

**Primary Lease Agreement
Northwest Area Library and Recreational Facility**

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: The YMCA of Greater San Antonio

Landlord’s Address: 3233 N. St. Mary’s Street, San Antonio, Texas 78214

Tenant: City of San Antonio

Tenant's Address: P.O. Box 829966, San Antonio, Texas 78283-3966
(Attention: Ramiro S. Salazar, Library Department
Director)

Premises: An approximately 43,121 square foot portion of a 55,663 square foot building located on a 5.96 acre lot, the "Building" located at 8765 State Highway 151, San Antonio, Texas 78251 consisting of:

Recreation Center Premises: an approximately 38,121 square foot area subject to the license rights granted in Section 3 of this Lease. Notwithstanding such license rights, certain portions of Recreation Center Premises are designated common area as that term is defined below and shall be available for Tenant's use and;

Library Premises: a 5,000 square foot area exclusive for Tenant's use.

Recreation Center Premises, Library Premises, and Common Areas are depicted on Exhibit A which is attached hereto and may be referred to herein as Premises meaning the entirety of Recreation Center Premises and Library Premises including the Common Areas or individually as Recreation Center Premises or Library Premises.

Permitted Use: Any and all lawful uses during any time of day or night.

Lease Commencement and Binding Dates: This Agreement shall commence and is binding on the Parties on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties.

Term: As to Recreation Center Premises excluding the Common Areas, the Term shall expire upon the earlier of: (a) the expiration of 25 years from the Lease Commencement Date; (b) final repayment by the City of all bonds providing funding under the Funding Agreement, as those bonds may be refinanced from time to time; or (c) termination of the Funding Agreement as otherwise provided herein, whichever occurs first.

As to Library Premises and the rights to make use of the Common Areas, the Term shall expire upon the expiration of 26 years from the Lease Commencement Date.

Rent:

The consideration paid for the Premises shall be in the form of the terms and conditions of the Funding Agreement as that document is defined below with no other Rent due during the term of this Lease.

**Asbestos Survey
Deadline:**

10 days prior to the Lease Commencement Date

Common Areas:

All facilities and areas of the Building and related land that are identified in Exhibit A and are intended to be used by Landlord and Tenant for the common, general, and nonexclusive use of the public. At a minimum, these areas include: a parking lot large enough to accommodate both Landlord's and Tenant's needs; a common lobby leading to Library Premises; common area bathrooms adjacent to Library Premises and sufficient in size to accommodate Tenant's use and occupancy; a meeting room adjacent to the lobby not less than 1,200 square feet in size; an area or areas outside Building for library programming purposes and; any other areas designated by Landlord for the common use of both Landlord and Tenant. Landlord has exclusive control over the Common Areas, provided however any rules imposed by Landlord must (a) recognize that Tenant has priority to use the Common Areas; (b) not inhibit Tenant's reasonable use of the Common Areas in a manner that is consistent with the policies set forth by the San Antonio Public Library Board of Trustees and; (c) not preclude Tenant's right to use the Common Areas during times that Tenant is open for business.

Funding Agreement:

Agreement between City of San Antonio and the Greater YMCA of San Antonio for renovation of Recreation Center Premises and Library Premises, including the Common Areas pursuant to the Authorizing Ordinance.

The following Exhibits to this Lease are attached and incorporated into it for all purposes:

- Exhibit A: Description of Premises
- Exhibit B: Cleaning and Maintenance Schedule
- Exhibit C: Funding Agreement

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Tenant's right of occupancy of the Library Premises and right to make use of the Common Areas begin on the construction completion date.

2.03. This Agreement is binding on the Parties on the Binding Date.

2.04. Tenant will have access to the Premises before, during, and after any renovations, which Landlord is expected to undertake and complete during the Term as called for in the Funding Agreement.

3. Reservation and License for YMCA of Greater San Antonio's Use of the Recreation Center Premises and Common Areas.

3.01. Notwithstanding anything herein to the contrary, the YMCA of Greater San Antonio hereby reserves a license to exclusively improve, operate, and maintain Recreation Center Premises and the Common Areas located in the Building the duration of this Lease.

3.02. In the event that this Lease expires, or is otherwise terminated, the license hereby granted in Section 3.01 shall be automatically revoked on the date the Lease expires or is otherwise terminated.

3.03. Tenant hereby covenants and agrees not to interfere in any way with Landlord's use of the Recreation Center Premises outside of the Common Areas.

4. Rent.

4.01. Base Rent - Landlord acknowledges Tenant's commitment to provide all Base Rent due under this Lease as provided for in the Funding Agreement, subject to Landlord's requirement to comply with all terms and conditions of the Funding Agreement.

5. Term.

5.01. The Term of this Lease is as defined in Section 1 of this Lease.

5.02. Tenant may terminate this Lease at any time without cause by delivering 30 days prior written notice to Landlord.

6. Tenant's Affirmative Promises.

Tenant will:

6.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building.

6.02. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

6.03. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are obligations of Landlord.

6.04. Vacate the Premises and return all keys to the Premises promptly upon expiration of the Term, subject to any holdover rights.

6.05. On request, execute an estoppel certificate that states the Lease Commencement Date, and duration of the Lease, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

6.07 Operating Expenses – Commencing on the date that Tenant takes occupancy of Library Premises, Tenant shall pay to Landlord the Annual Operating Expenses. The Annual Operating Expenses shall be paid in one lump sum on January 1 of each year of the term. The annual amount shall be prorated to the day for any period of occupancy that commences on a date other than January 1. The initial Annual Operating Expenses amount shall be \$21,902.37, and Landlord acknowledges that this amount is an accurate assessment of costs Landlord will incur to provide all of the services that are Landlord's obligations under this Lease. This amount shall be applicable to the first full calendar year (January 1 to December 31) of the term and any partial calendar year of a term which commences on a date other than January 1 prior to that initial calendar year. Commencing on the second January 1st of the Term and each anniversary thereafter, the Annual Operating Expenses shall be subject to adjustment based on the Consumer Price Index—All Urban Consumers, All Items, in the US, Southwest, not seasonally adjusted, 1982-84=100. Adjustments are determined by multiplying the Operating Expenses by a fraction, the numerator being the index number published in December of the prior calendar year and the denominator being the index number published in November of the current calendar. If the product is greater than the previous year's Operating Expenses, Tenant will pay the difference between the product and the previous year's Operating Expenses until the next rental adjustment. If the Department of Labor ceases publishing the Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, Southwest, All items, 1982-84=100, Landlord and Tenant shall mutually and in good faith agree on an alternative index to be used. In no event shall the year

over year increase exceed 5%.

7. Tenant's Negative Promises.

Tenant will not:

7.01. Use the Premises for any purpose other than the Permitted Use.

7.02. Create a nuisance.

7.03. Interfere with any construction or renovations nor any of Landlord's normal business operations or management of the Building.

7.04. Permit waste.

7.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

7.06. Alter the Premises without prior approval.

7.07. Allow a lien to be placed on the Premises.s

8. Landlord's Affirmative Promises.

Landlord will:

8.01. Lease to Tenant the Premises for the entire Term, beginning on the Lease Commencement Date.

8.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

8.03. Repair, replace, and maintain the entirety of the Premises and the land on which it is situated on including but not limited to (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior and interior walls, doors, corridors, and windows, (e) HVAC systems, concealed and exposed wiring and electrical systems, including IT infrastructure, and concealed and exposed plumbing, (f) floors including carpeting and any other type of floor covering, (g) damage to any improvements constructed pursuant to the Funding Agreement, (h) other structures or equipment serving the Premises including the Common Areas, and (i) all other parts of the Premises as none of the obligations to repair, replacement, and/or maintain the Premises has been allocated to Tenant.

8.04. Be responsible for procuring and paying for all utilities serving the Premises including all utility infrastructure or facilities serving the Premises.

8.05. Provide the Cleaning and Maintenance Services to Library Premises and the Common Areas as detailed in Exhibit B.

8.06. Provide the improvements to Library Premises and the Common Areas as detailed in the Funding Agreement.

8.07. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

8.08. Pay all real estate taxes, general and special assessments, and other charges of any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the Lease term, whether belonging to Landlord or to Tenant. Landlord must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency.

8.09. Provide Tenant with a mutually acceptable location in the parking area for the purposes of installation of drive up book depository equipment including any required lighting, curbs and landscaping required to install this equipment at Landlord's expense.

8.10. Provide Tenant the right to install monument signage at the driveway entrances leading to the property of which the Premises is part including the 151 frontage road entrance and the Potranco Road entrance. Additionally, Tenant shall have the right to install prominent signage on the building of which the Premises is part and on any doors leading into the building of which the Premises is part. Tenant's signage shall be compatible with any signage installed by Landlord and shall be designed pursuant to Tenant's needs. However, in no event shall Tenant's signage be larger in size than any monument signage installed to identify Landlord's business. The cost of Tenant's signage shall be paid for through the Funding Agreement.

8.11. Landlord 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 identify, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

8.12. Tenant shall reserve to itself the right to name the Premises in accordance with San Antonio Public Library Board of Trustees' policies. The Tenant will be allowed to include the name of the library branch in any signage erected by Landlord on Tenant's behalf at the time of initial occupancy subject to the terms and conditions contained in Section 8.10 above. In the event that Tenant elects to name the Premises subsequent to Landlord's fulfillment of all obligations outlined in the Funding Agreement, then any modifications to the signage as a result will be funded for by Tenant at its sole cost and expense.

8.13. Landlord agrees to honor any request from the San Antonio Public Library or their designee to deny access to the Premises to any individual who has been found by the San Antonio Public Library to be in violation of library policies resulting in such person being denied access to Library Premises. Tenant agrees to notify Landlord in writing of any person prohibited from entering the Library. Landlord shall timely initiate whatever controls are necessary so that its staff are aware of prohibited persons and ensure its staff will take all reasonable actions to prohibit admittance by such persons to the Premises and Common Areas including any portions of the Building of which the Premises are part.

8.14. Landlord agrees to allow Tenant to use other portions of Building in addition to Library Premises and Common Areas for Library-related programs and activities after giving prior written consent, which Landlord may not unreasonably withhold.

9. Landlord's Negative Promises.

Landlord will not:

9.01. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

9.02 Unreasonably withhold consent to a proposed assignment or sublease.

9.03 Unreasonably deny any request by Tenant for use of the Premises or a portion of the Premises assuming Tenant has provided Landlord 10 days prior notice.

10. Repair, Maintenance and Replacement Responsibilities.

Landlord and Tenant each must repair, maintain, and replace, if necessary, any building component allocated to it in the table below:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Janitorial Services to Premises	No	Yes
Janitorial Services to Common Areas	No	Yes
Utility Services	No	Yes
Parking Lot Maintenance	No	Yes
Landscaping	No	Yes
Exposed Electrical Systems including any illuminated exterior and interior signage.	No	Yes

Light bulbs and tubes	No	Yes
Concealed Electrical Systems	No	Yes
Exposed Plumbing Systems	No	Yes
Concealed Plumbing Systems including under slab drain lines	No	Yes
HVAC Systems	No	Yes
Pest Control Services	No	Yes
Fire Life Safety Systems including fire extinguishers	No	Yes
Low Voltage intrusion alarms, door access controls and closed circuit security cameras	Yes	No
IT Infrastructure	No	Yes

11. Condemnation.

11.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this Lease.

11.02. If the entire Premises are taken or so transferred, this Lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. All proceeds of condemnation are Landlord's.

11.03. If only part of the Premises is taken or transferred, this Lease terminates if, in Tenant's opinion, the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Tenant's business cannot be effectively and practicably operated on it. In such case, this Lease and all rights, title, and interest under it cease on the date that title vests in the condemning authority. All proceeds of condemnation are Landlord's.

11.04. If part of the Premises is taken or transferred and, in Tenant's opinion, the remainder of the Premises is in such that Tenant's business can be effectively and practicably operated on the remaining Premises, this Lease terminates only as to the portion of the Premises

taken or transferred. The termination is as of the date title vests in the condemning authority. The Lease continues as to the portion not taken or transferred. As of the termination date, Tenant's Operating Expenses are reduced during the unexpired portion of this Lease to that proportion of the annual Operating Expenses that the value of the part of the Premises not taken bears to the value of the whole. Such values are to be determined as of the date immediately before any actual taking. All proceeds of condemnation are Landlord's.

11.05. In any case, Tenant is free to seek a separate condemnation award for any loss of or diminishment to its leasehold.

