

contribution obligations hereunder is authorized by applicable Texas law, including the City's Home Rule Charter and the City voters' approval of Proposition C at the May 7, 2022 City bond election, and such contribution shall satisfy in full the City's funding obligation for the project identified in Proposition C of the City's May 7, 2022 bond election as "UTSA Athletics Facilities LF"; and

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

I. TERM

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The term of this Agreement ("**Term**") shall expire upon the earlier to occur of: (a) twenty (20) years, or (b) final payment or discharge of the City Bonds issued to finance the City's contribution to the Project. The Director of Public Works may administratively approve extension of agreement term up to an additional year if deemed necessary by City.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in Section 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 the Project by October 2026, as described in this Agreement.

2.02 The current budget estimates of the Project are approximately \$35,000,000. Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$4,900,000, plus \$100,000 which shall be retained by the City per Section 5.01, for a total of \$5,000,000. In the event that the scope of the Project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any costs over the estimated amount of the Project unless agreed to in writing in the form of an amendment to this Funding Agreement. The City shall fund its commitment hereunder from proceeds derived from its sale of bonds authorized under Proposition C of the City's May 7, 2022 bond election (such City bonds, as well as any City bonds from time to time issued to refund the same, the "City Bonds").

2.03 Unless written notification by Grantee to the contrary is received and approved by City (such approval not to be unreasonably withheld), Grantee's _Asst. VP, Design & Construction or his/her designee shall be Grantee's designated representative responsible for the management of this Agreement, and will serve as the point of contract for City on all matters regarding this Agreement.

2.04 The Director of Public Works (PW) or 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.

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

2.06 Grantee shall provide to City a narrative Scope for the Project, including a background, project summary and timeline, (“**Scope**”) as **Exhibit A**.

2.07 Grantee shall provide to City its plans and specifications for the Project, including a construction schedule, (“**Plans**”) and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The City’s approvals required under this Section will not be unreasonably withheld. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental or contractual approvals, including those provided by the State of Texas Commission on Environmental Quality (Article 9102). In addition, Grantee will adhere to its Design and Construction Standards found at <https://www.utsa.edu/rpm/resources/index.html>, as well as the requirements of its Certificate of Occupancy located at <https://www.utsa.edu/rpm/resources/forms/index.html>. As an agency of the of the State of Texas, Grantee is not subject to the City's development and other municipal processes by operation of law. The Project is subject only to the City development and municipal processes only as expressly and specifically required by this Agreement. 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.

2.08 Grantee shall provide to City a Budget for the Project illustrating where City Bond Funds are to be utilized in accordance with this agreement, as well as illustrating all funding for the entire Project if applicable as **Exhibit C**.

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

2.10 Grantee will ensure the Project accomplishes the following public purpose described below in this Section 2.10 (collectively, the “**Public Purpose**”);

2.10.1 The Project will establish a new practice facility for Grantee’s intercollegiate women's and men's basketball and women's volleyball programs that will (i) result in opportunities for public access for organized competitive events and for organized youth sports as well as bringing sporting events to San Antonio, subject to Grantee’s standard scheduling and rental requirements to include rental fees, security, insurance and custodial support depending on the event or use. Rental application form is located at <https://goutsa.com/facilities>.

2.10.2 Each year of the Term, Grantee must make substantial portion of the Athletics Facilities available for 15 days for exclusive or prioritized official use by the City of San Antonio (“**City Days**”) with 30 days advanced notice for coordination. Any rental, utility, or other usage fees normally charged will be waived for the aforementioned City Days. City and Grantee will cooperate in good faith to appropriately and reasonably schedule the City Days

2.10.3 Each year of the Term, Grantee must make free, no-cost parking within a reasonable walking distance of the Athletics Facilities available to the City and City users during the aforementioned City Days.

