

AN ORDINANCE 2015-10-29-0933

**AUTHORIZING THE NEGOTIATION AND EXECUTION OF A DEVELOPER PARTICIPATION AGREEMENT WITH SECURITY SERVICE FEDERAL CREDIT UNION AND AUTHORIZING \$817,000.00, PAYABLE TO SSFCU, FOR THE REGIONAL DRAINAGE AND WATER QUALITY PUBLIC INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT OF THE SSFCU HEADQUARTERS.**

\* \* \* \* \*

**WHEREAS, Security Service Federal Credit Union (SSFCU)** acquired property in March 2014 to consolidate its San Antonio locations and construct a new headquarters facility at 14880 West IH-10 in San Antonio; and

**WHEREAS,** as part of the construction of its new headquarters facility, SSFCU will provide public infrastructure improvements to the area, which include Regional Drainage and Water Quality Public Infrastructure Improvements; and

**WHEREAS,** the drainage improvements at UTSA Boulevard and UTEX Boulevard will provide for improvements to the current drainage structures and enhanced drainage flow of the surrounding areas and will eliminate the low water crossing at UTSA Boulevard; and

**WHEREAS,** UTSA Boulevard is currently functioning with four (4) six (6) foot by four (4) foot box culverts and this Project will add four (4) eight (8) foot by four (4) foot box culverts to, for a total of eight (8) box culverts; and

**WHEREAS,** the drainage improvements at UTEX Boulevard include replacing four (4) thirty (30) inch pipe culverts with eight (8) feet by four (4) feet box culverts; and

**WHEREAS,** on July 21, 2015, the Bexar County Commissioner's Court approved an Interlocal Agreement with the City of San Antonio in order to commit \$817,000.00 from Storm Water Quality Funds in support of this Project and will help accomplish the County's objective of improving storm water quality management; and

**WHEREAS,** this Ordinance authorizes the execution of a Developer Participation Agreement with **Security Service Federal Credit Union** and authorizes payment of \$817,000.00 Public Infrastructure and Water Quality Improvements for engineering and construction-related costs in relation to the Regional Drainage and Water Quality Public Infrastructure Improvements associated with the development of the SSFCU Headquarters located in District 8; and

**WHEREAS,** if this Developer Participation Agreement with SSFCU is not approved, the Interlocal Agreement would be voided as funds are only available from Bexar County for the improvements to be constructed by SSFCU for the Regional Drainage and Water Quality Public Infrastructure Improvements associated with the development of the SSFCU Headquarters;  
**NOW THEREFORE,**

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

**SECTION 1.** The City Manager, or her designee, is authorized to execute a Developer Participation Contract, in substantial form as **ATTACHMENT A**, with **Security Service Federal Credit Union** in the amount of \$817,000.00 for the Regional Drainage and Water Quality Public Infrastructure Improvements associated with the development of the SSFCU Headquarters.

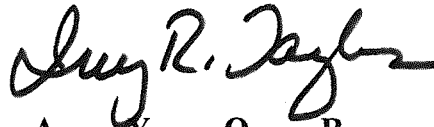
**SECTION 2.** The Contract must be executed within 90 days of signing of this Ordinance; if the parties are not able to finalize within 90 days, the Agreement must be considered through a subsequent Ordinance. Should an Agreement be negotiated which substantially varies from the terms of the attached Agreement, the Agreement must be considered through a subsequent Ordinance.

**SECTION 3.** Payment in amount not to exceed \$817,000.00 in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01504, UTEX Boulevard Improvements, is authorized to be encumbered and made payable to **Security Service Federal Credit Union** (SSFCU), for execution of a Developer Participation Agreement.

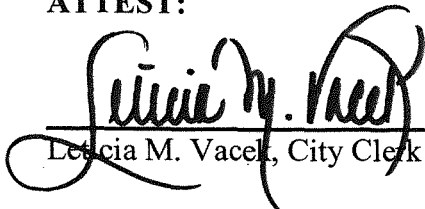
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.


**PASSED AND APPROVED** this 29th day of October, 2015.

  
M A Y O R  
Ivy R. Taylor

**ATTEST:**

  
Leticia M. Vaceli, City Clerk

**APPROVED AS TO FORM:**

 for  
Martha G. Sepeda, Acting City Attorney

<b>Agenda Item:</b>	25B ( in consent vote: 5, 6, 7, 8, 9A, 10, 12A, 12B, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25A, 25B )
<b>Date:</b>	10/29/2015
<b>Time:</b>	10:27:24 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing the execution of a Developer Participation Agreement with Security Service Federal Credit Union (SSFCU) and authorizing \$817,000.00, payable to SSFCU, for the Regional Drainage and Water Quality Public Infrastructure Improvements associated with the development of the SSFCU Headquarters.
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

STATE OF TEXAS        §  
                                 §  
COUNTY OF BEXAR    §        **DEVELOPER PARTICIPATION AGREEMENT  
FOR SECURITY SERVICE FEDERAL CREDIT  
UNION HEADQUARTERS**

This Developer Participation Agreement is hereby made and entered into by and between the City of San Antonio (hereafter referred to as "*City*"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and Security Service Federal Credit Union (hereafter referred to as "*SSFCU*" or sometimes as "*Developer*"), acting by and through its officers, hereto duly authorized (City and Developer hereafter referred to singularly as "*Party*" and collectively referred to as "*the Parties*").

**WHEREAS**, SSFCU plans to develop, construct and consolidate its current San Antonio locations into a new corporate and regional headquarters facility (the "*SSFCU Regional Headquarters*") located at 14880 W IH 10 in San Antonio; and

**WHEREAS**, the SSFCU Regional Headquarters investment includes Regional Drainage and Water Quality Public Infrastructure Improvements described on the attached Exhibit "D" (hereinafter the "*Project*");

**WHEREAS**, the Project qualifies for a Developer Participation Contract for public infrastructure improvements for which City funds may be used; and

**WHEREAS**, City has identified SSFCU as the appropriate party to contract with for the fulfillment of the public purpose of public infrastructure construction in accordance with all applicable laws of public funding; and

**WHEREAS**, SSFCU will design and construct the Project, and

**WHEREAS**, the public benefit to be gained from the Project is the provision of improving public drainage, water quality and public infrastructure improvements for the City of San Antonio; and

**WHEREAS**, Texas Local Government Code, Sections 212.071 – 212.074 allows a municipality to enter into agreements with a developer of a subdivision or land in the municipality pursuant to which a municipality may participate in the cost of public infrastructure improvements related to the development at a level not to exceed thirty percent (30%) of the total contract price required for public infrastructure improvements in a development or subdivision of land in the municipality; and

**WHEREAS**, this Developer Participation Agreement with SSFCU for the Project limits the City's participation to a level not to exceed 30% of the total Project infrastructure design and construction contract price not to exceed EIGHT HUNDRED SEVENTEEN THOUSAND DOLLARS AND NO/100 (\$817,000.00) or less for the Project; and

**WHEREAS**, the total estimated design and construction contract price for all of the public infrastructure associated with the SSFCU Regional Headquarters (the "**Total Contract Price**") is TEN MILLION EIGHT HUNDRED FORTY-SIX THOUSAND TWO HUNDRED SIXTY-THREE DOLLARS AND NO/100 (\$10,846,263.00); and

**WHEREAS**, City's agreed participation in the Project is the lesser of an amount not to exceed EIGHT HUNDRED SEVENTEEN THOUSAND DOLLARS AND NO/100 (\$817,000.00) and to a level not to exceed thirty percent (30%) of the Total Contract Price; and

**WHEREAS**, the amount appropriated by the San Antonio City Council to the Project is EIGHT HUNDRED SEVENTEEN THOUSAND DOLLARS AND NO/100 (\$817,000.00); and

**WHEREAS**, the Developer shall complete the design and construction of the Project not later than three (3) years from the date of execution of this Agreement; and

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

## **I. DEFINITIONS**

1.01 "**Agreement**" means this Developer Participation Agreement between the City of San Antonio, Texas and SSFCU.