12. Assignment and Subletting.

12.01. Tenant may not transfer, assign, or sublet Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent.

12.02. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

12.03. Landlord need not consent to a sublease to a Tenant-affiliated entity.

13. Holdover.

13.01. If the Lease has not been earlier terminated according to its terms, Tenant may hold-over on a month-to-month basis. There shall be no rent due during a hold over, and all other terms of this Lease apply.

14. Default.

14.01 Upon default by Landlord in the performance of its obligations hereunder, Tenant shall give Landlord notice of the same, and Landlord shall have thirty (30) days following receipt of written notice of default from Tenant (or such reasonably longer time as may be necessary provided Landlord commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Landlord fails to timely cure such default, Tenant may pursue all remedies available in law or at equity and/or other rights Tenant 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.

14.02. In no event shall this Agreement or Tenant's use of the premises be terminated prior to the final payment or defeasement of the bonds issued by Tenant to pay for the improvements. As long as such bonds have not been paid, the Tenant's failure to perform any required actions under this Agreement shall give rise to Landlord's right, upon 60 days written notice to Tenant, to undertake to perform any such actions and to receive reimbursement from Tenant for the cost of performing such actions. After the bonds have been finally paid, any breach or violation by Tenant to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of the Landlord, at its option, upon thirty (30) days' written

notice to Tenant, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein.

14.02 No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

14.03. *Waiver of Liens.* As required by Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

15. Dispute Resolution.

15.01. Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The Parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

15.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one Party's waiver does not affect another Party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

15.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

15.04. The Party desiring relief has the burden to initiate mediation. Waiting for another Party to initiate mediation does not waive the right to it.

15.05. If the Parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all Parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

15.06. Mediator fees must be borne equally.

15.07. Parties need not mediate before going to court (i) for either Party to seek emergency injunctive relief or (ii) for Landlord to seek forcible entry and detainer relief against Tenant.

16. Insurance

16.01. Tenant will self-insure as it deems advisable against property loss for its personal property only. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

Tenant disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Landlord. Any and all claims resulting from any obligation for which Landlord may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Landlord.

16.02. Landlord must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A-(VII) or better by A.M. Best Company and/or otherwise acceptable to Tenant, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Tenant
2. Employer's Liability	\$500,000/\$500,000/\$500,000 with a Waiver of Subrogation in favor of Tenant.
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of all improvements on the Premises
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000.00 per occurrence
(a.) Owned/Leased Automobiles	

(b.) Non-owned Automobiles

(c) Hired Automobiles

5. Property Insurance for physical damage to the property of the Landlord, including improvements and betterments

Coverage for replacement cost of all improvements on the Premises.

16.03 Each insurance policy required by this Lease must contain the following clauses:

“This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days prior written notice has been given to:

(a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) City of San Antonio
Leasing Division Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

“The insurance provided by Landlord is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Lease, excepting policies for Workers’ Compensation and Employer’s Liability, must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio.”

16.04. Landlord must require its insurance carrier(s) to deliver to Tenant’s Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Tenant. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will provide 30 days prior notice to Landlord and an

opportunity to discuss the changes. If Tenant still wants the changes after discussion, Landlord must make the changes and Landlord must pay the cost thereof.

16.05. Within 30 days after the Lease Commencement Date, Landlord must deliver certificates to Tenant's Risk Manager and the City Clerk from Landlord's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

16.06. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancellation.

16.07. Nothing herein contained limits in any way Landlord's liability for damages to persons or property resulting from Landlord's activities or the activities of Landlord's agents, employees, sublessees, or invitees under this Lease.

16.08. Landlord waives all claims against Tenant for injury to persons or property on or about the Premises, whether or not caused by Tenant's negligence.

16.09 Release of Claims/Subrogation.

16.09.01 The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, waive subrogation against each other for Covered Claims.

17. Indemnification

17.01. These definitions apply to the indemnity provisions of this Agreement:

17.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Agreement, whether or not the person is a party to this Agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

17.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

17.01.03. "Indemnitor" means Landlord.

17.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

17.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnatee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnatee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

17.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

17.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnatee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

17.06. In addition to the indemnity required under this Agreement, each Indemnatee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

17.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnatee as to the particular Indemnified Claim, unless (a) the settlement will be fully funded by Indemnitor and (b) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnatee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnatee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement

purporting to bind an Indemnatee must first be approved by City Council.

17.08. Nothing in this Agreement waives governmental immunity or other defenses of Indemnitees under applicable law.

17.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

18. Environmental.

18.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

18.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

18.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

18.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively "Occupants") to comply with all applicable Environmental Laws.

18.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

18.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

18.07. Landlord represents and warrants that, (i) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (a) the Property violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release; or (d) the Property is subject to a lien under any Environmental Laws; and (ii) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

18.08. Before the Lease Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

18.09. Landlord must indemnify Tenant and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Landlord's environmental representations, warranties, and covenants.

19. Prohibited Interests in Contracts.

19.01. The City Charter 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) 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;

(iv) 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.

19.02. Landlord warrants and certifies as follows:

(i) Landlord and its officers, employees and agents are neither officers nor employees of the City.

(ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

19.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

20. Appropriations.

All City obligations under this instrument are funded subject to the discretion of City Council whether to appropriate funding. If City Council fails to appropriate money for any obligation under this Agreement, the City may terminate this Agreement and have no further liability.

21. Alterations.

21.01 During the term, Tenant shall be allowed to make any non-structural alterations to Library Premises as Tenant deems appropriate. However, prior to making structural alterations to Library Premises or any alterations to Common Areas, Tenant shall first advise Landlord of the extent of the proposed alterations, and Landlord shall approve or deny Tenant's request within not more than 30 days of the date of the request. In the event that Landlord does not expressly approve or deny Tenant's request within 30 days of the date that Landlord receives Tenant's alteration request, then the request shall be automatically approved, and Tenant shall be allowed to proceed. Structural alterations are limited to any alterations that would require a building permit be issued by the City of San Antonio.

21.02 At the end of the Term, Tenant may, at its sole option, remove any fixtures, furnishings telecommunication equipment and improvements, the "Personal Property", including any Personal Property installed in the Common Areas, regardless whether they were installed by Landlord as part of the improvements completed pursuant to the Funding Agreement or installed by Tenant after the Binding Date, or leave such Personnel Property in place, in which case the Personal Property will become property of the Landlord. In order for the items located in the Common Areas to be considered Personal Property for purposes of this Section only, then the Personal Property must be exclusively for Tenant's use.

21.03 Neither Party may alter Common Areas without the other Party's prior written approval. Either Party shall first advise the other Party of the extent of the proposed alterations, and each Party shall approve or deny the other Party's request within not more than 30 days of

the date of the request. Structural alterations are limited to any alterations that would require a building permit be issued by the City of San Antonio.

22. Miscellaneous.

22.01. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** Both Parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this Agreement is only in Bexar County, Texas.

22.02. If any part of this Agreement is found invalid or unenforceable, the finding does not affect the remainder.

22.03. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each Party. This clause does not authorize any assignment not otherwise authorized.

22.04. This Written Agreement Together With the Funding Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

22.05. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion. Notwithstanding the above, the Parties reserve the right to make administrative changes to this Agreement relating to cleaning and maintenance services provided by Landlord by written agreement signed by the Landlord and the Director of the Library Department.

22.06. This Agreement benefits the Parties and their successors and permitted assigns only. It has no third party beneficiaries.

22.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, or by independent delivery service addressed to the parties at their respective addresses set forth at the beginning. If sent by certified mail, notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent other than by certified mail, notice is complete on the date shown on the receipt. Address for notice may be changed by giving notice.

22.08. Paragraph captions are for ease of reference only and do not affect the interpretation.

22.09. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all Parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

22.10. The Parties must execute and deliver such additional documents and instruments as may be necessary. No such additional documents can alter the rights or obligations of the Parties stated in this Agreement.

22.11. The Director of the Library Department may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease relating to the Library Premises and Common Areas and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without City Council consent.

22.12. As long as Tenant pays the Operating Expenses and other charges under this Lease and observes the covenants and terms of this Lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during the lease term without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

22.13. Time is of the essence under this Agreement.

22.14. The rights and remedies under this Lease are cumulative, and either Party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance, or otherwise.

22.15. The relationship between Landlord and Tenant is at all times solely that of Landlord and Tenant, not that of partners or a joint venturers.

23. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the Parties have caused their representatives to set their hands.

Tenant

Landlord

City of San Antonio, a Texas
municipal corporation

The YMCA of Greater San Antonio,
a_____.

Signature:_____

Signature:_____

Printed
Name:_____

Printed
Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Attest:

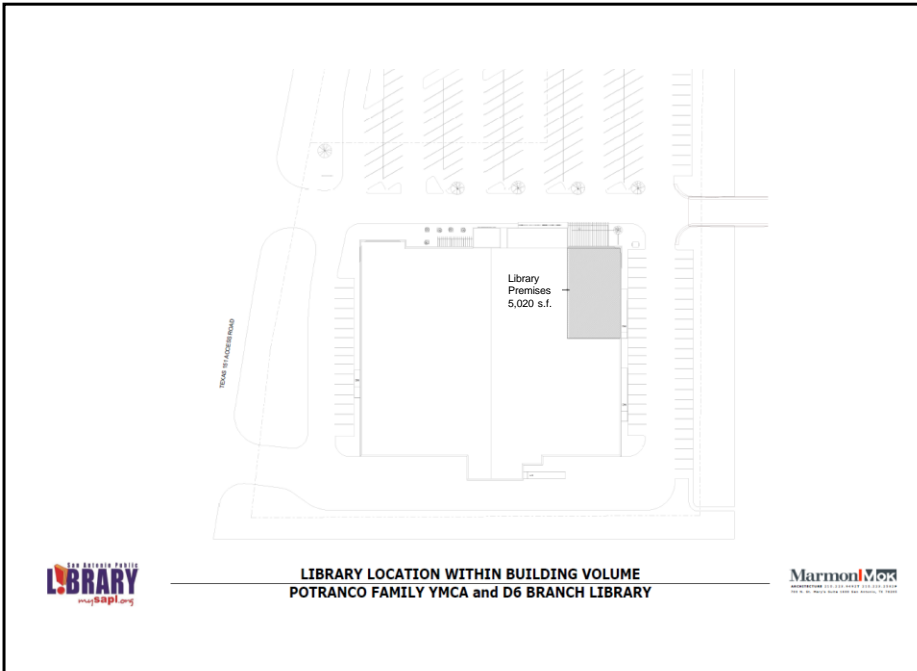
City Clerk

Approved as to Form:

City Attorney

Exhibit A: Description of Premises

These Plans are preliminary and are subject to change with the approval of both Parties by written agreement signed by Landlord and the Director of the Library Department.



