

ORDINANCE 2018-09-06-0685

**AUTHORIZING THE EXECUTION OF FUNDING AGREEMENTS WITH MUNICIPAL GOLF ASSOCIATION – SAN ANTONIO FOR FORESTATION PROJECTS AND APPROPRIATES \$1,170,000 FROM THE TREE CANOPY PRESERVATION AND MITIGATION FUND.**

\* \* \* \* \*

**WHEREAS**, the Municipal Golf Association-SA (MGA-SA) has efficiently managed and operated the City's municipal golf courses for approximately 10 years while making improvements to increase the quality of these golf facilities; and

**WHEREAS**, in 2014, MGA-SA identified forestation projects as a capital improvement and has successfully managed the planting of over 3,000 larger caliper trees throughout four golf courses; and

**WHEREAS**, MGA-SA's reforestation efforts continue to support the City's goal of protecting and increasing the tree canopy in San Antonio; and

**WHEREAS**, the City's Tree Canopy and Mitigation Fund is designated for tree planting; and

**WHEREAS**, the City's partnership with MGA-SA presents a good opportunity to collaborate and develop forestation plans for City-owned golf courses which are situated on public park land; and

**WHEREAS**, these large scale tree planting project will provide numerous environmental benefits as new trees provide cleaner air and reduce temperatures while increasing the aesthetics of the City- owned golf courses; and

**WHEREAS**, these funding agreements allows MGA-SA oversight and responsibility for the administration of the reforestation project at Northern Hills and Olmos Golf Courses; and

**WHEREAS**, trees will be of appropriate species and the project will include all the irrigation and maintenance of all trees planted through the establishment period; and

**WHEREAS**, approximately 1,000 trees will be planted at Northern Hills golf course and an additional 400 trees will be planted at Olmos Golf Course; and

**WHEREAS**, under this effort, the trees will be three times the standard size normally typically planted in park locations; and

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**WHEREAS**, this caliper of tree is most appropriate for planting on golf courses as they are mature and frame the course of play while providing privacy to the surrounding area; and

**WHEREAS**, trees planted under this agreement will not be used to offset any tree mitigation requirements; and

**WHEREAS**, this Agreement will be executed in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on this contract; and

**WHEREAS**, this contract is within the scope of the SBEDA Program; and

**WHEREAS**, due to the type of commodities/services being procured, no SBEDA tool was applied; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee, or the Director of the Department of Parks and Recreation or his designee, is authorized execute 2 Funding Agreements in a total amount not-to-exceed \$1,170,000.00 with the Municipal Golf Association-San Antonio (MGA-SA) for the use of Tree Canopy and Mitigation Funds to plant trees at City-owned golf courses managed by MGA-SA. A copy of the funding agreements, in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachments I and II.**

**SECTION 2.** Funding in the amount of \$1,170,000.00 for this ordinance is available as part of the FY2018 Budget, see the table below:

Amount	General Ledger	Cost Center	Fund
\$ 320,000.00	5201040	2616020001	29646000
\$ 850,000.00	5201040	2616010001	29619000
Total amt. \$ 1,170,000.00			

**SECTION 3.** Payment not to exceed the budgeted amount is authorized Municipal Golf Association - San Antonio (MGA-SA) and should be encumbered with a purchase order.


**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to

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

**SECTION 5.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED this 6<sup>th</sup> day of September, 2018.**



**M A Y O R**  
**Ron Nirenberg**

**ATTEST:**

**APPROVED AS TO FORM:**



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Leticia M. Vacek, City Clerk



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Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>15 ( in consent vote: 4, 5, 8, 9, 10, 11, 15 )</b>						
<b>Date:</b>	09/06/2018						
<b>Time:</b>	09:27:35 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance authorizing the execution of Funding Agreements with Municipal Golf Association - San Antonio for forestation projects and appropriates \$1,170,000 from the Tree Canopy Preservation and Mitigation Fund. [María Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

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# **ATTACHMENT I**

STATE OF TEXAS § FUNDING AGREEMENT –  
§ MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO  
COUNTY OF BEXAR § “TREE PLANTING PROJECT”

This AGREEMENT (“Agreement”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (“CITY”), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2018, and MUNICIPAL GOLF ASSOCIATION - SAN ANTONIO (“GRANTEE”), a Texas non-profit corporation, acting by and through its President/CEO, hereto duly authorized.