2.10.4 Each year of the Term, Grantee will allow City free, no-cost outreach opportunities at UTSA events for the City’s Parks and Recreation staff to promote the Parks and Recreation Department’s events, clinics, programs and employment opportunities . City and UTSA will collaborate in good faith to schedule the outreach opportunities and mutually agree upon the scheduling of such opportunities. Neither party will unreasonably withhold their approval.

2.10.5 Each year of the Term, Grantee will give City 20 tickets each to two UTSA football games, two men’s basketball games, two women’s basketball games, and two women’s volleyball games, which may be made available for public incentives.

2.11 Beginning on January 31 of the year following the opening of the UTSA Athletic Facilities Project , and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall provide Director of Parks & Recreation or designee an annual report (“**Annual Report**”). The Annual Report shall include the following:

2.11.1 Description of all activities that occurred during the previous calendar year that were available for public access as described in Section 2.10.1, including activity dates, estimated attendance, days and hours that the Project improvements were utilized for the public access described in Section 2.10.1, and the rules and regulations for use.

2.11.2 Evidence of insurance coverage as outlined in **Article XII** below.

2.11.3 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 .

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 **Legal Compliance.** Grantee warrants and represents that it will comply with all applicable 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 the Project.

3.02 **Open and competitive contracting.** Grantee agrees to abide by the competitive procurement requirements of Chapter 2254 of the *Texas Government Code*, and Chapter 51 of the

Texas Education Code. In particular, Grantee intends to construct the Project using the competitive process for selection of a “construction-manager-at-risk” under Sections 51.782 and 51.9335 of the *Texas Government Code*, utilizing the process established in The University of Texas System Office of General Counsel Construction Law Guidelines found at <https://www.utsystem.edu/documents/docs/general-counsel-documents/2017/construction-contracting-guidelines>.

3.03 ADA compliance. Plans must conform to Americans with Disabilities Act (ADA) requirements) as well as applicable Texas State Accessibility standards 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 (**Exhibit E**). 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 of each Phase. 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 comply with all applicable Federal and State environmental requirements, as well as any local environmental requirements applicable to Grantee.

3.06 **Small Business Economic Development Advocacy Program.** City understands and acknowledges that Grantee must adhere to the requirements of the State Historically Underutilized Business program as established under Chapter 2161 of the *Texas Government Code*, Section 51.9335 of the *Texas Education Code*, and Chapter 20, Subchapter D, of the *Texas Administrative Code*, as well as the related policies under The University of Texas System Policy UTS137 located at <https://www.utsystem.edu/sites/policy-library/policies/uts-137-historically-underutilized-business-hub-program> (collectively, the “**HUB Program**”). City further understands and acknowledges that the HUB Program does not authorize the use of preference points or related preferences when selecting contracted providers under Grantee’s procurement process described in Section 3.02. To the extent permitted by law and the rules and regulations of the University of Texas System, Grantee shall comply with all Small/Minority and Woman Owned Business Terms and Conditions as attached hereto as **Exhibit D**.

3.07 **Compliance with Bond Covenants.** The City’s commitment hereunder is funded with City Bonds, which are obligations the interest on which is excluded from the gross income calculations of the holders thereof for the purpose of determining income tax liability under applicable federal law. Maintaining the eligibility of the City Bonds for this tax treatment requires the City’s compliance with applicable federal tax law and regulations, which includes agreements regarding the use of City Bonds’ proceeds and the use and operation of facilities financed with those proceeds. As the expenditure of the City Bonds’ proceeds once delivered to the Grantee, and the use and operation of the completed Project, is under the control of the Grantee, Grantee agrees that it shall not use, or permit the use of, proceeds of the City Bonds, 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 proceeds of the City Bonds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest on City Bonds 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 the Project in a manner that will accomplish the Public Purpose, specifically including the use by the general public described in Section 2.10.1. Grantee hereby agrees that the operating hours of the facility will facilitate accomplishing the Public Purpose and that the scheduling of use, rules and regulations, and other operational practices will be consistent with the Public Purpose, specifically including the use by the general public described in Section 2.10.1. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the 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 Project improvements shall facilitate the design and construction of improvements at UTSA for the construction of a new Women's and Men's Basketball and Women's Volleyball practice facility on UTSA main campus within available funding in accordance with the Plans and provide for its continued operation during the entire term that the City Bonds issued to finance the City's contribution to the Project remain outstanding.