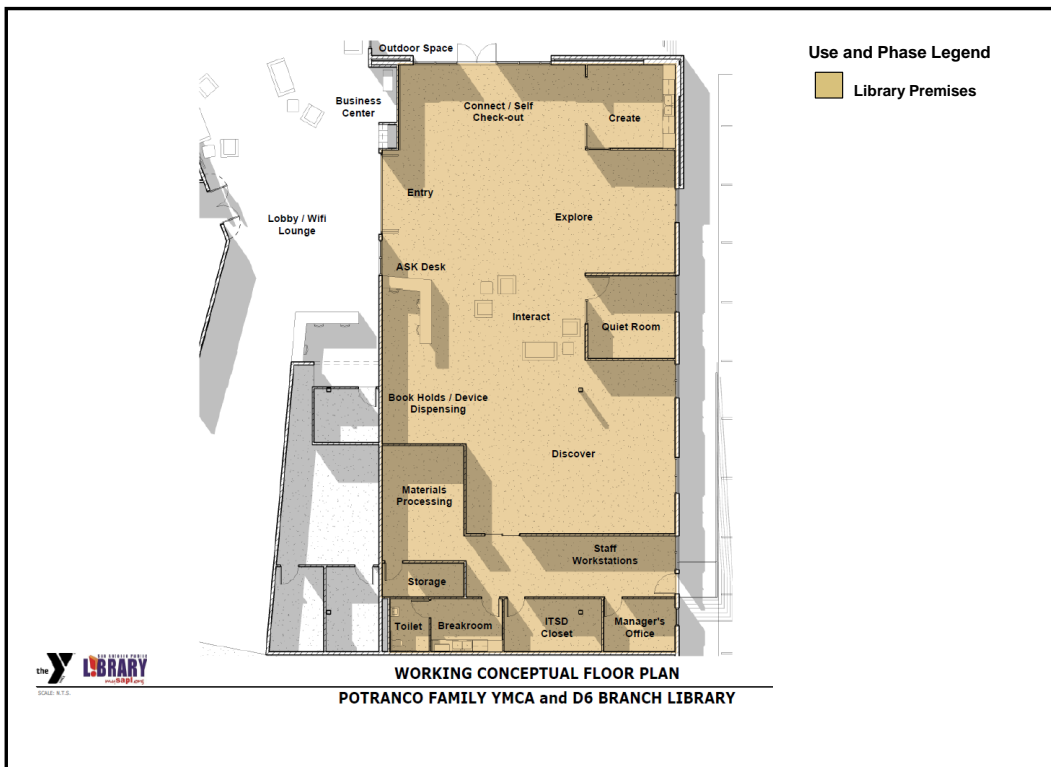
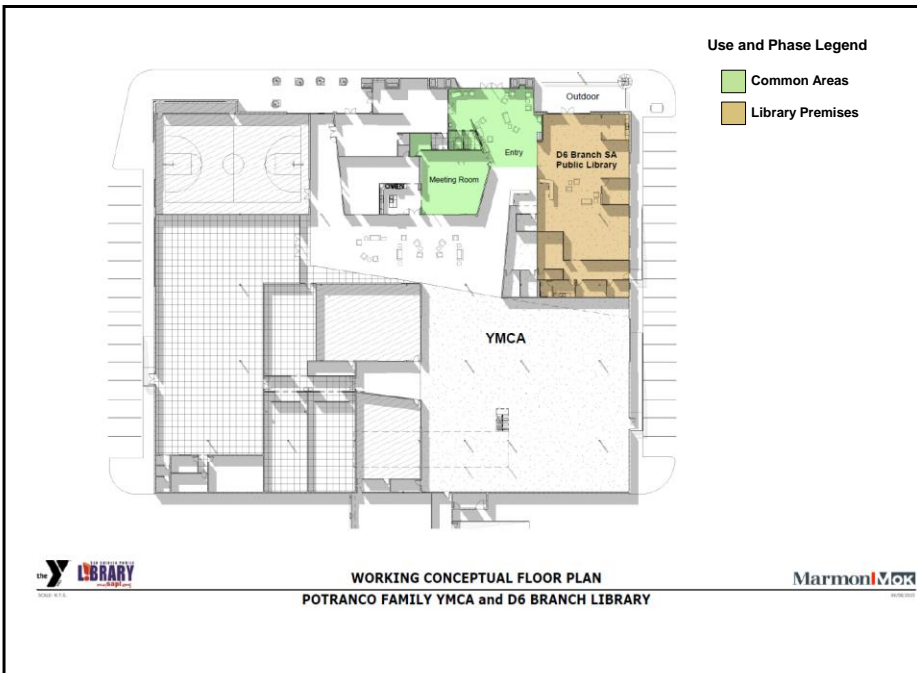


Exhibit B: Cleaning and Maintenance Schedule

Daily

Carpets Vacuumed.

Composition floors dust-mopped and wet mopped. All other non-carpeted floors swept and washed.

Desks, desk accessories and office furniture dusted. Papers and folders left on desk, not to be disturbed.

Waste baskets and other trash receptacles emptied; trash removed from the building to an area designated outside of the Premises twice daily.

Chairs and wastebaskets returned to proper position.

Fingerprints removed from glass doors and partitions twice daily.

Drinking fountains cleaned, sanitized, and polished twice daily.

Staff lavatories, toilets, toilet rooms, and toilet partitions cleaned/swept/mopped and toilet supplies replenished twice daily.

Malfunctioning light bulbs and tubes replaced, as required.

Graffiti expunged as needed but no more than two business days after Tenant has given Landlord verbal notice of the existence of graffiti.

Kitchen/lunchroom supplies replenished including paper supplies and soap twice daily.

Upholstered furniture vacuumed and plastic and leather furniture cleaned.

Wood furniture polished.

Weekly

Low-reach areas such as, but not limited to, chair rungs, baseboards, and doorjambs dusted and cleaned.

Windowsills, ledges, and wood paneling and molding dusted.

All painted walls, walls covered in vinyl covering, and door surfaces washed/stains removed.

Monthly

Floors waxed in uncarpeted office areas.

High-reach areas, such as, but not limited to, door frames, tops of partitions and hanging light fixtures dusted.

Picture molding and frames dusted.

Wall vents and ceiling vents vacuumed.

Carpet professionally spot cleaned as required to remove stains.

Quarterly

Light fixtures cleaned and dusted, but not less frequently than Quarterly.

Draperies or mini-blinds cleaned as required, but not less frequently than Quarterly.

HVAC units serviced for preventative maintenance purposes, all filters changed.

Semi-Annually

Windows washed as required inside and outside but not less frequently than two times annually.

Annually

Furniture Systems and other fabric or upholstered surfaces, including chairs, couches, walls, etc., spot cleaned, or if determined to be necessary in Tenant's sole discretion, professionally cleaned in their entirety using a water extraction process.

Bathroom and any other ceramic tile surfaces professionally cleaned using a hand scrub process. All grout and porous surfaces resealed with a professional grade sealant.

Touch-up paint all interior painted surfaces in a color and finish to match existing.

As Needed

On call day porter services so that all bathrooms serving the Premises are checked every day in the morning by 10:30 AM and again in the afternoon by 2:00 PM to ensure cleanliness and adequate provision of paper supplies. The day porter shall clean glass surfaces of Premises, including glass doors and partitions, and empty trash receptacles at least once a day during operating hours. The day porter shall be available during business hours on 1 hour notice to handle any janitorial related issues within the building.

Premises and the sidewalks, driveways, parking areas and all means of ingress and egress serving the Premises should be free of standing water and maintained in good repair and in clean and safe condition at all times.

All lawns, shrubbery and foliage on the grounds of which the Premises is part should be maintained in good condition and neat in appearance. Grass and shrubbery must be replanted as needed to maintain the grounds in good appearance and condition.

All carpets to be cleaned using non-detergent, low moisture, soil encapsulation system as recommended by the carpet manufacturer. The following schedule will be maintained for carpet cleaning: (i) heavy traffic areas as needed with a minimum frequency of bi-monthly (six times per year); (ii) moderate traffic areas cleaned as needed with a minimum of once every six months (two times per year) and; (iii) clean light traffic areas a minimum of one time per year. Cleaning carpet via use of a bonnet cleaning system is not an acceptable method for cleaning carpets.

All walls repainted and wall coverings replaced throughout the Premises. The paint finish should be eggshell or semi-gloss as directed by Tenant and in a color acceptable to Tenant. In no event, subject to damage or destruction conditions as provided in the Lease, will Landlord be required to repaint or replace wall coverings more than one time in a five-year period, not counting the initial tenant improvements completed prior to Tenant's occupancy or as a condition to the renewal of the Lease.

General

Landlord must, upon request of Tenant, produce written service contracts as evidence of compliance with the terms of this Cleaning and Maintenance Schedule.

Exhibit C: Funding Agreement

STATE OF TEXAS §
 § **FUNDING AGREEMENT**
COUNTY OF BEXAR §

This Agreement (the “Agreement”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Young Men’s Christian Association of Greater San Antonio, a Texas non-profit corporation (hereinafter referred to as “YMCA” or "Grantee"), acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Parks, Recreation & Open Space Improvements (Proposition 3 on the ballot) and Library, Museums & Cultural Arts Improvements (Proposition 4 on the ballot) pursuant to such Bonds (the “Bonds”); and

WHEREAS, among the Parks, Recreation & Open Space Improvements projects approved is a project titled “Northwest Area Recreational Facility (LF)”;

WHEREAS, among the Library, Museum & Cultural Arts Improvements projects approved is a project titled “District 6 New Library Site”;

WHEREAS, the Northwest Area Recreational Facility (LF) and the District 6 New Library Site are sometimes collectively referred to herein as the “Project”; and

WHEREAS, the official brochure for the Bond Election described this project as follows: “Northwest Area Recreational Facility LF: Leverage funding for the development of a recreational facility to service the northwest area of the city; and

WHEREAS, the official brochure for the Bond Election described this project as follows: “District 6 New Library Site: development of branch library site in Council 6;” and

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

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

WHEREAS, Grantee is the fee simple owner of the property located at 8765 State Highway 151, San Antonio, Texas 78251 (Real Property), the proposed location of the Project; and

WHEREAS, City will enter into a 25-year lease with Grantee for said property described more fully in **Exhibit A** attached hereto (“Lease”); and

WHEREAS, the public benefit to be gained from the Project is the provision of recreational facilities, operated under non-profit regulations, available for the citizens of San Antonio; and

WHEREAS, in conjunction with the Project and this Agreement, the YMCA will retain fee ownership of all of the Real Property, and will be entitled to use the same for any and all YMCA purposes (subject to the use rights for the branch library site as contemplated herein);

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

I. TERM

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The Term shall expire upon the earlier of: (a) the expiration of 25 years from this Agreement’s commencement date; (b) final repayment by the City of all bonds providing funding under this Agreement, as those bonds may be refinanced from time to time; or (c) termination of this Agreement as otherwise provided herein, whichever occurs first.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in Section V of this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the Project by May 2016. The Project shall include the design/construction or construction of a 5,000 square foot library and an approximately 38,121 square foot recreational facility.

2.01.1.1 Grantee shall complete construction of Library Premises and allow Library Department and its agents access to the completed Library Premises a sufficient amount of time prior to the completion of the recreational facility to perform any activities related to Library Premises’ post-construction activity, including but not limited to installation of shelves, collections, security systems, lockers, signage, and technology; conducting training activities; and staging for grand opening of library, in order to ensure the library and recreational facility open

and begin operations concurrently. Upon completion of design and in consultation with the Director of the Library Department and The Director of the Transportation & Capital Improvements (“TCI”), the Grantee shall provide a project implementation schedule reflecting all project milestones, including post-construction activities for the Library Premises.

2.02 Current budget estimates of the Project are approximately \$4,000,000.00. Grantee shall provide all necessary funding for the Project beyond the City’s commitment of \$4,000,000.00 (“Grant Funds”).

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee’s Chief Executive Officer shall be Grantee’s designated representative responsible for the management of this Agreement.

2.04 The Director of TCI or his designee shall be responsible for the administration of this Agreement on behalf of the City until the completion of the City funded portion of the Project; thereafter, the Director of the Parks and Recreation Department or his designee shall be responsible for the administration of the recreational portion of this Agreement on behalf of City and Library Director.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.03 and 2.04 hereinabove.

2.06 Grantee shall provide to City its plans and specifications for the Project, including a construction schedule (“Plans”) and such Plans shall be subject to the review and approval of City and San Antonio Public Library Board of Trustees, acting in its capacity as grantor under this Agreement, which approval shall not be unreasonably conditioned, withheld or delayed. Plans shall conform to the Library Program, and after approval by City and San Antonio Public Library Board of Trustees, Plans (or a listing of specific references thereto) shall be attached and incorporated into this Funding Agreement as **Exhibit B** and Grantee shall not make any substantial changes to the Plans without the prior written approval of City, which approval shall not be unreasonably conditioned, withheld or delayed. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals including those provided by City through its relevant development departments and relevant boards and commissions and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans and to request copies of construction inspections performed by Grantee and third parties. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the TCI Director or his designee at the completion of the Project construction. Grantee shall notify City and City shall

have the right to attend all scheduled construction meetings. Grantee shall provide City with a copy of the Certificate of Occupancy upon completion of the Project.

2.08 Beginning on January 31, 2016, and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall provide to City Director of Parks & Recreation an annual report (“Annual Report”). The Annual Report shall include the following:

- 2.08.1.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.
- 2.08.1.2 Evidence of insurance coverage, with City as additional insured, as outlined in Section 12 below.
- 2.08.1.3 Description of all maintenance activities, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.
- 2.08.1.4 Following final completion of the improvements, City shall have the right to use the gymnasium and/or multi-purpose room for City activities and events for up to ten (10) days in any calendar year during the term of this Agreement (“City Days”). City’s right to City Days shall be subject to the availability of the gymnasium and/or multi-purpose room based on Grantee’s use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups. City shall be exempt from the payment to Grantee of any rent or fees for City Days. City shall use its best efforts to avoid any damage to the Project (including any related improvements), and any damage caused as a result of City’s use shall be promptly repaired by City, at City’s expense. During City Days, City shall not be bound by any exclusivity contracts for concession sales entered into by Grantee with any concession suppliers.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee’s use of City Funds and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 Grantee agrees to procure all contracts under this agreement through open competitive contracting processes which are advertised to the public in an appropriate manner.