1.02 "**Amount appropriated by City Council**" is an amount not to exceed EIGHT HUNDRED SEVENTEEN THOUSAND DOLLARS AND NO/100 (\$817,000.00).

1.03 "**City**" means the City of San Antonio, Texas, a Texas municipal corporation.

1.04 "**City's Representative**" means the Director of Transportation & Capital Improvements (hereafter referred to as "**TCP**") or such other person as the City Manager may designate.

1.05 "**City Share**" means the lesser of (a) 30% of the Total Contract Price or (b) EIGHT HUNDRED SEVENTEEN THOUSAND DOLLARS AND NO/100 (\$817,000.00).

1.06 "**Construction Documents**" means the plans, specifications and estimates for the Project which shall be provided by the Developer pursuant to the terms of this Agreement. The Construction Documents shall illustrate the dimensions, materials, methods of construction, methods of excavation, and other pertinent and customary details of the Project. A description of the Construction Documents is provided in **Exhibit A** attached hereto.

1.07 "**Contract Documents**" means this Agreement and Exhibit A through Exhibit D attached hereto, incorporated herein by reference and made a part hereof for all purposes.

1.08 "**Developer**" means SSFCU.

1.09 "**Developer Property**" means the approximately 64 acre property described in **Exhibit B** attached hereto that is owned by Developer.

1.10 "**Developer's Representative**" means Developer's Project Manager or such other person as Developer may designate.

1.11 "**Developer's Share**" means all costs of the Project in excess of City Share.

1.12 "**Development**" means the SSFCU Regional Headquarters described in **Exhibit C** attached hereto.

1.13 "**Director**" means the Director of Transportation & Capital Improvements Department, City of San Antonio.

1.14 "**Project**" means the Regional Drainage and Water Quality Public Infrastructure Improvements more fully described in **Exhibit D** attached hereto and made a part hereof for all purposes.

1.15 "**Project Costs**" means all costs and expenses incurred by Developer with respect to the completion of the Project in accordance with this Agreement, including without limitation all costs to: (i) prepare the Construction Documents, including but not limited to: (a) all engineering fees and expenses for all studies, estimates of probable costs and other work performed by the Project Manager; (b) all required utility removal, replacement, and relocation cost along with all required environmental reports and permits; (c) all title work; (d) all legal fees; and (e) all other fees and expenses relating to the Project; and (ii) all costs and expenses to construct the Project.

1.16 "**Project Manager**" means Jack Dysart.

1.17 "**Subcontractor(s)**" means persons or business entities providing construction services or supplies for the Construction Contractor (as defined in Section 2.04).

1.18 "**Total Contract Price**" is TEN MILLION EIGHT HUNDRED FORTY SIX THOUSAND TWO HUNDRED SIXTY-THREE DOLLARS AND NO/100 (\$10,846,263.00).

1.19 "**Work**" means the installation and construction of the Project by Developer in accordance with the Construction Documents and as provided herein.

## II. CONTRACT PROVISIONS

2.01 This Agreement qualifies as a "Developer Participation Contract" pursuant to Sections 212.071-212.074 of the Texas Local Government Code. In this regard, Developer shall construct the Project and City shall pay the City Share of the Project Costs, and Developer shall pay the Developer's Share of the Project Costs.

2.02 Developer shall design and construct the Project in accordance with the requirements of the City of San Antonio Unified Development Code (hereafter referred to as "*UDC*") Conventional Drainage Design Standards.

2.03 Developer shall initially pay all costs incurred from time to time with respect to the Work. After the Project is constructed and accepted by City, Developer shall submit a Request for Reimbursement (as defined in Section 7.03 below) to City. Upon approval of the Request for Reimbursement, City shall pay to Developer City's Share within thirty (30) days following City's receipt of such approved Request for Reimbursement.

2.04 Prior to the commencement of construction on the Project, Developer's contractor (the "*Construction Contractor*") shall provide City with (a) payment and performance bonds for the Project in accordance with and in satisfaction of Section 212.073 of the Texas Local Government Code and Chapter 2253 of the Government Code, reflecting City as beneficiary thereunder, and (b) insurance certificates showing the City and Bexar County, Texas as a named insured in types and amounts reasonably required by the City's Risk Manager. The foregoing shall remain in force and effect throughout the course of construction of the Project.

2.05 Developer's contract with the Construction Contractor for the Project shall prohibit third party beneficiaries other than City, which shall be specifically designated as a third party beneficiary, shall not be assignable by the Developer and shall provide City access to the Project at all reasonable times for inspection purposes.

2.06 "As Built" Plans shall be provided to City no later than 60 days after completion of the Project, as jointly certified by the Project Manager and the Director.

2.07 Developer warrants that title to all Work covered by any Request for Reimbursement will pass to City no later than the time of payment. Developer further warrants that upon submittal of a Request for Reimbursement, all Work for which the Request for Reimbursement is issued shall, to the best of Developer's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Developer, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **DEVELOPER SHALL INDEMNIFY AND HOLD CITY AND BEXAR COUNTY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CONSTRUCTION CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONSTRUCTION CONTRACTOR OR**

**SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE CITY TO DEVELOPER.**

2.08 In the Request for Reimbursement, Developer shall certify that there are no known liens or bond claims outstanding at the date of the Request for Reimbursement, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Request for Reimbursement and that except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work, and that releases from all Subcontractors and Developer's Construction Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work performed; provided that if any of the foregoing is not true and cannot be certified, Developer shall revise the Request for Reimbursement as appropriate and identify all exceptions to the requested certifications.

2.09 City shall, within thirty (30) days after receipt of Developer's Request for Reimbursement, either pay the Request for Reimbursement, for such amount as City determines is properly due, or notify Developer in writing of City's reasons for withholding payment in whole or in part as provided in Section 2.11.

2.10 The payment of the Request for Reimbursement shall constitute City's understanding based on City's evaluation of the Work and the data comprising the Request for Reimbursement, that the Work has been completed and that, to the best of City's knowledge, information and belief, the quality of the Work is in accordance with the Agreement Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion, and to any specific qualifications. The Payment will further constitute a representation that the Developer is entitled to payment in the amount paid. However, the issuance of a Payment shall not be a representation that City has: (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Developer's right to payment.

2.11 City may withhold Payment in whole or in part, to the extent reasonably necessary to protect City if, in City's opinion, the requirements of this Section 2.11 cannot be made. If City is unable to make payment in the amount of the Request for Reimbursement, City shall notify Developer as provided in Section 2.09. If Developer and City cannot agree on a revised amount, City will promptly issue Payment for the amount for which City agrees. City may also withhold Payment in whole or in part, because of subsequently discovered evidence, may modify the whole or a part of a Payment to such extent as may be necessary, in City's opinion, to protect City from loss for which the Developer is responsible, including loss resulting from acts and omissions because of:

2.11.01 defective Work not remedied;



- 2.11.02 third party claims filed or reasonable evidence indicating probable filing of such claims for which Developer is responsible hereunder unless security acceptable to City is provided by Developer;
- 2.11.03 failure of Developer to make payments properly to the Construction Contractor, Subcontractors or for labor, materials or equipment;
- 2.11.04 reasonable evidence that the Work cannot be completed for the unpaid balance of City's Share and Developer has failed to provide City adequate assurance of its continued performance within a reasonable time after demand.