**RECITALS**

WHEREAS, Ordinance 2007-12-13-1354 assigned a License Agreement between City and GRANTEE to ensure a more efficient management of all municipal golf facilities in San Antonio; and

WHEREAS, Ordinance 2007-05-03-0479 approved a Management Agreement for the Management of the Municipal Golf Facilities; and

WHEREAS, Ordinance 2018-08-30-xxxx appropriated \$850,000.00 from the Tree Canopy and Tree Mitigation Fund to be used by GRANTEE to conduct additional tree planting projects on CITY-owned municipal golf courses,

NOW THEREFORE, the parties hereto (“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**

1.1 The initial term of this Agreement is three (3) years; beginning on the date of execution and expiring on September 30, 2022.

1.2 This Agreement shall be administratively extended for two, one-year extensions options.

**II. GENERAL RESPONSIBILITIES**

2.1 CITY shall provide up to \$850,000.00 in Tree Mitigation and Tree Canopy Funds for GRANTEE’s expenses for tree planting projects on municipal golf courses, as outlined in the attached Exhibit A – Scope of Work and Exhibit B – Maintenance Program subject to review and approval by the Parks and Recreation Department. Exhibit A – Scope of Work and Exhibit B – Maintenance Program may be amended administratively as approved by the Director of the Parks and Recreation Department.

2.2 The funds provided under this Agreement shall be used to plant trees on municipal golf courses which are managed by GRANTEE, and for allowable expenses as outlined in Section 7.2 of this Agreement.

2.3 Unless written notification by GRANTEE to the contrary is received and approved by CITY, GRANTEE’S President/CEO shall be GRANTEE’S designated representative responsible for the administration of this Agreement on behalf of GRANTEE.

2.4 The Parks and Recreation Director (“Director”) or his designee, is responsible for the administration of this Agreement on behalf of CITY.

2.5 This Agreement will permit the GRANTEE’S private contractor to perform installation of trees on City property.

2.6 Trees planted under this Agreement will not be used to offset any other tree mitigation requirements.

2.7 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in Sections 2.3 and 2.4 hereinabove.

### **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.1 GRANTEE warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to GRANTEE, and to GRANTEE'S use of City Funds for this project.

3.2 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

- (A) Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.
- (B) Government Code 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).
- (C) Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that its construction contractor shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City has the right to audit certified payroll records as necessary in accordance with this Agreement. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, Grantee shall cause its 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 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 Agreement.

### **IV. LEGAL AUTHORITY**

4.1 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.

4.2 GRANTEE represents, warrants, assures and guarantees that the undersigned has full legal authority to execute this Agreement on behalf of GRANTEE and to bind GRANTEE to all terms, performances and provisions herein contained.

### **V. FUNDING AND ASSISTANCE BY CITY**

5.1 In consideration of GRANTEE'S performance of all services and activities set forth in this Agreement, CITY agrees to pay GRANTEE for all eligible expenses as defined in Section 7.1 incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$850,000.00.

5.2 In order to partially offset GRANTEE'S expenses associated with the Project, the City will provide advanced payment in multiple disbursements during the term of this Agreement for the expenses reflected directly tied to the Implementation Plan reflected in Exhibit A – Scope of Work and Exhibit B – Maintenance Program.

5.3 Distribution of funds will be based upon requests submitted by GRANTEE. Subsequent to disbursement, GRANTEE shall provide City with evidence of amount of funds expended, the payee, the

date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the paid invoice(s).

5.4 The Director of the Parks and Recreation Department may amend this Agreement without further action by City Council in order to revise the Allowable Expenses in Section 7.2.

