

ORDINANCE 2019-06-13-0497

APPROVING THE EXECUTION OF A FUNDING AGREEMENT WITH THE UNIVERSITY OF TEXAS AT SAN ANTONIO (UTSA) IN AN AMOUNT NOT TO EXCEED \$750,000.00 FOR TESTING TRENCHLESS PIPE REHABILITATION METHODS OF CORRUGATED METAL PIPE (CMP) AS PART OF THE TESTING PHASE OF THE CMP PILOT PROGRAM. FUNDS ARE AVAILABLE FROM THE STORM WATER OPERATING FUND.

* * * * *

WHEREAS, an estimated 55 miles of Corrugated Metal Pipe (CMP) currently resides under the City's streets for the purpose of conveying storm water runoff from the surface to the creekways in order to alleviate flooding; and

WHEREAS, within the last several years, there has been a significant increase in the amount of CMP failures in which these pipes have either become severely corroded or collapsed, resulting in emergency pipe repairs and pavement failures; and

WHEREAS, given the immediate concern for the public's health and safety, a comprehensive pilot program was funded in FY 2019 to begin the process of developing a proactive approach that will plan, prioritize and execute the rehabilitation of the failing CMP network, and this program will explore several types and methodologies of spray lining currently in the market in order to determine which specific method is best for the City while maximizing any allocated funding; and

WHEREAS, this agreement with UTSA will provide for the Testing Phase of the CMP Pilot Program which will involve testing four trenchless rehabilitation technologies covering 1,500 feet of failing CMP with these services anticipated to begin in July 2019 and completed by September 2019; **NOW THEREFORE**,

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

SECTION 1. The City Manager or designee is authorized to execute a Funding Agreement with UTSA in an amount not to exceed \$750,000.00. A copy of the Agreement is attached hereto as Attachment I.


SECTION 2. Payment is authorized to be encumbered and made payable to University of Texas at San Antonio (UTSA), for testing trenchless pipe rehabilitation methods of Corrugated Metal Pipe (CMP) as part of the Testing Phase of the CMP Pilot Program in the amount not to exceed \$750,000.00 in Fund 40099000, WBS Element 23-01805-05-02-01, and GL 5201140.


SECTION 3. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

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

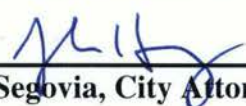
SECTION 5. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage

PASSED AND APPROVED this 13th day of June, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Andrew Segovia, City Attorney

Agenda Item:	21B (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21A, 21B, 22, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 48, 50, 51A, 51B, 52)
Date:	06/13/2019
Time:	10:10:52 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a funding agreement with the University of Texas at San Antonio in an amount not to exceed \$750,000.00 for testing trenchless pipe rehabilitation methods of Corrugated Metal Pipe as part of the Testing Phase of the CMP Pilot Program. Funds are included and available in the FY 2019 Storm Water Operating Fund Adopted Budget.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor	x					
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

Attachment I

STATE OF TEXAS
COUNTY OF BEXAR

**FUNDING AGREEMENT WITH
THE UNIVERSITY OF TEXAS AT SAN ANTONIO**

This 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 _____, The University of Texas at San Antonio ("UTSA"), an agency of the State of Texas and academic component of The University of Texas System, (hereinafter referred to as "Grantee"), both of which may be referred to herein collectively as the "Parties", under the authority of Chapter 791 of the Texas Government Code. The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors.

"Grantee" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's Transportation & Capital Improvements Department or his designee.

"Project Director" shall mean Grantee's employee and faculty member, Samer Dessouky, PhD, PE, who will direct Grantee's activities pursuant to this Agreement.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on July 1, 2019 and terminate on September 30, 2019. Upon mutual written agreement of the Parties, this Agreement may be extended.

2.2 If funding is not available at the time this Agreement is entered into, City retains the right to terminate at the expiration of each of City's budget periods. Subsequent contract periods shall be subject to and contingent upon funding and appropriation by the San Antonio City Council.

III. SCOPE OF SERVICES

3.1 Grantee agrees to provide the services described in this Article in exchange for the compensation described in Article IV.

3.2 Grantee shall perform work in accordance with Attachment A ("Scope of Services").

3.3 All work performed by Grantee hereunder shall be performed to the satisfaction of Director of City's Transportation & Capital Improvements Department. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Grantee which is not satisfactory to Director. The basis for satisfaction and acceptance of services shall be performance of services in accordance with Attachment A. City shall have the right to terminate this Agreement in accordance with Article VII. Termination, in whole or in part, should Grantee's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO GRANTEE

4.1 In consideration of Grantee's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Grantee the fixed amount of **Seven Hundred and Fifty Thousand Dollars** (\$750,000) as total compensation. Grantee will submit invoices to the City on a monthly basis, through City's PrimeLink system. City will pay Grantee \$150,000 per month not to exceed \$600,000 in accordance with Attachment A, with the final \$150,000 withheld and paid once all final deliverables are received by the City.

