleges PAC Natatorium-Gym Remodel**

Renovations to the Natatorium and Gym consists of replacing the interior and exterior finishes with modern materials and textures. The exterior consists of adding new translucent wall/skylight panels for more natural lighting, adding new metal roof panels and modifying the entry. Site improvements include improving site drainage, adding shading features and replacing pavers with stained concrete. For the interior, renovations consist of replacing lighting with LED fixtures, upgrading interior finishes, such as, flooring, ceilings and walls in public spaces, including the natatorium and locker/shower areas.

## **EXHIBIT B**

### **PLANS**

The Plans for the Alamo Colleges Palo Alto College natatorium-gym remodel signed and sealed by Robert Lopez with Lopez/Salas Architects dated January 27, 2020, and the specifications for the Alamo Colleges Palo Alto College natatorium-gym remodel signed and sealed by Hayden Phillips with RVK Architects dated January 27, 2020, are hereby incorporated into this Agreement by reference. The construction schedule when completed shall be attached hereto and incorporated herein.



## EXHIBIT D

### SBEDA ORDINANCE COMPLIANCE PROVISIONS AND COMMITMENT FORM

#### A. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on City’s Economic Development (hereafter referred to as “EDD”) website page and also is available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this Exhibit 1 are governed by the terms of said Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City, pursuant to said Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual in effect as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this Exhibit 1 shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

#### B. SBEDA Program Compliance – Affirmative Procurement Initiatives

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

**M/WBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Grantee agrees to subcontract at least **twenty-seven percent (27%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).

**Segmented M/WBE Goal.** In accordance with SBEDA Ordinance Section III. D. 2. (e), this contract is being awarded pursuant to Segmented M/WBE Goals. Grantee agrees to subcontract at least **three percent (3%)** of the contract value to a certified African American Business Enterprise (AABE) firm 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 **twenty-seven percent (27%)** M/WBE subcontracting goal.

Grantee shall submit a **Subcontractor/Supplier Commitment Form** to City with this funding agreement. Failure to include a completed, signed copy of the Subcontractor/Supplier Commitment Form acknowledging the subcontracting goal(s) for this funding will render this contract voidable. *As the comprehensive scope of work is established*, Grantee agrees to submit a Subcontractor/ Supplier Utilization Plan with the names of the certified M/WBE and AABE Grantee Subcontractors to be used by Grantee on this contract, the respective percentages of the total

prime contract dollar value to be awarded and performed by each M/WBE and AABE Subcontractor, and documentation including a description of each M/WBE and AABE Subcontractor's scope of work and confirmation of each M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is to be attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, the failure of Grantee to attain this subcontracting goal for M/WBE 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 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.

C. Contract Requirements and Commitment

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

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

D. SBEDA Program Compliance – General Provisions

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

1. Grantee shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding Grantee's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission

- of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
2. Grantee shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Grantee or its subcontractors or suppliers;
  3. Grantee shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
  4. Grantee shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Grantee's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Grantee to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Grantee of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
  5. Grantee shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
  6. Grantee shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
  7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Grantee's Subcontractor / Supplier Utilization Plan, the Grantee shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Grantee and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
  8. Grantee acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the Grantee for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and Grantee has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

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

E. Violations, Sanctions and Penalties

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

1. fraudulently obtains, retains, attempt to obtain, or aids another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. willfully falsifies, conceals or covers up by a trick, scheme or device, a material fact or makes any false, fictitious or fraudulent statements or representations, or makes use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statements or entries pursuant to the terms of the SBEDA Ordinance;
3. willfully obstructs, impedes or attempts to obstruct or impede any authorized official or employee investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. fraudulently obtains, attempts to obtain or aids another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. makes false statements to any entity that any other entity is or is not certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

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

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

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

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



## H. Definitions

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

**Centralized Vendor Registration System (hereafter referred to as “CVR”)** – refers to a mandatory electronic system wherein City requires all prospective Consultants, Sub-Consultants, Contractors and Subcontractors ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices and for receiving payments from City. The CVR-assigned identifiers also are used by City’s Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE (as defined herein) firms by Industry or commodity codes and for establishing annual aspirational Goals and contract-by-contract Subcontracting Goals.

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

**Commercially Useful Function** – means a S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm also must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it actually is performing, the S/M/WBE credit claimed for its performance of the work and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation when, in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE

firms by Grantee to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent, if Grantee attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Grantee shall not be given credit for the participation of its S/M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers or joint venture partner towards attainment of S/M/WBE utilization goals, and Grantee and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

(1) documentation reflecting Grantee’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or

(2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes, to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Consultant’s posting of a bond covering the work of SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Grantee and the solicitation; and documentation of consultations with trade associations and Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers representing the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers). The appropriate form and content of Grantee’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

**HUBZone Firm** – means a business certified by the U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet all of the following criteria:

1. The business is owned and Controlled by U.S. citizens;
2. At least thirty five percent (35%) of the business’s employees must reside in a HUBZone;  
and
3. The business’s Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

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

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

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

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

African-Americans: Persons with origins in any of the black racial groups of Africa.

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

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

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

**Originating Department** – refers to a City department or authorized representative of City managing the contract.

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

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

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

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

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

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

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

**Significant Business Presence** – defined as an established place of business in one or more of the eight (8) counties making up the SAMSA, from which twenty percent (20%) of the entity’s full-time, part-time and contract employees regularly are based, and from which a substantial role in the S/M/WBE’s performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence. To qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one (1) year within the Relevant Marketplace

**Small Business Enterprise (hereafter referred to as “SBE”)** – means a corporation, partnership, sole proprietorship or other recognized legal entity existing for the purpose of making a profit, is independently owned and operated by Individuals legally residing in or are citizens of the United States or its territories, meets the U.S. Small Business Administration (hereafter referred to as “SBA”) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements, as defined herein.

**Small Business Office (hereafter referred to as “SBO”)** – means the office within City’s EDD Department primarily responsible for general oversight and administration of the S/M/WBE Program.

**Small Business Office Manager (hereafter referred to as “SBO Manager”)** – refers to the Assistant Director of EDD responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager also is responsible for enforcement of Grantee, Consultant and vendor compliance with contract participation requirements and ensuring that overall SBEDA Program goals and objectives are met.

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

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

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

**Sub-Consultant/Supplier Utilization Plan** – refers to the binding part of this Agreement stating Grantee’s commitment for the use of Joint Venture Partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the performance of this Agreement, stating the name, scope of work and dollar value of work to be performed by each of Grantee’s Joint Venture partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and/or Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or and Consultant, Sub-

Consultant, Contractor, Subcontractor and/or Supplier names, scopes of work or dollar values of work to be performed requires an amendment to this Agreement approved by the EDD Manager or his/her designee.

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

**EXHIBIT E**  
**FINANCING AND JOINT USE AGREEMENT**

SW: cb  
07/01/99  
Item No. 16

**AN ORDINANCE**

AUTHORIZING THE EXECUTION OF AMENDMENT NO. 2 TO THE FINANCING AND JOINT USE AGREEMENT FOR THE PALO ALTO NATATORIUM BETWEEN THE ALAMO COMMUNITY COLLEGE DISTRICT AND THE CITY OF SAN ANTONIO TO ALLOW THE USE OF THE NATATORIUM'S MAJOR REPAIRS AND REPLACEMENT FUND FOR THE ADDITION OF AN AIR CONDITIONING SYSTEM TO THE ACCD'S PALO ALTO NATATORIUM; AND SETTING A LIMIT ON CONTRIBUTIONS TO THE FUND BY THE CITY OF SAN ANTONIO AND THE ALAMO COMMUNITY COLLEGE DISTRICT.

