

STATE OF TEXAS
COUNTY OF BEXAR

§
§
§

ECONOMIC DEVELOPMENT
GRANT AGREEMENT OF THE
CITY OF SAN ANTONIO

This Economic Development Grant Agreement (this "**Agreement**") is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation (the "**City**"), acting by and through its City Manager or designee, and Geekdom, LC, a Texas Limited Liability Company ("**Geekdom**"), acting by and through its Program Manager. The City and Geekdom may be referred to collectively herein as the "**Parties**."

WHEREAS, in order to support the local entrepreneurial ecosystem, encourage the development of ideas and products aimed at solving civic challenges and opportunities, and impact the number of startup and technology-focused companies and talent choosing to remain in or relocate to San Antonio, the City's Economic Development Department ("**EDD**") has worked closely with the City's Office of Innovation, Information Services Technology Department, and Geekdom to develop a program with the goal of keeping talented individuals and their companies in the City; and

WHEREAS, as a result of such work, the Civic Technology Division Pilot Program of the Geekdom Incubator Program (the "**Program**") was created as a partnership with Geekdom, a local for-profit co-working hospitality organization that will offer increased support to ideation or early-stage startup or high-growth companies focused on civic technology solutions that could be applicable to the City's civic technology, innovation, and/or smart cities projects and/or initiatives; and

WHEREAS, Geekdom will facilitate the Program's participant identification and selection process of up to six (6) Program participants over two (2) years who will commit to operating within San Antonio and the Program in accordance with the Program Guidelines; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City is authorized to grant municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, the City created an economic development program for the purpose of making such grants available; and

WHEREAS, the capital investment and creation of full-time jobs will promote local economic development and stimulate business and commercial activity in the City of San Antonio; and

WHEREAS, the City has identified funds available in the form of an economic development grant for Geekdom to use in deferring costs associated with the Program.

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

SECTION 1. AGREEMENT PURPOSE

Geekdom shall promote local economic development and stimulate business and commercial activity in the City of San Antonio. The City is supporting the Program through an economic development grant to provide funding for the purpose of promoting entrepreneurial development and spurring innovation.

SECTION 2. PROGRAM REQUIREMENTS AND FUNDING

A. Both Geekdom and the City understand and agree that this Agreement is to be executed pursuant to the approval of the City Council of the City of San Antonio by Ordinance Number 2019-__-__-___ given on ____, 2019.

B. Geekdom shall implement and administer the Program Guidelines, attached hereto and incorporated herein for all purposes as **Exhibit A**. The Program Guidelines:

- i. outline the milestones to be achieved and procedures to be utilized to deliver the services in accordance with the terms and conditions of this Agreement;
- ii. describe the methodology and steps to be followed by Geekdom to deliver the services in accordance with the terms and conditions of this agreement;
- iii. include a breakdown of grant-funded services that indicates in appropriate detail how the funding granted toward the Program will be expended; and
- iv. will be reviewed and revised as necessary prior to December 31, 2020 for year two of this Agreement.

C. If determined necessary by the City or Geekdom in either Party's reasonable discretion, the City and Geekdom shall work jointly to amend the Program Guidelines for year two, and shall submit the Program Guidelines to the City's EDD Director or their designee and Geekdom's governing board for approval. After approval by each respective board, the Program Guidelines for year two shall be incorporated into this Agreement, affected by amendment without further City Council action. The Parties understand that circumstances during any period of time may differ from those contemplated when the Program Guidelines were established; however, any material changes to the approved Program Guidelines must be approved in writing by both Parties.

D. Geekdom will maintain reasonable levels of communication with the City staff throughout the Term of this Agreement. Geekdom shall provide, upon reasonable request, reports to the City discussing in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters) its progress in implementing the Program Guidelines. Geekdom agrees to provide the City semi-annual written status reports and general accountings related to the Services, and, upon reasonable request and

at least thirty (30) calendar days notice by the City, periodic updates for presentations that address the services provided pursuant to this Agreement.

E. Geekdom shall conduct its own risk assessment of the City's financial exposure under the terms of this Agreement and determine whether criminal background checks are required for all personnel and Program participants under this Agreement.