4.2 No additional fees or expenses of Grantee shall be charged by Grantee nor be payable by City. The parties hereby agree that all compensable expenses of Grantee have been provided for in the total payment to Grantee as specified in Subsection 4.1 above. Total payments to Grantee cannot exceed that amount set forth in Subsection 4.1 above, without prior approval and agreement of all parties, evidenced in writing, and subject to appropriation by the San Antonio City Council.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Grantee following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Grantee, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Grantee and City agree that intellectual property arising through the services rendered hereunder shall be and remain the sole and exclusive proprietary property of Grantee. All intellectual property rights including, without limitation, patent, copyright, trade secret, trademark brand names, color schemes, designs, screens, displays, user interfaces, data structures, organization, sequences of operation, trade dress, and other proprietary rights (the "Intellectual Property Rights") in such work shall be solely vested in the Grantee. Subject to confidential treatment by City of Grantee's confidential Intellectual Property Rights that may be disclosed thereunder, Grantee grants City a permanent and perpetual, fully paid-up, non-exclusive license

under Grantee's copyrights to reproduce, publish, use, and to make derivative works, from any written report prepared and delivered to City in accordance with this Agreement. Provided, however, nothing herein contained is intended nor shall it be construed to require Grantee to transfer any ownership interest in Grantee's best practices and benchmarking information to the City.

5.2 Notwithstanding any terms herein, Grantee and Project Director, or others of Grantee's faculty, staff, and students, shall have the right to publish any results, information, or data associated work performed in accordance with Attachment A, and to assert copyright or proprietary claims to any results, information, studies, or reports using data related to such work, if such results, information, studies or reports were not included in the work to be delivered to the City hereunder.

VI. RECORDS RETENTION

6.1 Grantee and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "Documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof; and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Grantee shall return said Documents to City upon conclusion of this contract; however, Grantee shall have the right to retain one (1) copy of said Documents in a secure manner for the purpose of complying with the terms of this Agreement.

6.3 The Public Information Act, Texas Government Code Section 552.021, requires the City to make public information available to the public. Under Texas Government Code Section 522.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if Grantee receives inquiries regarding documents within its possession pursuant to this Agreement, Grantee shall (a) within 24 hours of receiving the requests, forward such requests to City for notification purposes and to afford the City the opportunity to assert any applicable arguments or protections necessary to protect its information, and (b) take action as authorized under the Public Information Act to protect information that may be confidential pursuant to state or federal law. If the requested information is confidential pursuant to State or Federal law, the Grantee shall submit to the City the list of specific statutory authority mandating confidentiality no later than three business days of Grantee's receipt of such request.

6.4 Grantee agrees to comply with official records retention schedules in accordance with the Local Government Records Act of 1989, any amendments thereto, and any other applicable federal or state laws or regulations.

VIL TERMINATION

7.1 Termination of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon ten (10) business days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Default by Grantee in the performance of this Agreement shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Grantee shall have fifteen business days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Grantee fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Grantee to complete the work required in this Agreement. Grantee shall be entitled to receive just and equitable compensation for any work satisfactorily completed and noncancellable obligations incurred prior to such termination date.

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Grantee shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Grantee, or provided to Grantee, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Grantee in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty business days of a written request by City and shall be completed at Grantee's sole cost and expense.

7.7 Within sixty business days of the effective date of completion, or termination or expiration of this Agreement, Grantee shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Grantee to submit its claims within sixty business days shall negate any liability on the part of City and constitute a **Waiver** by Grantee of any and all right or claims to collect moneys that Grantee may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Grantee shall

cease all operations of work being performed by Grantee or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination in any way, at law or at equity, limit City's right to seek damages from or otherwise pursue Grantee for any default hereunder or other action.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Director of Transportation & Capital
Improvements 114 W. Commerce, 6th floor
San Antonio, Texas 78205

If intended for Grantee, to:

The University of Texas at San Antonio (UTSA)
Office of Sponsor Project Administration,
Contract and Industry Agreements
One UTSA Circle
San Antonio, Texas 78249

With a copy to:

The University of Texas at San Antonio
Civil and Environmental Engineering
Hatim Sharif, Ph.D.
One UTSA Circle, BSE Building San
Antonio, Texas 78249

IX. STANDARD OF PERFORMANCE

9.1 Services provided by Grantee under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

X. INSURANCE

10.1 Grantee and the City each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

10.2 With respect to Grantee, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment. Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of The University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

XI. INDEMNIFICATION

11.1 Grantee and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Grantee and the City shall each promptly notify the other in writing of any claim or demands that become known against them in relationship to or arising out of activities under this Agreement.