4.04 For the entire term that the City Bonds remain outstanding, Grantee shall operate the Project continuously and in a manner that accomplishes on the City's behalf the Public Purpose that forms the basis for the City's contribution to the Project. Grantee shall satisfy this obligation by assuring that, for the duration previously specified, the construction of the new athletics facility within available funding provided at the Project, once completed, as a ratio of all services provided at the completed Project, shall be at least proportionate to the percentage of the total Project cost funded by the City (assuming a City contribution of \$5,000,000 and an overall Project cost of \$35,000,000).

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$5,000,000.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee and Public Works "hereinafter referred to as PW", for payment of any monies or provision of any goods or services.

5.03 Funding shall consist of reimbursements paid to Grantee for design and construction costs of the Project, not to exceed \$4,900,000, with \$100,000 to be retained by the City, for total funding by City of \$5,000,000. The City funding provided under this Funding Amendment may only be used for the portions of the Project that will serve to meet the Public Purposes. No City funds may be used for Grantee's personal office space or other non-public aspects of the Project.

5.04 Payments will be a reimbursement of work done and payments made for the portions of the project that City is funding. Records and documentation that the expenses were in relation to the City-funded portion of the project will be submitted as City may reasonably require with pay application with additional documentation available upon request.

5.05 Except as otherwise set forth herein, it is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

5.06 In the event that the Bond Funds are not used for the purposes authorized under and/or in accordance with the terms and conditions of this Agreement, Grantee agrees to refund any

amounts to City which were not authorized or used in accordance with the terms and conditions of this Agreement. Grantee shall pay such refund in a reasonable amount of time, not to exceed ninety (90) calendar days.

**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 agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement, including a detailed accounting of the expenditure of amounts received from the City herunder, for so long as the City Bonds remain outstanding, but not less than four (4) years from the completion of the Project.

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

6.04 All requests for reimbursement shall be submitted through the COSA PRIMElink. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMElink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMElink and/or utilizing forms and instructions approved by PW. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by PW, 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 Plans. Invoices should include all supporting documentation that costs have been incurred, as reasonably 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, 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:

- (A) Construction contract and change orders
- (B) Construction contingencies
- (C) Architectural/Engineering Design Contract and Amendments
- (D) Construction project management firms for professional assistance with project management of the UTSA Athletics Facilities construction process

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:

- (A) Personnel costs, salaries or wages paid directly by Grantee or an affiliated organization of Grantee
- (B) Travel and travel-related expenses
- (C) Costs or fees for consultant and/or professional services, except for those directly related to the Project (including but not limited to costs and fees of the Architect)
- (D) Costs or fees associated with attendance of Grantee at meetings, seminars, or conferences
- (E) Costs or fees associated with regular maintenance and operation of Grantee
- (F) Fundraising

(G) 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.

(H) Advertising

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

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

(B) It is financially stable and capable of fulfilling, and possesses internally or will outsource duties to acquire the sophistication to fulfill 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 reasonably 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 provided, however, that Grantee has the right to require the requestor to make payment for copies or services as allowed by law.

X. MONITORING AND EVALUATION

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

XI. INDEMNITY

11.01 Grantee is an institution of higher education and agency of the State of Texas and, City is a political subdivision of the State of Texas. As such, both Grantee and City are each subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in the *Texas 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.

XII. INSURANCE & BONDS

12.01 City acknowledges that, because UTSA is an agency of the State of Texas, liability for tortious conduct of employees of UTSA or for injuries caused by conditions or use of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (Texas Civil Practice and Remedies Code Chapters 101 and 104); and that workers' compensation insurance coverage for UTSA employees is provided by UTSA as mandated by the provisions of Chapter 502, Texas Labor Code. UTSA, shall have the right, at its option, to (a) obtain liability insurance protecting UTSA and its employees and property insurance protecting UTSA's buildings and contents, to the extent authorized by Section 5.1966 Texas Education Code, or other law, or (b) self-insure against any risk that may be incurred by UTSA as a result of its operations under the Agreement.

