

**STATE OF TEXAS** § **INTERLOCAL FUNDING AGREEMENT**  
§ **BETWEEN THE CITY OF SAN ANTONIO**  
§ **AND NORTH EAST INDEPENDENT**  
**COUNTY OF BEXAR** § **SCHOOL DISTRICT**

This Interlocal Funding Agreement (“Funding Agreement”) is hereby made and entered into by and between the **City of San Antonio** (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and **North East Independent School District** (hereinafter referred to as "Grantee" or “District”), a Texas independent school district and political subdivision of the state of Texas, acting by and through its Board of Trustees, hereto duly authorized.

**RECITALS:**

WHEREAS, Chapter 791 of the Texas Government Code authorizes interlocal agreements between local governmental entities such as Cities, Counties and political subdivisions to perform governmental functions and services, including construction or improvements in which the contracting entities are mutually interested and which serve the public interests of both parties;

WHEREAS, the Parties have identified certain common, legitimate public purposes in entering into this Agreement

WHEREAS, the governing bodies of the District and the City have each met in legally convened open meetings and authorized their respective representatives to enter into this Agreement;

WHEREAS, North East Independent School District is overseeing improvements at Hidden Forest Elementary located at 802 Silver Spruce, San Antonio, Texas 78232 which includes design and installation of artificial turf within the boundaries of the school’s existing running track; and

WHEREAS, the FY 2023 and FY 2024 City of San Antonio Annual Budgets allocated funds towards District 9 Infrastructure Improvements of which \$210,000.00 is to be used towards Grantee’s project in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, the funding will be used to accomplish the public purpose of installing artificial turf which includes site preparation for the intended use as a soccer field and other sports;

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

**I. TERM**

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The Term shall expire

upon the earlier to occur of: (a) final payment by the City of all funding under this Agreement, or (b) termination of this Agreement as otherwise provided herein. The Director of Public Works may administratively approve extension of the agreement term up to an additional year if deemed necessary by City.

## **II. GENERAL RESPONSIBILITIES OF THE PARTIES**

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 agrees to provide or cause to be provided design and installation of artificial turf and complete the Project by \_\_\_\_\_, as described in this Agreement which includes soil testing, site preparation of the subgrade, installation of play surfacing, Kid Play with Envirofill & T-Cool.

2.02 The current budget estimates of the Project are approximately \$210,000.00. Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$210,000.00. In the event that the scope of the Project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. Grantee assumes responsibility for any costs over the estimated amount of the Project. City is not responsible for any costs over the estimated amount of the Project.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Interim Executive Director of Construction Management & Engineering shall be Grantee's Designated Representative responsible for the management of this Funding Agreement and the point of contact for City on all matters regarding this Funding Agreement. Should Grantee wish to designate another individual for the management of this Funding Agreement and serving as the point of contact, it may do so by providing City with written notice of such individual.

2.04 The Director of the Public Works Department 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 Sections numbered 2.03 and 2.04 hereinabove.

2.06 Grantee shall provide to City a Scope for the Project, including a project budget and timeline ("Scope"), which shall be attached and incorporated into this Funding Agreement as **Exhibit A**.

2.07 Grantee shall provide to City its Plans and Specifications and its construction schedule, (collectively "Plans") and such Plans and Specifications shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. After approval by City, the Plans shall be attached and incorporated into this Funding Agreement as **Exhibit B** and Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions and those that may be required from the State of Texas, including not limited to compliance with the Texas Accessibility

Standards. 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 construction budget ("Budget") for the Project, which shall be attached and incorporated into this Funding Agreement as **Exhibit C**, illustrating where City Funds are to be utilized in accordance with this agreement, as well as illustrating all funding for the entire Project, which will be attached hereto as part of **Exhibit C**.

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

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

3.01 Grantee warrants and represents that it will comply with all applicable Federal, State and Local laws and regulations and will use reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project, including inclusion of appropriate provisions in its Owner-Contractor Agreement and requiring flow down provisions in subcontractor and material supplier agreements.

3.02 The contract for construction of the Project, will be procured by Grantee in accordance with the requirements of Texas Education Code, Chapter 44, Subchapter B and Chapter 2269 of the Texas Government Code, assure an open competitive contracting process, advertised to the public in a legal and appropriate manner, and shall enter a contract for Construction with a Contractor in accordance with the statutory requirements and the provisions of this Agreement. The agreement between the District and the Contractor shall be in form mutually agreeable between the District and the City in accordance with the provisions of this Agreement. This Section 3.02 shall survive the termination of this Agreement.

