

**STATE OF TEXAS §
 §
COUNTY OF BEXAR §**

**FUNDING AGREEMENT FOR
LERMA BUILDING**

This Funding 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 Esperanza Peace & Justice Center, 922 San Pedro, San Antonio, Texas 78212 (hereinafter referred to as "Grantee"), a 501(c)(3) non-profit community organization, acting by and through its officers, hereto duly authorized. City and Grantee collectively are referred to herein as "Parties" and individually are referred to as "Party".

WHEREAS, Grantee's stated mission is to "preserve and promote cultural expression, history and viewpoints traditionally excluded from mainstream society, providing for cultural grounding and understanding among and across diverse communities as a basis for social change"; and

WHEREAS, Grantee is transforming and developing the former Lerma Building, located at 1612 North Zarzamora, San Antonio, Texas (hereafter referred to as "the Property"), into a cultural heritage resource; and

WHEREAS, the Property is recognized by the National Register of Historic Places, the National Register List listed of Latino Culturally Significant Heritage Sites, the Texas Historical Commission, Texas Historical Dance Hall Preservation, Inc. and the City of San Antonio Designation of Local Historic Landmarks; and

WHEREAS, the Property was scheduled for demolition in 2010 before Grantee stepped forward and acquired the Property; and

WHEREAS, Grantee will develop and repurpose the Property into a Conjunto Musical Heritage Center (hereafter referred to as "the Project" in three (3) phases:

Phase I, for which City shall provide funding pursuant to this Funding Agreement, shall consist of infrastructure improvements to stabilize the building, as well as Architectural and Engineering design for necessary mechanical, electrical and plumbing repairs;

Phase II shall consist of renovations to the building's interior, including the installation of electrical, plumbing and HVAC systems; and

Phase III shall consist of the finish out and furnishing of each part of the building appropriate to its designated use; and

WHEREAS, Grantee is the fee simple owner of the Property, the proposed location of the Project; and

WHEREAS, City will enter into a 20-year Lease Agreement and a 20-year Leaseback Agreement with Grantee for the Property, described more fully in **Exhibit A** attached and incorporated hereto; and

WHEREAS, the public benefit to be gained from the Project is the provision of cultural facilities available for the citizens of San Antonio, operated under non-profit regulations, operated under non-profit regulations as indicated in the Determination Letter from the Internal Revenue Service, attached and incorporated herein as **Exhibit B**; and

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

WHEREAS, City of San Antonio City Council by Ordinance 2016-_____-_____-_____ approved the not-to-exceed amount of **FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$500,000.00)** in Certificates of Obligation to be sourced from the City's 2016 Capital Budget, to be used for tax exempt purposes (hereafter referred to as "City Funding"); and

WHEREAS, Grantee proposes the application of these funds to address Phase I Infrastructure Improvements of the Property; and

WHEREAS, through this Funding Agreement, City's Transportation & Capital Improvement Department (hereafter referred to as "TCI") is designated as the managing City department for the oversight of the Funding Agreement.

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

I. TERM

This Agreement shall commence on the later of: (a) the effective date of the Authorizing Ordinance or (b) the signatures of the Parties. The Term shall expire upon the later to occur of: (a) final payment by the City of all of City's Funding under this Agreement; (b) completion of construction; or (c) life of the Certificates of Obligation utilized to provide City's Funding or upon termination of this Agreement as otherwise provided herein.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 The funding in this Funding Agreement is contingent upon the final execution of all documents in **Exhibit A**.

2.02 Provided Grantee receives the funding described in **Article V** of this Agreement, and subject to the other terms and conditions of this Agreement, including, but not limited to, force majeure provisions, Grantee hereby accepts full responsibility for the performance of all services and activities to complete construction of Phase I of the Project not later than two (2) years from the date of full execution of this Agreement. Phase I of the Project shall consist of Infrastructure Improvements necessary to stabilize the Property, as well as Engineering and Architectural design for necessary mechanical, electrical and plumbing repairs.

2.03 The current budget estimates of the entire transformation and development of the Lerma Building Project are approximately **TWO MILLION DOLLARS AND NO/100 (\$2,000,000.00)**. The current budget estimates for Phase I of the Project are approximately **SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$750,000.00)**. A copy of the proposed budget for Phase I of the Project is attached and incorporated herein as **Exhibit C**. Grantee shall provide all necessary funding for the Phase I of the Project beyond the City's commitment contained in this Agreement.

2.04 The Bexar County Appraisal District value of the property described in Exhibit A is estimated at \$362,850.00.

2.05 Grantee shall provide all necessary funding for Phase I of the Project beyond City's not-to-exceed commitment of **FOUR HUNDRED NINETY THOUSAND DOLLARS AND NO/100 (\$490,000.00)**, plus **TEN THOUSAND DOLLARS AND NO/100 (\$10,000.00)**, which shall be retained by City pursuant to **Section 5.01** herein, for a City Share total of **FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$500,000.00)**. Grantee shall provide evidence to City that all funds for Phase I of the Project have been secured prior to the receipt of any funding under this Funding Agreement.

2.06 In the event that the scope of the project is adjusted downward, City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any costs over the estimated amount of Phase I of the Project unless agreed to in writing in the form of an amendment to this Funding Agreement.

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

2.08 The Director of TCI or his/her 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.

2.09 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in Sections 2.06 and 2.07.

2.10 Grantee shall provide City its plans and specifications for Phase I of the Project, including a construction schedule (hereafter collectively referred to as “Plans”), and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. After approval by City, the Plans shall be attached and incorporated into this Funding Agreement as **Exhibit D**. Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this **Section 2.09** 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). Nor does City’s approval of the Plans release Grantee of the responsibility for the correction of Grantee’s mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.11 City shall have authority to inspect Phase I of 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(s) to provide, when submitting a payment request to City, certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall notify City and City shall have the right to attend all scheduled construction meetings.

2.12 Upon completion of the entire Project, Grantee shall allow City to use the Property 10 days per calendar year (“City Days”), subject to Grantee’s use of the Property. City and Grantee shall work together to schedule such City days.

2.13 Beginning on January 31, 2017, and on each succeeding January 31 throughout the Term of this Agreement, Grantee shall provide Director of TCI or his/her designee an annual report (hereafter referred to as the “Annual Report”). The Annual Report shall include the following:

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

2.13.2 Evidence of insurance coverage, with City as additional insured, as outlined in **Article XII** herein.

2.13.3 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.

2.13.4 The number of City Days utilized during the period covered by the Annual Report.

2.14 Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the design and construction of Phase I of the Project not later than two (2) years from the date of full execution of this Agreement.

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 and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on Phase I of the Project.

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

3.03 Phase I of the Project's plans shall 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.

3.04 Prevailing Wage Rate and Labor Standards

- A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this Funding Agreement. Grantee agrees that its construction contractor 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. The 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. 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 under this Agreement. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Funding Agreement.
- C. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any 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 from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Funding Agreement.

3.05 **Environmental.** Construction shall be in accordance with all Federal, State, and local environmental requirements including all City applicable construction and development regulations.