City shall pay the undisputed portions of such Request for Reimbursement within the time frames established in Article II.

2.12 When the above reasons for withholding payment are removed, payment shall be made for amounts previously withheld. City shall not be deemed in default by reason of withholding payment as provided for in subparagraph 2.11.

2.13 After City has reviewed the Request for Reimbursement, City shall make payment to Developer in the manner and within the time provided herein.

- 2.13.01 City shall not have an obligation to pay or to see to the payment of money to the Construction Contractor or a Subcontractor, except as may otherwise be required by law, if any.
- 2.13.02 Payments to material suppliers shall be treated in a manner similar to that provided in this Section regarding the Construction Contractor and Subcontractors.
- 2.13.03 A reimbursement payment, or partial or entire use or occupancy of the Project by City shall not constitute acceptance of Work that was not performed or furnished in accordance with the Agreement Documents.

2.14 Inspections. The Project shall be accessible at all reasonable times to City and its designee(s) for inspection. Developer acknowledges any inspections performed by City during the course of construction for purposes of this Agreement (as opposed to routine building and construction inspections performed by City for permitting and acceptance purposes common to all similar construction projects) are for the benefit of City only and may not be relied upon by others, be claimed by Developer as an approval by City, a permit granted by City, a waiver by City or used for any purpose by Developer, the Developer or any third party. Developer further acknowledges that Developer is required to perform its own inspections and any inspections by City do not waive, lessen or address

any obligations of Developer or others. Subject to the foregoing, City promptly shall notify Developer of any defects or non-conformances discovered during any City inspection.

2.15 Construction Documents. Developer shall provide City with a complete set of Construction Documents for the Project meeting the requirements of this Agreement and in conformance with all applicable local, state and federal codes and regulations and customary engineering practices. The Construction Documents shall be prepared by and bear the seal of the individual engineer working on behalf of the Project Manager. Construction of any part of the Project shall in no event commence prior to Director's approval of the Construction Documents for that part of the Project. Developer shall cause the preparation of the Construction Documents promptly upon completion of engineering and design and to diligently continue same to completion. City shall own the Construction Documents upon payment by City of the City Share of the total Project design/engineering charges and Developer shall thereupon obtain and provide Project Manager's assignment of its interest to City, subject to any limitations under law. Developer hereby assigns its interest in the Construction Documents to City, to become effective upon receipt by Developer of the total City Share. City shall own the Construction Documents for all purposes and may duplicate them, license them, use them and re-use them for any and all purposes.

2.16 Warranty. If the Work is found to be defective, either wholly or in part, and/or found to be non-conforming with the Agreement Documents and/or the Construction Documents during the twelve (12) month period following City's acceptance of the Project, City immediately shall give Developer written notice thereof; specifying the defect and/or non-conforming Work with particularity. Developer shall cause the correction of such defective or nonconforming Work within thirty (30) days of notice thereof given by City, or within such longer time as may be reasonably necessary, provided Developer is working diligently and continuously towards a cure. If Developer fails to so cure such defective or non-conforming Work, then City may, at its own expense, correct such defective or non-conforming Work by City's own crews or by outside Developers, at City's option, and the reasonable cost of such correction shall be deemed to be sums due to City by Developer, and may be offset against any outstanding sums due by City to Developer under this Agreement. The cost of City crews shall be determined by prevailing market rates for performing the work required to correct such defects and/or nonconforming work. At the end of said 12-month period, all available product and workmanship material warranties, including all warranties given by Developer, shall be assigned to City, to the extent assignable. This provision shall survive termination of this Agreement.

2.17 Default. Upon the occurrence of a default by Developer in the performance of its obligations hereunder (a "Default") and the failure of Developer to cure such Default within thirty (30) days following receipt of written notice of Default from City (or such reasonably longer time as may be necessary provided the Developer commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion), City shall have the right to terminate this Agreement. The following shall be deemed

Defaults hereunder:

- 2.17.01 The failure or refusal of Developer/Developer's Contractor to start the Work.
- 2.17.02 A reasonable belief that the progress of the Work being made by Developer/Developer's Contractor is insufficient to complete the Work within the specified time.
- 2.17.03 The failure or refusal of Developer/Developer's Contractor to provide sufficient and/or proper equipment or construction forces to properly execute the Work in an timely manner.
- 2.17.04 The failure or refusal on the part of Developer to observe any material requirements of the Agreement Documents
- 2.17.05 The failure or refusal of Developer/Developer's Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by City.

2.18 In the event of an uncured Default by Developer of Work to be performed under this Article II and only in the event that City decides to construct or correct deficiencies of the Project pursuant to Section 2.16, the Developer shall grant to City a twenty-five (25) foot construction easement on each side of the Project for City to complete the construction of the Project but only to the extent of property owned by Developer and unburdened by conflicting easements. In this event, Developer agrees to reimburse City for any reasonable costs in excess of City Share. This Agreement shall operate as an agreement by Developer to allow City access to the Property as necessary to complete the Project in accordance with the Agreement Documents. These remedies are in addition to any money damages and/or legal, equitable and/or other contract rights City may have in the event of Developer's Default; provided that it is expressly agreed that neither Party shall have the right to seek consequential, special or punitive damages against the other for any default under this Agreement.

2.19 Representations and Warranties. Developer and City represent, warrant, certify and agree that neither this Agreement, nor the Agreement Documents, nor any part of the relationship between the parties hereto shall be construed in any way or operate as creating a joint venture, partnership or other business entity between Developer and City.

### III. TERM

The term (the "*Term*") of this Agreement shall commence upon execution of the Agreement by both Parties, and continue until the Project is complete and accepted by City and all payments received by Developer pursuant to this Agreement. Notwithstanding the foregoing, certain provisions of this Agreement, including Section 2.16, shall survive the Term.

## **IV. GENERAL RESPONSIBILITIES OF DEVELOPER AND CITY**

### **RESPONSIBILITIES OF DEVELOPER**

4.01 Developer hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the design and construction of the Project not later than three (3) years from the date of execution of this Agreement. Construction of the Project shall be in accordance with the City Unified Development Code (hereinafter referred to as "UDC") all applicable state and federal environmental requirements, including all City applicable construction and development regulations.

4.02 Current budget estimates for the Total Contract Price is TEN MILLION EIGHT HUNDRED FORTY-SIX THOUSAND TWO HUNDRED SIXTY-THREE DOLLARS AND NO/100 (\$10,846,263.00). Developer shall provide all necessary funding for the Project and the Total Contract Price beyond City Share.

4.03 Unless written notification by Developer to the contrary is received and approved by City, the Project Manager shall be the Developer designated representative responsible for the management of this Agreement with TCI.

4.04 The Director of TCI or his/her designee shall be responsible for the administration of this Agreement on behalf of City until the completion of the Project.

4.05 Communications between TCI and Developer shall be directed to the designated representatives of each as set forth in paragraphs numbered 4.03 and 4.04 herein.

4.06 Developer shall provide to City its plans and specifications for the Project, and such Plans shall be subject to the review and approval of City. After approval by City, Developer shall not make any substantial changes to the Plans without the prior written approval of Director. This Section does not relieve Developer of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

4.06.01 Developer shall obtain as part of the Project Cost any and all required environmental permits for the Project.

4.06.02 Developer shall coordinate all required environmental permits for the Project with City's Environmental Division.

4.07 Developer shall provide a schematic showing the width of the drainage improvements to be built as part of the Project.