F. The total amount of funding that may be granted toward the Program is TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00), which shall be restricted to Allowable Costs associated with the Program as defined in Subsection (e) of **Exhibit A**.

G. The funding provided in Section 2(F) above shall be disbursed to Geekdom semiannually in the amount of \$62,500.00 within thirty (30) calendar days upon the City's receipt of a correct and valid invoice for the following events:

- At the commencement of year one (1) of the Program.
- Geekdom's submission and the City's acceptance of the second quarter report for 2020 pursuant to Section 7(B) of this Agreement.
- At the commencement of year two (2) of the Program.
- Geekdom's submission and the City's acceptance of the second quarter report for 2021 pursuant to Section 7(B) of this Agreement.

Should Geekdom demonstrate a programmatic need that could jeopardize the success of Program participants ("Participants") and/or the Program overall, City may, in its sole discretion, provide payment in advance of the events listed above. Advanced payment must be approved in writing by the City's EDD Director or their designee.

H. Program participants ("**Participants**") will retain ownership over the Participants' idea, creation, product, and/or business resulting from the Program; however, Geekdom shall require all Participants to agree in writing to the following provision:

The parties hereby acknowledge and agree that the City of San Antonio, a Texas Municipal Corporation (the "City"), is intended to be a third-party beneficiary to this contract. As consideration for Participant's receipt of grant assistance provided to this Program by the City, Participant shall grant to the City, without limitation: (a) the right to display non-confidential information relating to Participant's idea, creation, product, and/or business resulting from the Program online and in any media or other promotional material now known or hereafter developed; (b) a non-exclusive, non-transferable, irrevocable, royalty-free, licensable, and perpetual worldwide right to use, review, assess, test, modify, develop, communicate, sub-license, and otherwise analyze Participant's idea, creation, product, and/or business resulting from the Program; and (c) a right to further negotiate with Participant for additional rights to Participant's idea, creation, product, and/or business resulting from the Program. Participant shall agree to work in good faith with the City to fulfill all documentation that may be

required for the City and its designees to make use of the rights granted herein, if necessary. This provision shall survive termination or expiration of this contract.

SECTION 3. AGREEMENT PERIOD

This Agreement begins upon the effective date of the ordinance awarding the contract or date specified in the award letter, whichever is later, and ends on December 31, 2021 (the “**Term**”), unless terminated earlier in accordance with the provisions of this Agreement.

SECTION 4. INSURANCE

A. Geekdom shall comply with the insurance requirements set forth below:

- i. Prior to the commencement of any work under this Agreement, Geekdom shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Finance Department, which shall be clearly labeled “Traffic Management Controller Software/Firmware” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Finance Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- ii. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereby the City may incur increased risk.
- iii. Geekdom’s financial integrity is of interest to the City; therefore, subject to Geekdom’s right to maintain reasonable deductibles in such amounts as are approved by the City, Geekdom shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Geekdom’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Worker's Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
Commercial General Liability Insurance to include coverage for the following: a. Premises Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

- iv. Geekdom agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Geekdom herein, and provide a certificate of insurance and endorsement that names the Geekdom and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Geekdom. Geekdom shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- v. As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Geekdom shall be required to comply with any such requests and shall submit requested documents to the City at the address provided below within 10 calendar days. Geekdom shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- vi. Geekdom agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
 - (a) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- (b) Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy; and
 - (c) Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- vii. Geekdom shall provide advance written notice directly to the City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- viii. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Geekdom shall provide a replacement Certificate of Insurance and applicable endorsements to City. The City shall have the option to suspend Geekdom’s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- ix. In addition to any other remedies the City may have upon Geekdom’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Geekdom to stop work hereunder, and/or withhold any payment(s) which become due to Geekdom hereunder until Geekdom demonstrates compliance with the requirements hereof.
- x. Nothing herein contained shall be construed as limiting in any way the extent to which Geekdom may be held responsible for payments of damages to persons or property resulting from Geekdom’s or its subcontractors’ performance of the work covered under this Agreement.
- xi. It is agreed that Geekdom’s insurance shall be deemed primary and non-contributory with respect to any insurance or self- insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- xii. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- xiii. Geekdom and any subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 5. DEPARTMENT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2(F) of this Agreement, the City will disburse grant funds not to exceed TWO HUNDRED FIFTY THOUSAND AND 00/1000 DOLLARS (\$250,000.00) to Geekdom as set forth in Section 2(G), and subject to the limitations set forth in this Section 5 and in Sections 14 and 15 below. Notwithstanding any other provision of this Agreement, the total of all grant payments and other obligations incurred by the City under this Agreement will not exceed the sum of TWO HUNDRED FIFTY THOUSAND AND 00/1000 DOLLARS (\$250,000.00).