3.06 **Small Business Economic Development Advocacy Program.** Grantee shall comply with all Small/Minority and Woman Owned Business Terms and Conditions as attached and incorporated into this Agreement d as **Exhibit E**.

3.07 Grantee shall not use, or permit the use of, City Funding, or earnings thereon, or any other amounts or any property, the acquisition, construction, or improvement of which is to be financed directly or indirectly with City Funding or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest of the City's debt to be includable in the gross income of the bond owners for federal income tax purposes. In addition, purposes which are not permissible include, but are not limited to religious activities, restaurants, cafes, and retail stores.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will construct Phase I of the Project in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the 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 Phase I Project improvements. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Phase I Project improvements. Grantee hereby agrees that the programs and use described herein will continue for the Term of this Funding Agreement.

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

4.03 The Phase I Project improvements shall be used for infrastructure improvements of the historic building that, upon completion, will be a cultural heritage resource. The Project shall provide cultural facilities to the citizens of San Antonio and shall be open to the public during the entire term of the Lease and Leaseback, attached as Exhibit A, and the life of the Certificates of Obligation providing the source of funding for this Agreement.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City Funding shall consist of reimbursements paid to Grantee for all eligible expenses incurred hereunder, consisting of design and construction costs of Phase I of the Project. Notwithstanding any other provisions of this Agreement, the total City Funding of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of **FOUR HUNDRED NINETY THOUSAND DOLLARS AND NO/100 (\$490,000.00)**, plus an additional **TEN THOUSAND DOLLARS AND NO/100 (\$10,000.00)** City shall retain for fiscal and project oversight, for a total funding by City for Phase I of the Project of **FIVE HUNDRED THOUSAND DOLLARS AND NO/100 (\$500,000.00)**.

5.02 Grantee understands and agrees City Funding for Phase 1 of the Project shall only be used for infrastructure improvements on areas of the building to be utilized for public use/public purposes.

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

5.04 All funding provided by City shall come from funds appropriated in the 2016 Adopted Capital Budget from 2016 Certificates of Obligation for Phase I of the Project. Such funding is contingent upon the sale of the City of San Antonio, Combination Tax and Revenue Certificates of Obligation, Series 2016. City shall not be responsible for the payment of any eligible expenses until sufficient funds are available.

5.05 Except as otherwise set forth herein, Grantee further expressly understands and agrees this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

5.06 After all City debt has been paid, Grantee shall own the building improvements associated with the Project.

5.06 This Agreement is only to provide funding for work on Phase I of the Project. There is no commitment or guarantee of City funds for any future phases.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Grantee agrees to maintain readily identifiable records that shall 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 shall 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 City's Project Reporting Information Management Exchange Link (hereafter referred to as "PRIMElink") within thirty (30) days after receipt of an approved invoice, subject to Section 5.04.

6.04 All requests for reimbursement shall be submitted through *PRIMELink*. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing *PRIMELink* sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on *PRIMELink* and/or utilizing forms and instructions approved by 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 shall be processed and approved as task orders through the portal.

6.05 Prior to reimbursement, City shall have the right to inspect work completed to ensure conformance with the approved Phase I 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 shall 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 for Phase I of the Project, 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
- Project Management/Construction Management
- 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 Phase I of 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 or Project
- 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
- Construction of non-public aspects of Phase I of the Project

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

Grantee further represents and warrants:

- (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 shall 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

Grantee agrees 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 of San Antonio and the elected officials, employees, officers, directors, volunteers and representatives of 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 City directly or indirectly arising out of resulting from or related to Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, consultant or subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02 The provisions of this INDEMNITY solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Grantee shall advise City in writing within twenty four (24) hours of any claim or demand against 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. 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 **Article XI**.

11.03 NOTWITHSTANDING THE FOREGOING, 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 TCI, which shall be clearly labeled **“Lerma Building Funding Agreement”** 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. City shall 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 City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City’s TCI Department. No officer or employee, other than City’s Risk Manager, shall have authority to waive this requirement.

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

12.03 Grantee’s financial integrity is of interest to City; therefore, subject to Grantee’s right to maintain reasonable deductibles in such amounts as are approved by City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee’s sole expense, insurance coverage written on an occurrence basis, 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	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury 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, 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 City as additional insureds. Grantee shall provide 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 City, 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, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

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

13.01 City shall have the right to terminate this Funding Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Grantee has failed to comply with any term of this Funding Agreement. City will provide Grantee with written notification as to the nature of the non-compliance, and give Grantee a 30 day period from the date of the City's written notification to cure any issue of non-compliance. Should Grantee fail to cure any default within this period of time, City may terminate this Funding Agreement immediately by providing written notice to Grantee, withhold further payments to Grantee and seek repayment of any and all funds disbursed by City.

13.02 In the event of termination of the Sublease for any reason, this Funding Agreement shall likewise terminate. Upon termination of this Funding Agreement for any reason, Grantee shall pay City the value of the bond debt that remains outstanding for the Project, as determined by City and its financial advisors, and any costs associated with the defeasance of said debt.

13.03 City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if Grantee defaults under the material terms of this Funding Agreement and fails to cure such default within the cure period set forth above subject to any and all lawful defenses, counterclaims, offsets, settlements, deductions or credits to which Grantee may be entitled.

XIV. NONDISCRIMINATION

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.

XV. CONFLICT OF INTEREST

15.01 Grantee covenants 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 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.

15.02 Grantee further covenants 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.

15.03 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.

XVI. POLITICAL ACTIVITY

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.

XVII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, as well as any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City (provided Grantee shall be entitled to maintain copies of all of the foregoing materials).

XVIII. CONTRACTING

18.01 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.

18.02 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.

XIX. CHANGES AND AMENDMENTS

19.01 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.

19.02 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.

XX. ASSIGNMENTS

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, which approval shall not be unreasonably withheld or delayed after construction of Phase I of the Project is completed. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XXI. SEVERABILITY OF PROVISIONS

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

XXII. NON-WAIVER OF PERFORMANCE

22.01 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.

22.02 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.

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

XXIII. ENTIRE AGREEMENT

23.01 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.

23.02 **Incorporation of Attachments.** Each of the attachments listed below is an essential part of the Funding Agreement, which governs the rights and duties of the Parties.

Exhibit A – Lease and Leaseback Agreements
Exhibit B – Determination Letter from the Internal Revenue Service
Exhibit C – Budget
Exhibit D – Plans
Exhibit E – SBEDA Terms and Conditions

XXIV. NOTICES

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

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

and

Grantee: Graciela Sanchez
Executive Director
Esperanza Peace & Justice Center
922 San Pedro Avenue
San Antonio, Texas 78212

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.

XXV. PARTIES BOUND

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

XXVI. RELATIONSHIP OF PARTIES

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

XXVII. TEXAS LAW TO APPLY

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

XXVIII. GENDER

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

XXIX. CAPTIONS

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

XXX. DEFAULT

30.01 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.

30.02 In no event shall this Agreement or City's use of the Leased 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.

XXXI. LEGAL AUTHORITY

31.01 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.

31.02 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.