3.03 Plans must conform to Americans with Disabilities Act requirements and must be

approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS

3.04 (A) The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the City funded portion of this agreement. Grantee agrees that its construction contractor performing work on the City funded portion of the Project will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

(B) In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City will provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the Project, Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee shall require its construction contractor to collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as deemed necessary by City to confirm compliance with this Agreement.

(C) Upon audit of the records and certified payrolls under this section, should the City or its auditors find any wage violations, the Grantee shall cause its construction contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Grantee's contractor from its obligations 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.

ENVIRONMENTAL

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

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

3.06 Small/Minority and Woman Owned Business Terms and Conditions are attached hereto as **Exhibit C**.

COMPLIANCE WITH BOND COVENANTS

3.07 The YMCA shall not use, or permit the use of, City Funds, or earnings thereon, or any other amounts or any property, or the acquisition, construction, or improvement of which is to be financed directly or indirectly with City Funds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest on the City's debt to be includable in the gross income of the bond owners for federal income tax purposes. In addition, City Funds may not be used in connection with any religious activity, restaurant operation, café operation, and/or retail store operation on the Real Property, however, the foregoing use restrictions shall not apply to any part of the Real Property and/or improvement use on the Real Property where construction and renovation, finish out improvement and/or operation costs are funded through sources other than City Funds. No church signage may be placed on the building or Premises covered in the Lease.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will cause the Project to be completed in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the completed facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow under Grantee's control others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees that the programs and use described above will continue for the term of this Agreement.

4.02 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The Project improvements shall be used in part for operation of the YMCA of Greater San Antonio facility during the entire term of the Lease and the term of the Bonds.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$4,000,000.00.

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

5.03 Funding shall consist of reimbursements paid to Grantee for costs of construction of the Project, not to exceed \$4,000,000.00.

5.04 It is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

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

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

6.03 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIMELink) within thirty (30) days after receipt of an approved invoice.

6.04 All requests for reimbursement shall be submitted through the COSA PRIMELink. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMELink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMELink and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.05 Prior to reimbursement, City will have the right to inspect work completed to ensure

conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.06 City agrees to provide Grantee written notice regarding any expenditure for which Grantee has requested reimbursement under this Agreement which the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

- (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.

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

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all applicable city, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. All funds paid by City shall be for permanent public improvements. Only the following categories of costs shall be considered allowable:

- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design contract and amendments

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

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

- Personnel costs, salaries or wages paid directly by Grantee or an affiliated organization of Grantee
- Travel and travel-related expenses

- Costs or fees for consultant and/or professional services, except for those directly related to the Project (including but not limited to costs and fees of the Architect)
- Costs or fees associated with attendance of Grantee at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation of Grantee
- Fundraising
- Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's general contractor and shown on the approved Plans and specifically approved by City.
- Advertising

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

(A) All information, data or report heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

(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 affect 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

9.01 At any time during normal business hours and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to

this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 Grantee agrees and represents that it 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

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and to ensure Grantee's compliance with all applicable laws, regulations and ordinances related to the performance hereof.

XI. INDEMNITY

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

11.02 The provisions of this INDEMNITY 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.

11.03 TO THE EXTENT PROVIDED BY LAW, CITY SHALL BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST CITY ARISING IN FAVOR OF ANY PERSON, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY, OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF CITY AND/OR ITS EMPLOYEES.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Transportation & Capital Improvements (TCI) Department, which shall be clearly labeled "YMCA of Greater San Antonio" 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 phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TCI Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.03 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000

<p>3. Broad form Commercial General Liability Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *g. Explosion, Collapse, Underground h. Damage to property rented by Grantee 	<p>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</p> <p>h. \$100,000</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence</p>
<p>5. Builder's Risk (if applicable)</p>	<p>All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.</p>
<p>6. Property Insurance: For physical damage to the property of City, including improvements and betterment to the Leased Premises</p>	<p>Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property</p>
<p>*if applicable</p>	

12.04 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the CITY as additional insureds. 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.

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

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

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

- Name the City, its officers, officials, employees, 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;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

12.08 In addition to any other remedies the City may have upon Grantee's failure to

provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

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

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

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

12.12 Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

12.13 Grantee shall ensure that its general contractor complies with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. NONDISCRIMINATION

13.01 As a party to this contract, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIV. CONFLICT OF INTEREST

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

14.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of

being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

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

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

XV. POLITICAL ACTIVITY

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

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

XVII. CONTRACTING

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XVIII. CHANGES AND AMENDMENTS

18.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing

executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

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

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

XXII. ENTIRE AGREEMENT

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

XXIII. NOTICES

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

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

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

And Director of Library
600 Soledad
San Antonio, TX 78205

Grantee: YMCA of Greater San Antonio
3233 N. St. Mary's
San Antonio, TX 78214
Attn: Ross Magsig

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

XXIV. PARTIES BOUND

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. TEXAS LAW TO APPLY

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

XXVII. GENDER

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

XXVIII. CAPTIONS

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

XXIX. DEFAULT

29.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same, and Grantee shall have thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

29.02 In no event shall this Agreement or City's use of the premises be terminated prior

to the final payment or defeasement of the bonds issued by City to pay for the improvements. As long as such bonds have not been paid, the City's failure to perform any required actions under this Agreement shall give rise to Grantee's right, upon 60 days written notice to City, to undertake to perform any such actions and to receive reimbursement from City for the cost of performing such actions. After the bonds have been finally paid, any breach or violation by City to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of Grantee, at its option, upon thirty (30) days' written notice to City, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

XXX. LEGAL AUTHORITY

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

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

XXXI. CONDITIONS TO AGREEMENT

31.01 This Agreement, and all obligations of the parties hereunder, is expressly made conditioned on the mutual final agreement to the terms and conditions of the Lease and license attached hereto.

(Signatures Appear on the Following Page)

(Signature Page-Funding Agreement)

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

By: _____
Mike Frisbie, P.E., City Engineer
Director, TCI

YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO,
a Texas non-profit corporation

By: _____
Sandy Morander, President & CEO

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A

LEASE OF FACILITY BY CITY

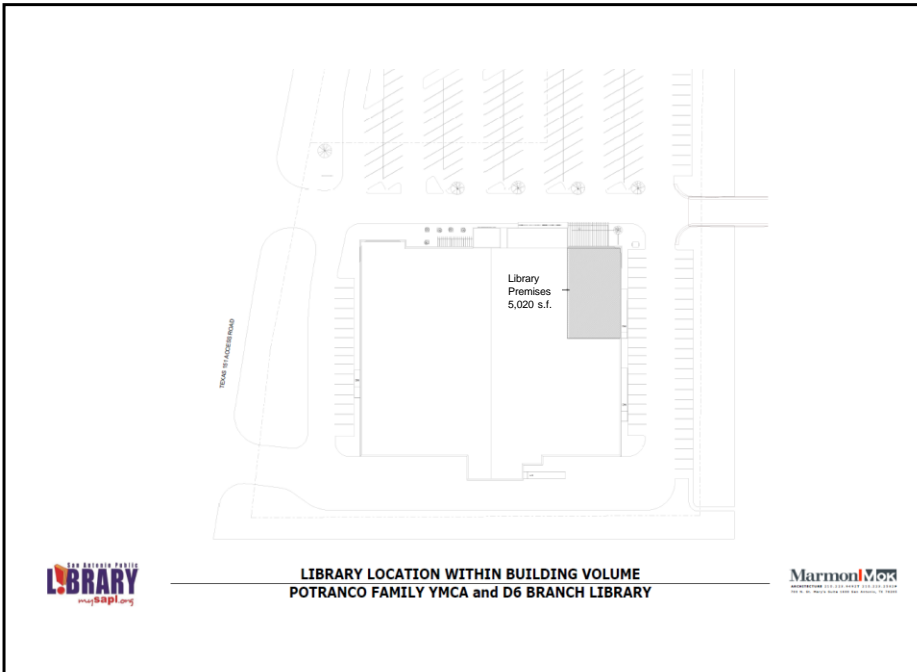
This Exhibit refers to the Primary Lease Agreement Northwest Area Library and Recreational Facility above.

DRAFT

Exhibit B

PLANS

These Plans are preliminary and are subject to change with the approval of both Parties by written agreement signed by the Grantee and the Director of the Library Department.



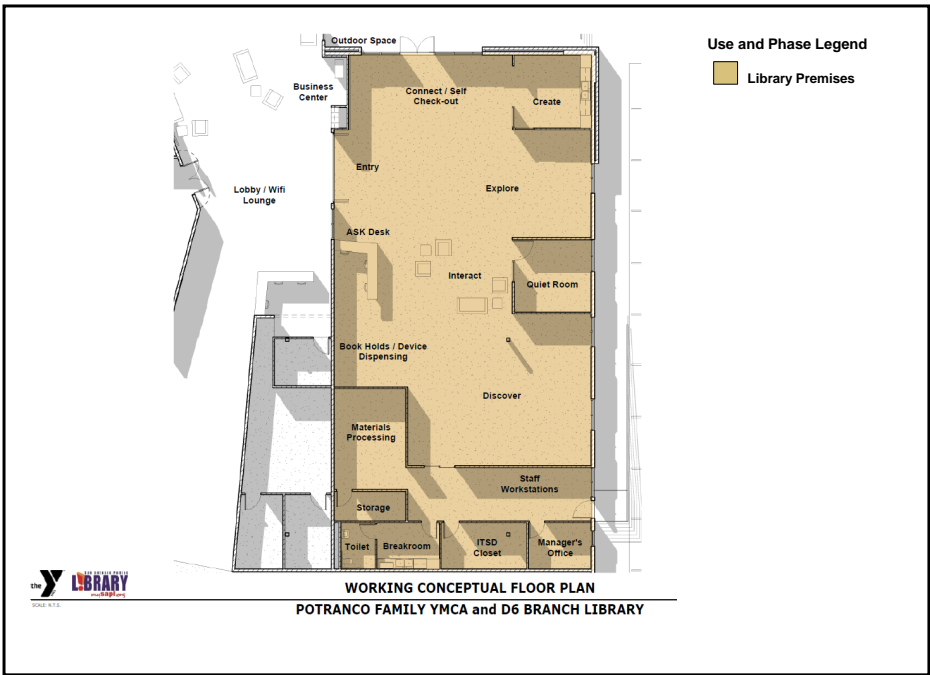
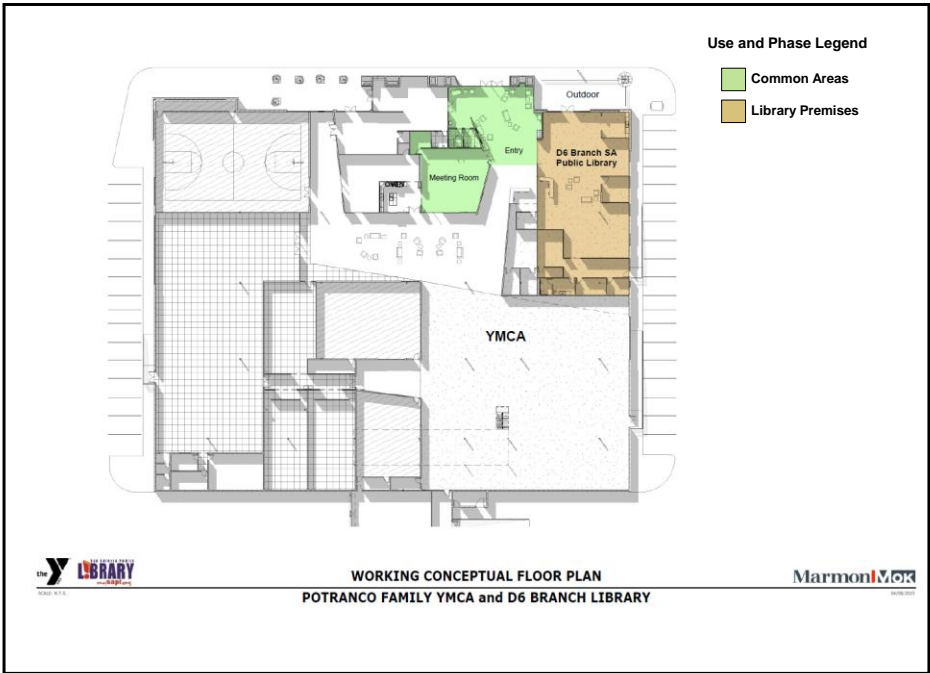


EXHIBIT C

SBEDA

For the purposes of this Exhibit, CITY OF SAN ANTONIO will be referred to as “CITY” and Young Men’s Christian Association of Greater San Antonio will be referred to as “CONTRACTOR.”