\* \* \* \* \*

WHEREAS, Ordinance No. 67682, passed and approved on August 4, 1988, authorized the City of San Antonio to enter into an agreement with the Alamo Community College District (ACCD) for the construction and operation of a natatorium on the campus of Palo Alto College, located at 1400 West Villaret in City Council District 4; and

WHEREAS, under the terms of said agreement the Palo Alto Natatorium is open for use by the general public forty-five percent (45%) of the time; and

WHEREAS, said agreement created a "Major Repairs and Replacement Fund" to provide for major repair or replacement items; and

WHEREAS, as per the requirements of the agreement, the ACCD makes a \$51,000.00 annual contribution to the fund and the City makes a \$49,000.00 annual contribution to this fund; and

WHEREAS, it is necessary to amend the language of the agreement to allow the use of the Major Repairs and Replacement Fund to be used to provide a portion of the cost of adding air conditioning to the Palo Alto Natatorium; and

WHEREAS, under the current agreement there is no limit on contributions to the Major Repairs and Replacement Fund by either the ACCD or the City, no matter what the fund balance is; and

WHEREAS, it is now necessary to authorize the execution of Amendment No. 2 to the Financing and Joint Use Agreement for the Palo Alto College Natatorium between the Alamo College District and the City of San Antonio to allow the use of the Major Repairs and Replacement Fund for the addition of air conditioning at the facility and setting a limit on contributions to said fund when the fund balance reaches \$1,000,000.00; NOW THEREFORE:

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

Section 1. The City Manager, or in his stead, either the Assistant City Managers or the Assistants to the City Manager are hereby authorized to execute Amendment No. 2 to the Financing and Joint Use Agreement for the Palo Alto College Natatorium between the City of San Antonio and the Alamo Community College District to allow the use of the Major Repair and Replacement Fund for a portion of the cost of air conditioning the Palo Alto Natatorium. A copy of said amendment, in substantially correct form, is affixed hereto and incorporated herein for all purposes as Attachment I.



Section 2. This ordinance shall be effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this \_\_\_\_\_ day of July, 1999.

M A Y O R

ATTEST: \_\_\_\_\_  
City Clerk


APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney

90054

ORD. NO. \_\_\_\_\_

JUL 01 1999

*Norma S. Rodriguez*  
CITY CLERK

DAS,  
FILE  
12/11/99  


**FINANCING AND JOINT USE AGREEMENT  
FOR  
PALO ALTO COLLEGE NATATORIUM  
BETWEEN  
ALAMO COMMUNITY COLLEGE DISTRICT  
AND  
CITY OF SAN ANTONIO**

**AMENDMENT NO. 2**

The City of San Antonio, hereinafter called "CITY", entered into a Financing and Joint Use Agreement with the Alamo Community College District, hereinafter called "DISTRICT", pursuant to Ordinance No. 68966, passed and approved by the City Council of the City of San Antonio on March 2, 1989, and amended by Ordinance No. 74925, passed and approved on December 9, 1991. Both the CITY and DISTRICT wish to amend said agreement and hereby agree to the following amendments to said agreement:

1.) Section 2.1 (k), of said agreement is hereby amended to read as follows:

(k) Major Repairs and Capital Improvements: any item of expense for repair, replacement or capital improvement to the Natatorium estimated by the District to cost \$5,000.00 or more.

2.) Section 2.1 (l), of said agreement is hereby amended to read as follows:

(l) Major Repairs, Replacement and Capital Improvement Fund: accumulation of amounts expensed annually as a part of Operation and Maintenance and set aside to meet future outlays for Major Repairs, Replacements and Capital Improvements.

3.) The title to Article XIII. of said agreement is hereby amended to read as follows:

**MAJOR REPAIRS, REPLACEMENT AND CAPITAL IMPROVEMENTS FUND**

4.) Section 13.1 of said agreement is hereby amended to read as follows:

13.1 District shall administer the Major Repairs, Replacement and Capital Improvements Fund and shall deposit the annual contributions to this Account by the parties hereto to an interest-bearing account. The earnings on said Account shall be retained in the Major Repairs, Replacement and Capital Improvements Fund for use in accordance with the provisions of Article XIII herein.

5.) Section 13.2 of said agreement is hereby amended to read as follows:

13.2 It is the intent of the parties that the Major Repairs, Replacement and Capital Improvements Fund shall be used to the extent possible to defray the costs of Major repairs, replacements and for capital improvements as provided herein.

6.) Section 13.3 of said agreement is hereby amended to read as follows:

13.3 The amount of annual contribution to this Fund by each party hereto for the term of this agreement is hereby established as follows:

District:	\$51,000.00
City:	\$49,000.00

The annual contributions of the parties to the Major Repair, Replacement and Capital Improvements Fund is due on the first anniversary date of this Agreement, and each anniversary date thereafter throughout the original term of this Agreement, provided however, either the CITY or the DISTRICT may suspend it's contributions to the Major Repair, Replacement and Capital Improvements Fund once the fund balance reaches \$1,000,000.00. Said contributions must resume on the above-described schedule when the Major Repair, Replacement and Capital Improvement Fund un-obligated fund balance falls below \$750,000.00.

7.) Section 13.4 of said agreement is hereby amended to read as follows:

13.4 The decision to award Major Repair or Replacement contracts, as well as the administration of such contracts, shall be solely the responsibility of the DISTRICT. If the cost of any Major Repair or Replacement Contract shall exceed the balance of funds in the Major Repair, Replacement and Capital Improvements Fund, then the award of the contract is subject to approval by both parties. The decision to award any Capital Improvement Contract shall be made jointly by the CITY and the DISTRICT. Once approved, it shall be the DISTRICT'S responsibility to implement, monitor and administer such Capital Improvement Contracts. The CITY shall participate through it's representative in the selection process of any consultant utilized by the DISTRICT for Capital Improvements to be paid out of the Major Repair, Replacement and Capital Improvements Fund.

8.) Section 13.5 of said agreement is hereby amended to read as follows:

13.5 The Cost of Major Repairs, Replacements or Capital Improvements which are greater than the un-obligated fund balance of the Major Repair, Replacement and Capital Improvements Fund, and which is jointly approved as required herein, shall be assessed against the parties in the same pro rata percentage set out in Section 13.3 herein, and shall be payable by CITY to the DISTRICT upon demand.

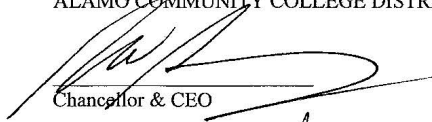
9.) All of the other terms and conditions of said agreement shall remain in full force and effect.

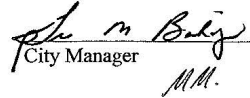
10.) These amendments shall be effective on July 11, 1999.

Executed this 17th day of July, 1999.

ALAMO COMMUNITY COLLEGE DISTRICT

CITY OF SAN ANTONIO

  
Chancellor & CEO

  
City Manager  
M.M.

Approved as to form:   
City Attorney

TF:amt  
12/9/91

AN ORDINANCE **74925**

APPROVING AN AMENDMENT TO THE AGREEMENT WITH THE ALAMO COMMUNITY COLLEGE DISTRICT FOR CONSTRUCTION, OPERATION, AND USE OF THE PALO ALTO COLLEGE NATATORIUM WHEREBY THE CITY WILL PROVIDE \$98,000.00 FROM ITS SHARE OF THE REPAIR AND REPLACEMENT FUND, PLUS \$31,610.00 IN ADDITIONAL FUNDING, FOR CONSTRUCTION OF SEATING AT THE NATATORIUM, IN EXCHANGE FOR THE DISTRICT PROVIDING APPROXIMATELY \$263,000.00 IN ADDITIONAL IMPROVEMENTS FOR EQUIPMENT, LANDSCAPING AND ASSUMING RESPONSIBILITY FOR THE CITY'S SHARE OF OVERRUNS, AND AGREEING THAT THE CITY WILL REPLENISH ITS SHARE OF THE REPAIRS AND REPLACEMENT FUND OVER A FIVE YEAR PERIOD.