12.02 City acknowledges that UTSA shares the same statutory duty pursuant to Texas Government Code Chapter 2253 requiring payment and performance bonds for construction contracts. UTSA warrants that it will comply with its statutory duty to require payment and performance bonds on the Project in accordance with Texas Government Code Chapter 2253.

XIII. NONDISCRIMINATION

13.01 As a party to this contract, Grantee understands and agrees that Grantee and its employees and agents will comply with its Nondiscrimination Policy located at <https://www.utsa.edu/hop/chapter9/9.01.html> and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIV. CONFLICT OF INTEREST

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

employed or appointed as a member of its governing body or of its staff. City covenants that no member of the City Council has a direct or indirect financial interest in the construction that is the subject of this Agreement. City further acknowledges and agrees that it is aware of Grantee's Conflicts of Interest Policy, and applicable state ethics laws or codes and that all actions taken pursuant to this Agreement will be in conformance with same.

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

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

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

XV. POLITICAL ACTIVITY

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

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

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

XVII. CONTRACTING

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

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

XVIII. CHANGES AND AMENDMENTS

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

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

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City, which approval shall not be unreasonably withheld or delayed after construction 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. Notwithstanding the foregoing, City understands and acknowledges that UTSA is a state agency and an institution of higher education under the Board of Regents of The University of Texas System, and any assignment, transfer, merger or consolidation initiated by the State of Texas or said Board of Regents is outside the control of UTSA, and will not be deemed a violation of this Section.

XX. SEVERABILITY OF PROVISIONS

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

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein

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

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

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

XXII. ENTIRE AGREEMENT

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

XXIII. NOTICES

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

<p><u>If to City:</u></p> <p>Razi Hosseini , P.E., Director, Public Works Department City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966 Razi.Hosseini@sanantonio.gov</p>	<p><u>If to Grantee</u></p> <p>Nick Tuttle, Asst. VP, Design & Construction One UTSA Circle San Antonio, TX. 78249 Nicholas.tuttle@utsa.edu</p>
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Notice of change of address by either Party must be made in writing and mailed to the other Party’s last known address within five (5) business days of such change.

XXIV. PARTIES BOUND

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

XXV. RELATIONSHIP OF PARTIES

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

XXVI. TEXAS LAW TO APPLY

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

XXVII. GENDER

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

XXVIII. CAPTIONS

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

XXIX. DEFAULT

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

29.02 In no event shall this Agreement be terminated prior to the final payment or discharge of the City Bonds. As long as reimbursement has not been made by City for authorized expenses, 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 reimbursement has been made by City for authorized expenses, any breach or violation by City to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of Grantee, at its option, upon thirty (30) days' written notice to City, unless such breach or violation is cured prior

to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

XXX. LEGAL AUTHORITY

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

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

XXXI. FORCE MAJEURE

31.01 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.

(Signatures Appear on the Following Page)

EXECUTED AND AGREED TO BETWEEN THE PARTIES this the ____ day of _____, _____.

CITY OF SAN ANTONIO

By: _____
John Peterek,
Interim Assistant City Manager
City of San Antonio

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

By: *Veronica Salazar*

Veronica Salazar
Executive Vice President for Business Affairs
University of Texas at San Antonio

APPROVED AS TO FORM:

On behalf of CITY ATTORNEY

EXHIBIT A SCOPE

Background

In May of 2022, voters approved a City of San Antonio Bond which included \$5M to support the construction of a new Women's and Men's Basketball and Women's Volleyball practice facility that would be constructed at the University of Texas at San Antonio – Main Campus located at 1 UTSA Circle, San Antonio TX. 78249. The facility will be located adjacent to the recently completed Roadrunner Athletic Center of Excellence (RACE) on the west part of campus and will span two stories with a gross square footage (GSF) of 51,900. The facility will provide all practice facility amenities associated with top-tier NCAA Division 1 basketball and volleyball programs. Each program will have access to practice courts, a team locker room with shower space, a film review room, a team lounge area, and program office spaces for coaching staff. Programs will share strength and conditioning facilities, hydrotherapy facilities, and equipment and laundry facilities.