5.5 CITY shall not be obligated nor liable under this Agreement to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

## **VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

6.1 GRANTEE understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support of the use of such CITY funds.

6.2 GRANTEE agrees to maintain 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.

6.3 GRANTEE agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

6.4 In order to be reimbursed for eligible expenses, GRANTEE agrees to submit to CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the subsequent paid invoice(s).

6.5 CITY agrees to provide GRANTEE written notice regarding any expenditure the CITY reasonably determines to be outside the permissible parameters of this Agreement. GRANTEE shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to GRANTEE, refund to the CITY those funds, determined to:

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

6.6 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) calendar days of receipt of a request for reimbursement as defined above.

6.7 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) calendar days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

## **VII. ALLOWABLE EXPENDITURES**

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



7.2 The following shall be considered Eligible Expenses under this Agreement:

- (A) Purchase of all trees for implementation of this project.
- (B) Installation of all trees for implementation of this project.
- (C) Watering efforts to maintain the trees for a period of three (3) years.
- (D) Other allowable expenses associated with this work effort such as irrigation and maintenance activities, archaeological monitoring, repair of irrigation bubblers, and installation and repair of tree supports for the establishment period as deemed appropriate by the Parks and Recreation Department.

7.3 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**

8.1 GRANTEE further represents and warrants that as of the date hereof:

- (A) All information, data or reports heretofore or hereafter provided to CITY is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement 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 effect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing indenture or agreement of GRANTEE.

### **IX. ACCESSIBILITY OF RECORDS**

9.1 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.

9.2 GRANTEE agrees and represents that it will 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**

10.1 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities, and GRANTEE shall provide reasonable access to CITY for such activities, so as to ensure compliance by GRANTEE with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

### **XI. INDEMNIFICATION**

11.1 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, GRANTEE or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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.**

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

## **XII. INSURANCE**

12.1 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 PARKS AND RECREATION Department, which shall be clearly labeled "**NORTHERN HILLS GOLF COURSE TREE PLANTING PROJECTS**" 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 will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and telephone 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 PARKS AND RECREATION Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.2 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 will City allow modification whereby City may incur increased risk.

12.3 A 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:

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>*b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Damage to property rented by you</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000

\*If applicable

12.4 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. Respondent 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.

12.5 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: PARKS AND RECREATION Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

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

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

12.7 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.

12.8 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.

12.9 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.

### **XIII. NON-DISCRIMINATION**

13.1 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**

14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (A) a City officer or employee;
- (B) his parent, child or spouse;
- (C) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (D) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.2 Consultant warrants and certifies as follows:

- (A) Consultant and its officers, employees and agents are neither officers nor employees of the City.
- (B) Consultant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.3 Consultant acknowledges that City's reliance on the above warranties and certifications is reasonable.

**XV. POLITICAL ACTIVITY**

15.1 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. CONTRACTING**

16.1 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 permits required for the activities under this Agreement are obtained.

16.2 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.

**XVII. CHANGES AND AMENDMENTS**

17.1 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.

17.2 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.

**XVIII. ASSIGNMENTS**

18.1 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 other assignment shall be void *ab initio* and shall confer no rights upon any third person.

**XIX. SEVERABILITY OF PROVISIONS**

19.1 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.

**XX. DEFAULT**

20.1 Upon default by GRANTEE in the performance of its obligations hereunder, CITY shall give GRANTEE notice of the same and GRANTEE shall have 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 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.

20.2 Upon default by CITY in the performance of its obligations hereunder GRANTEE shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from GRANTEE (or such reasonably longer time as may be necessary provided CITY commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If CITY fails to timely cure such default, GRANTEE may pursue all remedies available in law or equity and/or other rights GRANTEE may have in this Agreement, subject to the limitations set forth in Section 23.01.

#### **XXI. NON-WAIVER OF PERFORMANCE**

21.1 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.

21.2 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.

21.3 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**

22.1 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 is in writing, dated subsequent to the date hereof and duly executed by the Parties.

#### **XXIII. NOTICES**

23.1 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

**CITY:**

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

**GRANTEE:**

President/CEO  
Municipal Golf Association-San Antonio  
2315 Avenue B  
San Antonio, Texas 78215

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. 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**

24.1 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**

25.1 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**

26.1 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.

