STATE OF TEXAS	§	**FUNDING AGREEMENT FOR THE**
	§	**MEDICAL CENTER INTERSECTION**
COUNTY OF BEXAR	§	**IMPROVEMENTS PHASE IX PROJECT**

THIS FUNDING AGREEMENT (hereafter referred to as "the Agreement" or "this Agreement") for the **MEDICAL CENTER INTERSECTION IMPROVEMENTS PHASE IX PROJECT** is effective as of the _____ day of _____, 2016 (hereafter referred to as "Effective Date"), by and between the **CITY OF SAN ANTONIO, TEXAS**, a Texas Home Rule Municipality (hereafter referred to as "City") and the **UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER**, a political subdivision of the State of Texas (hereafter referred to as "UTHSC"), acting by and through its officers, hereto duly authorized. City and UTHSC singularly or collectively shall be referred to herein as "Party" or "the Parties."

WITNESSETH

WHEREAS, the voters of San Antonio approved a $595,000,000.00, 2012 – 2017 Bond Program in May of 2012 to: improve City streets, bridges and sidewalks; for drainage and flood control; for parks, recreation and open space improvements; for library, museum and cultural arts facilities improvements; and for public safety facilities improvements; and

WHEREAS, included in City's 2012 – 2017 Bond Program was $6,600,000 for the Medical Center Intersection Improvements Project (hereafter referred to as "the Project" or "City's Project"), to improve select intersections in the Medical Center Area; and

WHEREAS, City project is under construction with EZ BEL Construction for these improvements; and

WHEREAS, City and UTHSC have identified for the need to install a Pedestrian Hybrid Beacon. The dedicated pedestrian signals will be place on Floyd Curl to facilitate pedestrian traffic across Floyd Curl Drive, within the Medical Center to benefit the public; and

WHEREAS, the UTHSC authorized the James D. Kazen, Executive Vice President, to identify funding, in the amount up to $215,431, for improvements to Medical Center Intersection Improvement and to negotiate a Funding Agreement with the City of San Antonio; and

WHEREAS, City and UTHSC have agreed City shall incorporate scope of work – to install a Pedestrian Hybrid Beacon into City's Project, as identified in the 2012 – 2017 Bond Program, and in exchange UTHSC shall pay City $215,431, and

WHEREAS, UTHSC shall provide said $215,431 to City, in a lump sum amount, for the construction-related costs of the Project and City shall incorporate UTHSC's lump sum amount into City's overall budget for the Project; and

WHEREAS, City shall be responsible for the maintenance of all of the Projects within the City's Right of Way after their completions; and

WHEREAS, the Parties desire to enter into this Funding Agreement, to establish the rights and obligations of the Parties for the engineering, construction, operations, and maintenance of the Project, and

to establish the procedures for funding the Project;

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the Parties agree as follows:

ARTICLE I
PURPOSE

1.01 The purpose of this Agreement is to establish the terms and conditions for: (1) managing the design and construction services associated with the Project, including construction disruption; (2) funding the engineering and construction-related costs for the Project; and (3) operating and maintaining the Project upon completion.

ARTICLE II
TERM

2.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory party to the Agreement and shall end upon completion of the Project.

2.02 City has the duty to maintain the Project and to enforce warranties associated therewith. These duties shall survive the termination of this Agreement.

ARTICLE III
UTHSC'S FINANCIAL COMMITMENT

3.01 The UTHSC shall provide funds to City not to exceed **TWO HUNDRED FIFTEEN THOUSAND FOUR HUNDRED THIRTY ONE DOLLARS AND NO/100 ($215,431)** (hereafter referred to as "UTHSC's Contribution").

3.02 The Parties acknowledge that the financial commitments stated in this Agreement are independent of the necessary operating and maintenance expenses that are and will remain City's responsibilities during and after the Project.

3.03 **Two hundred fifteen thousand four hundred thirty one dollars and no/100 ($215,431)** is the total maximum UTHSC funds commitment to City for the Project. UTHSC funding for the Project shall be used for the construction related costs to install a Pedestrian Hybrid Beacon. The dedicated pedestrian signals will be place on Floyd Curl to facilitate pedestrian traffic across Floyd Curl Drive, within the Medical Center to benefit the public. No other funds shall be available from UTHSC to City for the Project, unless UTHSC increases its requested scope for the Project.