XXXII. FORCE MAJEURE

If City or Grantee is delayed or prevented from performing any of their respective obligations under this Agreement by reason of strike, labor troubles, or any cause whatsoever beyond such party's reasonable control, the period of such delay or prevention shall be deemed added to the time herein provided for the performance of any such obligation by the delayed party.

XXXIII. CONDITIONS TO AGREEMENT

This Agreement, and all obligations of the parties hereunder, is expressly made conditioned on the mutual final agreement to the terms and conditions of this Funding Agreement.

(Signature Page immediately to follow)

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2016.

CITY OF SAN ANTONIO

**ESPERANZA PEACE & JUSTICE
CENTER**

By: _____
Peter Zaroni
Deputy City Manager

By: _____
Graciela Sanchez
Executive Director

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

LEASE AND LEASBACK AGREEMENTS

Lease Agreement

(Lerma Building)

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Exhibit A

Authorizing Ordinance: _____

Lessee: City of San Antonio, a Texas municipal corporation

Lessee's Address: City Hall, 100 Military Plaza, San Antonio, Texas
78205

Lessor: Esperanza Peace and Justice Center

Lessor's Address: 922 San Pedro, San Antonio, Texas 78212

Premises: Lerma Building located at 1612 North Zarzamora, San Antonio, Bexar County, Texas, 78201, as more fully described in Exhibit A, attached and incorporated into this Lease, and below.

Permitted Use: For any purpose, as agreed upon in writing by the Parties hereto.

Lease Commencement Date: The later of: the effective date of the Authorizing Ordinance or the signatures of the Parties.

Term: 20 years

Rent: \$10 total for the entire Term

Funding Agreement: Agreement of even date herewith between Lessor and Lessee for Phase I of the Lerma Building Project.

Leaseback: A sub-lease executed contemporaneously with this Lease whereby Lessor leases back the Premises from Lessee.

Background:

The Premises are situated on Lots 13 and 14, New City Block 2085, Block 25, according to the map or plat thereof recorded at Volume 15328, Page 0247, real property records of Bexar County, Texas.

Lessee wishes to provide funding to Lessor for permanent public improvements to the Premises through the Funding Agreement.

Lessee's funds are derived from the issuance of Certificates of Obligation and the use of such funds requires that Lessee have an interest in the property to be improved with the funds.

Lessor and Lessee are contemporaneously entering into the Funding Agreement, this Lease and the Leaseback.

The Premises for the Lease and the Leaseback are the same.

The durations of the Lease and the Leaseback coincide.

At the expiration of both leases, neither the Lease nor the Leaseback will be an encumbrance on the fee title to the Premises.

Rights and Obligations:

1. Demise of Premises.

Lessor leases the Premises to Lessee, and Lessee leases the Premises back to Lessor under the terms of the Leaseback.

2. Lease Term.

The Term is as stated above.

3. Rent.

3.01 Lessor acknowledges receipt in full of all monetary Rent due for the Term in the form of an offset against rent due on the Leaseback.

3.02 In addition to the Rent set forth in Section 3.01, Leaseback Landlord acknowledges the use of the Premises for the public purpose of establishing a Conjunto Musical Heritage Center as other valuable consideration.

4. Taxes.

Taxes are Lessor's responsibility.

5. Utilities.

Utilities are Lessor's responsibility.

6. Use of Premises.

Lessee may use the Premises for any purpose, as agreed upon in writing by the Parties hereto.

7. Funding Agreement.

Lessor must comply with the Funding Agreement in all its operations on the Premises, including but not limited to construction on the Premises.

8. Encumbrance of Leasehold Estate.

8.01. Under no circumstances may Lessee pledge its leasehold to secure any obligation.

8.02. Lessee and Lessor will not modify this Lease by mutual consent without any lender's ("Lender") written consent, except as may be required by the terms of the Certificates of Obligation providing funding under the Funding Agreement.

9. Repairs, Maintenance, and Restoration.

Repairs, maintenance, and restoration are Lessor's responsibility.

10. Mechanic's Liens.

Lessee must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises.

11. Condemnation.

Condemnation is handled in accordance with applicable law. Lessee has no interest in any award.

12. Insurance.

Insurance is Lessor's responsibility and Lessee has no insurance-related obligations hereunder.

13. Assignment and Subletting.

Lessee may not assign or sublet the Premises except with the consent of Lessor.

14. Default, Remedies and Termination.

14.01. If Lessee defaults in performing any obligation arising out of this Lease and does not correct the default within 30 days after receipt of written notice from Lessor, Lessor may terminate this Sublease. Lease termination does not entitle Lessee to a refund of any part of the prepaid rent.

14.02. Lease Termination terminates Lessee's obligation to make further disbursements to Lessor under the Funding Agreement, whether under Article V of that agreement or otherwise. The Funding Agreement itself is not terminated insofar as it imposes continuing obligations on Lessor as to previously disbursed funds.

14.03 Termination of the Funding Agreement shall automatically terminate this Lease.

15. Indemnification.

15.01. These definitions apply to the indemnity provisions of this Lease:

15.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of:

- a. Responsibilities allocated to Lessor by this Lease; and
- b. All claims associated with Lessor's occupancy of the Premises.

15.01.02. This indemnity does not cover claims arising out of Lessee's sole negligence.

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

15.01.04. "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.

15.01.05. "Indemnitor" means Lessor.

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

15.03. If one or more Indemnitees are finally adjudged to be solely 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.

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

15.05. Indemnitor must promptly advise the Sublessee in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the Lessee is an Indemnatee as to a particular Indemnified Claim, the Lessee 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.

15.06. 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.

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

15.08. Nothing in this Lease waives governmental immunity or other defenses of Indemnitees under applicable law.

15.09. 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 for Indemnitees' 5% if the City is an Indemnified Party as to a particular Indemnified Claim.

16. Miscellaneous.

16.01. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws of The State of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

16.02. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

16.03. 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.

16.04. *Relationship of Agreements and Persons With Interests In the Premises.*

16.04.01. **This Written Lease, Together With the Funding Agreement and the Leaseback, 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.**

16.04.02. This Lease benefits only the parties hereto and their successors and permitted assigns.

16.05. This Lease may not be changed orally but only by a written amendment, 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.

16.06. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three (3) days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

16.07. Paragraph captions in this Lease are for ease of reference only and do not affect the interpretation hereof.

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

16.09. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Lease.