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Contract Requirements and Commitment

CONTRACTOR understands and agrees that the following provisions shall be requirements of this contract, and by its execution, CONTRACTOR commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of CONTRACTOR to commit, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE and M/WBE subcontracting goals shall constitute default.

Waiver Request - A CONTRACTOR may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this contract by submitting the *Vendor Subcontracting Waiver Request* form (which is available at <http://www.sanantonio.gov/SBO/Forms.aspx>). The CONTRACTOR’s Waiver request must fully document subcontractor unavailability despite the CONTRACTOR’s good faith efforts to comply with the goals. Such documentation shall include all good faith efforts made by CONTRACTOR including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

C. Definitions

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

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

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order

to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE

eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

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

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

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

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

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

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of

Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in

the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

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

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as

applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. DEVELOPER agrees to subcontract at least *thirty-three percent (33%)* of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to the CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement, **and**

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least *twenty-one percent (21%)* of its prime contract value to certified S/M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each S/M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar

amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least **two percent (2%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSAs). This two percent (2%) subcontracting goal will also count toward the aforementioned twenty-one percent (21%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each AABE Subcontractor, and documentation including a description of each AABE Subcontractor's scope of work and confirmation of each AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of 33%; the M/WBE subcontracting goal of 21% and the AABE subcontracting goal of 2% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of June 2014, African-American owned firms represent approximately 2.37% of available subcontractors, Hispanic-American firms represent approximately 17.08%, Asian-American firms represent approximately 1.12%, Native American firms represent approximately 0.33%, and Women-owned firms represent approximately 4.75% of available construction industry subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE,

M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

STATE OF TEXAS §
 § **FUNDING AGREEMENT**
COUNTY OF BEXAR §

This Agreement (the "Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Young Men's Christian Association of Greater San Antonio, a Texas non-profit corporation (hereinafter referred to as "YMCA" or "Grantee"), acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Parks, Recreation & Open Space Improvements (Proposition 3 on the ballot) and Library, Museums & Cultural Arts Improvements (Proposition 4 on the ballot) pursuant to such Bonds (the "Bonds"); and

WHEREAS, among the Parks, Recreation & Open Space Improvements projects approved is a project titled "Northwest Area Recreational Facility (LF)"; and

WHEREAS, among the Library, Museum & Cultural Arts Improvements projects approved is a project titled "District 6 New Library Site"; and

WHEREAS, the Northwest Area Recreational Facility (LF) and the District 6 New Library Site are sometimes collectively referred to herein as the "Project"; and

WHEREAS, the official brochure for the Bond Election described this project as follows: "Northwest Area Recreational Facility LF: Leverage funding for the development of a recreational facility to service the northwest area of the city; and

WHEREAS, the official brochure for the Bond Election described this Project as follows: "District 6 New Library Site: development of branch library site in Council 6;" and

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

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

WHEREAS, Grantee is the fee simple owner of the property located at 8765 State Highway 151, San Antonio, Texas 78251 (Real Property), the proposed location of the Project; and

WHEREAS, City will enter into a 25-year lease with Grantee for said property described more fully in **Exhibit A** attached hereto ("Lease"); and

WHEREAS, the public benefit to be gained from the Project is the provision of recreational facilities, operated under non-profit regulations, available for the citizens of San Antonio; and

WHEREAS, in conjunction with the Project and this Agreement, the YMCA will retain fee ownership of all of the Real Property, and will be entitled to use the same for any and all YMCA purposes (subject to the use rights for the branch library site as contemplated herein);

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

I. TERM

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The Term shall expire upon the earlier of: (a) the expiration of 25 years from this Agreement's commencement date; (b) final repayment by the City of all bonds providing funding under this Agreement, as those bonds may be refinanced from time to time; or (c) termination of this Agreement as otherwise provided herein, whichever occurs first.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in Section V of this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the Project by May 2016. The Project shall include the design/construction or construction of a 5,000 square foot library and an approximately 38,121 square foot recreational facility.

2.01.1.1 Grantee shall complete construction of Library Premises and allow Library Department and its agents access to the completed Library Premises a sufficient amount of time prior to the completion of the recreational facility to perform any activities related to Library Premises' post-construction activity, including but not limited to installation of shelves, collections, security systems, lockers, signage, and technology; conducting training activities; and staging for grand opening of library, in order to ensure the library and recreational facility open and begin operations concurrently. Upon completion of design and in consultation with the Director of the Library Department and The Director of the Transportation & Capital Improvements ("TCI"), the Grantee shall provide a project implementation schedule reflecting all project milestones, including post-construction activities for the Library Premises.

2.02 Current budget estimates of the Project are approximately \$4,000,000.00. Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$4,000,000.00 ("Grant Funds").

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

2.04 The Director of TCI or his designee shall be responsible for the administration of this Agreement on behalf of the City until the completion of the City funded portion of the Project; thereafter, the Director of the Parks and Recreation Department or his designee shall be responsible for the administration of the recreational portion of this Agreement on behalf of City and Library Director.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.03 and 2.04 hereinabove.

2.06 Grantee shall provide to City its plans and specifications for the Project, including a construction schedule ("Plans") and such Plans shall be subject to the review and approval of City and San Antonio Public Library Board of Trustees, acting in its capacity as grantor under this Agreement, which approval shall not be unreasonably conditioned, withheld or delayed. Plans shall conform to the Library Program, and after approval by City and San Antonio Public Library Board of Trustees, Plans (or a listing of specific references thereto) shall be attached and incorporated into this Funding Agreement as **Exhibit B** and Grantee shall not make any substantial changes to the Plans without the prior written approval of City, which approval shall not be unreasonably conditioned, withheld or delayed. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals including those provided by City through its relevant development departments and relevant boards and commissions and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans and to request copies of construction inspections performed by Grantee and third parties. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the TCI Director or his designee at the completion of the Project construction. Grantee shall notify City and City shall have the right to attend all scheduled construction meetings. Grantee shall provide City with a copy of the Certificate of Occupancy upon completion of the Project.

2.08 Beginning on January 31, 2016, and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall provide to City Director of Parks & Recreation an annual report ("Annual Report"). The Annual Report shall include the following:

2.08.1.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.

2.08.1.2 Evidence of insurance coverage, with City as additional insured, as outlined in Section 12 below.

2.08.1.3 Description of all maintenance activities, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

2.08.1.4 Following final completion of the improvements, City shall have the right to use the gymnasium and/or multi-purpose room for City activities and events for up to ten (10) days in any calendar year during the term of this Agreement ("City Days"). City's right to City Days shall be subject to the availability of the gymnasium and/or multi-purpose room based on Grantee's use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups. City shall be exempt from the payment to Grantee of any rent or fees for City Days. City shall use its best efforts to avoid any damage to the Project (including any related improvements), and any damage caused as a result of City's use shall be promptly repaired by City, at City's expense. During City Days, City shall not be bound by any exclusivity contracts for concession sales entered into by Grantee with any concession suppliers.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee's use of City Funds and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 Grantee agrees to procure all contracts under this agreement through open competitive contracting processes which are advertised to the public in an appropriate manner.

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

PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS

3.04 (A) The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to construction work performed on the City funded portion of this agreement. Grantee agrees that its construction contractor performing work on the City funded portion of the Project will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

(B) In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City will provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the

Project, Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee shall require its construction contractor to collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as deemed necessary by City to confirm compliance with this Agreement.

(C) Upon audit of the records and certified payrolls under this section, should the City or its auditors find any wage violations, the Grantee shall cause its construction contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Grantee's contractor from its obligations 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.

ENVIRONMENTAL

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

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

3.06 Small/Minority and Woman Owned Business Terms and Conditions are attached hereto as **Exhibit C**.

COMPLIANCE WITH BOND COVENANTS

3.07 The YMCA shall not use, or permit the use of, City Funds, or earnings thereon, or any other amounts or any property, or the acquisition, construction, or improvement of which is to be financed directly or indirectly with City Funds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest on the City's debt to be includable in the gross income of the bond owners for federal income tax purposes. In addition, City Funds may not be used in connection with any religious activity, restaurant operation, café operation, and/or retail store operation on the Real Property, however, the foregoing use restrictions shall not apply to any part of the Real Property and/or improvement use on the Real Property where construction and renovation, finish out improvement and/or operation costs are funded through sources other than City Funds. No church signage may be placed on the building or Premises covered in the Lease.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will cause the Project to be completed in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the completed facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow under Grantee's control others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees that the programs and use described above will continue for the term of this Agreement.

4.02 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The Project improvements shall be used in part for operation of the YMCA of Greater San Antonio facility during the entire term of the Lease and the term of the Bonds.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$4,000,000.00.

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

5.03 Funding shall consist of reimbursements paid to Grantee for costs of construction of the Project, not to exceed \$4,000,000.00.

5.04 It is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

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

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

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

6.03 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIMElink) within thirty (30) days after receipt of an approved invoice.

6.04 All requests for reimbursement shall be submitted through the COSA PRIMElink. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMElink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMElink and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

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

6.06 City agrees to provide Grantee written notice regarding any expenditure for which Grantee has requested reimbursement under this Agreement which the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

- (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.

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

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all applicable city, state and federal laws; regulations and ordinances affecting

Grantee's operations hereunder. All funds paid by City shall be for permanent public improvements. Only the following categories of costs shall be considered allowable:

- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design contract and amendments

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

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

- Personnel costs, salaries or wages paid directly by Grantee or an affiliated organization of Grantee
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project (including but not limited to costs and fees of the Architect)
- Costs or fees associated with attendance of Grantee at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation of Grantee
- Fundraising
- Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's general contractor and shown on the approved Plans and specifically approved by City.
- Advertising

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

(A) All information, data or report heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

(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 affect 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

9.01 At any time during normal business hours and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 Grantee agrees and represents that it 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

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and to ensure Grantee's compliance with all applicable laws, regulations and ordinances related to the performance hereof.

XI. INDEMNITY

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

11.02 The provisions of this INDEMNITY 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.

11.03 TO THE EXTENT PROVIDED BY LAW, CITY SHALL BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST CITY ARISING IN FAVOR OF ANY PERSON, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY, OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF CITY AND/OR ITS EMPLOYEES.

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Transportation & Capital Improvements (TCI) Department, which shall be clearly labeled "YMCA of Greater San Antonio" 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 phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TCI Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.03 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. * g. Explosion, Collapse, Underground h. Damage to property rented by Grantee	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage h. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Builder's Risk (if applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Property Insurance: For physical damage to the property of City, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of the Contractor's property
*if applicable	

12.04 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the CITY as additional insureds. 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.

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

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

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

- Name the City, its officers, officials, employees, 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;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

12.08 In addition to any other remedies the City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

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

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

12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

12.12 Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

12.13 Grantee shall ensure that its general contractor complies with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

XIII. NONDISCRIMINATION

13.01 As a party to this contract, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIV. CONFLICT OF INTEREST

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

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

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

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

XV. POLITICAL ACTIVITY

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

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

XVII. CONTRACTING

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XVIII. CHANGES AND AMENDMENTS

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

18.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

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

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

XXII. ENTIRE AGREEMENT

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

XXIII. NOTICES

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

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

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

And Director of Library
600 Soledad
San Antonio, TX 78205

Grantee: YMCA of Greater San Antonio
3233 N. St. Mary's
San Antonio, TX 78214
Attn: Ross Magsig

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

XXIV. PARTIES BOUND

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. TEXAS LAW TO APPLY

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

XXVII. GENDER

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

XVIII. CAPTIONS

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

XXIX. DEFAULT

29.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same, and Grantee shall have thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

29.02 In no event shall this Agreement or City's use of the premises be terminated prior to the final payment or defeasement of the bonds issued by City to pay for the improvements. As long as such bonds have not been paid, the City's failure to perform any required actions under this Agreement shall give rise to Grantee's right, upon 60 days written notice to City, to undertake to perform any such actions and to receive reimbursement from City for the cost of performing such actions. After the bonds have been finally paid, any breach or violation by City to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of Grantee, at its option, upon thirty (30) days' written notice to City, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

XXX. LEGAL AUTHORITY

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

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

XXXI. CONDITIONS TO AGREEMENT

31.01 This Agreement, and all obligations of the parties hereunder, is expressly made conditioned on the mutual final agreement to the terms and conditions of the Lease and license attached hereto.