4.08 Developer shall dedicate and/or obtain at no cost to the City an easement for the drainage improvements as required by City's UDC, unless such improvements are made within existing City rights-of-way.

4.09 Any development of the Project affecting the floodplain shall comply with UDC.

4.10 Developer shall coordinate with all utilities affected by the Project.

4.10.01 Developer shall pay as part of the Project Cost all required costs for utility removal, replacement and relocation.

#### **RESPONSIBILITIES OF CITY**

4.11 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Developer shall cause its Project Manager to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Developer shall submit said certification to the Director or his/her designee at the completion of the Project construction. City shall have the right to withhold funding until certification is provided.

4.12 City shall pay the City Share.

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

5.01 Developer warrants and represents that in relation to the Project it shall comply with all applicable federal, state and local laws and regulations and shall use all reasonable efforts to ensure said compliance by the Construction Contractor and Subcontractors that may work on the Project.

5.02 Developer agrees to abide by the following laws, Ordinances, Rules and regulations in its expenditures of City Funds in relation to the Project:

5.02.01 Government Code Chapter 2253 provisions regarding payment and performance bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

5.02.02 Government Code Chapter 2258 and Ordinance No. 71312, as amended by Ordinance No. 2008-11-20-1045, regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that is Construction Contractor and Subcontractors submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of TCI.

- A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this Agreement. Developer agrees that its Construction Contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall require Subcontractors to comply with City Ordinance 71312 and its successors such as City Ordinance No. 2008-11-20-1045 and Developer shall not accept affidavits.
- B. In accordance with the provisions of Chapter 2258 of the Texas Government Code and City Ordinance No. 2008-11-20-1045, upon request City, acting through Director, will provide Developer with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work on this Project. The Developer is required, and shall require its Construction Contractor and all Subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer calls for bids for construction of a given phase. The Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Construction Contractor and all Subcontractors for construction of each Phase. Developer is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City shall audit certified payroll records as necessary in accordance with this Agreement.
- C. Upon audit of the records and certified payrolls under this section, should City or its auditors find any violations, Developer shall cause its Construction Contractor to forfeit, as a penalty to 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 Agreementor or any Subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve Developer 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

5.03. Developer shall ensure that the Project is completed in accordance with the requirements pertaining to the City's Small Business Economic Development Advocacy Ordinance, as amended attached hereto as **Exhibit E** (the "**SBEDA Ordinance**"). The Parties agree that Developer's minimum subcontracting requirements under the SBEDA Ordinance shall be determined by multiplying the Affirmative Procurement Initiative percentages (the "**API**"), by the amount of the City Share, as follows:

<u>Subcontracting Category</u>	<u>API</u>	<u>x</u>	<u>City Share</u>	<u>=</u>	<u>Min. Required</u>
Small Business Enterprise (SBE) Subcontracting	23%		\$817,000		\$187,910
Minority/Women Business Enterprise (M/WBE) Subcontracting	18%		\$817,000		\$147,060
African American Business Enterprise (AABE) Subcontracting	2%		\$817,000		\$16,340

The City expressly agrees that Developer's subcontracting requirements under this Section may be achieved by any subcontracting undertaken by Developer in connection with any public infrastructure project for the SSFCU Regional Headquarters and assumed in the Total Contract Price, and shall not be limited to subcontracting for the Project.

5.04 Plans must conform to any applicable Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation (if required by state law) before construction may begin. Inspections and final approval shall be the responsibility of Developer.

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

6.01 Developer shall be responsible for the design and construction of the Project and all associated costs, if any, in excess of the City Share.

6.02 City shall reimburse Developer only for eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the amount appropriated by City Council in connection with this Agreement. Additionally, it is expressly understood and agreed by City and Developer that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City in excess of \$817,000.

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

6.04 Funding shall consist of a one-time reimbursement not to exceed 30% of the Total Contract Price for the Project up to a maximum of **EIGHT HUNDRED SEVENTEEN THOUSAND DOLLARS AND NO/100** (\$817,000.00) paid to Developer for costs of design and construction of the Project.

## VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY DEVELOPER

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

7.01.01 That maintenance of the Records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

7.01.02 That Developer's record system shall contain sufficient documentation to provide, in reasonable detail, justification for each expenditure.

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

7.03 In order to be reimbursed for work completed, Developer shall submit to City a request for reimbursement (a "*Request for Reimbursement*") in the form of a certificate from the Project Manager certifying the amount of the Work performed and confirming that such Work was performed in accordance with the Construction Documents, stating the amount of the City Share attributable thereto and Developer's Share and include a breakdown of labor, names of Contractors and materials used. Prior to reimbursement, City shall have the right to inspect work completed to ensure conformance with the approved Plans. Upon approval of the Request for Reimbursement, City shall pay to Developer City's Share within thirty (30) days following City's receipt of such approved Request for Reimbursement.

7.04 Following receipt of the Request for Reimbursement, City agrees to provide Developer written notice regarding any expenditure City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Developer thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Developer determined to:

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

7.04.02 Not be supported by adequate documentation to fully justify the expenditure.

7.05 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in **Article VII**



herein as a result of any auditing or monitoring by City, Developer shall refund such amount to City within thirty (30) calendar days of City's written request wherein the amount disallowed or disapproved shall be specified.

### **VIII. RIGHT OF REVIEW AND AUDIT**

8.01 Developer grants the City or its designees the right to audit, examine or inspect, at City's election, all of the Records relating to the performance of the Work under the Agreement during the Term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City.

8.02 City agrees that it shall exercise the right to audit, examine or inspect only during regular business hours, with at least five (5) business days prior written notice. The Developer agrees to allow City's designee access to all of the Records, and current or former employees of Developer, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Developer also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

### **IX. ALLOWABLE EXPENDITURES**

9.01 Only the following categories of costs shall be considered allowable:

- Amounts paid under the construction contract for the Project
- The cost of bonds required by this Agreement
- Construction contingencies with approved change orders
- Design Plans and specifications, surveys, testing and environmental studies

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

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

- Personnel costs, salaries or wages paid directly by Developer or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by Developer's General Developer and shown on the approved Plans
- Advertising
- Right of Way

## **X. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

10.01 Developer further represents and warrants that:

- 10.01.01 All information, data and/or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.
- 10.01.02 It is financially stable and capable of fulfilling its obligations under this Agreement and that Developer shall provide City immediate written notice of any adverse material change in the financial condition of Developer that may materially and adversely affect its performance of the obligations hereunder.
- 10.01.03 No litigation or proceedings presently pending or to Developer's knowledge, threatened against Developer, that will affect its performance of the obligations hereunder.
- 10.01.04 None of the provisions contained herein contravene or in any way conflict with the authority under which Developer is doing business or with the provisions of any existing indenture or agreement of Developer.

## **XI. ACCESSIBILITY OF RECORDS**

11.01 At any time and as often as City may deem necessary, upon three (3) days written notice, Developer 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.

## **XII. TERMINATION**

12.01 Notwithstanding any other provision of this Agreement, if any of the following defaults occur, then this Agreement may be terminated immediately by City upon ten (10) business days advance written notice unless Developer cures such default within ten (10) business days:

- 12.01.01 Following an inquiry by TCI, a reasonable belief by City that the Developer has abandoned the Work.
- 12.01.02 Following an inquiry by City, a reasonable belief by City that the Developer has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

- 12.01.03 Following an inquiry by TCI, a reasonable belief by the City that collusion exists or has occurred for the purpose of illegally procuring this Agreement, or that a fraud is being perpetrated on City in connection with the construction of Work under this Agreement.
- 12.01.04 Following notice by City, repeated and flagrant violation of safe working procedures by Construction Contractor.