17. Public Information.

The parties acknowledge that this Lease is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

18. Appropriations.

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

(Signature Page immediately to follow)

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

Lessee

City of San Antonio, a Texas
municipal corporation

Lessor

**Esperanza Peace and Justice
Center**, a Texas non-profit
corporation

Sheryl Sculley
City Manager

Graciela Sanchez
CEO

Date:_____

Date:_____

Attest:

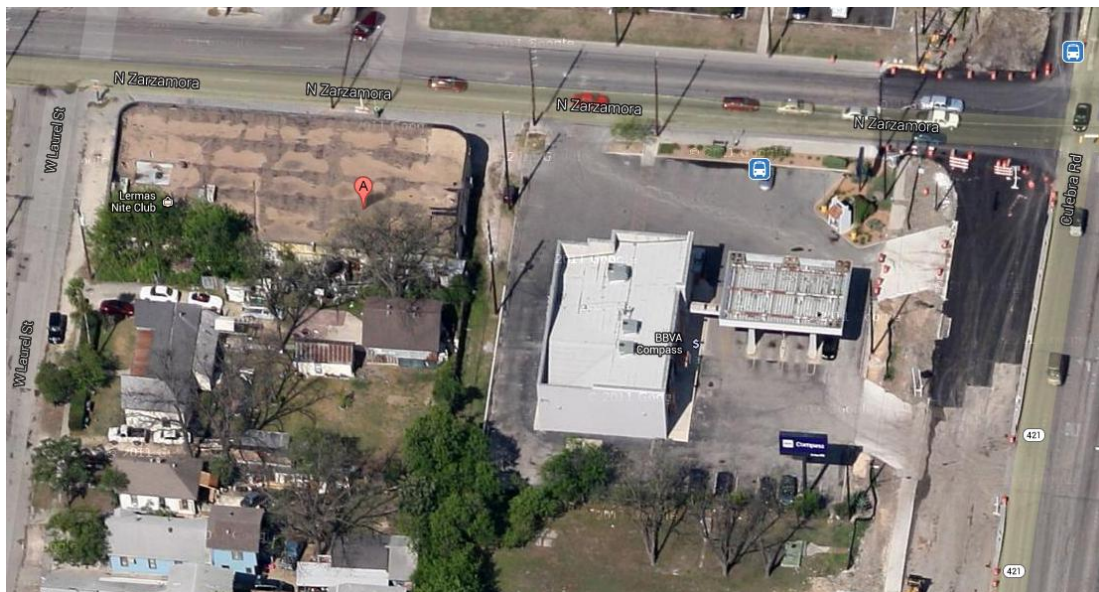
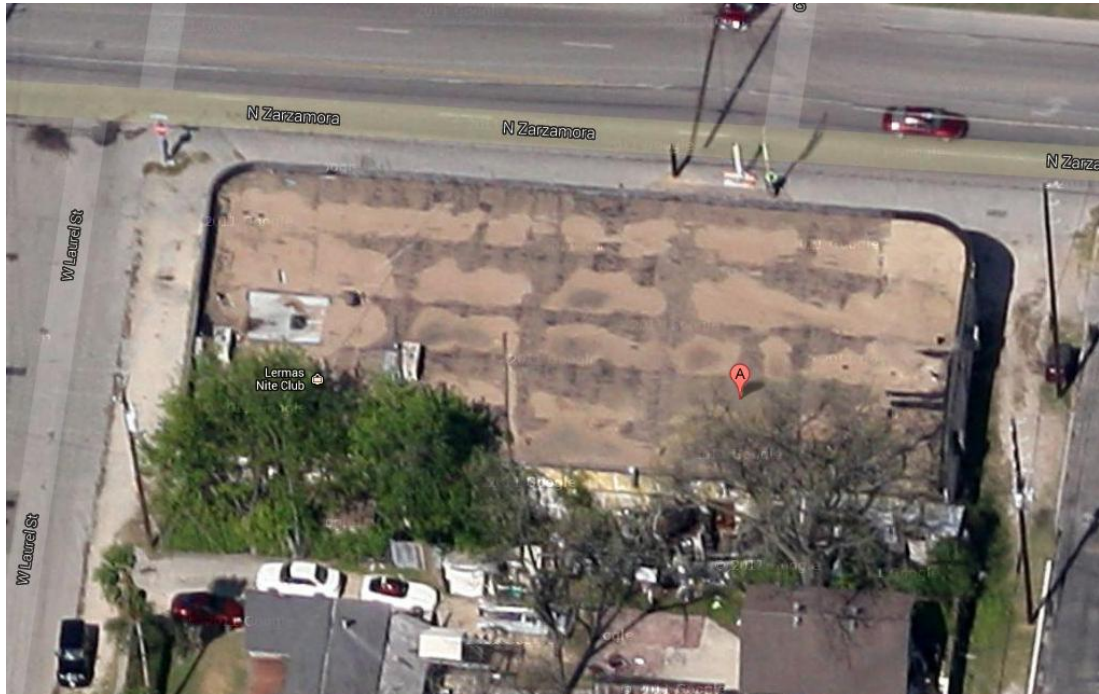
City Clerk

Approved as to Form:

City Attorney

Exhibit A

Property Description



Leaseback Agreement

(Lerma Building)

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Authorizing Ordinance: _____

Leaseback Landlord: City of San Antonio, a Texas municipal corporation

Leaseback Landlord's Address: City Hall, 100 Military Plaza, San Antonio, Texas 78205

Leaseback Tenant: Esperanza Peace and Justice Center

Leaseback Tenant's Address: 922 San Pedro, San Antonio, Texas 78212

Premises: Lerma Building located at 1612 North Zarzamora, San Antonio, Bexar County, Texas, 78201, as more fully described in Exhibit A, attached and incorporated into this Lease, or below.

Permitted Use: For any purpose, as agreed upon in writing by the Parties hereto.

Lease Commencement Date: The later of: the effective date of the Authorizing Ordinance or the signatures of the Parties.

Term: 20 years

Rent: \$10 total for the entire Term plus other valuable consideration

Funding Agreement: Agreement of even date herewith between Leaseback Tenant and Leaseback Landlord for Phase I of the Lerma Building Project.

Lease: A lease agreement executed contemporaneously with this Leaseback under which the Esperanza Peace and justice Center leases the Premises to the City of San Antonio.

Background:

The Premises are situated on Lots 13 and 14, New City Block 2085, Block 25, according to the map or plat thereof recorded at Volume 15328, Page 0247, real property records of Bexar County, Texas.

Leaseback Landlord wishes to provide funding to Leaseback Tenant for permanent public improvements to the Premises.

Leaseback Landlord's funds are derived from the issuance of Certificates of Obligation and the use of such finds requires that Leaseback Landlord have an interest in the property to be improved with the funds.

Leaseback Tenant is the Landlord under the Lease.

Leaseback Tenant and Leaseback Landlord are contemporaneously entering into the Funding Agreement, the Lease and this Leaseback.

The Premises for the Lease and the Leaseback are the same.

The durations of the Lease and the Leaseback coincide.

At the expiration of both leases, neither the Lease nor the Leaseback will be an encumbrance on the fee title to the Premises.

Rights and Obligations:

1. Demise of Premises.

Leaseback Tenant leases the Premises back from Leaseback Landlord, and Leaseback Landlord leases the Premises back to Leaseback Tenant under the terms of this Leaseback Agreement (this "Leaseback"). Leaseback Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them.

2. Lease Term.

The Term is as stated above.

3. Rent.

3.01 Leaseback Landlord acknowledges receipt in full of all monetary Rent due for the Term in the form of an offset against rent due as provided in the Lease.

3.02 In addition to the Rent set forth in Section 3.01, Leaseback Landlord acknowledges the use of the Premises for the public purpose of establishing a Conjunto Musical Heritage Center as other valuable consideration.

4. Taxes.

Taxes are Leaseback Tenant's responsibility in accordance with the Lease.

5. Utilities.

Utilities are Leaseback Tenant's responsibility in accordance with the Lease.