(Signatures Appear on the Following Page)

DRAFT

(Signature Page-Funding Agreement)

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

By: _____
Mike Frisbie, P.E., City Engineer
Director, TCI

YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SAN ANTONIO,
a Texas non-profit corporation

By: _____
Sandy Morander, President & CEO

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A

LEASE OF FACILITY BY CITY

**Primary Lease Agreement
Northwest Area Library and Recreational Facility**

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: The YMCA of Greater San Antonio

Landlord's Address: 3233 N. St. Mary's Street, San Antonio, Texas 78214

Tenant: City of San Antonio

Tenant's Address: P.O. Box 829966, San Antonio, Texas 78283-3966
(Attention: Ramiro S. Salazar, Library Department Director)

Comment [JAKR1]: Add name

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Premises: An approximately 43,121 square foot portion of a 55,663 square foot building located on a 5.96 acre lot, the “Building” located at 8765 State Highway 151, San Antonio, Texas 78251 consisting of:

Recreation Center Premises: an approximately 38,121 square foot area subject to the license rights granted in Section 3 of this Lease. Notwithstanding such license rights, certain portions of Recreation Center Premises are designated common area as that term is defined below and shall be available for Tenant’s use and;

Library Premises: a 5,000 square foot area exclusive for Tenant’s use.

Recreation Center Premises, Library Premises, and Common Areas are depicted on Exhibit A which is attached hereto and may be referred to herein as Premises meaning the entirety of Recreation Center Premises and Library Premises including the Common Areas or individually as Recreation Center Premises or Library Premises.

Permitted Use: Any and all lawful uses during any time of day or night.

Lease Commencement and Binding Dates: This Agreement shall commence and is binding on the Parties on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties.

Term: As to Recreation Center Premises excluding the Common Areas, the Term shall expire upon the earlier of: (a) the expiration of 25 years from the Lease Commencement Date; (b) final repayment by the City of all bonds providing funding under the Funding Agreement, as those bonds may be refinanced from time to time; or (c) termination of the Funding Agreement as otherwise provided herein, whichever occurs first.

As to Library Premises and the rights to make use of the Common Areas, the Term shall expire upon the expiration of 26 years from the Lease Commencement Date.

Rent: The consideration paid for the Premises shall be in the form of the terms and conditions of the Funding Agreement as that document is defined below with no other Rent due during the term of this Lease.

**Asbestos Survey
Deadline:**

10 days prior to the Lease Commencement Date

Common Areas:

All facilities and areas of the Building and related land that are identified in Exhibit A and are intended to be used by Landlord and Tenant for the common, general, and nonexclusive use of the public. At a minimum, these areas include: a parking lot large enough to accommodate both Landlord's and Tenant's needs; a common lobby leading to Library Premises; common area bathrooms adjacent to Library Premises and sufficient in size to accommodate Tenant's use and occupancy; a meeting room adjacent to the lobby not less than 1,200 square feet in size; an area or areas outside Building for library programming purposes and; any other areas designated by Landlord for the common use of both Landlord and Tenant. Landlord has exclusive control over the Common Areas, provided however any rules imposed by Landlord must (a) recognize that Tenant has priority to use the Common Areas; (b) not inhibit Tenant's reasonable use of the Common Areas in a manner that is consistent with the policies set forth by the San Antonio Public Library Board of Trustees and; (c) not preclude Tenant's right to use the Common Areas during times that Tenant is open for business.

Funding Agreement:

Agreement between City of San Antonio and the Greater YMCA of San Antonio for renovation of Recreation Center Premises and Library Premises, including the Common Areas pursuant to the Authorizing Ordinance.

The following Exhibits to this Lease are attached and incorporated into it for all purposes:

- Exhibit A: Description of Premises
- Exhibit B: Cleaning and Maintenance Schedule
- Exhibit C: Funding Agreement

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Tenant's right of occupancy of the Library Premises and right to make use of the Common Areas begin on the construction completion date.

2.03. This Agreement is binding on the Parties on the Binding Date.

2.04 Tenant will have access to the Premises before, during, and after any renovations, which Landlord is expected to undertake and complete during the Term as called for in the Funding Agreement.

3. Reservation and License for YMCA of Greater San Antonio's Use of the Recreation Center Premises and Common Areas.

3.01. Notwithstanding anything herein to the contrary, the YMCA of Greater San Antonio hereby reserves a license to exclusively improve, operate, and maintain Recreation Center Premises and the Common Areas located in the Building the duration of this Lease.

3.02. In the event that this Lease expires, or is otherwise terminated, the license hereby granted in Section 3.01 shall be automatically revoked on the date the Lease expires or is otherwise terminated.

3.03 Tenant hereby covenants and agrees not to interfere in any way with Landlord's use of the Recreation Center Premises outside of the Common Areas.

4. Rent.

4.01. Base Rent - Landlord acknowledges Tenant's commitment to provide all Base Rent due under this Lease as provided for in the Funding Agreement, subject to Landlord's requirement to comply with all terms and conditions of the Funding Agreement.

5. Term.

5.01. The Term of this Lease is as defined in Section 1 of this Lease.

5.02. Tenant may terminate this Lease at any time without cause by delivering 30 days prior written notice to Landlord.

6. Tenant's Affirmative Promises.

Tenant will:

6.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building and (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building.

6.02. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

6.03. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are obligations of Landlord.

6.04. Vacate the Premises and return all keys to the Premises promptly upon expiration of the Term, subject to any holdover rights.

6.05. On request, execute an estoppel certificate that states the Lease Commencement Date, and duration of the Lease, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate

that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

6.07 Operating Expenses – Commencing on the date that Tenant takes occupancy of Library Premises, Tenant shall pay to Landlord the Annual Operating Expenses. The Annual Operating Expenses shall be paid in one lump sum on January 1 of each year of the term. The annual amount shall be prorated to the day for any period of occupancy that commences on a date other than January 1. The initial Annual Operating Expenses amount shall be \$21,902.37 and Landlord acknowledges that this amount is an accurate assessment of costs Landlord will incur to provide all of the services that are Landlord's obligations under this Lease. This amount shall be applicable to the first full calendar year (January 1 to December 31) of the term and any partial calendar year of a term which commences on a date other than January 1 prior to that initial calendar year. Commencing on the second January 1st of the Term and each anniversary thereafter, the Annual Operating Expenses shall be subject to adjustment based on the Consumer Price Index—All Urban Consumers, All Items, in the US, Southwest, not seasonally adjusted, 1982-84=100. Adjustments are determined by multiplying the Operating Expenses by a fraction, the numerator being the index number published in December of the prior calendar year and the denominator being the index number published in November of the current calendar. If the product is greater than the previous year's Operating Expenses, Tenant will pay the difference between the product and the previous year's Operating Expenses until the next rental adjustment. If the Department of Labor ceases publishing the Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, Southwest, All items, 1982-84=100, Landlord and Tenant shall mutually and in good faith agree on an alternative index to be used. In no event shall the year over year increase exceed 5%.

7. Tenant's Negative Promises.

Tenant will not:

7.01. Use the Premises for any purpose other than the Permitted Use.

7.02. Create a nuisance.

7.03. Interfere with any construction or renovations nor any of Landlord's normal business operations or management of the Building.

7.04. Permit waste.

7.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

7.06. Alter the Premises without prior approval.

7.07. Allow a lien to be placed on the Premises.

8. Landlord's Affirmative Promises.

Landlord will:

8.01. Lease to Tenant the Premises for the entire Term, beginning on the Lease Commencement Date.

8.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

8.03. Repair, replace, and maintain the entirety of the Premises and the land on which it is situated on including but not limited to (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior and interior walls, doors, corridors, and windows, (e) HVAC systems, concealed and exposed wiring and electrical systems, including IT infrastructure, and concealed and exposed plumbing, (f) floors including carpeting and any other type of floor covering, (g) damage to any improvements constructed pursuant to the Funding Agreement, (h) other structures or equipment serving the Premises including the Common Areas, and (i) all other parts of the Premises as none of the obligations to repair, replacement, and/or maintain the Premises has been allocated to Tenant.

8.04. Be responsible for procuring and paying for all utilities serving the Premises including all utility infrastructure or facilities serving the Premises.

8.05. Provide the Cleaning and Maintenance Services to Library Premises and the Common Areas as detailed in Exhibit B.

8.06. Provide the improvements to Library Premises and the Common Areas as detailed in the Funding Agreement.

8.07. Deliver to Tenant an Asbestos Survey of the Premises and the Building not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

8.08. Pay all real estate taxes, general and special assessments, and other charges of any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the Lease term, whether belonging to Landlord or to Tenant. Landlord must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency.

8.09. Provide Tenant with a mutually acceptable location in the parking area for the purposes of installation of drive up book depository equipment including any required lighting, curbs and landscaping required to install this equipment at Landlord's expense.

8.10. Provide Tenant the right to install monument signage at the driveway entrances leading to the property of which the Premises is part including the 151 frontage road entrance and the Potranco Road entrance. Additionally, Tenant shall have the right to install prominent signage on the building of which the Premises is part and on any doors leading into the building of which the Premises is part. Tenant's signage shall be

compatible with any signage installed by Landlord and shall be designed pursuant to Tenant's needs. However, in no event shall Tenant's signage be larger in size than any monument signage installed to identify Landlord's business. The cost of Tenant's signage shall be paid for through the Funding Agreement.

8.11. Landlord 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 identify, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

~~8.12. Landlord, at its sole cost and expense will provide uniformed security personnel to patrol the Premises. At a minimum the security services must be in the form of at least one on site guard, who will be stationed in the Common Area Lobby, be available whenever the Tenant is open for business, and shall patrol the Common Areas until such time that Landlord closes for business each day that Tenant is open. Landlord and Tenant will mutually determine what the security scope of services are and will memorialize these services in the form of post orders.~~

8.123. Tenant shall reserve to itself the right to name the Premises in accordance with San Antonio Public Library Board of Trustees' policies. The Tenant will be allowed to include the name of the library branch in any signage erected by Landlord on Tenant's behalf at the time of initial occupancy subject to the terms and conditions contained in Section 8.10 above. In the event that Tenant elects to name the Premises subsequent to Landlord's fulfillment of all obligations outlined in the Funding Agreement, then any modifications to the signage as a result will be funded for by Tenant at its sole cost and expense.

8.134. Landlord agrees to honor any request from the San Antonio Public Library or their designee to deny access to the Premises to any individual who has been found by the San Antonio Public Library to be in violation of library policies resulting in such person being denied access to Library Premises. Tenant agrees to notify Landlord in writing of any person prohibited from entering the Library. Landlord shall timely initiate whatever controls are necessary so that its staff are aware of prohibited persons and ensure its staff will take all reasonable actions to prohibit admittance by such persons to the Premises and Common Areas including any portions of the Building of which the Premises are part.

8.145. Landlord agrees to allow Tenant to use other portions of Building in addition to Library Premises and Common Areas for Library-related programs and activities after giving prior written consent, which Landlord may not unreasonably withhold.

9. Landlord's Negative Promises.

Landlord will not:

9.01. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

9.02 Unreasonably withhold consent to a proposed assignment or sublease.

9.03 Unreasonably deny any request by Tenant for use of the Premises or a portion of the Premises assuming Tenant has provided Landlord 10 days prior notice.

10. Repair, Maintenance and Replacement Responsibilities.

Landlord and Tenant each must repair, maintain, and replace, if necessary, any building component allocated to it in the table below:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Janitorial Services to Premises	No	Yes
Janitorial Services to Common Areas	No	Yes
Utility Services	No	Yes
Parking Lot Maintenance	No	Yes
Landscaping	No	Yes
Exposed Electrical Systems including any illuminated exterior and interior signage.	No	Yes
Light bulbs and tubes	No	Yes
Concealed Electrical Systems	No	Yes
Exposed Plumbing Systems	No	Yes
Concealed Plumbing Systems including under slab drain lines	No	Yes
HVAC Systems	No	Yes
Pest Control Services	No	Yes
Fire Life Safety Systems including fire extinguishers	No	Yes
Low Voltage intrusion alarms, door access controls and closed circuit security cameras	Yes	No
IT Infrastructure	No	Yes

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11. Condemnation.

11.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this Lease.

11.02. If the entire Premises are taken or so transferred, this Lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. All proceeds of condemnation are Landlord's.