\* \* \* \* \*

WHEREAS, City of San Antonio ordinance No. 68966, passed and approved on March 2, 1989, authorized a financing and joint use agreement with the Alamo Community College District (A.C.C.D.) for construction of a natatorium on the grounds of the Palo Alto College; and

WHEREAS, pursuant to the terms of said agreement, A.C.C.D. has undertaken construction of the Natatorium and such construction is now nearing completion, and the natatorium has already proved to be an economic generator for the area, being a major reason why the Olympic Festival is to be held in San Antonio; and

WHEREAS, at the time of construction contract award, there were insufficient funds to include spectator seating in the contract; and

WHEREAS, such seating is essential to meet the standards required for major competitive events like the 1993 Olympic Festival, some events of which will be held at the Palo Alto Natatorium; and

WHEREAS, the cost of aforesaid spectator seating is now determined to be \$129,610.00; and

WHEREAS, the addition of seating will greatly benefit both the District and the City; and

WHEREAS, the District has agreed to fund improvements to the natatorium over and above what is required in the original agreement, in a sum approximating \$263,000.00; and

WHEREAS, one of the provisions of the aforestated financing and joint use agreement calls for establishment of a "Major Repairs and Replacement Fund" to which the City and A.C.C.D. have so far contributed \$98,000.00 and \$102,000.00 respectively; and

WHEREAS, the City of San Antonio and A.C.C.D. agree that City funds now deposited to the Major Repair and Replacement Fund may be used to purchase spectator seating for the Palo Alto Natatorium and that such use is in the best interest of the project; and

WHEREAS, City's contribution of \$98,000.00 to date to the Major Repair and Replacement Fund is needed to purchase aforesaid spectator seating facilities; and

WHEREAS, to replenish the City's share of said fund, the City hereby commits to pay, in addition to its annual contractual obligation of \$49,000.00 to said fund, over the next five fiscal years beginning with fiscal year 1992-1993, an annual amount equal to one fifth of the City's share of aforesaid spectator seating, said additional payment to be \$19,600.00; NOW THEREFORE:

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

SECTION 1. The City of San Antonio and A.C.C.D. have informally agreed that the City of San Antonio's existing share of \$98,000.00 from the Palo Alto Natatorium Major Repair and Replacement Fund shall be used to purchase seating facilities for said Natatorium. Such purchase shall be in accordance with the Financing and Joint Use Agreement between the City of San Antonio and Alamo Community College District as authorized by Ordinance No. 68966 dated March 2, 1989.

SECTION 2. The City Council of the City of San Antonio hereby assures A.C.C.D. that the City of San Antonio will replenish its share of the Major Repair and Replacement Fund over the next five fiscal years beginning with fiscal year 1992-93 by making an additional annual contribution to said fund in an amount equal to one-fifth of the City share of the cost of aforesaid spectator seating, said additional payment to be \$19,600.00, each year of said five year period.

SECTION 3. The amount of \$31,610.00, which with the \$98,000.00 City contribution now reposing in ACCD's Natatorium Major Repair & Replacement Fund totals \$129,610.00 required to enable ACCD to procure the installation of the spectator seating, is authorized to be provided to ACCD from the following City Council District Discretionary Funds:

District	Fund	Amount
1	40-010001	\$ 400.00
4	40-010004	19,600.00
8	40-010008	1,000.00
9	40-010009	10,000.00
10	40-010010	<u>610.00</u>
	Total	\$ 31,610.00

The above amounts are appropriated in the funds shown for transfer to the City Council Discretionary Funds Collective Projects Fund No. 40-010020, as follows:

Index No.	Fund No.	Account Title	Obj.Code	Amount
915637	40-010001	Tfr to Fd 40-010020	09-499	\$ 400.00
915652	40-010004	"	"	19,600.00
915611	40-010008	"	"	1,000.00
915694	40-010009	"	"	10,000.00
915702	40-010010	"	"	<u>610.00</u>
	Total			<u>\$31,610.00</u>

The above transfers are appropriated in Fund No. 40-010020 as follows:

Index No.	ESTIMATED REVENUES	Obj.Code	Amount
130500	Contrib'n fr Fd 40-010001		\$ 400.00
130534	" Fd 40-010004		19,600.00
130575	" Fd 40-010008		1,000.00
130583	" Fd 40-010009		10,000.00
130591	" Fd 40-010010		<u>610.00</u>
	Total Revenues		\$ <u>31,610.00</u>

#### BUDGET APPROPRIATIONS

525311	AACD for Natatorium Seating	04-250	\$ <u>31,610.00</u>
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The above amount of \$31,610.00 is authorized to be encumbered in and paid from Expenditure Account Index No. 525311 to ACCD which with the \$98,000.00 above to be provided from the Natatorium's Major Repair & Replacement Fund totals \$129,610.00 for the cost of procuring and installing the natatorium spectator seating.

SECTION 4. The City Manager is hereby authorized to execute an amendment to the agreement with Alamo Community College District which embodies the following principles:

- A. The City agrees to defray the total cost of \$129,610.00 for spectator seating. The District is authorized to make such purchase pursuant to the agreement cited in Section 1 hereinbefore. The City Parks Department must approve the plans for the seating. The agreement will provide for the approval of the necessary change order to the ongoing construction contract. Funding for said purchase shall be \$98,000 .00 from the Natatorium's Major Repair and Replacement Fund which is under the management of A.C.C.D. and the \$31,610 .00 appropriated in Section 3 hereinbefore. The City also agrees to replenish said Natatorium Major Repair and Replacement Fund at a rate of \$19,600.00 annually for 5 years beginning with fiscal year 1992-93. Said \$19,600.00 annual payment shall be in addition to the City's annual \$49,000.00 contribution to said Fund pursuant to afocited agreement, and is based upon annual budgeted funds for these purposes.
- B. The Alamo Community College District agrees to (1) defray the total cost of Natatorium-related equipment now estimated to be \$127,238.00; (2) defray the total cost of landscaping at a cost now estimated to be \$118,924.00; and 3) assume responsibility for the City's share of approximately \$17,000.00 in project overruns.
- C. The agreement must be approved in form and content by the City Manager and City Attorney to insure that the above points are covered and included in legally sufficient language.

PASSED AND APPROVED this 9th day of December, 1991.

ATTEST

*Armando S. Rodriguez*  
City Clerk

*Thomas W. Wolff*  
M A Y O R

APPROVED AS TO FORM:

*Tom Finley*  
City Attorney

91 - 52



PALO ALTO NATATORIUM

AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE  
CITY OF SAN ANTONIO AND THE ALAMO COMMUNITY  
COLLEGE DISTRICT FOR FINANCING AND JOINT USE  
OF THE PALO ALTO COLLEGE NATATORIUM.

This AMENDMENT TO THE AGREEMENT FOR FINANCING AND JOINT USE OF THE PALO ALTO COLLEGE NATATORIUM BETWEEN ALAMO COMMUNITY COLLEGE DISTRICT AND THE CITY OF SAN ANTONIO is made and entered into by and between ALAMO COMMUNITY COLLEGE DISTRICT (hereinafter called "DISTRICT") and has been approved by the CITY OF SAN ANTONIO, a Texas Municipal Corporation, acting by and through its City Manager or Assistant City Manager (hereinafter called "CITY"), and such approval is evidenced by Ordinance No. 74925 dated December 9, 1991.