12.02 When this Agreement is terminated for any of the causes itemized in Section 12.01 above or terminated pursuant to Section 2.17, the Developer shall, as of the date specified by City, discontinue the Work, whereupon the company or companies providing surety for the completion of the Work pursuant to Section 2.04 (the "Surety") shall, within fifteen (15) days after the written notice of termination for cause has been served upon Developer and the Surety or its authorized agents, assume the obligations of Developer for the Work or that portion of the Work which City has ordered Developer to discontinue and may:

- 12.02.01 perform the Work with forces employed by the Surety;
- 12.02.02 with the written consent of City, tender a replacement contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under this Agreement as, of the time of the termination; or
- 12.02.03 with the written consent of City, tender and pay to City in settlement the amount of money necessary to finish the balance of uncompleted Work under this Agreement, correct existing defective or nonconforming work, and compensate City for any other loss sustained as a result of Developer's Default under this Agreement.

12.03 Should Surety assume responsibility of Developer to complete the Work, the Surety shall assume Developer's place in all respects, and the amount of funds remaining unpaid under the Agreement shall be paid to the Surety by City for all Work performed by the Surety or the replacement contractor (as the case may be) in accordance with the terms of the Agreement Documents, subject to any rights of City to deduct any costs, damages, or actual damages that the City may have incurred, including but not limited to additional fees, expenses and attorneys' fees, as a result of such termination.

12.04 The balance of City's Share remaining at the time of Developer's Default shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Agreement Documents. If the Surety does not, within the time specified, exercise its obligation to assume the obligations of Developer then City shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The expenses incurred by City to complete the Work shall be deducted by

City out of the balance of the City Share remaining unpaid to or unearned by Developer. Developer and the Surety shall be liable to City for any costs incurred in excess of the balance of the City Share for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees and attorney's fees), and actual damages, as the case may be, incurred as a result of the termination. In no case, shall the Developer or Surety be liable for consequential damages or claims.

12.05 In the event that the City assumes responsibility for completing the Work under Section 12.04, the City shall not be required to obtain the lowest bid for the Work of completing the construction, but the expenses to be deducted from the City Share shall be the actual cost of such Work and the other damages. In case City's costs and damages are less than the sum which would have been payable under the Agreement if the same had been completed by the Developer, then City may pay to Developer (or the Surety, in the event of a complete termination) the difference, provided that Developer (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In the event such costs for completion and damages exceed the amount which would have been payable under the Agreement if the same had been completed by Developer, then Developer and Surety shall pay the amount of the excess to City on notice from City for the excess amount owed.

### **XIII. INDEMNITY**

13.01 Developer covenants and agrees to INDEMNIFY and HOLD HARMLESS City and Bexar County, City and Bexar County elected officials, agents, employees, officers, directors, consultants, subconsultants and representatives of City individually or collectively, (collectively, the "*City Parties*") from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury, death and property damage, (the "*Damages*") made upon City, arising out of or resulting from Developer's negligent activities or omissions in the performance of Work under this Agreement, including any negligent acts or omissions of any agent, officer, director, representative, employee, consultant, subconsultant, Contractor or Subcontractor of Developer, and their respective officers, agents, employees, directors and representatives (collectively "*Developer Parties*") while in the exercise of the performance of the Work under this Agreement, all without, however, waiving any governmental immunity available to City under Texas law and without waiving any defenses of the parties under Texas law. THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL EXPRESSLY NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, BEXAR COUNTY, OR THE CITY AND/OR BEXAR COUNTY PARTIES IN SUCH INSTANCE WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, INCLUDING BUT NOT LIMITED TO THE DRAINAGE IMPROVEMENTS SPECIFIED BY CITY OR REQUIRED BY CITY TO BE INSTALLED BY DEVELOPER UNDER THIS AGREEMENT. IN THE EVENT DEVELOPER AND CITY AND/OR BEXAR COUNTY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT, JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN

ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS , LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.02 The provisions of this indemnity are solely for the benefit of the parties, hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity (except as to Bexar County as expressly set forth herein). Developer shall promptly advise City and Bexar County in writing within 72 hours of any claim or demand against City, Bexar County or Developer known to Developer and related to or arising out of Developer's negligent activities or omissions under this Agreement, and shall see to the investigation and defense of such claim or demand at Developer's cost. Notwithstanding any condition imposed by a policy of insurance to which Developer and/or Bexar County and City are named, City and Bexar County shall retain the right, at their option and at their own expense, to participate in such defense provided by any insurance or self-insurance of Developer under this section without relieving Developer of any of its obligations under this section.

#### XIV. INSURANCE

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

14.02 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 reasonably modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance shall City allow modification whereupon City may incur increased risk.

14.03 The Construction Contractor's financial integrity is of interest to City; therefore, subject to the Construction Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, the Construction Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Construction Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of

Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<b>Insurance Table</b>	
<b>TYPE</b>	<b>AMOUNTS</b>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Damage of Liability Insurance to include coverage for the following:	For Bodily Injury and Property \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess
a. Premises operations Liability	
*b. Independent Developers	Coverage
c. Products/completed operations	
d. Personal Injury	
e. Contractual Liability	
4. Business Automobile Liability Injury	Combined Single Limit for Bodily and Property Damage of \$1,000,000
a. Owned leased vehicles	per occurrence
b. Non-owned vehicles	
c. Hired Vehicles	
* if applicable	

14.04 Developer agrees to require the Construction Contractor to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 14.03 (Insurance Table) from each Subcontractor and provide a Certificate of Insurance and Endorsement that names the Developer and City as an additional insured.

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

City of San Antonio  
Transportation & Capital Improvement Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

14.06 Developer agrees that with respect to the above required insurance, all insurance policies of its Construction Contractor are to contain or be endorsed to contain the following provisions:

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

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

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

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

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

## **XV. GUARANTEE/WARRANTY**

City agrees that Developer is installing drainage improvements under this Agreement under specifications and plan approvals of the City and TCI. The Project

Manager shall be responsible for ensuring Project is constructed in material compliance with the Plans and Specifications, approved by City or other governmental entities.

## **XVI. DESIGN PER CITY REQUIREMENTS**

Developer shall ensure that design and construction of the Regional Drainage and Water Quality Public Infrastructure Improvements shall meet the requirements of City's UDC.

## **XVII. NONDISCRIMINATION**

**Non-Discrimination.** As a Party to a contract with City and in connection with the construction of the Project, Developer 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. Developer represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Developer shall adhere to the City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall Developer retaliate against any person for reporting instances of such discrimination. This **Article XVI** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Developer shall incorporate this clause into each of its Subcontractor and supplier agreements entered into, pursuant to all City agreements/contracts.

## **XVIII. CONFLICT OF INTEREST**

18.01 Developer covenants that no member of its governing body or of its executive officers presently has any business interest, direct or indirect, which would conflict in any manner or degree with the performance under this Agreement. Developer further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its executive staff.

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

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



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

### **XIX. POLITICAL ACTIVITY**

None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly, 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.

### **XX. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

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

### **XXI. CONTRACTING**

21.01 Any work or services contracted by Developer 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 the Construction Contractor and Subcontractors with this Agreement shall be the responsibility of Developer. Developer is responsible to ensure that all applicable local, state and federal permits and approvals required for the activities under this Agreement are obtained.

21.02 City shall in no event be obligated to any third party, including any contractor of Developer, for performance of or payment for work or services.

