

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**FUNDING AGREEMENT
WITH
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT
STORM WATER DETENTION IMPROVEMENTS FOR
JEFFERSON HIGH SCHOOL**

This Funding Agreement (hereafter referred to as the “Agreement”) is hereby made and entered into by and between the City of San Antonio, a Texas municipal corporation (hereafter referred to as “City” or “Grantor”), acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and the San Antonio Independent School District, a political subdivision of the State of Texas (hereinafter referred to as “Grantee”), acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 12, 2012, and received approval from the voters to fund a variety of drainage & flood control improvements (Proposition 2 on the ballot); and

WHEREAS, among the drainage & flood control improvements projects approved is a project titled “Upper Woodlawn Drainage, Project No. 40-00428”. The Stormwater Detention Improvement for Jefferson High School Project (hereafter referred to as the “Project”) is part of the Upper Woodlawn Drainage, Project No. 40-00428; and

WHEREAS, the official brochure for the Bond Election described the Upper Woodlawn Drainage Project as: “Construct drainage improvements in the Upper Woodlawn Lake Area. Projects will be chosen from those identified in a study funded by 2007-2012 Bond savings”; and

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

WHEREAS, City has identified Grantee as the appropriate party with which to contract for the fulfillment of the public purpose identified in the official 2012 Bond Election brochure, in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, Grantee is the fee simple owner of the property located at Jefferson High School, the proposed location of the Project; and

WHEREAS, the public benefit to be gained from the Project is the provision of safety and benefit from the drainage and flood control improvements, under regulations, available for the citizens of San Antonio.

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

I. TERM

1.01 The term of this Agreement shall commence upon execution of the Agreement by the City Manager or her designee and shall continue until the Project is completed.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding from City, as described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement, to complete the construction of the Project by the date mutually agreed by both parties. The Project shall include the construction and installation of two detention ponds and an underground storm drain (hereafter referred to as the "Improvements") on the east side of the watershed at Jefferson High School.

2.02 Current budget estimates of the Project are **\$1.8 million**. Grantee shall provide all required and necessary funding for the Project, beyond the City's commitment contained herein, and shall provide evidence to City that all Project funds have been secured. In the event the scope of the Project is reduced, City shall have the option of adjusting its commitment downward accordingly.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Associate Superintendent for Facilities Services shall be Grantee's designated representative responsible for the management of this Agreement.

2.04 The Director of City's Capital Improvements Management Services (hereafter referred to as "CIMS") or his/her designee shall be responsible for City's administration of this Agreement until the completion of the Project.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each party, as set forth in **Section 2.03** and **Section 2.04** herein.

2.06 Grantee shall provide to City its Plans and Specifications for the Project (hereafter referred to as the "Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as Grantor under this Agreement. After the approval of the Plans by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given pursuant to this **Section 2.06** 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, including but not limited to the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 Following City's approval of the Plans, Grantee shall submit any proposed changes in the Plans to the CIMS Director or his/her designee for review and approval to ensure their compatibility with the Plans.

2.08 City may inspect the Project throughout the construction process, to ensure compliance with the approved Plans. Grantee shall cause its design professional to provide periodic certifications of construction to City, certifying that construction has been conducted in

compliance with the approved Plans. Grantee shall submit said certification to the CIMS Director or his/her designee throughout the Project's construction and at the completion of the Project. City shall have the right to withhold funding of the Project until such certifications are provided by Grantee.

2.10 Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the design and construction of the Project not later than three (3) years from the date of execution of this Contract.

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, regulations and codes 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 Chapter 252 and Chapter 271 of the Texas Local Government Code, and Chapter 2254 and Chapter 2267 of the Texas Government Code and/or other competitive contracting processes allowed for as expressed exceptions to these laws.

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

3.04 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.

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

B. In accordance with the provisions of Texas Local Government Code Chapter 2258 and City Ordinance No. 2008-11-20-1045, Grantee shall request, upon advertisement of construction bids, and 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 Project construction work. Grantee is required and shall require its Project Construction Contractor and all Project Subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time Grantee calls for bids for construction of a given Project phase. Grantee further is required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's Project Construction Contractor and all Project Subcontractors for construction of each Project phase of construction. 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 workers. City will audit certified payroll records as necessary in accordance with this Agreement.

C. Upon audit of the Project records and certified payrolls under this **Section 3.04**, should the City or its auditors find any violations, Grantee shall cause its Construction Contractor to forfeit, as a penalty to City, \$60.00 for each laborer, worker or mechanic employed on the Project for each calendar day, or portion thereof, that such laborer, worker or mechanic is paid less than the said stipulated prevailing wage rates for any work done under this Agreement and Grantee's contract with Grantee's Construction Contractor or any Project Subcontractor. The establishment of prevailing wage rates, in accordance with Chapter 2258, Texas Government Code, shall not be construed to relieve Grantee from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed under this Agreement.

3.05 ENVIRONMENTAL

Construction shall be in accordance with the all state and federal environmental requirements, including all City-applicable construction and development regulations.

3.06 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

This could change if scope if known

City, through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy (hereafter referred to as "SBEDA") Program. Information regarding the SBEDA Ordinance may be found on the City's Economic Development Department (hereafter referred to as "EDD") website and also is available in hard copy form, upon request to City. Grantee understands and agrees that, for portions of the Project undertaken by Grantee in the award of contracts, subcontracts and other opportunities for design, construction and operation of the Project, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. **IMMEDIATELY UPON THE COMPLETION OF THE SCOPE OF WORK FOR CONSTRUCTION AND PRIOR TO ISSUING BIDS OR SOLICITATIONS FOR ANY PRIME OR SUBCONTRACTORS, GRANTEE** shall submit a copy of the scope of work to EDD's Small Business Office (hereafter referred to as the "SBO"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (hereafter referred to as "API"), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (hereafter referred to as the "Plan"). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.