RECITALS

WHEREAS, City of San Antonio Ordinance No. 68966, passed and approved on March 2, 1989, authorized a Financing and Joint Use Agreement with DISTRICT for construction of a Natatorium on the grounds of the Palo Alto College; and

WHEREAS, pursuant to the terms of said Agreement, DISTRICT has undertaken construction of the Natatorium and such construction is now nearing completion; and

WHEREAS, at the time of construction contract award, there were insufficient funds to include spectator seating in the contract; and

WHEREAS, such seating is essential to meet the standards required for major competitive events like the 1993 Olympic Festival, some events of which will be held at the Palo Alto Natatorium; and

WHEREAS, the cost of aforesaid spectator seating is now determined to be \$129,610.00; and

WHEREAS, the addition of seating will greatly benefit both the DISTRICT and the CITY; and

WHEREAS, the DISTRICT has agreed to fund improvements to the Natatorium over and above what is required in the original Agreement, in a sum approximating \$263,000.00; and

WHEREAS, one of the provisions of the aforesaid Financing and Joint Use Agreement calls for establishment of a "Major Repair and Replacement Fund" to which the CITY and DISTRICT have so far contributed \$98,000.00 and \$102,000.00 respectively; and

WHEREAS, the CITY and DISTRICT agree that CITY funds now deposited to the "Major Repair and Replacement Fund" may be used to purchase spectator seating for the Palo Alto Natatorium and that such use is in the best interest of the project; and

WHEREAS, CITY's contribution of \$98,000.00 to date to the "Major Repair and Replacement Fund" is needed to purchase aforesaid spectator seating facilities; and

WHEREAS, to replenish the CITY's share of said fund, the CITY hereby commits to pay, in addition to its annual contractual obligation of \$49,000.00 to said fund, over the next five fiscal years beginning with fiscal year 1992-93, an annual additional payment of \$19,600.00; and

WHEREAS, CITY and DISTRICT now desire to amend the aforesaid Agreement; NOW THEREFORE, the parties agree as follows:

AGREEMENTS AND ACTS

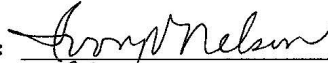
1. CITY hereby agrees to finance the \$129,610 cost of spectator seating for the Natatorium. The following method of such financing is hereby agreed to:
  - a. DISTRICT is authorized to use \$98,000 so far contributed by CITY to the Natatorium's "Major Repair and Replacement Fund." In addition, CITY shall pay to DISTRICT, on demand by DISTRICT, \$31,610; such funds having been authorized and appropriated by City of San Antonio Ordinance No. 74925 dated December 9, 1991.
  - b. Purchase and installation of aforesaid spectator seating shall be accomplished by DISTRICT consistent with applicable paragraphs of Articles VII and VIII of the Financing and Joint Use Agreement between CITY and DISTRICT as authorized by City of San Antonio Ordinance No. 68966, March 2, 1989.
2. To replenish its \$98,000 share of the "Major Repair and Replacement Fund," CITY hereby agrees to make an additional \$19,600 annual contribution to said Fund for five years beginning with CITY's 1992-1993 fiscal year. Thus, CITY's annual contribution to the "Major Repair and Replacement Fund" shall be \$68,600 during CITY's fiscal years 1992-1993, 1993-1994, 1994-1995, 1995-1996, and 1996-1997. Beginning with CITY's fiscal year 1997-1998, CITY's annual payment to the "Major Repair and Replacement Fund" shall revert to the payment schedule prescribed in Article XIII of aforesaid Financing and Joint Use Agreement.

If, prior to full replenishment of the "Major Repair and Replacement Fund" as hereinbefore described, any necessary repair(s) or replacement(s) occur, the cost of which exceeds the amount available in the "Major Repair and Replacement Fund," CITY agrees, at its next scheduled fiscal year payment to said Fund, to pay whatever amount in excess of \$19,600 is necessary to cover its 49% share of the cost of such repair or replacement.


- 3. In consideration of CITY's financing of the cost of spectator seating for the Natatorium, DISTRICT hereby agrees to:
  - a. Defray the total cost of Natatorium-related equipment now estimated to be \$127,238;
  - b. Defray the total cost of landscaping at a cost now estimated to be \$118,924; and
  - c. Assume responsibility for CITY's share of approximately \$17,000 in project overruns.
  
- 4. SUCCESSORS AND ASSIGNS: All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of all the parties and their respective legal representatives, successors and assigns.

EXECUTED this 29<sup>th</sup> day of January, 1992.

DISTRICT

By:   
Chapcellor  
Name and Title

CITY OF SAN ANTONIO

By:   
J. Rolando Bono  
Assistant City Manager

71.  
Daly

TF:amt  
3/2/89

AN ORDINANCE **68966**

AMENDING ORDINANCE NO. 67682, PASSED AND APPROVED ON AUGUST 4, 1988, SO AS TO DELETE THE CONDITION THEREIN WHICH CALLS FOR A CITY OF SAN ANTONIO SHARE OF OWNERSHIP IN A NATATORIUM TO BE JOINTLY FINANCED, CONSTRUCTED AND USED WITH THE ALAMO COMMUNITY COLLEGE DISTRICT ON THE PALO ALTO COLLEGE CAMPUS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FINANCING AND JOINT USE AGREEMENT.

\* \* \* \* \*

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

The City Manager is authorized to execute a revised agreement with Alamo Community College District concerning the Natatorium at the Palo Alto College campus. A copy of the agreement is attached hereto and incorporated herein.

Ordinance No. 67682 of August 4, 1988, is amended so as to delete therefrom the condition calling for the City of San Antonio to share ownership of the natatorium. To the extent this ordinance or the attached revised agreement are in conflict with said prior ordinance, the prior ordinance shall be superceded and replaced hereby.

PASSED AND APPROVED this 2nd day of March, 1989.

*Henry Cisneros*  
M A Y O R

ATTEST:

*Norme S. Rodriguez*  
City Clerk

APPROVED AS TO FORM:

*Tom Hinkley*  
City Attorney

1013712 - Vendor #  
4600008979 - K#  
4500233983 - PO

FINANCING AND JOINT USE AGREEMENT  
FOR  
PALO ALTO COLLEGE NATATORIUM  
BETWEEN  
ALAMO COMMUNITY COLLEGE DISTRICT  
AND  
CITY OF SAN ANTONIO

*Re Note with Year savings  
30M, 327 - 2500 on 6/12/1  
To determine a formula for  
Cost sharing of P&E and  
Construction Costs of the  
total project; i.e. Gym,  
Natorium, Parking, etc.  
Project completed  
Build, Mid Sept '89  
Start " " Nov '89  
Finish Nov '90*

This Agreement is made this 17<sup>th</sup> day of May, 1989, by and between the City of San Antonio (hereinafter called "City"), a Texas municipal corporation and political subdivision acting by and through its City Manager pursuant to Ordinance No. 68966, dated March 2, 1989, and Alamo Community College District, a Texas political subdivision of higher education (hereinafter called "District"), acting by and through its Board of Trustees pursuant to its actions of February 22, 1989.

I.

PREAMBLE

WHEREAS, prior to execution of this Agreement, District had contemplated, as a part of its capital improvements program, a swimming pool facility to be located at and utilized by the students and faculty of Palo Alto College, to consist of a twenty-five (25) meter pool, without diving facilities; and

WHEREAS, in substitution thereof, City has proposed to District that City and District join together to provide to the community, in the most efficient and cost-effective manner possible, an Olympic-class natatorium of approximately seventy-three (73) meters and other support facilities (hereinafter referred to as "Natatorium") which will be jointly financed and used by the parties hereto to enhance District's Physical Education courses, sports and recreational programs, and City's public recreational goals and objectives, and to contribute to the fitness and wellness of the District's students, faculty and staff and to the fitness and wellness of the citizens of the City; and

WHEREAS, District and City acknowledge that the availability of a Natatorium, as proposed herein, will stimulate and enhance District's ability to better serve its students now and in the future and will provide year-round aquatic facilities for the citizens of the City, as well as opportunities for City and District to attract national and international amateur swimming and diving competitive events; and

WHEREAS, the expense of designing, constructing, operating and maintaining the Natatorium as proposed herein would be cost-prohibitive to either City or District, individually; and

WHEREAS, joint funding of construction, joint use and joint maintenance of the Natatorium is a cost-effective method for the parties hereto to best serve the needs of their respective constituencies; and

WHEREAS, Sections 332.021 and 273.001 of the Texas Local Government Code, as amended, authorize any two political subdivisions located in the same county by agreement to jointly establish, provide, maintain, construct, and operate playgrounds, recreation centers, athletic fields, swimming pools, and other park and recreational facilities on property owned by either political subdivision; and

WHEREAS, the City and District are each political subdivisions located in Bexar County, Texas; and

WHEREAS, District shall finance its portion of the construction costs out of a portion of the proceeds of the issuance of its \$40,000,000.00 general obligation bonds sold on May 4, 1988, and City shall finance its portion of the construction costs out of the proceeds of the issuance of its certificates of obligation issued on October 20, 1988; and

WHEREAS, District and City each represent to the other that their respective pro rata portions of the maintenance and operation costs (as hereinafter

defined) and repair costs shall be paid from funds available to each which do not require further evidence of authority from the governing bodies of each respective party; and

WHEREAS, the Natatorium is to be constructed on property owned by the District and located on the Palo Alto College campus of District; and

WHEREAS, in consideration for City's participation in the cost of design and construction, the cost of operation and the cost of maintenance of the Natatorium, City will receive the right to share the use of the Natatorium with District for the public purposes of the City, as set out herein:

NOW, THEREFORE, in consideration of the covenants, conditions and provisions set forth herein, the parties hereto agree as follows:

II.