**XXVII. GENDER**

27.1 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.

**XXVIII. CAPTIONS**

28.1 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.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF SAN ANTONIO**

**GRANTEE**

By: \_\_\_\_\_  
Xavier D. Urrutia, Director,  
Parks and Recreation Department

By: \_\_\_\_\_  
Jim Roschek, President and CEO  
Municipal Golf Association, San Antonio

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_

**Exhibit A – Scope of Work**  
**Exhibit B – Maintenance Program**

## **Exhibit A – Scope of Work**

### STATEMENT OF WORK

GRANTEE shall purchase, install and maintain various tree species as follows: 1,000 trees at Northern Hills Golf Course and address archaeological monitoring, if applicable.

### DELIVERABLES:

GRANTEE will plant, maintain, water and replace trees installed under this agreement during the establishment period. GRANTEE agrees to provide each deliverable identified above no later than the timeline established by the CITY.

GRANTEE agrees to manage and perform all work as listed below:

### Implementation Plan

- A) Submit an Implementation Plan to the CITY for approval prior to commencement of any purchase, delivery, or planting of trees. Such Implementation Plan shall include a schedule of activities related to advanced site preparation including but not limited to: irrigation, staging/set up costs, tree purchase, delivery, installation and archaeological monitoring.
- B) Ensure that a transparent process for the solicitation of a Request For Proposal (RFP) for the GRANTEE's selection of a contractor shall be easily accessible and viewable by the public, shall be clearly labeled "Request For Proposal" and posted directly on the GRANTEE's website, and shall include all terms, requirements and conditions of the RFP.
- C) Select contractor, source and oversee nursery stock installation and all appropriate establishment activities.
- D) Source stock from local nurseries to the extent possible.
- E) Implement winter/spring planting timeline within the contract term as approved by the Parks and Recreation Department.
- F) Plant a minimum of 1,000 trees at Northern Hills Golf Course.
- G) Ensure that work will not impact utility lines.
- H) Require GRANTEE'S contractor to warranty trees for a period of one year.
- I) Take appropriate measures to maximize the survival rate at 80% or more.
- J) Maintain irrigation, mulching, and all other appropriate activities for the maintenance and care of trees during the establishment period, which may extend beyond the term of this Agreement.



**Exhibit B – Maintenance Program**

The GRANTEE shall coordinate with the CITY to plant hundreds of trees on the City’s eight golf courses. It is important to the CITY that the planted trees are maintained properly during the early stages of their life. The following is a description of expenses anticipated for maintenance of 1,000 trees at Northern Hills Golf Course.

- WATER: 20 gallons per day for the first 30 days  
20 gallons every other day for remainder of year
- WEED CONTROL: Spay with herbicide during growing season every 60 days. (4 x yearly)  
April 15, June 15, August 15, October 15
- EVERY 3 MONTHS: Check guide wires and poles. Ensure trees remain at 90 degrees.
- FERTILIZATION: Broadcast in a six-foot diameter a 13-13-13 balance fertilizer with  
at least 50% slow release Nitrogen  
Fertilize after planting and at the six month mark (3 lbs. per N per year)
- AT ONE YEAR: Remove stakes and wires  
Level basins and check irrigation bubblers  
Prune every tree as needed
- BUDGET: Estimated Annual Cost: \$44.00 per tree per year

<b>Maintenance Program - Northern Hills Golf Course</b>		
	<b>Annual Cost / Tree</b>	<b>Annual Cost</b>
Water:	\$ 10.00	\$ 10,000.00
Control:	\$ 9.00	\$ 9,000.00
3 month check:	\$ 1.00	\$ 1,000.00
Fertilization:	\$ 7.00	\$ 7,000.00
One Year Maintenance:	\$ 17.00	\$ 17,000.00
<b>Estimated Annual Cost:</b>	<b>\$ 44.00</b>	<b>\$ 44,000.00</b>

SWah  
9/6/18  
Item #15

# **ATTACHMENT II**

STATE OF TEXAS           §           **FUNDING AGREEMENT –**  
   §           **MUNICIPAL GOLF ASSOCIATION-SAN ANTONIO**  
 COUNTY OF BEXAR       §           **“TREE PLANTING PROJECT”**

This AGREEMENT (“Agreement”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (“CITY”), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2018, and **MUNICIPAL GOLF ASSOCIATION - SAN ANTONIO** (“GRANTEE”), a Texas non-profit corporation, acting by and through its President/CEO, hereto duly authorized.