B. Except for the allowable costs defined in Subsection (e) of **Exhibit A** (“**Allowable Costs**”), the City will not be liable to Geekdom or other entity for any costs incurred by Geekdom.

C. Geekdom is only entitled to funds for the costs of actual expenses incurred and not in any amounts exceeding the allocations in Section 2(F) of this Agreement. Allowable Costs will be reasonably determined in accordance with this Agreement by the City’s EDD.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Geekdom shall maintain the fiscal records and supporting documentation for all expenditures of funds to be paid on behalf of Geekdom under this Agreement in a manner that conforms to this Agreement. Geekdom shall retain such records, and any supporting documentation, for the greater of: (1) two (2) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations (the “**Retention Period**”).

B. Upon at least five (5) business days’ prior notice to Geekdom, Geekdom shall give the City, its designee, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Geekdom and solely which pertain to the funds paid on behalf of Geekdom under this Agreement. Such rights to access shall continue during the Term and the Retention Period. Failure to provide reasonable access to authorized City representatives shall give the City the right to suspend or terminate the Agreement as provided for in Sections 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by Geekdom for a period of two (2) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Geekdom shall promptly notify City in the event Geekdom receives any request for information from a third party, which pertain to the documentation and records referenced herein. The City will process and handle all such requests in accordance with the Texas Public Information Act.

SECTION 7. MONITORING AND REPORTING

A. The City reserves the right to confirm Geekdom's compliance with the terms and conditions of this Agreement. The City will provide Geekdom with a written report of the monitor's findings. If the monitoring report notes deficiencies in Geekdom's performances under the terms

of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Geekdom and a reasonable amount of time in which to attain compliance. Failure by Geekdom to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. Geekdom shall provide a Quarterly Status Report to the City based on Geekdom and the Program Teams' progress, including the status of deliverables and related performance metrics, as further defined in Exhibit A. Reports shall be submitted within thirty (30) calendar days after the end of each quarter:

- Quarter 1 (Q1): January 1 – March 31
- Quarter 2 (Q2): April 1 – June 30
- Quarter 3 (Q3): July 1 – September 30
- Quarter 4 (Q4): October 1 – December 31

As appropriate, Geekdom may provide additional information in order to provide a robust report on the efforts undertaken by participants in the Civic Technology Division of the Incubator Program.

C. The City maintains a public website containing a summary report of all current and active economic incentive agreements and reports submitted in accordance with those agreements. Geekdom acknowledges and agrees that the City will include and post this Agreement and any reports submitted to the City pursuant to this Agreement on the aforementioned website.

SECTION 8. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the Parties hereto that the City is contracting with Geekdom as an independent contractor, and that Geekdom, its employees and subcontractors are not employees of the City.

SECTION 9. CONFLICT OF INTEREST

A. Geekdom shall ensure that no employee, officer, or agent of Geekdom shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Geekdom shall comply with Chapter 171, Texas Local Government Code as well as the City's Code of Ethics.

B. Except for eligible administrative costs, no employee, agent, consultant, officer, or elected or appointed official, of either Geekdom or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Program, shall be permitted to have or obtain a financial interest in or benefit from the Program or any contract, subcontract, or

agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one (1) calendar year thereafter.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Geekdom shall ensure that no person shall, on the ground of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by Geekdom under this Agreement shall involve, and no portion of the funds received by Geekdom under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

SECTION 11. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

SECTION 12. INDEMNIFICATION AND LAW APPLICABLE

A. GEEKDOM covenants and agrees to FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY and directly or indirectly arising out of, resulting from, or related to GEEKDOM'S activities under this Agreement, including any acts or omissions of GEEKDOM or the agents, officers, directors, representatives, employees, consultants, or subcontractors of GEEKDOM and their respective officers, agents, employees, directors, and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the CITY or its officers or employees in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GEEKDOM AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT

JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY, IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

B. The provisions of the indemnification provided for in this Agreement are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Geekdom shall provide written notice to the City within three (3) calendar days of any claim or demand against the City or Geekdom known to Geekdom and related to or arising out of Geekdom's activities under this Agreement; and Geekdom shall see to the investigation and defense of such claim or demand at Geekdom's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Geekdom of any of its obligations under this paragraph or Section 12(A) above.