11.2 The provisions of this Subsection are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Grantee shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Grantee. Grantee, its employees or its subcontractors shall perform all necessary work.

12.2 None of the work or services covered by this Agreement shall be sub-contracted without the prior written consent of the City and, if necessary, appropriate amendment to this Agreement consistent with the requirements herein.

12.3 Except as otherwise stated herein, Grantee may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Grantee shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Grantee, assignee, transferee or subcontractor.

12.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should

Grantee assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Grantee shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Grantee shall in no event release Grantee from any obligation under the terms of this Agreement, nor shall it relieve or release Grantee from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Grantee covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that Grantee shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and Grantees; that the doctrine of respondent superior shall not apply as between City and Grantee, its officers, agents, employees, contractors, subcontractors and Grantees, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Grantee. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Grantee under this Agreement and that the Grantee has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.1 Grantee acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

14.2 Pursuant to Subsection 14.1, Grantee represents and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Grantee further represents and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

15.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be effected by amendment, in writing, executed by both Director and Grantee.

XVI. SEVERABILITY

16.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal state or local laws, including but not limited to the City Charter,

City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of the Agreement a clause or provision as similar in term to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII. LICENSES/CERTIFICATIONS

17.1 Grantee represents and certifies that Grantee and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said **service** and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided **herein**.

XVIII. COMPLIANCE

18.1 Grantee shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

19.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not 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. In case of City, such changes must be approved by the City Council, as described in Article XV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XX. LAW APPLICABLE

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

20.3 City acknowledges that Grantee is a state agency and institution of higher education established under Texas law and governed by the Board of Regents of the University of Texas System. Therefore, notwithstanding anything in this Agreement to the contrary, Grantee agrees to comply with state and federal laws as described herein only to the extent such laws apply to Grantee and Grantee agrees to comply with City laws and policies only to the extent such laws and policies do not conflict with federal or state laws or policies applicable to Grantee. Additionally City and Grantee agree that, notwithstanding anything in this Agreement to the contrary, (a) nothing in this Agreement shall preclude, waive or limit any claim of Grantee or the State of Texas or Grantee's or the State's right to seek redress in the courts, (b) neither Grantee's nor City's failure to act in accordance with any provision of this Agreement shall preclude, waive or limit any claim of Grantee or the State of Texas of Grantee's or the State's right to seek redress in the courts, and (c) neither the execution of this Agreement by Grantee nor any other conduct, action or inaction of any representative of Grantee to this Agreement constitutes or is intended to constitute a waiver of Grantee's or State's sovereign immunity to suit.

XXI. LEGAL AUTHORITY

21.1 The signer of this Agreement for Grantee represents, certifies, and assures that he has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

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

XXIII. CAPTIONS

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

XXIV. ENTIRE AGREEMENT

24.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain 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 hereto, and duly executed by the parties, in accordance with Article XV. Amendments.

XXV. TEXAS GOVERNMENT CODE

25.1 No Boycotting of Israel. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By signing this Agreement with the City of San Antonio, Grantee hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Grantee's verification. If found to be false, City may terminate the contract for material breach.

25.2 TEXAS GOVERNMENT CODE § 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §2270.0201 or §2252.153 "Listed Companies". Consultant/Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's/Contractor's certification. If found to be false, or if Consultant/Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

EXECUTED and **AGREED** to as of the dates shown below.

CITY:

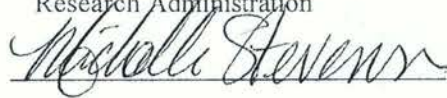
Razi Hosseini, P.E., R.P.L.S.
Interim Director/City Engineer

Date:

GRANTEE:

THE UNIVERSITY OF TEXAS AT
SAN ANTONIO (UTSA)

Michelle Stevenson, Ph.D.
Associate Vice President for
Research Administration



Date:

6/3/19

Attachment A Scope of Services

Introduction

An estimated 55 miles of Corrugated Metal Pipe (CMP) currently resides under City's streets for the purpose of conveying storm water runoff from the surface to the creek ways in order to alleviate flooding. Within the last several years there has been a significant increase in the amount of CMP failures in which these pipes have either become severely corroded or collapsed, resulting in emergency pipe repairs and pavement failures. To date, TCI has televised 133 miles of underground pipe, out of which 4.5 miles were identified as CMP. Approximately half of all televised CMP scored an "F", the worst condition rating, implying that there could potentially be a total of 26 miles of CMP that requires immediate attention.