DEFINITIONS

2.1. When used in this Agreement, the following terms shall mean:

- (a) City: the City of San Antonio, a Texas municipal corporation and a home-rule city organized under the laws of the State of Texas, acting by and through its City Manager as authorized by its home rule charter and the City Council of the City of San Antonio.
- (b) City Fiscal Year: October 1 to September 30.
- (c) City Funds: those funds designated and authorized by the City Council of the City of San Antonio for purposes of construction, repair, maintenance and operation of the Natatorium. City Funds include:
  - (1) The proceeds of the City's Certificates of Obligation issued October 20, 1988, in the amount of \$2,900,000.00 for the purpose of construction of the Natatorium;
  - (2) Revenues from receipts and fees for use of the Natatorium or concessions therein, all of which are intended for operation and maintenance expenses;
  - (3) The City's annual contribution to the Major Repair and Replacement Fund under Article XIII of this Agreement;

(4) Interest on the investment of the funds described in (c)(1)(2)(3) above as prorated to the City's deposit of such funds; and

(5) Other funds authorized as City Funds by the City Council of the City of San Antonio and acknowledged as City Funds by District.

City Funds do not include any other funds now held by the City or that the City may in the future come into possession from any source, other than the Natatorium, unless such other funds are authorized under (c)(5) above.

- (d) City Use: that time on the schedule of Natatorium use to be agreed upon by the parties to this Agreement as designated for use by City, not to exceed 45% of the Open Hours.
- (e) Construction Phase: that phase of the Natatorium project commencing with the award of a contract for construction and terminating with final payment to the Natatorium contractor.
- (f) Credited Student Contact Hours: hours of course instruction taught by District and approved by the Texas Coordinating Board for which students are granted academic or continuing education credit.
- (g) District: any and all divisions of the Alamo Community College District governed by its Board of Trustees.
- (h) District Bond Funds: District's portion of the proceeds of the issuance of its \$40,000,000.00 general obligation bonds sold on May 4, 1988, used for construction cost of the Natatorium.
- (i) District Fiscal Year: September 1 to August 31.
- (j) District Use: that time on the schedule of Natatorium use to be agreed upon by the parties to this Agreement as designated for use by District, not to exceed 55% of the Open Hours.
- (k) Major Repairs: any item of expense for repair or replacement to the Natatorium estimated by District to cost \$5,000.00 or more.
- (l) Major Repairs and Replacement Fund: accumulation of amounts expensed annually as part of Operation and Maintenance and set aside to meet future outlays for Major Repairs and replacements.



- (m) Milestone Inspections: inspections of the Natatorium construction by the Architect and/or Project Managers, conducted to determine the dates of Substantial Completion and final completion.
- (n) Open Days: will consist of the 333 days comprising the operating year, less mutually agreeable holidays during which the Natatorium will be closed.
- (o) Open Hours: that time of Natatorium operation designated for City or District use, as agreed upon by the parties to this Agreement and set out in the Natatorium Policy and Procedures Manual.
- (p) Operation and Maintenance: the operation and maintenance of the Natatorium, to include, but not limited to, City's and District's share of the Operation and Maintenance Account, salaries and benefits of all employees directly attributable to the normal operation and maintenance of the Natatorium, utilities, chemicals, custodial supplies, equipment, repair parts, replacement parts, tools, supplies, maintenance and repairs, not to include Major Repairs.
- (q) Operation and Maintenance Account: that account set aside by the District in District's depository to maintain monies designated for Operation and Maintenance Expenses under this Agreement.
- (r) Operation and Maintenance Expenses: those expenses attributable to the Operation and Maintenance of the Natatorium.
- (s) Project Consultants: the Natatorium Project Manager, 3D/International, Inc.; the Natatorium Architect, O'Neil, Conrad and Opelt; the Natatorium Landscape Architect, John Lafoon; engineers; surveyors; and other professionals employed to conduct scientific tests preliminary to and in conjunction with the construction of the Natatorium.
- (t) Project Costs: the cost of all elements of constructing and equipping the Natatorium, including the total of the amount of the construction contract award, Project Consultant fees, and such costs paid by the District prior to the date of this Agreement. Project Costs do not include the cost of the land.
- (u) Substantial Completion: the issuance of the Certificate of Substantial Completion by the Architect for the Natatorium project.

III.

STATEMENT OF GENERAL PURPOSE AND INTENT

3.1. The purpose and intent of this Agreement is to provide for the funding, design, construction, maintenance, operation, management and use of the Natatorium by District's students, faculty and staff, by other District invitees, by the general public and other invitees through City's Department of Parks and Recreation aquatics program, as described hereinbelow.

3.2. Said Natatorium shall consist of an enclosed seventy-three (73) meter swimming pool designed to specifications suitable to accommodate Olympic swimming and diving competition and other support facilities, all of which shall be located on District-owned property located at District's Palo Alto College campus at 1400 Villaret, San Antonio, Texas, and approximately described on Exhibit "A" attached hereto and incorporated herein by reference.

3.3. "Support facilities" shall be defined as those areas described in Exhibit "B" attached hereto and incorporated herein by reference.

3.4. It is the intent of the parties hereto that District shall design, construct, operate and maintain the Natatorium subject to the terms and provisions contained herein.

IV.

OWNERSHIP AND TERM OF CITY USE

4.1. The parties hereto understand and agree that title to the land and the Natatorium shall be and remain vested in District.

4.2. In consideration for City's contribution to the construction costs of the Natatorium, District hereby agrees to permit City Use of the Natatorium for the duration of the useful life of the Natatorium, a time span determined and agreed to be thirty (30) years from the date of Substantial Completion. City

Use shall be based on the principles and within the framework specified hereinafter.

4.3. City and District understand and agree that changing conditions and circumstances over a period of years may require periodic review and adjustments to this Agreement. Accordingly, the parties hereto agree to formally review the joint use provisions of this Agreement at least every fifth calendar year from the anniversary date of this Agreement and to make such modifications to those provisions as may be mutually agreed upon.

V.

CITY'S AND DISTRICT'S SHARE OF CONSTRUCTION COSTS

5.1. In consideration of City's use of the Natatorium, City hereby agrees to provide City Funds for construction of the Natatorium in the amount of \$2,900,000.00 or 49% of Project Costs, which Project Costs are estimated as of the date of this Agreement to be \$5,918,367.00.

5.2. City and District will each advance, on or before the date of award of a construction contract for the Natatorium, a proportionate share of the estimated Project Costs. City's 49% share is \$2,900,000.00, and District's 51% share is \$3,018,367.00. Such advanced funds shall be placed in a separate interest-bearing account in District's depository. District shall draw against said account for Project Costs. Accumulated interest shall be prorated and attributable to the parties based upon their proportionate share of contribution. Any balance remaining in said account after payment of Project Costs shall, to the extent permitted by law, be transferred to and maintained in the Operation and Maintenance Account described in Section X below, to be utilized as provided therein.