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

#### **3.04 Prevailing Wage Rate and Labor Standards**

3.04.1 The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to the portion of the Project that is being funded with City Funds. 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 for that portion of the project being funded with City Funds and shall not accept affidavits.

3.04.4 The Parties acknowledge that Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," is also applicable to the Grantee. Any phases or portions of the Project paid from Grantee's Funds, shall be governed solely by the provisions of Chapter 2258, and shall not be subject to the more restrictive requirements of City Ordinance No. 2008-11-20-1045 and the City's Program.

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

3.06 RESERVED

3.07 The Parties agree to comply with the applicable restrictions from Texas Government Code Chapters 2252, 2270, and 2271 prohibiting City from contracting with a company that engages in business with Iran, Sudan, or a designated Foreign Terrorist Organization; boycotts Israel; boycotts firearm entities or firearm trade associations; or boycotts energy companies. By signing this Agreement, each party hereby verifies they have reviewed the applicable state law restrictions, and warranties compliance with the certification requirements from Texas Government Code §2270.002 and §2274.002, if applicable. The Parties each hereby rely on the other Party's verification. If found to be false, this agreement may be terminated for material breach.

#### **IV. OWNERSHIP, USE AND OPERATIONS OF FACILITY**

4.01 Grantee acknowledges and agrees installation of the artificial turf with City funds in accordance with this Agreement will be Grantee's property, and Grantee shall be responsible for all future maintenance, repair, or replacement of the turf funded by City.

4.02 [RESERVED]

#### **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 \$210,000.00

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

5.03 Funding shall consist of reimbursements paid to Grantee for construction cost of the Project, not to exceed \$210,000.00 . The City funding provided under this Funding Agreement may only be used for the portions of the Project which are dedicated to public use/public purpose. No City funds may be used for Grantee's personal office space or other non-public aspects of the Project

**VI. RECEIPT, DISBURSEMENT AND ACCOUNT  
OF CONSTRUCTION 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 City 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 maintained in accordance with 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 funded by City Funds under this Agreement, including a detailed accounting of the expenditure of amounts received from the City hereunder, for 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* or utilizing forms and instructions approved by the Public Works Department. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by the Public Works Department, 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, with reasonable advance notice to Grantee and in compliance with any applicable security protocols of Grantee, have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include supporting documentation sufficient to verify the amounts incurred were for construction of the public improvements and that the amounts being invoiced match the amounts being paid.

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 and documentation of the reasons for disallowance shall be specified.

## **VII. ALLOWABLE CONSTRUCTION EXPENDITURES**

7.01 Upon preparation of Plans and Budget by Grantee, Grantee shall submit said budget to City in accordance with Section II 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 under this Agreement shall be for the permanent public improvements described herein. Only the following categories of costs shall be considered allowable:

- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design Contract and Amendments

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

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

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

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

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

8.01 Grantee further represents and warrants that:

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

(B) It is financially stable and capable of fulfilling 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 that relate to the Project or would prevent Grantee from entering this Agreement with the City.

(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 or Grantee may deem necessary, upon three business days (3) days during which the District administration offices are open for business, written notice from the other, City or Grantee shall make all requested records pertaining to this Agreement available to the other or any of its authorized representatives, and shall permit the City, the Grantee, as applicable, or any of their respective authorized representatives to audit, examine, and make excerpts and/or copies of same. Any City personnel or representative coming to any of Grantee's facilities will be required to submit to applicable visitor security protocols maintained by Grantee.

9.02 Grantee and the City agree and represents that they shall cooperate with one another, at no charge to the other, to satisfy, to the extent required by law, any and all requests for information received by either under the Texas Public Information Act or related laws applicable to and pertaining to this Agreement.

## **X. MONITORING AND EVALUATION**

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide

reasonable access to City related to such activities, subject to any of Grantee's security protocols applicable to visitors to Grantee's facilities.

## **XI. FINANCIAL RESPONSIBILITY**

**11.01 THE PARTIES EACH, AS TEXAS LOCAL GOVERNMENTAL UNITS, TO THE EXTENT PROVIDED BY LAW, SHALL BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST THEM ARISING IN FAVOR OF ANY PERSON BECAUSE OF PERSONAL INJURIES, DEATH OR DAMAGE TO PROPERTY OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSIONS OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF THEM AND/OR THEIR RESPECTIVE EMPLOYEES. NOTHING HEREIN CONTAINED SHALL BE INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY OR ANY OTHER LEGAL DEFENSE BY EITHER PARTY EXCEPT TO THE EXTENT PROVIDED BY LAW REGARDING CONTRACTING POWERS OF LOCAL GOVERNMENTAL UNITS.**

## **XII. INSURANCE & BONDS DURING CONSTRUCTION**

12.01 With respect to NEISD, 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. With respect to public school districts like NEISD, Chapter 101 of the Civil Practice and Remedies Code limits such liability to only those injuries caused by the use or operation of a motor vehicle. 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 NEISD are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

NEISD and the City acknowledge they are an agency and a political subdivisions, respectively, of the State of Texas and are subject to the comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practices and Remedies Code, §101.001 et seq. and its remedies regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

NEISD shall each maintain a commercial insurance or a self-insurance fund for liability claims and causes of action to meet their statutory obligations for their employees' acts, negligence and/or malpractice, as dictated by applicable law.