In October 2018, Transportation & Capital Improvements (TCI) funded a pilot program to explore alternative methods of trenchless technology such that the CMP can be rehabilitated with minimal disturbance to the existing pavement overhead. This proposal describes the tasks offered by the Grantee to assist TCI in testing these methods and providing recommendations. The proposed tasks below are the services offered by the Grantee in this agreement:

Task 1: Identify location sites (Projected July 1, 2019 – July 31, 2019)

The Grantee will identify a minimum of 1,500 LF of CMP for trenchless rehabilitation. These locations will be selected out of TCI's televised underground inventory, whereas the CMP segments scored an "F" condition rating.

Task 2: Select trenchless applications (Projected July 1, 2019 – July 31, 2019)

The Grantee will select a minimum of four trenchless application types based on recommendations provided by TCI. The application types may be similar in their overall general approach and end result, however they must have different compositions and specifications. TCI will provide final approval of selected locations.

Task 3: Test the trenchless applications (Projected July 1, 2019 – September 30, 2019)

The Grantee will utilize one to four trenchless construction companies to complete the rehabilitation of approximately 1,500 LF of CMP. Funding should be adequate for rehabilitating 1,500 LF, however it is a targeted amount and may be increased or decreased based on contractor negotiations and available funding. Grantee will take into consideration, TCI's recommendations regarding the construction component of this project. However, Grantee will conduct the selection of the contractor/subcontractor for the constructions services in accordance with University policies and procedures, and applicable laws and regulations.

Deliverables

1. Approximately 1,500 LF of rehabilitated CMP.
2. Detailed reports and presentations of Tasks 1-3, including before and after televising videos.

3. Recommendations of application type based on quality, ease/speed of construction, cost, etc.

Staffing

The study will be conducted by Dr. Hatim Sharif, PE, Dr. Samer Dessouky, PE, and UTSA graduate/undergraduate student.

Payment Schedule

Amount Due	Payment Date
\$150,000	July 1, 2019
\$150,000	August 1, 2019
\$150,000	September 1, 2019
\$150,000	October 1, 2019
\$150,000	November 1, 2019

Total funding is the fixed amount of \$750,000. Sponsor will make the last scheduled payment once Grantee provides all deliverables.

Grantee Biography:

Hatim Sharif, Ph.D., P.E., MPH, is a professor at the University of Texas at San Antonio. His research interests include water resources, hydrometeorology, geographic information systems (GIS), natural hazards, and the interaction between climate, transportation safety, and public health. His research projects (totaling more than \$9 million) in these areas are supported by Texas Department of Transportation and national and state funding agencies, including NASA, National Science Foundation, Army Corps of Engineers, and National Weather Service. Ongoing research projects are focused on water resources, flood modeling, reducing crash at intersections, low-water crossing safety, impact of weather on transportation safety, and fatigue related crashes. Dr. Sharif is well-versed in statistical methods, big data analytics, GIS, crash reduction factors analysis, crash diagram review, traffic impact studies, and case-control analysis. Dr. Sharif has been invited as senior specialist to perform research at international institutions in France, Taiwan, and Middle East.

Samer Dessouky, PhD, PE (Ohio and Texas), is currently a Professor in Civil Engineering at University of Texas San Antonio. He has more than 20 years of experience in infrastructure sustainability, pavement management and safety. His current research projects are sponsored by federal, state and private sector. His funding at UTSA exceeds \$6.70 million from FHWA, TxDOT, City of San Antonio, Howlett Packard, and SWRI. He is a current panelist and reviewer for the NCHRP program, Air Force Faculty Fellowship Program, Fulbright and NASA graduate fellowship program. Dr. Dessouky has 90 refereed technical publications on bituminous materials, computational micromechanics of asphalt mixtures, pavement sustainability, geogrid reinforcement, energy harvesting from roadways and motorists safety. He is the recipient of the Grant Mickle best paper award by the TRB in 2006, and his recent Energy harvesting innovation won the best innovative green engineering technology by ASCE in 2016 and the best paper award by ASEE in 2015 with his students. Dr. Dessouky serves on the board members of the bituminous committee of the ASCE construction institute and the Middle East Society of Asphalt Technologists. He sits on the Editorial Boards of the Transportation and Transit Systems and serves as Associate Editor for the International Journal of Engineering

Exhibit B

SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. 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 **specified subcontracting goal(s)** by submitting the *Respondent/ Vendor Subcontracting Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>). 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.

B. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 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 clause 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 clause 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.

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 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 managing the contract.

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.

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.

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 that the CITY will not execute a contract or issue a Notice to Proceed for this project until the Grantee and each of

its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and Grantee has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

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. (d), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **zero (0%)** of the contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA);

The Subcontractor / Supplier Utilization Plan that Grantee submitted to CITY for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by Grantee on this contract, 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 contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE, 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.

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

clause 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 **clause** 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 **clause** 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 **clause** 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).