5.3. The District shall account for all City Funds (including all receipts, expenditures and investments thereof) placed in the District's

depository on its books of account separately and apart from all other funds (and receipts, expenditures, investments thereof) and shall retain all records of such accounting for at least six years after the date on which the City Certificates are discharged. The District may, however, to the extent permitted by Federal income tax law, commingle the City Funds with monies of the District, provided that the District separately accounts for each receipt and expenditure of the City Funds and obligations acquired therewith. The District shall, upon reasonable request of the City, provide copies of, or reasonable inspection by the City or its employees or agents of, all such accounting books or records related to the City Funds.

5.4. The District shall not use, permit the use of, or omit to use City Funds or District Bond Funds (or earnings thereon) or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed directly or indirectly with the City Funds or District Bond Funds or earnings thereon) in a manner which, if made or omitted, respectively, would cause the interest on the City Certificates or District general obligation bonds to be includable in the gross income, as defined in Section 61 of the Internal Revenue Code of 1986, as amended, of the owners thereof for Federal income tax purposes.

VI.

OPTIONS TO WITHDRAW

6.1. Except as provided in Paragraph 6.2 below, either party may withdraw from this Agreement any time prior to the date of the award of a construction contract, upon written notice to the other party. The withdrawing party shall pay 100% of the Project Costs incurred up to the date of receipt of notice of withdrawal.

6.2. Notwithstanding Paragraph 6.1 above, subsequent to written

notification by the Architect of Project Costs for the Natatorium which would exceed the total estimated Project Costs of \$5,918,367.00, but prior to the award of the construction contract, either party may elect to withdraw from this Agreement, upon twenty (20) days' written notice to the other party. In such event, District will pay 51%, and City will pay 49% of the Project Costs incurred up to the date of notice of withdrawal. Furthermore, in such event, the District promises not to award a construction contract until twenty (20) days after written notification to City by District of the increased Project Costs, in order to permit City the opportunity to withdraw under this Paragraph.

6.3. As of the date the construction contract is awarded and thereafter, neither party shall have the option to withdraw from this Agreement without the written consent of the other party.

#### VII.

##### CONSULTANT AND CONSTRUCTION CONTRACTS

7.1. It shall be District's responsibility to contract on behalf of District for all project consultant services necessary to design, plan and monitor construction work related to the Natatorium. The parties acknowledge that certain consultant contracts have been previously awarded by District, and City recognizes and approves 3D/International, Inc. as the Project Manager, O'Neil, Conrad and Opeit as the Architect and John Lafoon as the Landscape Architect for the Natatorium. Monitoring and administration of such consultant contract(s), and the making of payments to such consultant(s) shall be District's responsibility, subject to City's obligation to pay its share of such costs to District pursuant to Paragraphs 5.1, 5.2 and 8.3 herein.

7.2. It shall be District's responsibility to advertise for construction contract bids and to award, in District's name, construction contract(s) for the Natatorium. Such bidding and construction contract award(s) shall be

accomplished in accordance with applicable rules, regulations, ordinances, statutes and codes of the District, the City, County of Bexar, and State of Texas. Monitoring and administration of such construction contract(s) shall be District's responsibility. Notwithstanding the foregoing, District agrees to coordinate and consult with City during the Design, Planning and Specification Phase as specified in Article VIII hereinafter.

VIII.

COORDINATION AND CONSULTATION

8.1. Throughout the Design, Planning and Specification Phase, District shall keep the Director, Department of Parks and Recreation, and/or his designee(s) informed of progress. To accomplish such, District and City hereby agree to appoint four (4) staff members each to a Plans Review Advisory Committee, of which Architect shall also be a voting member on any matter which District determines requires a vote of the members of the Committee. The Committee shall meet with the Project Consultant(s) to review project design, plans and specifications. Such meeting shall be called by District at mutually convenient times and places.

8.2. City shall have the opportunity to fully review and study all bids submitted to District. During the review and study process, District shall advise City of its recommendation regarding the firm to which it proposes to award the construction contract. The decision as to whom the construction contract is awarded is ultimately the District's; however, if City has irreconcilable objections to that selection, City may withdraw from this Agreement, as provided in Paragraph 6.1.

8.3. District shall submit all change orders or other Project Costs which would increase project construction costs to City to an amount greater than the sum of \$2,900,000.00 and the interest attributable to City under Paragraph 5.2

above, for City approval. City shall respond to District's request for review and approval of change orders under this paragraph within fifteen (15) calendar days of submittal of same to City by District. In the event City approves such change orders, City will pay District, upon demand, City's proportionate share of the cost of change orders approved by City under this paragraph. Should City fail to approve such change orders, District may abandon the change order or assume the entire additional construction cost. Should District assume the entire additional cost of such change order(s), such assumption shall not alter the City's percentage of use of time sharing prescribed in Section 14.1.

8.4. During the Construction Phase, supervision of construction is the sole responsibility of District. All contracts with the construction contractor and the Project Consultant(s) are District's responsibility, as is the administration of the construction contract and payments to construction contractor, subject to City's obligation to pay its share of such costs to District pursuant to Paragraphs 5.1, 5.2 and 8.3 herein. District agrees to keep the Director, Department of Parks and Recreation ("Director"), and/or his designee, fully informed of construction progress and of any problems or delays encountered during construction.

District further agrees to require Architect to provide City and District a full set of construction plans and drawings and further agrees to permit the Director and/or his designee(s) ("City Representative") to observe and inspect construction work at Milestone Inspections; provided, however, that such City Representative shall not make any official contact with the contractor or any Project Consultant in any fashion representing inspectional or supervisory authority.

Should City Representative observe any deficiencies or other problems in construction work, the same shall be reported to the District Project Manager

immediately, both orally and in writing. District agrees to promptly consider and, where appropriate, cause corrective action(s) to be taken by the construction contractor.

8.5. Should any construction deficiency of a substantive nature be observed by either District or City, only District shall have the authority to issue a stop work order to the construction contractor. Should City Representative observe such material deficiencies, he or she shall immediately notify District, both orally and in writing. It shall be District's sole responsibility to determine appropriate action.

IX.

FINAL PROJECT INSPECTION AND ACCEPTANCE

9.1. Official acceptance of the completed project shall be District's responsibility. However, District agrees to notify the City's Director of Parks and Recreation of the date and time of final project inspection. District agrees to permit City Representative to participate in such final inspection and to include such deficiencies, if any, as may be noted by City Representative, in the punch list for correction by the construction contractor.

9.2. District shall provide City with a copy of the final project acceptance document and shall also provide City with a set of as-built plans within a reasonable period of time following project acceptance.

X.

REVENUE

10.1. The parties reserve the right to establish such fees and charges as each deems necessary and appropriate for the use of the Natatorium during the times of their respective uses.

10.2. If a special event or activity is co-sponsored by both parties, the parties shall mutually agree upon appropriate fees and charges.



10.3. All revenues collected by either party connected with the use of the Natatorium shall be applied to Operation and Maintenance Expenses. All such revenues shall be retained in the Operation and Maintenance Account, to be applied to the Operation and Maintenance of the Natatorium. Operation and Maintenance Expenses which exceed those amounts retained in the Operation and Maintenance Account shall be borne by the parties in accordance with the cost sharing ratio set out in Paragraph 12.1 below.

10.4. Notwithstanding the foregoing, District reserves the right to retain, without applying toward Operation and Maintenance Expenses, student tuitions, fees and charges relative to classes and programs for which District has Credited Student Contact Hours by the Texas Coordinating Board.

~~10.5. District shall be solely responsible for establishing policies and procedures for locker use and for collection of locker fees.~~

XI.

CONCESSIONS

11.1. District may, at its option, elect to operate food and beverage concessions, including vending machines, at the Natatorium during all use times and at special events. All profits from such concessions and/or vending machines, less an 8% administration fee to be paid to District and deducted from the net proceeds, shall be applied to the Operation and Maintenance Account.

11.2. In the event District elects not to operate concessions during either party's use or special events, City may do so with the written approval of District.