11.03. If only part of the Premises is taken or transferred, this Lease terminates if, in Tenant's opinion, the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Tenant's business cannot be effectively and practicably operated on it. In such case, this Lease and all rights, title, and interest under it cease on the date that title vests in the condemning authority. All proceeds of condemnation are Landlord's.

11.04. If part of the Premises is taken or transferred and, in Tenant's opinion, the remainder of the Premises is in such that Tenant's business can be effectively and practicably operated on the remaining Premises, this Lease terminates only as to the portion of the Premises taken or transferred. The termination is as of the date title vests in the condemning authority. The Lease continues as to the portion not taken or transferred. As of the termination date, Tenant's Operating Expenses are reduced during the unexpired portion of this Lease to that proportion of the annual Operating Expenses that the value of the part of the Premises not taken bears to the value of the whole. Such values are to be determined as of the date immediately before any actual taking. All proceeds of condemnation are Landlord's.

11.05. In any case, Tenant is free to seek a separate condemnation award for any loss of or diminishment to its leasehold.

12. Assignment and Subletting.

12.01. Tenant may not transfer, assign, or sublet Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent.

12.02. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

12.03. Landlord need not consent to a sublease to a Tenant-affiliated entity.

13. Holdover.

13.01. If the Lease has not been earlier terminated according to its terms, Tenant may hold-over on a month-to-month basis. There shall be no rent due during a hold over, and all other terms of this Lease apply.

14. Default.

14.01 Upon default by Landlord in the performance of its obligations hereunder, Tenant shall give Landlord notice of the same, and Landlord shall have thirty (30) days following receipt of written notice of default from Tenant (or such reasonably longer time as may be necessary provided Landlord commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Landlord fails to timely cure such default, Tenant may pursue all remedies available in law or at equity and/or other rights Tenant 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.

14.02. In no event shall this Agreement or Tenant's use of the premises be terminated prior to the final payment or defeasement of the bonds issued by Tenant to pay for the improvements. As long as such bonds have not been paid, the Tenant's failure to perform any required actions under this Agreement shall give rise to Landlord's right, upon 60 days written notice to Tenant, to undertake to perform any such actions and to receive reimbursement from Tenant for the cost of performing such actions. After the bonds have been finally paid, any breach or violation by Tenant to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of the Landlord, at its option, upon thirty (30) days' written notice to Tenant, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein.

14.02 No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

14.03. *Waiver of Liens.* As required by Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

15. Dispute Resolution.

15.01. Before bringing any action arising out of this Agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The Parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

15.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one Party's waiver does not affect another Party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

15.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

15.04. The Party desiring relief has the burden to initiate mediation. Waiting for another Party to initiate mediation does not waive the right to it.

15.05. If the Parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all Parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

15.06. Mediator fees must be borne equally.

15.07. Parties need not mediate before going to court (i) for either Party to seek emergency injunctive relief or (ii) for Landlord to seek forcible entry and detainer relief against Tenant.

16. Insurance

16.01. Tenant will self-insure as it deems advisable against property loss for its personal property only. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

Tenant disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Landlord. Any and all claims resulting from any obligation for which Landlord may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Landlord.

16.02. Landlord must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A-(VII) or better by A.M. Best Company and/or otherwise acceptable to Tenant, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Tenant
2. Employer's Liability	\$500,000/\$500,000/\$500,000 with a Waiver of Subrogation in favor of Tenant.
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	

- (d) Contractual Liability
- (e) Personal Injury Liability
- (f) Broad-Form Property Damage, to include Fire Legal Liability Coverage for replacement cost of all improvements on the Premises
- 4. Business Automobile Liability to include coverage for: Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000.00 per occurrence
 - (a.) Owned/Leased Automobiles
 - (b.) Non-owned Automobiles
 - (c) Hired Automobiles
- 5. Property Insurance for physical damage to the property of the Landlord, including improvements and betterments Coverage for replacement cost of all improvements on the Premises.

16.03 Each insurance policy required by this Lease must contain the following clauses:

“This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days prior written notice has been given to:

- (a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

- (b) City of San Antonio
Leasing Division Manager
P.O. Box 839966
San Antonio, Texas 78283-3966

“The insurance provided by Landlord is primary to any insurance or self-insurance maintained by the City of San Antonio.”

“Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy.”

Each insurance policy required by this Lease, excepting policies for Workers’ Compensation and Employer’s Liability, must contain the following clause:

“The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio.”

16.04. Landlord must require its insurance carrier(s) to deliver to Tenant's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Tenant. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will provide 30 days prior notice to Landlord and an opportunity to discuss the changes. If Tenant still wants the changes after discussion, Landlord must make the changes and Landlord must pay the cost thereof.

16.05. Within 30 days after the Lease Commencement Date, Landlord must deliver certificates to Tenant's Risk Manager and the City Clerk from Landlord's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

16.06. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancellation.

16.07. Nothing herein contained limits in any way Landlord's liability for damages to persons or property resulting from Landlord's activities or the activities of Landlord's agents, employees, sublessees, or invitees under this Lease.

16.08. Landlord waives all claims against Tenant for injury to persons or property on or about the Premises, whether or not caused by Tenant's negligence.

16.09 Release of Claims/Subrogation.

16.09.01 The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, waive subrogation against each other for Covered Claims.

17. Indemnification

17.01. These definitions apply to the indemnity provisions of this Agreement:

17.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnatee that give rise to assertions of Indemnatee liability under this Agreement, whether or not the person is a party to this Agreement. Indemnified Claims include

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attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

17.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

17.01.03. "Indemnitor" means Landlord.

17.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

17.03. If Indemnitor and one or more Indemnitees are finally adjudged to be jointly liable for Indemnified Claim, Indemnitor need not further indemnify the so-adjudged Indemnitees from liability arising from the Indemnitees' adjudicated share of liability. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be negligent and must continue to indemnify other Indemnitees.

17.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

17.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

17.06. In addition to the indemnity required under this Agreement, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

17.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (a) the settlement will be fully funded by Indemnitor and (b) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed

settlement before it becomes binding. Any settlement purporting to bind an Indemnatee must first be approved by City Council.

17.08. Nothing in this Agreement waives governmental immunity or other defenses of Indemnitees under applicable law.

17.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

18. Environmental.

18.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

18.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

18.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

18.04. Landlord represents that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws. Landlord must cause its employees, agents, contractors, tenants, and other persons occupying or present on or about the property on which the Premises are located (other than the Premises) (collectively "Occupants") to comply with all applicable Environmental Laws.

18.05. Landlord represents and warrants that there has been no Release and there is no threat of Release of any Hazardous Materials on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

18.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

18.07. Landlord represents and warrants that, (i) with regard to activities and conditions on the Property Landlord has not given, nor was it required to give, and Landlord has not received, any notice that: (a) the Property violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Property; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up,

remediating, removing, or responding to a Hazardous Materials release; or (d) the Property is subject to a lien under any Environmental Laws; and (ii) no conditions currently exist, or are reasonably foreseeable, that would give rise to such a notice. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

18.08. Before the Lease Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the Property, Tenant must restore the Property. Tenant is responsible for damages arising from its testing on the Property and for the proper disposal of any wastes generated by its testing.

18.09. Landlord must indemnify Tenant and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Landlord's environmental representations, warranties, and covenants.

19. Prohibited Interests in Contracts.

19.01. The City Charter 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) 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;
- (iv) 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.

19.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.

(ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

19.03. Landlord acknowledges that City's reliance on the above warranties and certifications is reasonable.

20. Appropriations.

All City obligations under this instrument are funded subject to the discretion of City Council whether to appropriate funding. If City Council fails to appropriate money for any obligation under this Agreement, the City may terminate this Agreement and have no further liability.

21. Alterations.

21.01 During the term, Tenant shall be allowed to make any non-structural alterations to Library Premises as Tenant deems appropriate. However, prior to making structural alterations to Library Premises or any alterations to Common Areas, Tenant shall first advise Landlord of the extent of the proposed alterations, and Landlord shall approve or deny Tenant's request within not more than 30 days of the date of the request. In the event that Landlord does not expressly approve or deny Tenant's request within 30 days of the date that Landlord receives Tenant's alteration request, then the request shall be automatically approved, and Tenant shall be allowed to proceed. Structural alterations are limited to any alterations that would require a building permit be issued by the City of San Antonio.

21.02 At the end of the Term, Tenant may, at its sole option, remove any fixtures, furnishings telecommunication equipment and improvements, the "Personal Property", including any Personal Property installed in the Common Areas, regardless whether they were installed by Landlord as part of the improvements completed pursuant to the Funding Agreement or installed by Tenant after the Binding Date, or leave such Personal Property in place, in which case the Personal Property will become property of the Landlord. In order for the items located in the Common Areas to be considered Personal Property for purposes of this Section only, then the Personal Property must be exclusively for Tenant's use.

21.03 Neither Party may alter Common Areas without the other Party's prior written approval. Either Party shall first advise the other Party of the extent of the proposed alterations, and each Party shall approve or deny the other Party's request within not more than 30 days of the date of the request. Structural alterations are limited to any alterations that would require a building permit be issued by the City of San Antonio.

22. Miscellaneous.

22.01. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** Both Parties' obligations under this Agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this Agreement is only in Bexar County, Texas.

22.02. If any part of this Agreement is found invalid or unenforceable, the finding does not affect the remainder.

22.03. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each Party. This clause does not authorize any assignment not otherwise authorized.

22.04. This Written Agreement Together With the Funding Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

22.05. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion. Notwithstanding the above, the Parties reserve the right to make administrative changes to this Agreement relating to cleaning and maintenance ~~and security~~ services provided by Landlord by written agreement signed by the Landlord and the Director of the Library Department.

22.06. This Agreement benefits the Parties and their successors and permitted assigns only. It has no third party beneficiaries.

22.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, or by independent delivery service addressed to the parties at their respective addresses set forth at the beginning. If sent by certified mail, notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent other than by certified mail, notice is complete on the date shown on the receipt. Address for notice may be changed by giving notice.

22.08. Paragraph captions are for ease of reference only and do not affect the interpretation.

22.09. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all Parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this Agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all Parties.

22.10. The Parties must execute and deliver such additional documents and instruments as may be necessary. No such additional documents can alter the rights or obligations of the Parties stated in this Agreement.

22.11. The Director of the Library Department may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease relating to the Library Premises and Common Areas and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without City Council consent.

22.12. As long as Tenant pays the Operating Expenses and other charges under this Lease and observes the covenants and terms of this Lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during the lease term without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

22.13. Time is of the essence under this Agreement.

22.14. The rights and remedies under this Lease are cumulative, and either Party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance, or otherwise.

22.15. The relationship between Landlord and Tenant is at all times solely that of Landlord and Tenant, not that of partners or a joint venturers.

23. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the Parties have caused their representatives to set their hands.

Tenant

Landlord

City of San Antonio, a Texas
municipal corporation

The YMCA of Greater San Antonio,
a_____.

Signature:_____

Signature:_____

Printed
Name:_____

Printed
Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Attest:

City Clerk

Approved as to Form:

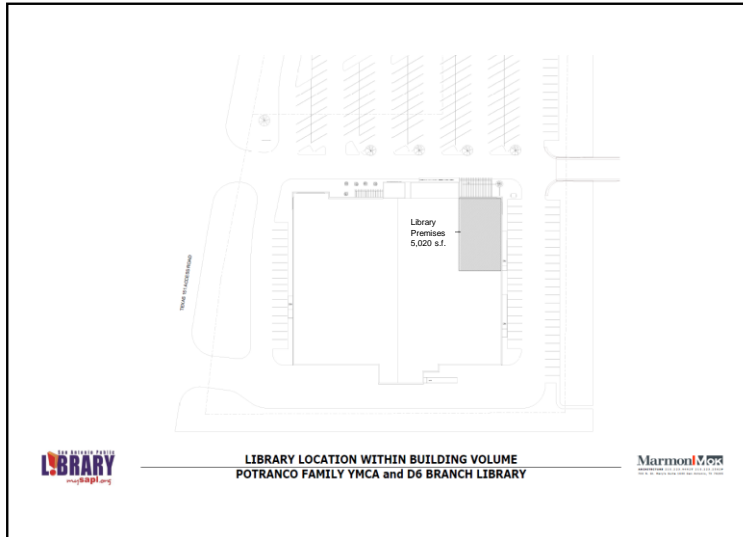
City Attorney

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Exhibit A: Description of Premises

These Plans are preliminary and are subject to change with the approval of both Parties by written agreement signed by the Landlord and the Director of the Library Department.