6. Use of Premises.

Leaseback Tenant may use the Premises as agreed upon in writing by the Parties hereto. Leaseback Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

7. Funding Agreement.

Leaseback Tenant must comply with the Funding Agreement in all its operations on the Premises, including but not limited to construction on the Premises.

8. Encumbrance of Leasehold Estate.

8.01. Leaseback Tenant may encumber its leasehold interest without obtaining Leaseback Landlord's consent, but no such encumbrance is or can be a lien on Leaseback Landlord's leasehold. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions; covenants, and obligations of this Leaseback and to all Leaseback Landlord's rights under the Sublease. References in this Leaseback to "Lender" refer to any person to whom Leaseback Tenant has encumbered its leasehold interest.

8.02. At any time after execution and recordation in Bexar County, Texas, of any mortgage or deed of trust encumbering Leaseback Tenant's leasehold interest, the lender ("Lender") may notify Leaseback Landlord in writing that the mortgage or deed of trust has been given. On Lender's request, Leaseback Landlord will deliver duplicate notices under this Leaseback to Lender at an address or agent it specifies.

8.03. Leaseback Landlord and Leaseback Tenant will neither modify nor terminate this Leaseback by mutual consent without Lender's written consent, except as may be required by the terms of the Certificates of Obligation providing funding under the Funding Agreement.

8.04. Lender may do any act required of Leaseback Tenant to prevent forfeiture of Leaseback Tenant's leasehold interest. All such acts are as effective to prevent a forfeiture of Leaseback Tenant's rights under this Leaseback as if done by Leaseback Tenant.

8.05. Lender may realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or equity or by the security documents. In so doing, it may transfer, convey, or assign Leaseback Tenant's title to the leasehold estate created by this Leaseback to any purchaser at a foreclosure sale. Lender also may acquire and succeed to Leaseback Tenant's interest under this Leaseback by virtue of a foreclosure sale. Lender will not be or become liable to Leaseback Landlord as an assignee of this Leaseback or otherwise, unless it assumes such liability in writing. No assumption by Lender may be inferred from or result (1) from foreclosure or other similar proceedings or (2) from other action or remedy provided for by the mortgage, deed of trust, or other security instrument, or (3) from a conveyance from Leaseback Tenant under which the buyer at foreclosure or grantee acquires Leaseback Tenant's rights and interest under this Leaseback. Any buyer at a foreclosure sale, including Lender, becomes obligated to Leaseback Landlord as the Leaseback Tenant under the Leaseback.

9. Repairs, Maintenance, and Restoration.

Repairs, maintenance, and restoration are Leaseback Tenant's responsibility and are to be handled in accordance with the Lease.

10. Mechanic's Liens.

Leaseback Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Leaseback Tenant's leasehold interest (excluding any leasehold mortgage).

11. Condemnation.

Condemnation is handled in accordance with applicable law. Leaseback Landlord has no interest in any award.

12. Insurance.

Insurance is Leaseback Tenant's responsibility and is subject to the Lease and Funding Agreement. Leaseback Landlord has no insurance-related obligations.

13. Assignment and Subletting.

Leaseback Tenant may not assign or sublet the Premises except with the consent of Leaseback Landlord.

14. Default, Remedies and Termination.

14.01. If Leaseback Tenant defaults in performing any obligation arising out of this Leaseback and does not correct the default within 30 days after receipt of written notice to Leaseback Tenant, Leaseback Landlord may terminate this Leaseback. Leaseback termination does not entitle Leaseback Tenant to a refund of any part of the prepaid rent.

14.02. Termination of the Funding Agreement or Lease shall automatically terminate this Leaseback.

15. Indemnification.

15.01. These definitions apply to the indemnity provisions of this Contract:

15.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of

- a. Responsibilities allocated to Leaseback Tenant by this Leaseback; and
- b. All claims associated with Leaseback Tenant's occupancy of the Premises.

15.01.02 This indemnity does not cover claims arising out of Leaseback Landlord's sole negligence.

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

15.01.04. "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.

15.01.05. "Indemnitor" means Leaseback Tenant.

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

15.03. If one or more Indemnitees are finally adjudged to be solely 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.

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

15.05. 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 the City of San Antonio. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

15.06. In addition to the indemnity required under this Leaseback, 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.

15.07. 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 the City of San Antonio 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.

15.08. Nothing in this Leaseback waives governmental immunity or other defenses of Indemnitees under applicable law.

15.09. 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 Indemnites and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnites' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

16. Miscellaneous.

16.01. This Leaseback is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Leaseback And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws of The State of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

16.02. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

16.03. This Leaseback 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.

16.04. *Relationship of Agreements and Persons With Interests In the Premises.*

16.04.01. **This Written Leaseback, Together With the Funding Agreement and the Sublease, 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.**

16.04.02. This Leaseback benefits only the Parties hereto and their successors and permitted assigns. There are no other third party beneficiaries.

16.05. This Leaseback may not be changed orally but only by a written amendment, signed by both parties. 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.

16.06. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three (3) days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

16.07. Paragraph captions in this Leaseback are for ease of reference only and do not affect the interpretation hereof.

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

16.09. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this Leaseback.

17. Public Information.

The parties acknowledge that this Leaseback is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

18. Appropriations.

All monetary obligations of the Leaseback Landlord under this Leaseback, if any, are subject to the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this agreement, the City may terminate this agreement and have no further liability.

19. Nondiscrimination.

As a party to this Agreement, Leaseback Tenant 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.

(Signature Page immediately to follow)

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

Leaseback Landlord

City of San Antonio, a Texas
municipal corporation

Leaseback Tenant

Esperanza Peace and Justice Center,
a Texas non-profit corporation

Sheryl Sculley
City Manager

Graciela Sanchez
Executive Director

Attest:

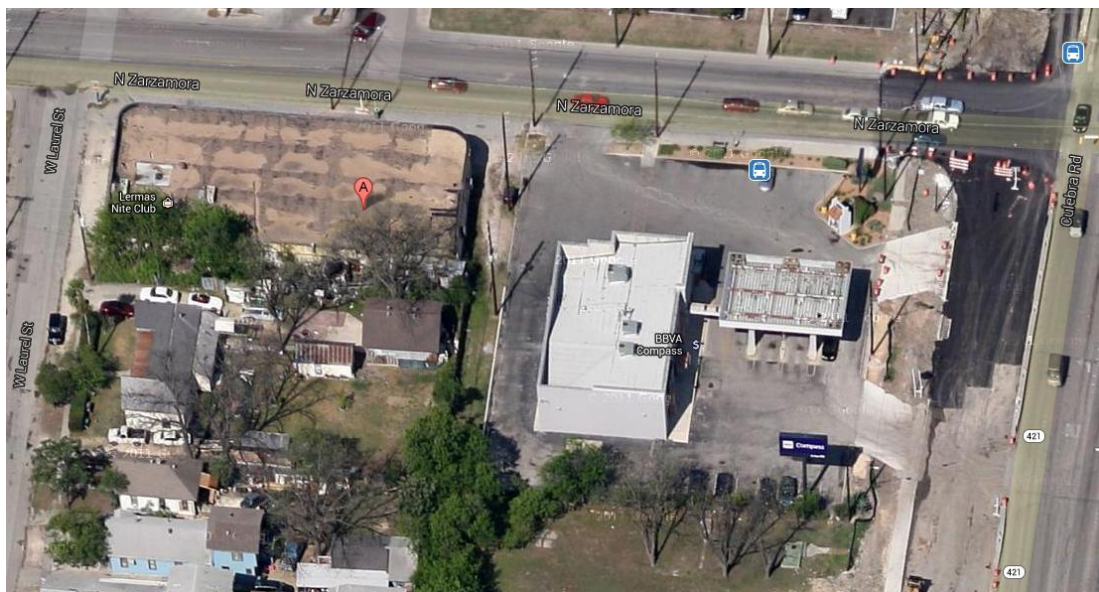
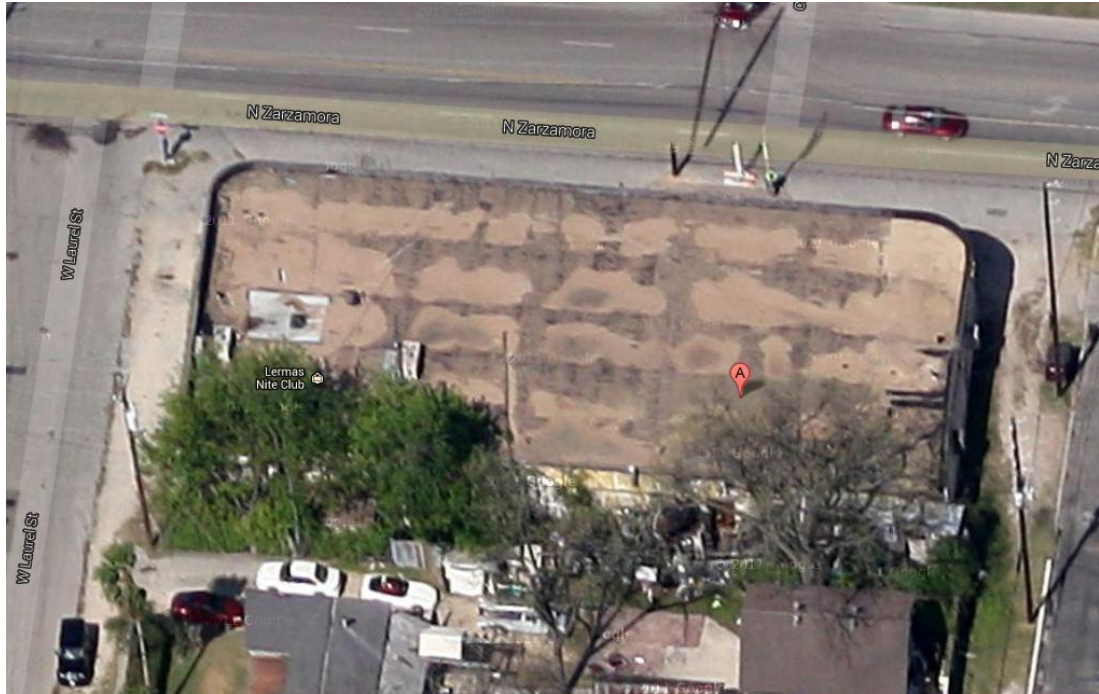
City Clerk

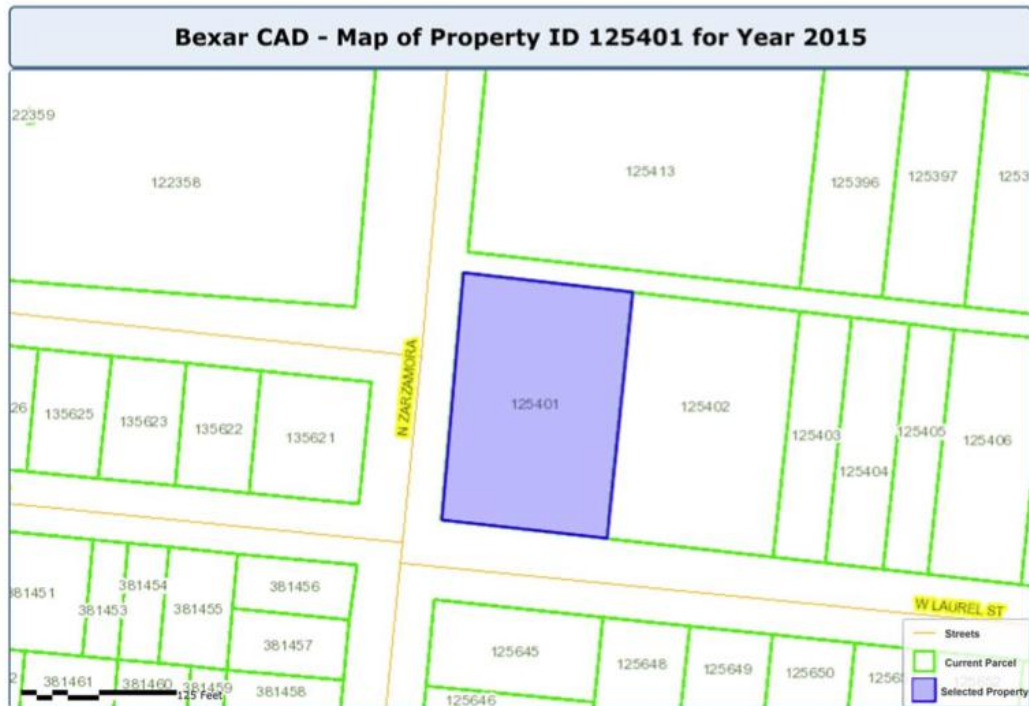
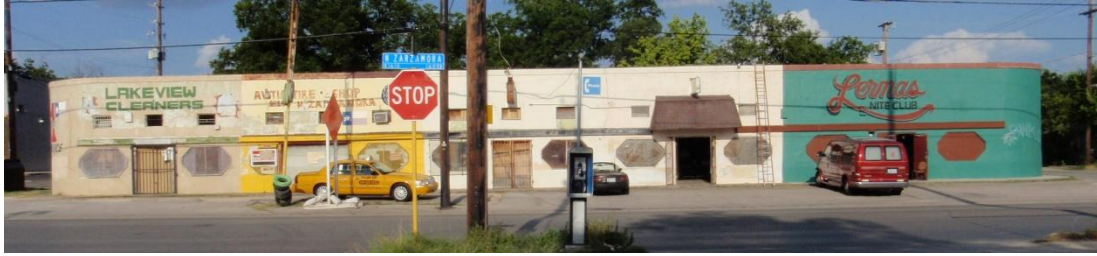
Approved as to Form:

City Attorney

Exhibit A

Property Description





Property Details

Account

Property ID: 125401
 Geo ID: 02085-025-0130
 Type: Real
 Legal Description: NCB 2085 BLK 25 LOT 13 AND 14

Location

Situs Address: 1612 N ZARZAMORA ST SAN ANTONIO, TX 78201
 Neighborhood: NBHD code11660
 Mapsco: 616A2
 Jurisdictions: 11, 09, 10, 21, 06, 08, CAD, 57

Owner

Owner Name: ESPERANZA PEACE & JUSTICE CENTER
 Mailing Address: , 922 SAN PEDRO AVE, SAN ANTONIO, TX 78212-4642

Property

Appraised Value: \$362,850.00

<http://www.bcad.org/Map/View/Map/1/125401/2015>

powered by
PropertyACCESS

Map Disclaimer: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. The Bexar County Appraisal District expressly disclaims any and all liability in connection herewith.