IV. OWNERSHIP, MAINTENANCE AND USE OPERATIONS

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public.

4.02 Grantee shall be responsible for the operation, maintenance and insurance of the Project facilities and improvements and all associated costs will be the responsibility of Grantee.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for allowable expenditures incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall be the not-to-exceed sum of **SEVEN HUNDRED FIFTY THOUSAND AND NO/CENTS DOLLARS (\$750,000.00)**.

5.02 City shall not be obligated or liable under this Agreement to any party, other than Grantee and CIMS, for payment of any monies or the provision of any goods or services.

5.03 Total funding by City for this Project shall consist of reimbursements paid to Grantee for allowable costs and expenditures of the Project, not to exceed **SEVEN HUNDRED FIFTY THOUSAND AND NO/CENTS DOLLARS (\$750,000.00)**.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

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

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Projects. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four year period.

6.03 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received by City pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this

Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through City's Project Reporting Information Management Exchange Link (hereafter referred to as "PRIMElink").

6.05 All requests for reimbursement shall be submitted through 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 CIMS. Prior to the initial request for reimbursement, Grantee shall submit a schedule of values for payment, which shall be approved by CIMS, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values, once approved by City, shall be processed and approved as task orders through PRIMElink.

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

6.07 City agrees to provide Grantee written notice regarding any expenditure 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 City any sum of money paid by City to Grantee if it is determined that:

- (A) City funds have not been spent by Grantee strictly in accordance with the terms of this Agreement; or
- (B) Grantee has not adequately documented an expenditure to fully justify the expenditure.

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

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received from City by Grantee hereunder. Costs shall be considered allowable only if approved by City 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 city, state and federal laws, regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Construction;

- Construction contingencies

Expenditures of the funds provided under this Agreement only shall - be allowed if incurred directly and specifically by Grantee in the performance of and in compliance with this Agreement and with 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 other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the projects
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- 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
- Insurance
- Design Services

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City is, shall be and shall remain complete and accurate as of the date shown on the information, data, or report and that since the said date shown, shall not have undergone any significant change without written notice to City.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that materially and adversely may affect its obligations hereunder.
- (C) Relative to the Project, no litigation or proceedings are presently pending or, to Grantee's knowledge, are threatened against Grantee.

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

IX. ACCESSIBILITY OF RECORDS

9.01 At any time 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 will cooperate with City, at no charge to 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 with all other laws, regulations and ordinances related to the performance hereof.

XI. INDEMNITY

11.01 To the extent permitted by law, Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of resulting from or related to Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, consultant or subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02 The provisions of this INDEMNITY solely are for the benefit of the parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other person or

entity. Grantee shall advise the City in writing within 24 hours of any claim or demand against the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Grantee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this paragraph.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to CIMS, which shall clearly be labeled, "The Stormwater Detention Improvement for Jefferson High School" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form shall have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CIMS. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 City reserves the right to review the insurance requirements of this **Article XII** during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

12.03 Grantee's financial integrity is of interest to City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by 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, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury	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

e. Contractual Liability	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
* if applicable	

12.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in **Section 12.03** herein (Insurance table) from each vendor subcontracted by Grantee and provide a Certificate of Insurance and Endorsement that names the Grantee and City as an additional insured.

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

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

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

- Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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 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 Contractor(s)' and/or Ssubcontractors' performance of the work covered under this Agreement.

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

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

12.11 Grantee shall comply 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 Grantee covenants that it, its agents, employees or anyone under its control will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, disability, sexual orientation, gender identity, gender expression, military or veteran status, or familial status, in employment practices which said discrimination Grantee acknowledges is prohibited.

XIV. CONFLICT OF INTEREST

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

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

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

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

XV. POLITICAL ACTIVITY

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

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

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 Contractor and/or Subcontractor 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 only shall be by amendment in writing and 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, codes and/or laws applicable hereto may occur during the term of this Agreement and that any such changes shall automatically be incorporated into this Agreement, without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, code or law.

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or 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 City Charter, City Code or ordinances of City, 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 never was contained herein; it also is the intention of the Parties hereto, 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 to this Agreement 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 this Agreement 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 San Antonio City Council.

XXII. ENTIRE AGREEMENT

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

XXIII. NOTICES

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

CITY: Director Capital Improvements Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: Kamal ElHabr
Associate Superintendent for Facilities Services
San Antonio Independent School District
1702 N. Alamo, Suite 307
San Antonio, Texas 78215

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

XXIV. PARTIES BOUND

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. TEXAS LAW TO APPLY

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

XXVII. GENDER

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

XVIII. CAPTIONS

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

XXIX. LEGAL AUTHORITY

29.01 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.

29.02 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.

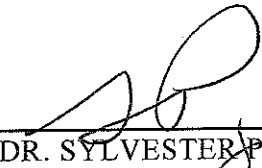
EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the 12 day of December, 2013.

CITY OF SAN ANTONIO

**SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT**



PETER ZANON
DEPUTY CITY MANAGER



DR. SYLVESTER PEREZ
SUPERINTENDENT OF SCHOOLS

APPROVED AS TO FORM:



CITY ATTORNEY