ARTICLE IV
OBLIGATIONS OF CITY

4.01 Pursuant to this Agreement, City shall perform and provide the following:

a. City shall be responsible for paying all fees and expenses incurred in the performance of the Project, to include UTHSC's Project scope request to install a Pedestrian Hybrid Beacon.

b. City shall oversee and manage all aspects of the Project.

c. City shall refund all unused portions of UTHSC's funding.

d. City shall be responsible for the staging of construction and all necessary street closures, if any, during construction, in an effort to minimize street closures.

e. City shall maintain the property included in the Project and City shall be responsible for the maintenance and operating expenses for such property during the Project.

f. If required, City shall obtain the United States Army Corps of Engineers (hereafter referred to as "USACE") Individual Permit or Nationwide Permit, as determined by final design option. If required by USACE Individual Permit, City shall perform regular site maintenance of the Project, in accordance to the terms and general conditions of the USACE Individual Permit Verification issued under Section 404 of the Clean Water Act, including maintenance requested by the USACE Fort Worth District Regulatory Branch and its Compliance Officer for conformance with the Permit.

g. City shall provide timely review and approval of design and construction contract documents for the Project.

h. City shall obtain warranties from third parties and enforce the warranties on behalf of the Parties, if necessary.

i. City shall acquire all necessary property for Project.

ARTICLE V
OBLIGATIONS OF UTHSC

5.01 Pursuant to this Agreement, UTHSC shall perform and/or provide the following:

a. UTHSC hereby identifies its Director, or his/her designee, as Project contact.

b. UTHSC is responsible to provide two hundred fifteen thousand four hundred thirty one dollars and no/100 ($215,431) for this Project no later than fifteen (15) days after the San Antonio City Council approves the Funding Agreement for this Project.

c. UTHSC shall provide timely review and approval of design and construction contract documents for the Project.

d. UTHSC shall participate in design Project meetings, as needed or requested by City.

e. UTHSC shall have no responsibility to maintain the Project.

ARTICLE VI
JOINT OBLIGATIONS OF THE PARTIES

6.01 The Parties shall agree upon the design and construction of the improvements to be integrated into the Project.

6.02 If substantial changes are requested, City shall obtain UTHSC's approval that the project goals are satisfied.

ARTICLE VII
DESIGNATION OF REPRESENTATIVES

7.01 City hereby appoints the Transportation & Capital Improvements Department Director/City Engineer, or his/her designee, (hereafter referred to as "City Project Manager"), as its designated representative under this Agreement. City Project Manager shall be the primary point of contact for City.

7.02 UTHSC hereby appoints the Assistant Vice President, or his/her designee, (hereafter referred to as "UTHSC Project Manager"), as its designated representative under this Agreement. UTHSC Project Manager shall be the primary point of contact for UTHSC.

ARTICLE VIII
UTHSC'S RIGHTS UNDER THIRD PARTY CONTRACTS

8.01 UTHSC agrees City shall have the authority to contract, on behalf of the Parties, for all services necessary for the completion of the Project.

8.02 UTHSC shall provide County, upon UTHSC's request, a fully executed copy of each contract entered into by City for the Project.

8.03 In all Project contracts entered into by City, City shall include provisions reflecting:

a. City shall require all contractors, consultants and service providers, including, but not limited to, all sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of City.

b. City shall require in its contracts for services, construction and materials that the contracting parties, along with all sub-consultants and subcontractors, be required to indemnify UTHSC and City, their officials, employees and agents, for claims by third parties, as allowed by law.

c. City shall require all consultants, sub-consultants, contractors, and subcontractors to provide all statutorily required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, City shall determine

whether to require performance bonds.

d. City shall state in all agreements with third-parties that UTHSC is a third-party beneficiary to those agreements.

ARTICLE IX
PROJECT MANAGEMENT DURING DESIGN AND CONSTRUCTION

9.01 City shall manage, oversee, administer and carry out all of the activities and services required for the design and construction of the Project, to ensure that this Project is designed, constructed, equipped, furnished and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the design and construction documents of the Project.

9.02 City shall enforce substantial compliance, pursuant to the terms of the agreements with the contractors and subcontractors, and require that work continuously and diligently be performed to achieve substantial completion on or before the scheduled completion date set out in the Project schedule.

9.03 Upon approval of this Agreement by the governing bodies of the Parties, the Parties' respective Directors shall schedule a meeting to finalize the team structure and develop the procedures and processes necessary to coordinate design and construction in accordance with the standard business practices of those disciplines.

9.04 City's Project Manager shall provide written notice to UTHSC's Project Manager a minimum of ten (10) business days prior to the issuance of a Notice to Proceed for the start of construction on the Project.

9.05 In addition to the requirements of **Article XVIII** herein, City promptly shall furnish UTHSC's Project Manager with copies of all legal notices received by City affecting the Project including, without limitation, notices from governmental authorities and notices from any party claiming default in any payment obligation and any other notice not of a routine nature. City promptly shall give notice under **Article XVIII** herein of any suit, proceeding or action that is initiated or threatened in connection with the construction of the Project or against City and/or UTHSC in connection with construction of the Project.