EXHIBIT B

DETERMINATION LETTER FROM IRS

EXHIBIT C

PHASE I PROJECT BUDGET

EXHIBIT D

PHASE I PLANS
(to be attached)

EXHIBIT E

SBEDA

SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

Grantee understands and agrees the following provisions shall be requirements of this Funding Agreement and Grantee, in acknowledging these requirements, commits to comply with these provisions.

Waiver Request - Grantee may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. Grantee's Waiver request fully must document Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier unavailability despite Grantee's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Grantee including, but not limited to, which Consultants, Sub-Consultants, Contractors, Subcontractors and/or Suppliers were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

Exception Request - Grantee may, for good cause, request an Exception to the application of the SBEDA Program if Grantee submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Exception request fully must document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of Funding Agreement is outside of the scope of the SBEDA Ordinance.

B. SBEDA Program

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 City's Economic Development (hereafter referred to as "EDD") website page and also is available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this **Exhibit B** are governed by the terms of said Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City, pursuant to said Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual in effect as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this Exhibit B 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.

C. Definitions

Affirmative Procurement Initiatives (hereafter referred to as “API”) – refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (hereafter referred to as “S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater prime contract 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 (hereafter referred to as “CVR”) – refers to a mandatory electronic system wherein City requires all prospective Consultants, Sub-Consultants, Contractors and Subcontractors ready, willing and able to sell goods or services to 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 City. The CVR-assigned identifiers also are used by City’s Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE (as defined herein) firms by Industry or commodity codes and for establishing annual aspirational Goals and contract-by-contract Subcontracting Goals.

Certification or “Certified” – refers to the process by which City’s Small Business Office (hereafter referred to as “SBO”) staff determines a firm to be a bona-fide small, minority-, women-owned or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as “ESBEs”) automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications covering 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, City accepts any firm that is certified by local government entities and/or 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 – means a 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 also must 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 actually is performing, 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 Grantee to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent, if Grantee 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, Grantee shall not be given credit for the participation of its S/M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers or joint venture partner towards attainment of S/M/WBE utilization goals, and Grantee and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee (hereafter referred to as “GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services and Goods and Supplies contracts/agreements to be awarded on a basis to include factors other than lowest price, and wherein responses submitted to City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other Respondents.

Good Faith Efforts – means the documentation of Grantee’s intent to comply with S/M/WBE Program Goals and procedures including, but are not limited to, the following:

(1) documentation within a solicitation response reflecting Grantee’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 Consultant’s posting of a bond covering the work of SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Grantee and the solicitation; and documentation of consultations with trade associations and Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers representing the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers). The appropriate form and content of Grantee’s Good

Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – means a business certified by the 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 all of the following criteria:

- (1) The business is owned and Controlled by U.S. citizens;
- (2) At least thirty five percent (35%) of the business's employees must reside in a HUBZone; and
- (3) The business's 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 – means the 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 – means an adult person that is of legal majority age.

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

Minority/Women Business Enterprise (hereafter referred to as “M/WBE”) – refers to a firm certified as a Small Business Enterprise and also is certified as either a Minority Business Enterprise or as a Women Business Enterprise, is at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members and/or women and is ready, willing and able to sell goods or services to be purchased by City.

M/WBE Directory – refers to a listing of minority- and women-owned businesses certified for participation in City's M/WBE Program APIs.

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

Minority Group Members – refers to 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 one sixteenth (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 – refers to a City department or authorized representative of City issuing a solicitation or for which a solicitation is issued.

Payment – refers to the dollars actually paid to Grantee and/or Grantee’s Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and/or vendors for City-contracted goods and/or services.

Points – refers to the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services and Other Services contracts (e.g., up to ten (10) points out of a total of one hundred (100) points assigned for S/M/WBE participation, as stated in City’s issued Request for Qualifications or Requests for Proposals).

Prime Consultant – refers to a Consultant, under contract to City, to whom a purchase order or contract is issued by City for the purposes of providing goods or services to City. For purposes of this Agreement, this term refers to Grantee.

Relevant Marketplace – means the geographic market area affecting the S/M/WBE Program, as determined for purposes of collecting data for NERA Economic Consulting and for determining eligibility for participation under various programs established by City’s SBEDA Ordinance, defined as the San Antonio Metropolitan Statistical Area (as defined herein), which currently includes the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – refers to an entity submitting a bid, Statement of Qualifications or Proposal in response to a solicitation issued by City. For purposes of this agreement, Grantee is Respondent.

Responsible – means a firm capable in all respects fully to perform the contractual requirements outlined in City’s solicitation and has the integrity and reliability to assure good faith performance of all project specifications.

Responsive – means a firm’s submittal (i.e. bid, response or proposal) conforming in all material respects to the solicitation (i.e. Invitation for Bid, Request for Competitive Sealed Proposal, Request for Qualifications or Request for Proposal) and is in compliance with a project’s S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (hereafter referred to as “SAMSA”) – also known as the Relevant Marketplace, referring to the geographic market area from which City’s NERA Economic Consulting analyzed contract utilization and availability data for disparity. City’s SAMSA currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

SBE Directory – refers to a listing of small businesses certified for participation in City’s SBE Program APIs.

Significant Business Presence – defined as an established place of business in one or more of the eight (8) counties making up the SAMSA, from which twenty percent (20%) of the entity’s full-time, part-time and contract employees regularly are 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. To qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one (1) year within the Relevant Marketplace

Small Business Enterprise (hereafter referred to as “SBE”) – means a corporation, partnership, sole proprietorship or other recognized legal entity existing for the purpose of making a profit, is independently owned and operated by Individuals legally residing in or are citizens of the United States or its territories, meets the U.S. Small Business Administration (hereafter referred to as “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 (hereafter referred to as “SBO”) – means the office within City’s EDD Department primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager (hereafter referred to as “SBO Manager”) – refers to the Assistant Director of EDD 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 also is responsible for enforcement of Grantee, Consultant and vendor compliance with contract participation requirements and ensuring that overall SBEDA Program goals and objectives are met.

Small Minority Women Business Enterprise Program (hereafter referred to as “S/M/WBE Program”) – refers to the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Sub-Consultant – means any vendor of Grantee providing goods or services to Grantee in furtherance of Grantee’s performance under an agreement, contract or purchase order with City. A copy of each binding agreement between Grantee and its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers shall be submitted to City in writing prior to execution of this Agreement and any modification to this Agreement.