### **XXII. CHANGES AND AMENDMENTS**

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

22.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the Term of this Agreement and that this Agreement does not waive compliance therewith.

### **XXIII. ASSIGNMENTS**

Developer 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. Any such assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, by receivership, in bankruptcy or otherwise, without the prior written consent of City shall, at City's option, be of no force and effect whatsoever. Any consent to any such assignment or transfer shall not constitute a waiver of any of the restrictions of this Section and the provisions of this Section shall apply to each successive assignment or other transfer hereunder, if any.

### **XXIV. SEVERABILITY OF PROVISIONS**

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.

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

25.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in anyone 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.

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

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

## XXVI. ENTIRE AGREEMENT

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

26.02 The terms of this Agreement are intended to be a final expression of the parties' agreement and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings, whether written or oral. The parties expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that this Agreement constitutes the complete and exclusive statement of the parties' intent and that no extrinsic evidence may be introduced in any proceeding involving the Agreement Documents. No addition to, deletion from, or modification of any term or provision of this Agreement shall be effective unless it is made in a writing signed by the parties hereto.

## XXVII. NOTICES

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

CITY:                      Transportation & Capital Improvements Director/City  
Engineer

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

With Copies to:        Office of the City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

DEVELOPER:            Robert Williamson, Sr. VP of Real Estate  
16211 La Cantera Pkwy  
San Antonio, TX 78256

With Copies to:        SSFCU Legal Services  
16211 La Cantera Pkwy  
San Antonio, TX 78256

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.

Any communication so addressed and mailed shall be deemed to be given on the earliest of: (a) when actually received or delivered; (b) when proof of return of certified mail is received; or (c) on the first business day after deposit with an overnight air courier service, if proof to the address of the intended addressee is provided. A change of address may be given by written notice: as provided herein.

## XXVIII. MISCELLANEOUS

28.01 Conflicts Between Documents. In the event of any conflict between the Exhibits hereto and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

28.02 Waiver. It is understood and acknowledged that City exercises no control over the means of accomplishing the Work. No approval by City shall impose any liability on City for any risk or damage to persons or property or the City Property or shall imply or guarantee any drainage implications or the operation of the drainage facilities to the Parties, any other party or otherwise.

28.03 Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement (except as expressly provided herein with respect to Bexar County).

28.04 Partial Invalidity. Any provisions or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and any remaining provisions shall continue to be valid and binding upon the parties and construed as close as reasonably possible to their original intent.

28.05 No Oral Modification. This Agreement shall not be modified orally or by course of conduct or dealing. Any modification of this Agreement shall be in writing, and signed by the authorized party.

28.06 Counterparts. The Contract Documents may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

28.07. Force Majeure. In the event Developer or City is unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Agreement (other than financial obligations), the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for the period of such delay, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, acts of terrorism, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the Party claiming

suspension and which by the exercise of due diligence such Party is unable to overcome. If the Developer suffers any event of "force majeure", such event shall likewise constitute force majeure with respect to Developer.

#### **XXIX PARTIES BOUND**

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.

#### **XXX. RELATIONSHIP OF PARTIES**

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.

#### **XXXI. 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 Bexar County, Texas. Exclusive venue shall lie in Bexar County, Texas.

#### **XXXII. GENDER**

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

#### **XXXIII. CAPTIONS**

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.

#### **XXXIV. LEGAL AUTHORITY**

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

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

*[Signatures on following page.]*

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF SAN ANTONIO

SECURITY SERVICE FEDERAL  
CREDIT UNION, a federally  
chartered credit union

By: \_\_\_\_\_  
Sheryl Sculley  
City Manager

By: *Robert Williamson*  
Printed Name: Robert Williamson  
Title: SVP Real Estate & Development

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

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

## **EXHIBIT A**

### **Construction Documents**

The anticipated Construction Documents include:

1. Utex Business Park - Storm Water Management Plan
2. UTSA Blvd - Demolition and Paving Plan
3. UTSA Blvd - Box Culvert Plan and Profile
4. UTSA Blvd - Drainage Details
5. UTSA Blvd - Traffic Control Plan and Details
6. UTSA Blvd - Cost Estimate
7. Utex Blvd - Demolition Plan
8. Utex Blvd - Master Drainage and Utility Plan
9. Utex Blvd - Storm Drain Plan and Profile
10. Utex Blvd - Box Culvert Plan and Profile
11. Utex Blvd - Drainage Details
12. Utex Blvd - Street Plan and Profile
13. Utex Blvd - Street Details
14. Utex Blvd - Signage and Pavement Marking Plan
15. Utex Blvd - Deceleration Lane Plan
16. Utex Blvd - Water Distribution Plan and Details
17. Utex Blvd - Traffic Control Plan and Details
18. Utex Blvd - Stormwater Pollution Prevention Plan and  
Details
19. Utex Blvd - Water Quality Basin Plan and Details

**EXHIBIT B**  
**Developer's Property**



FIELD NOTES  
FOR

A 66.062 acres, or 2,877,673 square feet more or less, tract of land out of a 90.801 acre tract of land conveyed to John L. Santikos described in a deed recorded in Volume 3172, Page 2092 of the Official Public Records of Real Property of Bexar County, Texas, out of the Anselmo Pru Survey No. 20, Abstract 574, New City Block 14746, in the City of San Antonio, Bexar County, Texas. Said 66.062 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (NA2011), from the Texas Coordinate System established for the South Central Zone:

**BEGINNING:** At a found  $\frac{1}{2}$  inch iron rod on the west right-of-way line of Interstate Highway 10, a variable width right-of-way, the southeast corner of a 93.379 acre tract of land conveyed to Diamond Shamrock Leasing, Inc. described in a deed recorded in Volume 7066, Page 990 of the Official Public Records of Real Property of Bexar County, Texas, the northeast corner of said 90.801 acre tract of land and the herein described tract;

**THENCE:** Southeasterly, along and with the west right-of-way line of said Interstate Highway 10, a non-tangent curve to the left, said curve having a radial bearing of N 81°07'21" E, a radius of 5947.65 feet, a central angle of 07°12'00", a chord bearing and distance of S 12°28'39" E, 746.91 feet, for an arc length of 747.40 feet to a found TXDOT Highway Monument "Type II" a point of tangency;

**THENCE:** S 15°54'29" E, continuing along and with said Interstate Highway 10, a distance of 208.03 feet to a found  $\frac{1}{2}$  inch iron rod at the northeast corner of Lot 5, Block 2, New City Block 14748, Gunn Honda I.H. 10 & UTEX Blvd. Subdivision recorded in Volume 9560, Page 108 of the Deed and Plat Records of Bexar County, Texas, the southeast corner of said 90.801 acre tract of land and the herein described tract,

**THENCE:** Departing the west right-of-way line of said Interstate Highway 10, along and with the common line between said 90.801 acre tract of land and said Lot 5, the following bearings and distances:

S 24°15'41" W, a distance of 149.72 feet to a found  $\frac{1}{2}$  inch iron rod

S 29°59'50" W, a distance of 336.91 feet to a set  $\frac{1}{2}$  inch iron rod with yellow cap marked "Pape-Dawson",

S 47°35'16" W, a distance of 192.39 feet to a found ½ inch iron rod,

S 29°11'03" W, a distance of 402.70 feet to a found ½ inch iron rod, and

S 40°14'36" W, a distance of 91.51 feet to a found ½ inch iron rod on the north right-of-way line of UTEX Boulevard, a 120-foot wide right-of-way, at the southwest corner of said Lot 5, the southeast corner of said 90.801 acre tract of land and the herein described tract;