11.3. City and District promise and agree that the sale, possession, or consumption of alcoholic beverages in, on or about the Natatorium are and shall be prohibited.

## XII.

COST SHARING FOR OPERATION AND MAINTENANCE

12.1. The administration and management of Operation and Maintenance shall be District's responsibility. Operation and Maintenance Expenses shall be accurately documented by District. Each year during the term of this Agreement, on or before June 1, District shall prepare and submit to City's Director of Parks and Recreation a revenue forecast and expenditure budget estimate for Operation and Maintenance Expenses, and an eight percent (8%) overhead fee calculated on the estimated Operation and Maintenance Expense for the next fiscal year. City shall pay District twenty-five percent (25%) of City's share of such estimated costs on the first day of each quarter of District's Fiscal Year. In the event the first operating period is less than District's entire Fiscal Year, the first payment will be made on the first day of the month next succeeding the initial operating period and each next succeeding regular quarterly date thereafter. At the end of the Fiscal Year, District shall prepare and submit to City a final accounting of Operation and Maintenance Expenses. District agrees to permit City to verify line item cost statements using standard generally accepted accounting procedures. The District shall pay Operation and Maintenance Expenses from the Operation and Maintenance Account. City's share of Operation and Maintenance Expenses shall be an amount equal to 49%, and District's share of Operation and Maintenance Expenses shall be an amount equal to 51%, of the total Operation and Maintenance Expenses. Any balance owed to District by City shall be payable to District on demand. Should any unspent or unencumbered balance remain in the Operation and Maintenance Account at the end of District's Fiscal Year, then forty-nine percent (49%) of said balance shall be credited to City's share of operations and budget for the new fiscal year.

XIII.

MAJOR REPAIRS AND REPLACEMENT FUND

13.1. District shall administer the Major Repairs and Replacement Fund and shall deposit the annual contribution to this Account by the parties hereto to an interest-bearing account. The earnings on said Account shall be retained in the Major Repairs and Replacement Fund for use in accordance with the provisions of Article XIII herein.

13.2. It is the intent of the parties that the Major Repairs and Replacement Fund shall be used to the extent possible to defray the costs of Major Repairs and replacement.

13.3. The amount of annual contribution to this Fund by each party hereto for the first ten years of Natatorium operation is hereby established as follows:

District: \$51,000.00  
City: \$49,000.00

On or before June 1 of the tenth year of Natatorium operation, the expenditures from the Major Repairs and Replacement Fund shall be compared to the interest earned by the Fund up to the date of comparison. Should the expenditures equal or exceed the interest earned, each party shall, that year and each year thereafter, increase its annual contribution to the Major Repairs and Replacement Fund as follows:

District: \$76,500.00  
City: \$73,500.00

Should the expenditures be less than the interest earned, the parties shall continue to contribute the annual contribution established for the previous years.

The annual contribution of the parties to the Major Repair and Replacement

Fund is due on the first anniversary date of this Agreement, and each anniversary date thereafter throughout the original term of this Agreement and any renewal or extension.

13.4. The decision to award Major Repair contract(s) shall be District's. It shall be District's sole responsibility to monitor and administer such Major Repair contract(s). If the cost of such contracts exceeds the amount of funds available in the Major Repairs and Replacement Fund, then the award of such Major Repair contracts shall be subject to approval of the parties hereto.

13.5. Cost of Major Repairs greater than the fund balance of the Major Repair and Replacement Fund shall be assessed against the parties in the same pro rata percentage set out in Paragraph 12.1 herein, and shall be payable by City to District upon demand.

#### XIV.

##### TIME SHARING FOR NATATORIUM USE

14.1. The parties hereto agree that the District and City shall each have use of the Natatorium based on the following formula:

District Use: 55% of the Natatorium Open Hours

City Use: 45% of the Natatorium Open Hours

The 4% difference in City's use of the facility versus its percentage of financial participation in construction, operation and maintenance of the project is in recognition of the fact that District will contribute the land on which the Natatorium is built, the cost of which is not included in the Project Costs being shared by the City.

14.2. The operating year for the Natatorium will consist of 333 days, which shall include open days plus agreed holidays, and which takes into account a combined maximum total of 32 days of shut-down for major maintenance, removal and installation of the roof and minor maintenance periods which shall include

the last 14 calendar days in May and other days, as needed. The shut-down times apply equally to City and District. The parties hereto understand and agree that circumstances, including the need to shut down for Major Repairs, may dictate change to the foregoing requirements. The number of Open Days and Open Hours may be changed by the written mutual consent of the parties hereto, so long as the 55/45 use ratio specified in Paragraph 14.1 is not changed.

14.3. The exact schedule for use of the Natatorium shall be established by District and City within the framework of the principle of 55% use by District and 45% use by City.

14.4. District and City recognize and agree that there will be numerous occasions for concurrent use, special uses and special events and competitions. Special uses, special events, competitions or third party use which encompasses use time of both City and District will be scheduled only upon mutual agreement of the parties.

14.5. All third party users shall enter into a written agreement with City and District, outlining all terms and provisions of third party use. All third party users who rent the Natatorium shall provide liability and casualty insurance coverage acceptable to District and City.

XV.

STAFFING

15.1. The day-to-day operational and maintenance staffing of the Natatorium shall be provided by District. District staffing to carry out Operation and Maintenance responsibilities shall include, but not necessarily be limited to, two (2) lifeguards, supervisory staff personnel, admission person(s), cashiers, and custodial and maintenance personnel on duty during all Open Hours. The costs of all aforesated personnel staffing shall be included in the cost statement submitted by District to City pursuant to Paragraph 12.1.

15.2. Should either party require more than two lifeguards, two admissions persons or one cashier during that party's use, and/or should either party determine a need to provide personnel additional to those provided under Paragraph 15.1 above to ensure that party's aquatic program's rules and regulations are enforced, such costs will be borne by the party requiring the additional personnel and shall not be included in the cost statement, but shall be considered in computing the eight percent overhead fee pursuant to Paragraph 12.1 above.

15.3. Should City determine the need to provide additional personnel pursuant to Paragraph 15.2 above, City shall provide District with a minimum of seven (7) days' notice, and shall hold District harmless and indemnify District, to the extent permitted by law, for damages, to include legal fees and associated costs, from any and all third party claims based upon failure of District to provide such additional personnel, unless City has complied with the notification provisions of this paragraph.

15.4. Either party may provide, at its sole cost and expense, any and all personnel that may be needed to instruct or monitor that party's sponsored aquatics programs conducted during that party's use times, as long as such instructor and/or monitor meets standard certification and accreditation requirements for their specific use.

15.5. District and City understand that staffing needs additional to lifeguards, cashiers, admissions persons, and others may be required to support special events, special uses and competitions. On those occasions, the provision of and the cost of such additional staffing and other direct event-related costs shall be borne by the party or parties promoting, scheduling or sponsoring the special event, special use or competition. Should such special event, special use or competition be co-sponsored by both parties hereto, the

extra cost related to the event will be shared, accounted for and billed in accordance with the agreement of the parties.

15.6. Additional costs of special events, special uses and competitions other than those included in the Operation and Maintenance Expenses shall be borne solely by the party responsible for a given event, use or competition. The District shall keep a separate accounting and billing of such costs if borne by the District, and shall not include them in the cost statement pursuant to Paragraph 12.1 above. Any such costs incurred by District for the benefit of City shall be payable by City to District upon demand.

15.7. Extra costs associated with concurrent use shall be borne in the manner described in the concurrent use agreements executed by interested parties independent of this Agreement.

XVI.

SIGNS AND ACKNOWLEDGMENT OF PARTICIPATION

16.1. District agrees to include in the design plans a permanently-installed plaque or other suitable permanent sign on, in or about the Natatorium which acknowledges City's participation in the construction of the Natatorium. The size, form, material, verbiage and location of such sign shall be mutually agreed upon by the parties hereto.