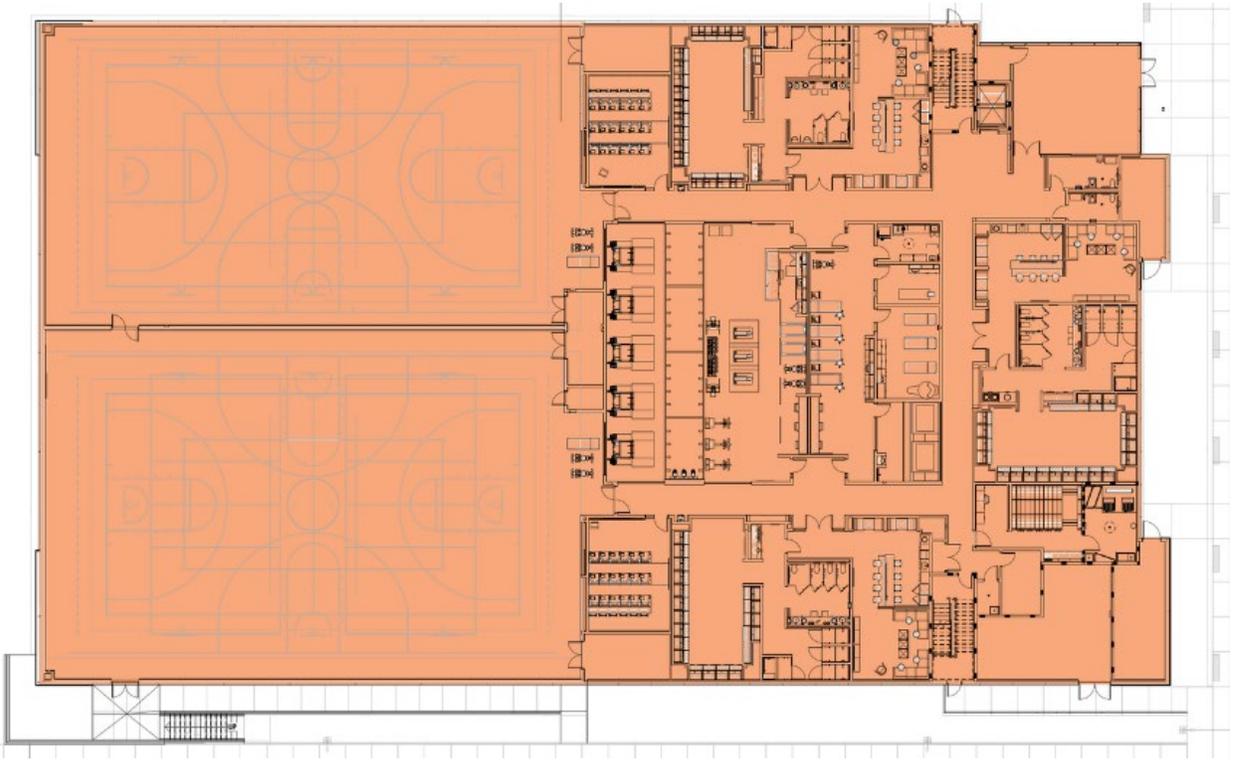
Schedule

Construction is anticipated to begin in April 2025 with estimated completion in October 2026.