**RECITALS**

WHEREAS, Ordinance 2007-12-13-1354 assigned a License Agreement between City and GRANTEE to ensure a more efficient management of all municipal golf facilities in San Antonio; and

WHEREAS, Ordinance 2007-05-03-0479 approved a Management Agreement for the Management of the Municipal Golf Facilities; and

WHEREAS, Ordinance 2018-08-30-xxxx appropriated \$320,000.00 from the Tree Canopy and Tree Mitigation Fund to be used by GRANTEE to conduct additional tree planting projects on CITY-owned municipal golf courses,

NOW THEREFORE, the parties hereto (“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**

1.1 The initial term of this Agreement is three (3) years; beginning on the date of execution and expiring on September 30, 2022.

1.2 This Agreement shall be administratively extended for two, one-year extensions options.

**II. GENERAL RESPONSIBILITIES**

2.1 CITY shall provide up to \$320,000.00 in Tree Mitigation and Tree Canopy Funds for GRANTEE’s expenses for tree planting projects on municipal golf courses, as outlined in the attached Exhibit A – Scope of Work and Exhibit B – Maintenance Program subject to review and approval by the Parks and Recreation Department. Exhibit A – Scope of Work and Exhibit B – Maintenance Program may be amended administratively as approved by the Director of the Parks and Recreation Department.

2.2 The funds provided under this Agreement shall be used to plant trees on municipal golf courses which are managed by GRANTEE, and for allowable expenses as outlined in Section 7.2 of this Agreement.

2.3 Unless written notification by GRANTEE to the contrary is received and approved by CITY, GRANTEE’S President/CEO shall be GRANTEE’S designated representative responsible for the administration of this Agreement on behalf of GRANTEE.

2.4 The Parks and Recreation Director (“Director”) or his designee, is responsible for the administration of this Agreement on behalf of CITY.

2.5 This Agreement will permit the GRANTEE’S private contractor to perform installation of trees on City property.

2.6 Trees planted under this Agreement will not be used to offset any other tree mitigation requirements.

2.7 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in Sections 2.3 and 2.4 hereinabove.

### **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.1 GRANTEE warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to GRANTEE, and to GRANTEE'S use of City Funds for this project.

3.2 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

- (A) Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.
- (B) Government Code 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).
- (C) Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that its construction contractor shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City has the right to audit certified payroll records as necessary in accordance with this Agreement. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, Grantee shall cause its 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 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 Agreement.

### **IV. LEGAL AUTHORITY**

4.1 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.

4.2 GRANTEE represents, warrants, assures and guarantees that the undersigned has full legal authority to execute this Agreement on behalf of GRANTEE and to bind GRANTEE to all terms, performances and provisions herein contained.

### **V. FUNDING AND ASSISTANCE BY CITY**

5.1 In consideration of GRANTEE'S performance of all services and activities set forth in this Agreement, CITY agrees to pay GRANTEE for all eligible expenses as defined in Section 7.1 incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$320,000.00.

5.2 In order to partially offset GRANTEE'S expenses associated with the Project, the City will provide advanced payment in multiple disbursements during the term of this Agreement for the expenses reflected directly tied to the Implementation Plan reflected in Exhibit A – Scope of Work and Exhibit B – Maintenance Program.

5.3 Distribution of funds will be based upon requests submitted by GRANTEE. Subsequent to disbursement, GRANTEE shall provide City with evidence of amount of funds expended, the payee, the

date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the paid invoice(s).

5.4 The Director of the Parks and Recreation Department may amend this Agreement without further action by City Council in order to revise the Allowable Expenses in Section 7.2.