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



## **XVIII. NONDISCRIMINATION**

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

## **XIV. CONFLICT OF INTEREST**

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

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

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

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

## **XV. POLITICAL ACTIVITY**

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

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

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

## **XVII. CONTRACTING**

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

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

### **XVIII. CHANGES AND AMENDMENTS**

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

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

### **XIX. ASSIGNMENTS**

19.01 Neither party shall 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 the other, which approval shall not be unreasonably withheld or delayed. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

### **XX. SEVERABILITY OF PROVISIONS**

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

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

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no

event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

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

21.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council. Similarly, no representative or agent of Grantee may waive the effect of the provisions of this Article without formal action from Grantee's governing body.

## **XXII. ENTIRE AGREEMENT**

22.01 This Agreement, including Exhibits herein referenced and attached hereto, 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 sent by email or by First Class U.S. registered or certified mail, postage prepaid, to the addresses set forth below:

City:

Razi Hosseini, P.E., R.P.L.S.  
Director/City Engineer,  
Public Works Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
[razi.hosseini@sanantonio.gov](mailto:razi.hosseini@sanantonio.gov)

And

Grantee: Dr. Sean Maika  
Superintendent of Schools  
North East Independent School District  
8961 Tesoro Drive  
San Antonio, Texas 78217

With Copy to: North East Independent School District  
Attn: Mr. Jorge Cabello  
Executive Director  
Construction Management & Engineering

jcabel@neisd.net

All email notices given pursuant to this Agreement shall be presumed effective upon receipt, provided that a receipt of confirmation is obtained and retained by sender. E-mail sent without receipt confirmation shall be subject to a rebuttable presumption that it was indeed received.

Notice of change of address and parties to whose attention notices shall be directed by either Party must be made in writing to the other Party's most recent notice 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. PLURALS AND 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 AND TERMINATION**

29.01 Termination Following Default. In the event either Party materially breaches or fails to perform any covenant or condition which it is required to observe and to perform under this Agreement that Party shall be deemed to be in default under this Agreement. In such event, the defaulting Party shall have an opportunity to cure such default of not fewer than thirty (30) days following written notice received from the Party asserting such default. In the event of such default, the Party asserting a default shall deliver a written notice to the defaulting Party specifying the nature of the default, setting out in detail what actions must be taken to cure such default, and the deadline for the cure of the default. In the event that the defaulting Party fails to cure its default,

the non-defaulting Party shall have the right to: a) perform the obligation of the other and seek reimbursement; b) terminate this Agreement effective upon the defaulting Party's receipt of notice thereof; and/or (c) pursue any other remedy, at law or in equity, to which the non-defaulting Party may be entitled. The provisions of this Section 29.01 shall survive the termination of this Agreement.

29.02 Alternative Dispute Resolution. The Parties agree that any dispute arising out of this Agreement shall be submitted in good faith to mediation as a condition precedent to filing suit. Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) days or more than ninety (90) days following the date of the request, except upon agreement of both parties. In the event the Parties are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent to filing suit in this article shall be deemed to have occurred.

### **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.

### **XXXII. CONDITIONS TO AGREEMENT**

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

32.02 Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

### **XXXIII. NO THIRD-PARTY BENEFICIARIES**

33.01 This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement

### **XXXIV. NO WAIVER OF IMMUNITY**

34.01 No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained there.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_ day of \_\_\_\_\_, 2025

**CITY OF SAN ANTONIO**

By: \_\_\_\_\_  
Razi Hosseini, P.E., R.P.L.S  
Director, Public Works Department

**NORTH EAST INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
Dr. Sean Maika, Superintendent of Schools

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
ATTORNEY FOR GRANTEE

- Exhibit A – Project Scope and Schedule**
- Exhibit B – Plans**
- Exhibit C – Project Budget**

**EXHIBIT A  
PROJECT SCOPE**

## **Exhibit B – Plans**



**Exhibit C**  
**Estimated Project Budget**