EXHIBIT B PLANS



Level 1



Level 2

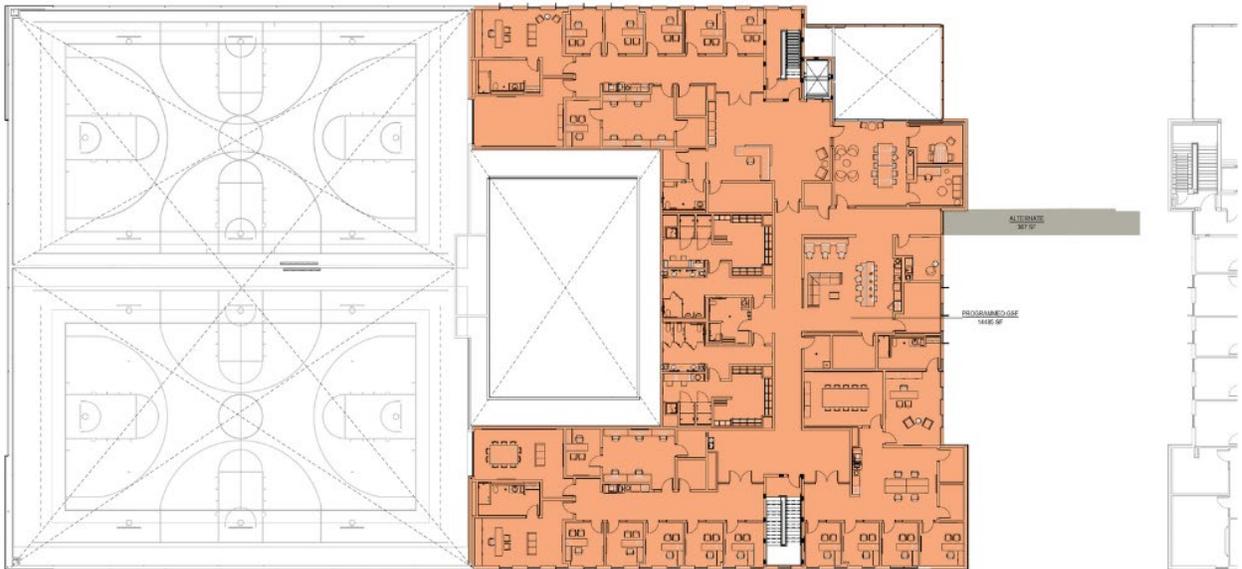


EXHIBIT D
SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM

UTSA Athletics Facilities

A. 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 Exhibit 1 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 1 shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. 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. The Grantee agrees to subcontract at least **twelve percent (12%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA).

Segmented M/WBE Goal. In accordance with SBEDA Ordinance Section III. D. 2. (e), this contract is being awarded pursuant to Segmented M/WBE Goals. The Grantee agrees to subcontract at least **two percent (2%)** of the contract value to a certified African American Business Enterprise (AABE) firm headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). This **two percent (2%)** subcontracting goal will also count toward the aforementioned **twelve percent (12%)** M/WBE subcontracting goal.

Grantee shall submit a **Subcontractor/Supplier Commitment Form** to City with this funding agreement. Failure to include a completed, signed copy of the Subcontractor/Supplier Commitment Form acknowledging the subcontracting goal(s) for this funding will render this contract voidable. *As the comprehensive scope of work is established*, Grantee agrees to submit a Subcontractor/ Supplier Utilization Plan with the names of the certified 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 M/WBE and AABE Subcontractor, and documentation including a description of each M/WBE and AABE Subcontractor's scope of work and confirmation of each M/WBE and AABE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is to be 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 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 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.

C. 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.

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

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

2. GRANTEE shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of GRANTEE or its subcontractors 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 Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

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

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

6. GRANTEE shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum 7of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a GRANTEE's Subcontractor / Supplier Utilization Plan, the GRANTEE shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the 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 for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and GRANTEE has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

For more information please see link: <http://www.sanantonio.gov/SBO/Compliance>

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

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. 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 with origins in any of the black racial groups of Africa.

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

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

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

Originating Department – 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.

**EXHIBIT E
PREVAILING WAGE RATE**