5.5 CITY shall not be obligated nor liable under this Agreement to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

#### **VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

6.1 GRANTEE understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support of the use of such CITY funds.

6.2 GRANTEE agrees to maintain 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.

6.3 GRANTEE agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

6.4 In order to be reimbursed for eligible expenses, GRANTEE agrees to submit to CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the subsequent paid invoice(s).

6.5 CITY agrees to provide GRANTEE written notice regarding any expenditure the CITY reasonably determines to be outside the permissible parameters of this Agreement. GRANTEE shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to GRANTEE, refund to the CITY those funds, determined to:

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

6.6 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) calendar days of receipt of a request for reimbursement as defined above.

6.7 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) calendar days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

#### **VII. ALLOWABLE EXPENDITURES**

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

7.2 The following shall be considered Eligible Expenses under this Agreement:

- (A) Purchase of all trees for implementation of this project.
- (B) Installation of all trees for implementation of this project.
- (C) Watering efforts to maintain the trees for a period of three (3) years.
- (D) Other allowable expenses associated with this work effort such as irrigation and maintenance activities, archaeological monitoring, repair of irrigation bubblers, and installation and repair of tree supports for the establishment period as deemed appropriate by the Parks and Recreation Department.

7.3 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**

8.1 GRANTEE further represents and warrants that as of the date hereof:

- (A) All information, data or reports heretofore or hereafter provided to CITY is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement 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 effect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing indenture or agreement of GRANTEE.

### **IX. ACCESSIBILITY OF RECORDS**

9.1 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.

9.2 GRANTEE agrees and represents that it will 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**

10.1 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities, and GRANTEE shall provide reasonable access to CITY for such activities, so as to ensure compliance by GRANTEE with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

### **XI. INDEMNIFICATION**

11.1 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, GRANTEE or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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.**

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

## **XII. INSURANCE**

12.1 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 PARKS AND RECREATION Department, which shall be clearly labeled "**OLMOS BASIN GOLF COURSE TREE PLANTING PROJECT**" 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 will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and telephone 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 PARKS AND RECREATION Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.2 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 will City allow modification whereby City may incur increased risk.

12.3 A 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:

TYPE	AMOUNTS
I. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>*b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Damage to property rented by you</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000

\*If applicable

12.4 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. Respondent 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.

12.5 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: PARKS AND RECREATION Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

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

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

12.7 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.

12.8 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.

12.9 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.

### **XIII. NON-DISCRIMINATION**

13.1 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**

14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (A) a City officer or employee;
- (B) his parent, child or spouse;
- (C) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (D) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.2 Consultant warrants and certifies as follows:

- (A) Consultant and its officers, employees and agents are neither officers nor employees of the City.
- (B) Consultant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.3 Consultant acknowledges that City's reliance on the above warranties and certifications is reasonable.

**XV. POLITICAL ACTIVITY**

15.1 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. CONTRACTING**

16.1 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 permits required for the activities under this Agreement are obtained.

16.2 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.

**XVII. CHANGES AND AMENDMENTS**

17.1 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.

17.2 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.

**XVIII. ASSIGNMENTS**

18.1 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 other assignment shall be void *ab initio* and shall confer no rights upon any third person.

**XIX. SEVERABILITY OF PROVISIONS**

19.1 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.

**XX. DEFAULT**

20.1 Upon default by GRANTEE in the performance of its obligations hereunder, CITY shall give GRANTEE notice of the same and GRANTEE shall have 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 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.

20.2 Upon default by CITY in the performance of its obligations hereunder GRANTEE shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from GRANTEE (or such reasonably longer time as may be necessary provided CITY commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If CITY fails to timely cure such default, GRANTEE may pursue all remedies available in law or equity and/or other rights GRANTEE may have in this Agreement, subject to the limitations set forth in Section 23.01.

#### **XXI. NON-WAIVER OF PERFORMANCE**

21.1 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.

21.2 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.

21.3 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**

22.1 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 is in writing, dated subsequent to the date hereof and duly executed by the Parties.