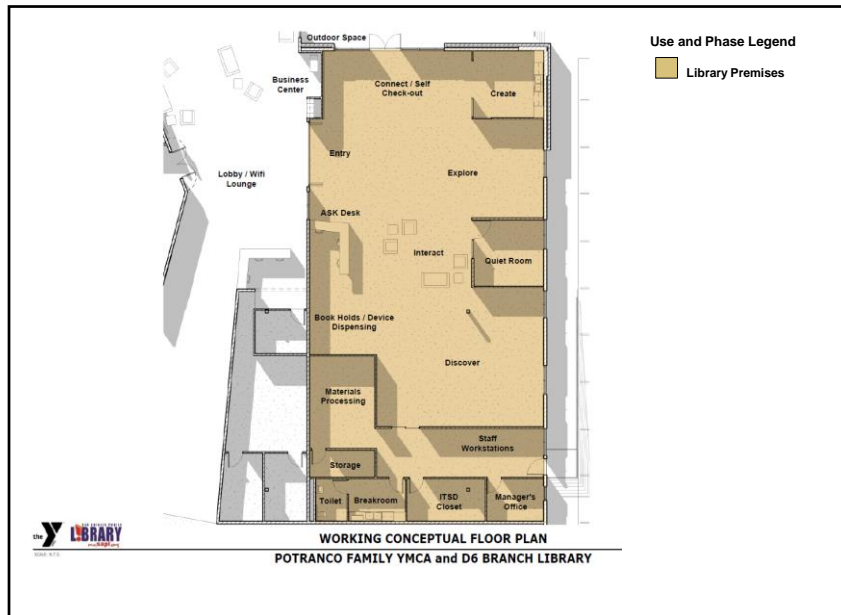


Exhibit B: Cleaning and Maintenance Schedule

Daily

Carpets Vacuumed.

Composition floors dust-mopped and wet mopped. All other non-carpeted floors swept and washed.

Desks, desk accessories and office furniture dusted. Papers and folders left on desk, not to be disturbed.

Waste baskets and other trash receptacles emptied; trash removed from the building to an area designated outside of the Premises twice daily.

Chairs and wastebaskets returned to proper position.

Fingerprints removed from glass doors and partitions twice daily.

Drinking fountains cleaned, sanitized, and polished twice daily.

Staff lavatories, toilets, toilet rooms, and toilet partitions cleaned/swept/mopped and toilet supplies replenished twice daily.

Malfunctioning light bulbs and tubes replaced, as required.

Graffiti expunged as needed but no more than two business days after Tenant has given Landlord verbal notice of the existence of graffiti.

Kitchen/lunchroom supplies replenished including paper supplies and soap twice daily.

Upholstered furniture vacuumed and plastic and leather furniture cleaned.

Wood furniture polished.

Weekly

Low-reach areas such as, but not limited to, chair rungs, baseboards, and doorjambs dusted and cleaned.

Windowsills, ledges, and wood paneling and molding dusted.

All painted walls, walls covered in vinyl covering, and door surfaces washed/stains removed.

Monthly

Floors waxed in uncarpeted office areas.

High-reach areas, such as, but not limited to, door frames, tops of partitions and hanging light fixtures dusted.

Picture molding and frames dusted.

Wall vents and ceiling vents vacuumed.

Carpet professionally spot cleaned as required to remove stains.

Quarterly

Light fixtures cleaned and dusted, but not less frequently than Quarterly.

Draperies or mini-blinds cleaned as required, but not less frequently than Quarterly.

HVAC units serviced for preventative maintenance purposes, all filters changed.

Semi-Annually

Windows washed as required inside and outside but not less frequently than two times annually.

Annually

Furniture Systems and other fabric or upholstered surfaces, including chairs, couches, walls, etc., spot cleaned, or if determined to be necessary in Tenant's sole discretion, professionally cleaned in their entirety using a water extraction process.

Bathroom and any other ceramic tile surfaces professionally cleaned using a hand scrub process. All grout and porous surfaces resealed with a professional grade sealant.

Touch-up paint all interior painted surfaces in a color and finish to match existing.

As Needed

On call day porter services so that all bathrooms serving the Premises are checked every day in the morning by 10:30 AM and again in the afternoon by 2:00 PM to ensure cleanliness and adequate provision of paper supplies. The day porter shall clean glass surfaces of Premises, including glass doors and partitions, and empty trash receptacles at

least once a day during operating hours. The day porter shall be available during business hours on 1 hour notice to handle any janitorial related issues within the building.

Premises and the sidewalks, driveways, parking areas and all means of ingress and egress serving the Premises should be free of standing water and maintained in good repair and in clean and safe condition at all times.

All lawns, shrubbery and foliage on the grounds of which the Premises is part should be maintained in good condition and neat in appearance. Grass and shrubbery must be replanted as needed to maintain the grounds in good appearance and condition.

All carpets to be cleaned using non-detergent, low moisture, soil encapsulation system as recommended by the carpet manufacturer. The following schedule will be maintained for carpet cleaning: (i) heavy traffic areas as needed with a minimum frequency of bi-monthly (six times per year); (ii) moderate traffic areas cleaned as needed with a minimum of once every six months (two times per year) and; (iii) clean light traffic areas a minimum of one time per year. Cleaning carpet via use of a bonnet cleaning system is not an acceptable method for cleaning carpets.

All walls repainted and wall coverings replaced throughout the Premises. The paint finish should be eggshell or semi-gloss as directed by Tenant and in a color acceptable to Tenant. In no event, subject to damage or destruction conditions as provided in the Lease, will Landlord be required to repaint or replace wall coverings more than one time in a five-year period, not counting the initial tenant improvements completed prior to Tenant's occupancy or as a condition to the renewal of the Lease.

General

Landlord must, upon request of Tenant, produce written service contracts as evidence of compliance with the terms of this Cleaning and Maintenance Schedule.

Exhibit C: Funding Agreement

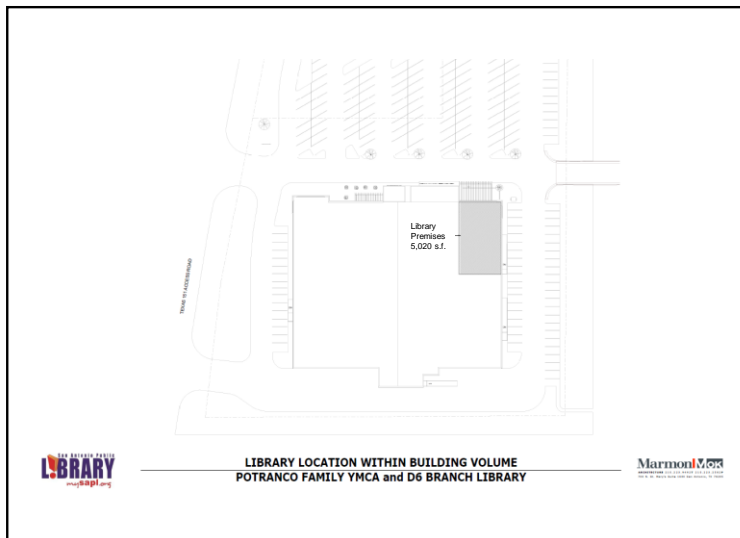
This Exhibit refers to the Funding Agreement above.

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Exhibit B

PLANS

These Plans are preliminary and are subject to change with the approval of both Parties by written agreement signed by Grantee and the Director of the Library Department.



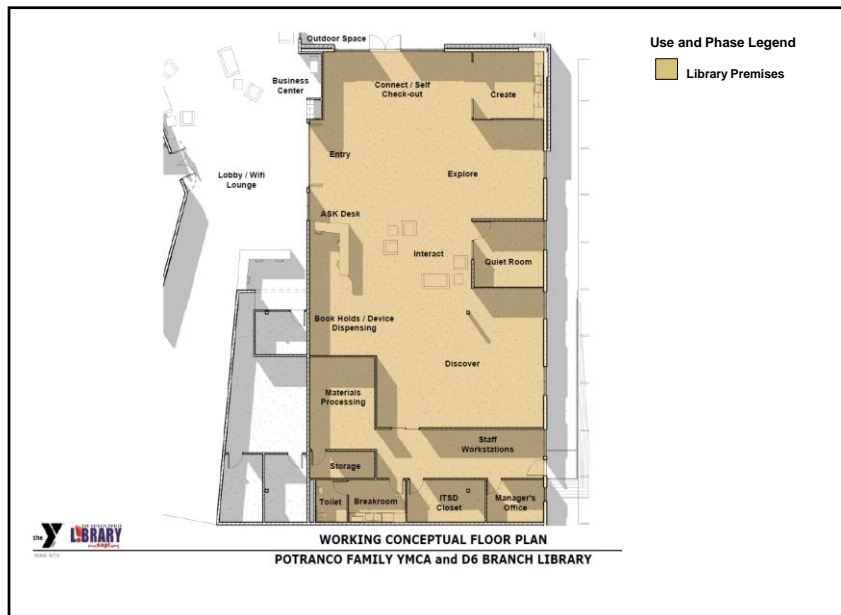
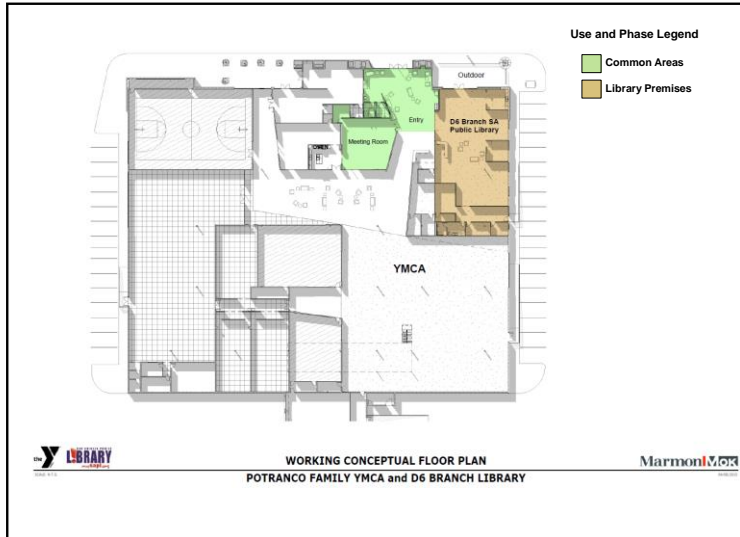


EXHIBIT C

SBEDA

For the purposes of this Exhibit, CITY OF SAN ANTONIO will be referred to as “CITY” and Young Men’s Christian Association of Greater San Antonio will be referred to as “CONTRACTOR.”

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Contract Requirements and Commitment

CONTRACTOR understands and agrees that the following provisions shall be requirements of this contract, and by its execution, CONTRACTOR commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of

CONTRACTOR to commit, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE and M/WBE subcontracting goals shall constitute default.

Waiver Request - A CONTRACTOR may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this contract by submitting the *Vendor Subcontracting Waiver Request* form (which is available at <http://www.sanantonio.gov/SBO/Forms.aspx>). The CONTRACTOR's Waiver request must fully document subcontractor unavailability despite the CONTRACTOR's good faith efforts to comply with the goals. Such documentation shall include all good faith efforts made by CONTRACTOR including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

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C. Definitions

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

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

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

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

functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

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

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

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

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

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

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

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

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

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

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

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMS), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMS) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

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

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

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

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA

Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR’s Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative

Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 1. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. DEVELOPER agrees to subcontract at least *thirty-three percent (33%)* of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to the CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each

SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement, **and**

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **twenty-one percent (21%)** of its prime contract value to certified S/M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each S/M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this contract is being awarded pursuant to Segmented M/WBE Goals. CONTRACTOR agrees to subcontract at least **two percent (2%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This two percent (2%) subcontracting goal will also count toward the aforementioned twenty-one percent (21%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each AABE Subcontractor, and documentation including a description of each AABE Subcontractor's scope of work and confirmation of each AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for AABE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing

future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon AABE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of 33%; the M/WBE subcontracting goal of 21% and the AABE subcontracting goal of 2% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Construction industry, as reflected in the City's Centralized Vendor Registration system for the month of June 2014, African-American owned firms represent approximately 2.37% of available subcontractors, Hispanic-American firms represent approximately 17.08%, Asian-American firms represent approximately 1.12%, Native American firms represent approximately 0.33%, and Women-owned firms represent approximately 4.75% of available construction industry subcontractors.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each

of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

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

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and

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

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