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

Sub-Consultant/Supplier Utilization Plan – refers to the binding part of this Agreement stating Grantee’s commitment for the use of Joint Venture Partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the performance of this Agreement, stating the name, scope of work and dollar value of work to be performed by each of Grantee’s Joint Venture partners and/or Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE Certification category for each Joint Venture partner and/or Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or and Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier names, scopes of work or dollar values of work to be performed requires an amendment to this Agreement approved by the EDD Manager or his/her designee.

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

D. SBEDA Program Compliance – General Provisions

Grantee acknowledges and accepts the terms of City’s SBEDA Ordinance, as amended, together with all requirements, guidelines and procedures set forth in City’s SBEDA Policy & Procedure Manual, are in furtherance of City’s efforts at economic inclusion and, moreover, such terms are part of Grantee’s Scope of Work, as referenced in City’s Funding Agreement, forming the basis for a Funding Agreement award and subsequent execution of this Agreement. These SBEDA Ordinance requirements, guidelines and procedures hereby are incorporated by reference into this Agreement and are considered by the Parties hereto to be material terms. Grantee’s agreement fully to comply with these SBEDA program terms is a material condition for being awarded this Funding Agreement by City. Without limitation, Grantee further agrees to the following terms as part of its contract compliance responsibilities under City’s SBEDA Program:

1. Grantee fully shall cooperate with the SBO and other City departments in the data collection and monitoring efforts regarding Grantee’s utilization and payment of and to Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers, S/M/WBE firms and HUBZone firms, as applicable, for their performance of Commercially Useful Functions pursuant to this Agreement 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, the timely entry of data into monitoring systems and ensuring the timely compliance of its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers with this term;
2. Grantee fully shall cooperate 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 Grantee, its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers;

3. Grantee 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 Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers and workers to determine whether there has been a violation of the terms of this Agreement;
4. Grantee immediately shall notify the SBO, in writing, on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Grantee's Sub-Consultant/Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Grantee to replace the Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes by Grantee to its Sub-Consultant/Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Grantee of work previously designated for performance by Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Supplier(s), substitutions of new Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers, terminations of previously designated Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers or reductions in the scope of work and value of work awarded to Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and/or Suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Grantee immediately shall notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.
6. Grantee shall retain all records of its Consultant, Sub-Consultant, Contractor, Subcontractor and/or Supplier payments pursuant to this Agreement for a minimum of four (4) years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this Agreement, for a minimum of four (4)

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 Grantee's Sub-Contractor/Supplier Utilization Plan, Grantee shall not be given credit for the participation of its S/M/WBE or HUBZone Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and/or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals and Grantee and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties, in accordance with the SBEDA Ordinance.
8. Grantee acknowledges City will not execute a contract or issue a Notice to Proceed for any work on this Project until Grantee and each of its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers for this Project have registered and/or maintained active status in City's Centralized Vendor Registration System and Grantee has represented to City which primary commodity codes each registered Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Supplier shall be performing under this Agreement.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

City has applied the following contract-specific Affirmative Procurement Initiatives to this Agreement. Grantee hereby acknowledges and agrees the selected API requirement also shall be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

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. Grantee agrees to subcontract at least **thirty-one percent (31%)** of the contract value to certified M/WBE firms headquartered or having a significant business presence within the SAMSA; and

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (d), this Agreement is being awarded pursuant to Segmented M/WBE Goals. Grantee agrees to subcontract at least **four percent (4%)** of the Agreement's value to certified African American Business Enterprise (AABE) firm(s) headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This

four percent (4%) subcontracting goal also will count toward the aforementioned thirty-one percent (31%) M/WBE subcontracting goal.

The Subcontractor / Supplier Utilization Plan Grantee submitted to City for this Agreement (or, as appropriate, Grantee agrees to submit during the price proposal negotiation phase of this Agreement), containing the names of the certified SBE, M/WBE and AABE Subcontractors to be used by Grantee pursuant to this Agreement, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor's scope of work and confirmation of each SBE, M/WBE and 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 Grantee to attain this subcontracting goal for SBE, M/WBE and AABE firm participation in the performance of a Commercially Useful Function under the terms of its Agreement shall be a material breach and grounds for termination of this Agreement City and may result in debarment from performing on or participating in future City agreements, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE, M/WBE and 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: City strongly encourages Grantee to be as inclusive as possible and to reach out to all segments of the M/WBE community, in Grantee's efforts to exercise good faith in achieving the M/WBE sub-consulting/subcontracting goal of thirty-one percent (31%) established for this Agreement. While the relative availability of ready, willing and able firms within various ethnic and gender categories significantly may vary from contract to contract, based upon the particular trades that are involved, overall in the San Antonio Architecture and Engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2016, African-American owned firms represent approximately 2.83% of available subcontractors, Hispanic-American firms represent approximately 15.91%, Asian-American firms represent approximately 1.30%, Native American firms represent approximately 0.23%, and Women-owned firms represent approximately 5.59% of available Architecture and Engineering Sub-Consultants.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, Grantee represents and warrants it has complied with, throughout the course of this solicitation and contract award process and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Grantee 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

Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers vendors or commercial customers, nor shall Grantee retaliate against any person for reporting instances of such discrimination. Grantee shall provide equal opportunity for Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s), Suppliers and vendors to participate in all of Grantee's public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this **Exhibit E** shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Grantee understands and agrees a material violation of this **Exhibit E** shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Grantee from participating in City contracts or other sanctions. This **Exhibit E** is not enforceable by or for the benefit of, and creates no obligation to, any third party. Grantee's certification of its compliance with this Commercial Nondiscrimination Policy, as submitted to City pursuant to the solicitation for this Agreement, hereby is incorporated into the material terms of this Agreement. Grantee shall incorporate this Commercial Nondiscrimination Policy clause into each of its Consultant(s), Sub-Consultant(s), Contractor(s) Subcontractor(s) and Supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this Agreement, Grantee shall be required to submit to City accurate progress payment information with each invoice, with regard to each of its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers, including HUBZone Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers, to ensure Grantee's reported subcontract participation is accurate. Grantee shall pay its Consultant(s), Sub-Consultant(s), Contractor(s), Subcontractor(s) and Suppliers in compliance with Chapter 2251, Texas Government Code (known as the "Prompt Payment Act") within ten (10) days of receipt of payment from City. In the event of Grantee's noncompliance with these prompt payment provisions, no new City contracts shall be issued to Grantee until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the Agreement.

H. Violations, Sanctions and Penalties

In addition to the above terms, Grantee acknowledges and agrees it is a violation of the SBEDA Ordinance and shall be deemed to have committed a material breach of this Agreement if Grantee:

1. fraudulently obtains, retains, attempt to obtain, or aids 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 falsifies, conceals or covers up by a trick, scheme or device, a material fact or makes any false, fictitious or fraudulent statements or representations, or makes use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statements or entries pursuant to the terms of the SBEDA Ordinance;
3. willfully obstructs, impedes or attempts to obstruct or impede any authorized official or employee investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. fraudulently obtains, attempts to obtain or aids 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. makes 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 or entity violating the provisions of this **Exhibit E (H)** 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 Grantee or other business firm from eligibility for providing goods or services to City for a period not to exceed two years (upon approval by the San Antonio City Council).