#### **XXIII. NOTICES**

23.1 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

CITY:

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

GRANTEE:

President/CEO  
Municipal Golf Association-San Antonio  
2315 Avenue B  
San Antonio, Texas 78215

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. 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**

24.1 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**

25.1 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**

26.1 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.

**XXVII. GENDER**

27.1 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.

**XXVIII. CAPTIONS**

28.1 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.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF SAN ANTONIO**

**GRANTEE**

By: \_\_\_\_\_  
Xavier D. Urrutia, Director,  
Parks and Recreation Department

By: \_\_\_\_\_  
Jim Roschek, President and CEO  
Municipal Golf Association, San Antonio

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Exhibit A – Scope of Work**  
**Exhibit B – Maintenance Program**

## **Exhibit A – Scope of Work**

### STATEMENT OF WORK

GRANTEE shall purchase, install and maintain various tree species as follows: 400 trees at Olmos Basin Golf Course and address archaeological monitoring, if applicable.

### DELIVERABLES:

GRANTEE will plant, maintain, water and replace trees installed under this agreement during the establishment period. GRANTEE agrees to provide each deliverable identified above no later than the timeline established by the CITY.

GRANTEE agrees to manage and perform all work as listed below:

### Implementation Plan

- A) Submit an Implementation Plan to the CITY for approval prior to commencement of any purchase, delivery, or planting of trees. Such Implementation Plan shall include a schedule of activities related to advanced site preparation including but not limited to: irrigation, staging/set up costs, tree purchase, delivery, installation and archaeological monitoring.
- B) Ensure that a transparent process for the solicitation of a Request For Proposal (RFP) for the GRANTEE's selection of a contractor shall be easily accessible and viewable by the public, shall be clearly labeled "Request For Proposal" and posted directly on the GRANTEE's website, and shall include all terms, requirements and conditions of the RFP.
- C) Select contractor, source and oversee nursery stock installation and all appropriate establishment activities.
- D) Source stock from local nurseries to the extent possible.
- E) Implement winter/spring planting timeline within the contract term as approved by the Parks and Recreation Department.
- F) Plant a minimum of 400 trees at Olmos Basin Golf Course.
- G) Ensure that work will not impact utility lines.
- H) Require GRANTEE'S contractor to warranty trees for a period of one year.
- I) Take appropriate measures to maximize the survival rate at 80% or more.
- J) Maintain irrigation, mulching, and all other appropriate activities for the maintenance and care of trees during the establishment period, which may extend beyond the term of this Agreement.

**Exhibit B – Maintenance Program**

The GRANTEE shall coordinate with the CITY to plant hundreds of trees on the City’s eight golf courses. It is important to the CITY that the planted trees are maintained properly during the early stages of their life. The following is a description of expenses anticipated for maintenance of 400 trees at Olmos Basin Golf Course.

- WATER: 20 gallons per day for the first 30 days  
20 gallons every other day for remainder of year
- WEED CONTROL: Spay with herbicide during growing season every 60 days. (4 x yearly)  
April 15, June 15, August 15, October 15
- EVERY 3 MONTHS: Check guide wires and poles. Ensure trees remain at 90 degrees.
- FERTILIZATION: Broadcast in a six-foot diameter a 13-13-13 balance fertilizer with  
at least 50% slow release Nitrogen  
Fertilize after planting and at the six month mark (3 lbs. per N per year)
- AT ONE YEAR: Remove stakes and wires  
Level basins and check irrigation bubblers  
Prune every tree as needed
- BUDGET: Estimated Annual Cost: \$44.00 per tree per year

<b>Maintenance Program - Olmos Basin Golf Course</b>		
	<b>Annual Cost / Tree</b>	<b>Annual Cost</b>
Water:	\$ 10.00	\$ 4,000.00
Control:	\$ 9.00	\$ 3,600.00
3 month check:	\$ 1.00	\$ 400.00
Fertilization:	\$ 7.00	\$ 2,800.00
One Year Maintenance:	\$ 17.00	\$ 6,800.00
<b>Estimated Annual Cost:</b>	<b>\$ 44.00</b>	<b>\$ 17,600.00</b>