THENCE: S 89°43'52" W, along and with the north right-of-way line of said UTEX Boulevard, the south line of said 90.801 acre tract of land, a distance of 1119.01 feet to a calculated point for the southeast corner of Lot 10, Block 2, New City Block 14746, NRP-UTSA, a subdivision recorded in Volume 9655, Page 70 of the Deed and Plat Records of Bexar County, Texas;

THENCE: Departing the north right-of-way line of said UTEX Boulevard, over and across said 90.801 acre tract of land, along and with the east line of said Lot 10, the following bearings and distances:

THENCE: N 20°06'52" W, a distance of 112.44 feet to a calculated point;

THENCE: Northwesterly, along a tangent curve to the right, said curve having a radius of 475.00 feet, a central angle of 06°00'00", a chord bearing and distance of N 17°06'52" W, 49.72 feet, for an arc length of 49.74 feet to a calculated point;

THENCE: N 14°06'52" W, a distance of 126.99 feet to a calculated point;

THENCE: Northwesterly, along a non-tangent curve to the left, said curve having a radial bearing of N 44°07'05" W, a radius of 50.00 feet, a central angle of 126°47'10", a chord bearing and distance of N 17°30'40" W, 89.41 feet, for an arc length of 110.64 feet to a calculated point;

THENCE: N 00°06'52" W, a distance of 776.82 feet to a calculated point;

THENCE: S 89°45'52" W, a distance of 528.91 feet to a found ½ inch iron rod with cap marked "MBC" on the southeast line of a 1.521 acre tract conveyed to the City of San Antonio described in a deed recorded in Volume 14249, Page 1283 of said Official Public Records and the westernmost corner of the herein described tract;

*RAC*

THENCE: N 32°15'49" E, along and with the southeast line of said 1.521 acre tract, a distance of 347.07 feet to a set ½ inch iron rod with yellow cap marked "Pape-Dawson" on the southeast line of a 93.379 acres conveyed to Diamond Shamrock Leasing, Inc. recorded in Volume 7066, Page 990 of the Official Public Records of Bexar County, Texas, the northwest line of said 90.801 acres, from which a found ½ inch iron rod at the northwest corner of said 1.521 acre tract bears S70°15'29"W, a distances of 81.24 feet;

THENCE: Along and with the northwest line of said 90.801 acres, the southeast line of said 93.379 acres, the following bearings and distances:

N 70°15'29" E, a distance of 331.39 feet to a found ½ inch iron rod;

N 84°05'29" E, a distance of 29.53 feet to a found ½ inch iron rod with yellow cap marked "Pape-Dawson";

N 71°15'09" E, a distance of 98.33 feet to a found nail in concrete for the westernmost corner of said 0.668 acre tract to the City of San Antonio recorded in Volume 14249, Page 1283 of said Official Public Records;

THENCE: Departing the southeast line of said 93.379 acres, along and with the south line of said 0.668 acres, the following bearings and distances:

N 86°42'46" E, a distance of 112.44 feet to a set ½ inch iron rod with yellow cap marked "Pape-Dawson";

N 71°19'20" E, a distance of 54.98 feet to a set ½ inch iron rod with yellow cap marked "Pape-Dawson";

Along a non-tangent curve to the right, said curve having a radial bearing of S 18°50'18" E, a radius of 300.00 feet, a central angle of 23°04'26", a chord bearing and distance of N 82°41'55" E, 120.00 feet, for an arc length of 120.81 feet to a set ½ inch iron rod with yellow cap marked "Pape-Dawson";

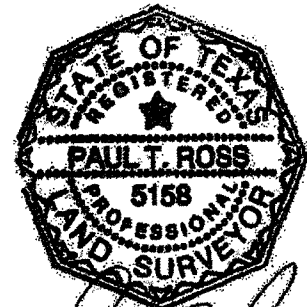
S 85°44'11" E, a distance of 458.54 feet to a found iron rod with cap marked "Unitech",

N 69°38'23" E, a distance of 250.19 feet to a wood nail in concrete, and

N 35°51'45" E, a distance of 54.24 feet to a set ½ inch iron rod with yellow cap marked "Pape-Dawson" on the south line of said 93.379 acre tract of land, the northeast corner of said 0.668 acre tract of land;

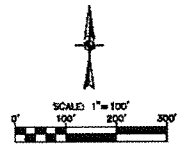
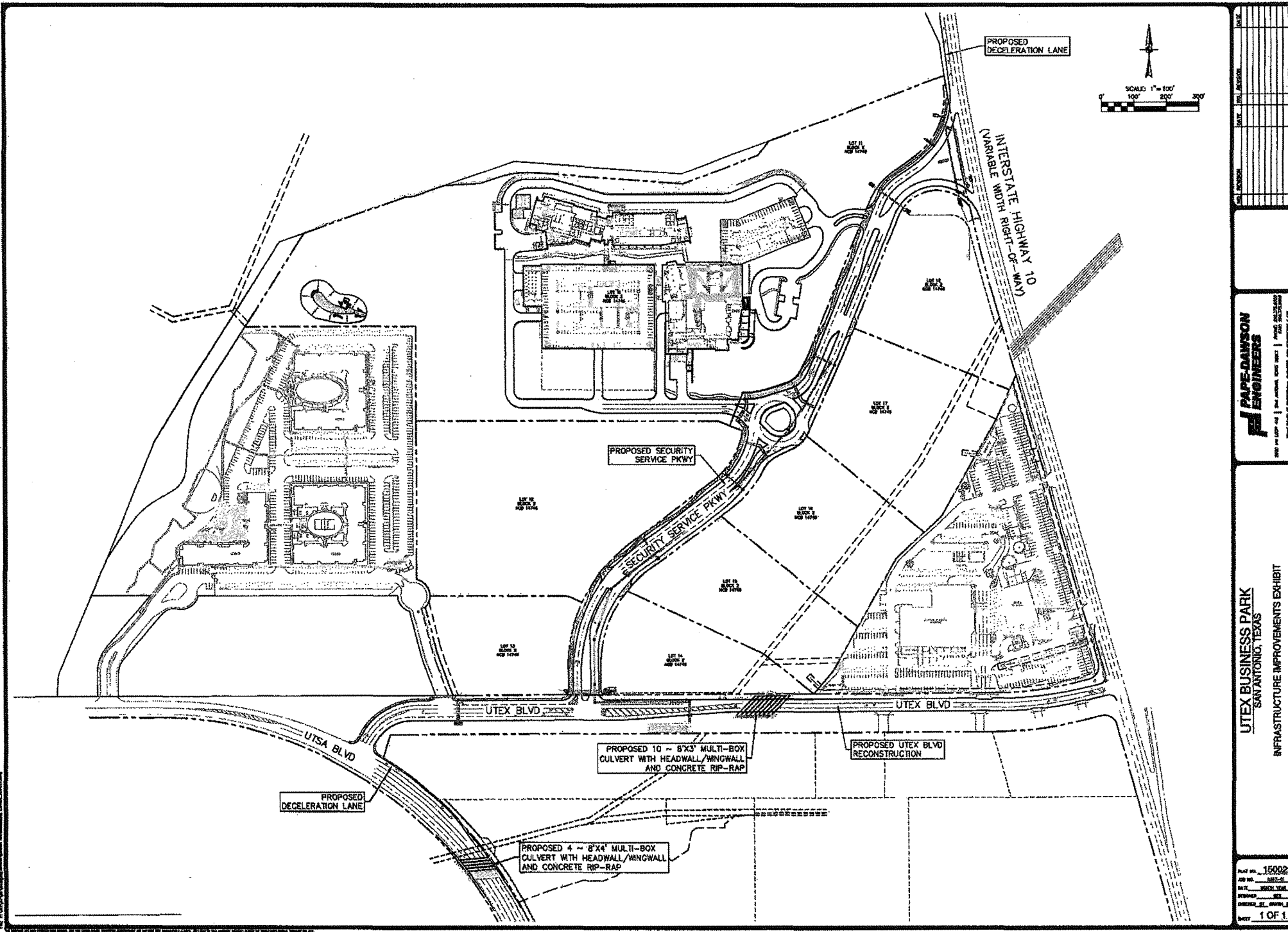
THENCE: N 69°38'04" E, along and with the common line between said 93.379 acre tract of land, the north line of said 90.801 acre tract of land, a distance of 579.29 feet to the POINT OF BEGINNING, and containing 66.062 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 9218-13 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: December 04, 2013  
JOB NO. 9218-13  
DOC. ID. N:\Survey\13\13-9200\9218-13\Word\FN9218-13 REV1.docx  
TBPE Firm Registration #470  
TBPLS Firm Registration #100288-00