16.2. District further agrees to provide in the design phase and include in the Natatorium construction, locations for sign(s) which announce public use hours and such other information as may be necessary to inform the public of available programs provided at the Natatorium by the parties to this Agreement and Natatorium users. The size, form, material, verbiage and location of such signs are subject to mutual agreement.

16.3. Throughout the term of this Agreement, the parties agree that in all Natatorium-related press releases, flyers, brochures and other informational

material prepared and distributed by District or City, District and City shall include acknowledgment and recognition of the joint nature of Natatorium development and operations.

XVII.

UTILITIES

17.1. Utility costs of the Natatorium shall be included in the total Operation and Maintenance Expenses to be shared by District and City pursuant to Paragraph 12.1. Design and construction of the Natatorium shall provide for metering of electrical, gas, water and sewer services separate from other such facilities on the Palo Alto College campus.

XVIII.

PARKING FACILITIES

18.1. District agrees to permit free public parking on District's parking lots during all scheduled City Use times in accordance with Exhibit "B" attached hereto and incorporated herein by reference. District further agrees to provide three (3) permanently-reserved parking spaces for City staff personnel at a location mutually agreed upon by District and City.

XIX.

SAFETY

19.1. District and City hereby agree and pledge that each shall fully comply with all established safety standards applicable to operation and use of the Natatorium. District shall post such informational signs as necessary to inform Natatorium users of rules and regulations. During their respective use of the Natatorium, City and District agree to enforce such rules and regulations. It is understood and agreed by the parties that Palo Alto College (at the time the parties enter into this Agreement) contracts for unarmed campus security personnel sufficient for its present security needs. District and City



agree that any additional cost to District of providing additional security personnel to provide security for the Natatorium facility and those parking facilities delineated in Paragraph 18.1 above and Exhibit "B" attached hereto shall be assessed against the parties hereto as operating costs, pursuant to Paragraph 12.1 herein. Should City determine that public event use during time of City Use will require additional armed security persons or commissioned peace officers, City will provide for such at its own cost and shall indemnify and hold District harmless from any cause of action or claim for damages, attorney's fees and associated costs made on the basis of the failure to provide security personnel or peace officers additional to that provided by District during the periods of City Use.

XX.

INSURANCE AND NON-INDEMNIFICATION

20.1. The City, at its own expense, shall provide and maintain, during the term of this Agreement, either insurance, with or without a retention, or a self-insurance program, allowed and provided by law, to Texas municipalities. This insurance or self-insurance shall cover liability for property damage and personal injury of the City's use of the Natatorium.

20.2. The District, at its own expense, shall provide and maintain, during the term of this agreement, either insurance, with or without retention, or a self-insurance program, allowed and provided by law, to Texas junior college districts. This insurance or self-insurance shall cover liability for property damage and personal injury of the District's use and ownership of the Natatorium.

20.3. The City's obligation to share in costs of operation, maintenance and repairs as set out in this Agreement, including, but not limited to, Article XII cost sharing for Operation and Maintenance, does not create any additional

duties, express or implied, not otherwise specifically set out within this agreement. The District shall be liable for its own acts of negligence, to the extent provided in law. The City shall be liable for its own acts of negligence, to the extent provided in law.

XXI.

REQUIRED ASSESSMENTS

21.1. During each year that either party is required by this Agreement to contribute to the Operation and Maintenance Account or Major Repairs and Replacement Fund, the parties agree to annually allocate and budget amounts sufficient to satisfy such obligations.

XXII.

DEFAULT

22.1. Should either party default in the payment of obligations due under Sections XII and/or XIII of this agreement, the defaulting party shall have ninety (90) days from written notice of default by the non-defaulting party to cure by offering all defaulted sums, plus six percent (6%) interest per annum from the date of default to the date of cure, together with the sum of all other obligations of the defaulting parties subsequently due under this Agreement.

22.2. Should District fail to cure default as above described, City may, at its option, terminate this Agreement. Should City exercise its option to terminate this Agreement, City will have right, title and interest, to the exclusion of District, to the return by District of all funds on deposit at the time of default in the Major Repairs and Replacement Fund and Operation and Maintenance Account attributable to the contribution of City to said Fund and Account.

22.3. Should City fail to cure default as above described, District may, at its option, terminate this Agreement. Should District exercise its option to

terminate this Agreement, District will have right, title and interest, to the exclusion of City, to all funds on deposit at the time of default in the Major Repairs and Replacement Fund and Operation and Maintenance Account.

22.4. Exercise of the option to terminate this Agreement and entitlement to funds on deposit, as provided above, shall not preclude pursuit of any other remedies or forfeiture or waiver of any damages accruing to either party by reason of the violation of any provision of this Agreement.

22.5. Obligations under Sections XII and XIII of this Agreement shall be considered independent of all other obligations, and failure to fulfill such other obligations shall not excuse default under Sections XII or XIII.

XXIII.

OPTION TO PURCHASE

23.1. Upon the anniversary of the fourth year of this Agreement, District may, at its option, elect to purchase City's interest in the shared use of the Natatorium and terminate this Agreement. The purchase price will be the total of City's contribution to the Project Costs, added to the City's proportionate share of amounts on deposit in the Operation and Maintenance Account, less City's contribution to the Major Repair and Replacement Fund, to the date of purchase.

XXIV.

ASSIGNMENT

24.1. This Agreement shall not be assignable by either party unless written authorization is first obtained from the other party.

XXV.

OPTION TO RENEW

25.1. Thirty (30) days prior to the expiration of the original term of this Agreement, and thirty (30) days prior to each extension thereafter, District may

offer City an option to renew and extend this Agreement for an additional term of years, to be determined by District, but otherwise under the same terms and conditions as may be operative on the date of said offer. Should City decline to accept District's offer to renew and extend within thirty (30) days of the offer, District will retain all funds on deposit in the Major Repairs and Replacement Fund as of the date of termination. Should District decline to extend City an option to renew and extend, this Agreement will terminate, and District will thereupon return to City City's proportionate share of all funds on deposit in the Major Repairs and Replacement Fund and the Operation and Maintenance Account.

XXVI.

SEPARABILITY

26.1. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, including any renewals, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXVII.

ENTIRE AGREEMENT

27.1. Except as to the Natatorium Policy and Procedures Manual, this Agreement contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon to date, and no other agreements of prior date, oral or otherwise, regarding the subject matter of

this Agreement shall be deemed to exist or to bind the parties hereto. It is the intent of the parties that neither party shall be bound by any term, condition or representation not herein written.

XXVIII.

AMENDMENT

28.1. No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto. It is the intention of the parties to supplement this Agreement by developing and adopting a Natatorium Policy and Procedures Manual, which may, itself, be modified from time to time by agreement of the parties.

XXIX.

NON-DISCRIMINATION

29.1. Any discrimination by District or City or their agents or employees on account of race, color, sex, age, religion, handicap or national origin, in employment practices or in the use of or admission to the Natatorium, is prohibited.

XXX.

NOTICES

30.1. Notices to the parties hereto required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified Mail, postage prepaid, addressed to District:

Chancellor  
Alamo Community College District  
P. O. Box 3800  
San Antonio, Texas 78284

with copy to:

President  
Palo Alto College  
1400 Villaret  
San Antonio, Texas 78224

to City:

City Clerk  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

with copy to:

City Manager  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

and copy to:

Director, Department of Parks and Recreation  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

XXXI.

TEXAS LAW TO APPLY

31.1. 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.

XXXII.

GENDER

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

XXXIII.

CAPTIONS

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

XXXIV.

AUTHORITY

34.1. The signers of this Agreement hereby represent and warrant that they have authority to execute this Agreement on behalf of each of their governing bodies.

WITNESS the signatures of the parties hereto in duplicate originals this 12<sup>th</sup> day of May, 1989.

ATTEST:

Jill A. Braberg

ATTEST:

[Signature]  
City Clerk

ALAMO COMMUNITY COLLEGE DISTRICT

By: [Signature]

CITY OF SAN ANTONIO

By: [Signature]  
City Manager