9.06 For any environmental event that is caused by or at the direction of either City or UTHSC employees at the Project site, the Party hiring the event-causing employee(s) shall be liable. An environmental event shall mean spills, discharge, leakage, pumpage, drainage, pourage, emission, emptying, injecting, dumping, disposing or other release of a hazardous material which may cause a threat or actual injury to human health or the environment.

9.07 Within thirty (30) business days following substantial completion of the Project, City shall:

a. notify UTHSC in writing upon the substantial completion of construction, whereupon UTHSC may inspect the completed work to determine if construction has been completed in a satisfactory and workmanlike manner and substantially completed in accordance with the plans and specifications for such work.

b. submit all permits and inspection reports and, if applicable, obtain a Final Acceptance Letter and submit a copy of each of these documents to the UTHSC.

c. submit "record" drawings to UTHSC, along with copies of all warranties and operations documents.

9.08 Both City and UTHSC shall participate in a walk through at the point of substantial completion of the Project to identify the punch list items. City shall supervise and coordinate the completion of punch list items and warranty work. Both Parties shall participate in a final walk through to determine whether all punch list items have been resolved.

9.09 For information purposes, City shall provide UTHSC's Project Manager, as and when available, the schedule for permitting, design and construction of the Project. UTHSC shall be furnished said schedule when revised from time to time throughout the duration of the Project. The schedule(s) shall establish a date for substantial completion of each phase in sufficient detail to allow UTHSC to monitor the progress of the construction of the Project.

9.10 Within one hundred eighty (180) days after final completion of the Project, City shall deliver to UTHSC's Project Manager a final construction report which shall set out the total costs incurred in connection with those portions of the Project for which both UTHSC and City made financial contributions.

9.11 City shall maintain the books, records and documents pertaining to those portions of the Project for which UTHSC and City have joint participation. UTHSC representatives shall have access to and the right to examine same, upon reasonable notice to City's Project Manager. City's books, records and documents relating to the Project must be maintained separately from other City projects so that an examination by UTHSC representatives shall be limited to the documents for this Project.

ARTICLE X
DEFAULT

In the event of a material breach of this Agreement, the non-breaching party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching party by the end of the thirty (30) day period, the non-breaching party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount paid by the non-breaching party for the Project.

ARTICLE XI
TERMINATION FOR CONVENIENCE

Whenever either party, in its sole discretion, deems it to be in that party's best interest, it may terminate this Agreement for convenience. Such termination shall be effective thirty (30) days after

the terminating party delivers written notice of termination of convenience to the other party. If the Agreement is terminated by a party prior to completion of the construction of the Project, after payment of any unpaid obligations for completed work, City shall refund to UTHSC any remaining portion of UTHSC's Contribution. The Parties shall have no additional liability to one another for termination under this **Article XI**.

ARTICLE XII
PRIOR AGREEMENTS SUPERSEDED

This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE XIII
ASSIGNMENT OR TRANSFER OF INTEREST

Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval shall be void.

ARTICLE XIV
LEGAL CONSTRUCTION

In case one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XV
COMPLIANCE WITH LAWS AND ORDINANCES

Both Parties shall comply with all federal, state and local laws and ordinances, in connection with the work and services performed under this Agreement.

ARTICLE XVI
TEXAS LAW TO APPLY

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 San Antonio, Bexar County, Texas.

ARTICLE XVII
AMENDMENT

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 be duly executed by the Parties hereto.

ARTICLE XVIII
NOTICES

All notices required to be given under this Agreement shall be in writing and either shall be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith, unless a provision of this Agreement designates another party and provides a different address. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to UTHSC:
Darrell Maatsch
Assistant Vice President
The University of Texas Health Science Center
7703 Floyd Curl Drive
San Antonio, Texas 78229

With a copy to:
Andrea Marks
Vice President/CFO
The University of Texas Health Science Center
7703 Floyd Curl Drive
San Antonio, Texas 78229

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

With a copy to:
Director of Transportation and Capital Improvements Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

ARTICLE XIX
FORCE MAJEURE

Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XX
MULTIPLE COUNTERPARTS

This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original, on this _____ day of _____, 20_____.

CITY OF SAN ANTONIO

By: _____
SHERYL SCULLEY
City Manager

Date: _____

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER

By: _____
Andrea Marks
Vice President/CFO

Date: 4/11/16

APPROVED AS TO FORM:

_____
Name
City Attorney

APPROVED AT TO LEGAL FORM

_____
Jack Park
Chief Legal Officer