*Paul T. Ross*  
04 DEC. 13

**EXHIBIT C**  
**Description of Development**



DATE:	10/1/2010
BY:	J. DAWSON
APP.:	J. DAWSON
SCALE:	AS SHOWN

**PAPE-DAWSON ENGINEERS**

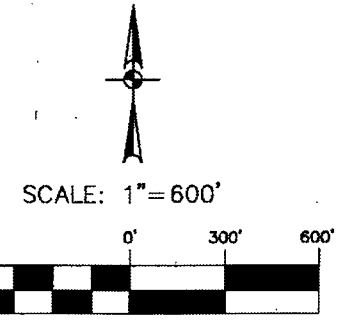
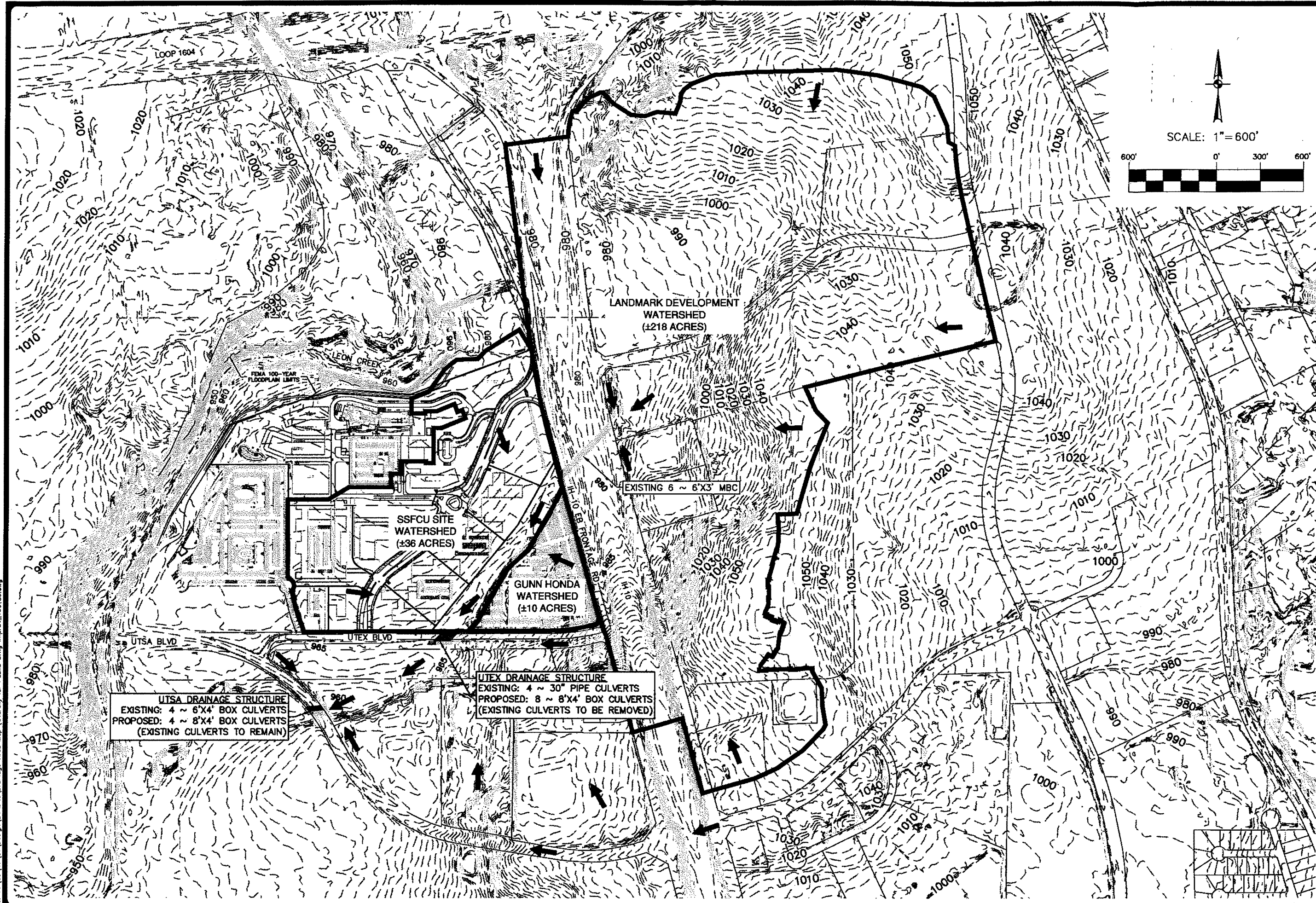
1000 W. LOOP W. | SAN ANTONIO, TEXAS 78207 | PHONE: 214.222.2222

Member of Parsons Brinckerhoff

**UTEX BUSINESS PARK**  
 SAN ANTONIO, TEXAS  
 INFRASTRUCTURE IMPROVEMENTS EXHIBIT

**EXHIBIT D**  
**Description of the Project**

DATE: JUN 04, 2013, 2:30pm User: dsbwt/epd  
 File: P:\6347\01\Design\Exhibits\Drainage Area Map (Overall).dwg



**UTSA DRAINAGE STRUCTURE**  
 EXISTING: 4 ~ 6'X4' BOX CULVERTS  
 PROPOSED: 4 ~ 8'X4' BOX CULVERTS  
 (EXISTING CULVERTS TO REMAIN)

**UTEX DRAINAGE STRUCTURE**  
 EXISTING: 4 ~ 30" PIPE CULVERTS  
 PROPOSED: 8 ~ 8'X4' BOX CULVERTS  
 (EXISTING CULVERTS TO BE REMOVED)

EXISTING 6 ~ 6'X3' MBC

SSFCU SITE WATERSHED  
 (±36 ACRES)

GUNN HONDA WATERSHED  
 (±10 ACRES)

LANDMARK DEVELOPMENT WATERSHED  
 (±218 ACRES)

**UTEX BUSINESS PARK**  
 SAN ANTONIO, TEXAS  
 PUBLIC DRAINAGE IMPROVEMENTS EXHIBIT

JOB NO. 6347-01  
 DATE JAN 2015  
 DESIGNER BES  
 CHECKED ST  
 DRAWN BES  
 SHEET 1 of 1

**PAPE-DAWSON ENGINEERS**  
 PHONE: 210.375.6000  
 FAX: 210.375.6910  
 2000 HW LOOP 410 | SAN ANTONIO, TEXAS 78213  
 TEXAS BOARD OF PROFESSIONAL ENGINEERS, P.E.M. REGISTRATION # 470

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