C. The City shall have the right to approve Geekdom's proposed defense counsel to be retained by Geekdom in fulfilling its obligation hereunder to defend and indemnify the City. The City may only reject the hiring of Geekdom's proposed defense counsel if there is an apparent conflict of interest between the proposed defense counsel and the City. If suit is filed and Geekdom fails to retain City approved defense counsel by the 10th calendar day before the expiration of the time required to file an answer, the City shall have the right to retain defense counsel on its own behalf and Geekdom shall be liable for all costs incurred by the City. The City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

D. In any and all claims against any party indemnified hereunder by any employee or subcontractor of Geekdom, anyone directly or indirectly employed by any employee or subcontractor of Geekdom, or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Geekdom or any subcontractor under worker's compensation or other employee benefit acts.

E. The City and Geekdom acknowledge that the City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third Parties for accident, injury, or death.

F. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 13. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both Parties to this Agreement upon City approval and authorization of Geekdom.

B. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth this date, and the terms and conditions of this Agreement.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Geekdom fails to comply with the terms of this Agreement, the City shall provide Geekdom with written notification as to the nature of the non-compliance in accordance with the notice provision set forth in this Agreement. The City shall grant Geekdom a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance. Should Geekdom fail to cure any default within this period of time, the City may, upon written notice of suspension to Geekdom, suspend this Agreement in whole or in part and withhold further payments to Geekdom, and prohibit Geekdom from incurring additional obligations of funds under this Agreement. Such notice of suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond Geekdom's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City shall, in its reasonable discretion, extend the cure period provided that Geekdom shall: (1) immediately upon receipt of notice of suspension advise the City of Geekdom's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. In the event the City fails to comply with the terms of this Agreement, Geekdom shall provide the City with written notification as to the nature of the non-compliance in accordance with the notice provision set forth in this Agreement. Geekdom shall grant the City a sixty (60) day period from the date of Geekdom's written notification to cure any issue of non-compliance. Should the City fail to cure any default within this period of time, Geekdom may, upon written notice of suspension to the City, suspend this Agreement in whole or in part and withhold further performance of this Agreement, and prohibit Geekdom from incurring additional obligations of funds under this Agreement. Such notice of suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and (3) in the case of partial suspension, the portion of the Agreement to be suspended.

D. In the case of default for causes beyond the City's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, Geekdom shall, in its reasonable discretion, extend the cure period provided that the City shall: (1) immediately upon receipt of notice of suspension advise Geekdom of the City's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

E. With the exception of payment for work in progress or materials ordered prior to receiving a notice of suspension, the City shall not be liable to Geekdom or to Geekdom's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION

A. The City shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 3 of this Agreement whenever the City determines in its reasonable discretion that Geekdom has failed to comply with any term of this Agreement. The City will provide Geekdom with written notification as to the nature of the non-compliance in accordance with the notice provisions set forth in this Agreement, and grant Geekdom a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance. Should Geekdom fail to cure any default within this period of time, the City may, upon issuance to Geekdom of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to Geekdom, and prohibit Geekdom from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond Geekdom's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City shall, in its reasonable discretion, extend the cure period provided that Geekdom shall: (1) immediately upon receipt of Notice of Termination advise the City of Geekdom's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Geekdom shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 3 of this Agreement whenever Geekdom determines in its reasonable discretion that the City has failed to comply with any term of this Agreement. Geekdom will provide the City with written notification as to the nature of the non-compliance in accordance with the notice provisions set forth in this Agreement, and grant the City a sixty (60) day period from the date of Geekdom's written notification to cure any issue of non-compliance. Should the City fail to cure any default within this period of time, Geekdom may, upon issuance to the City of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and (3) in the case of partial termination, the portion of the Agreement to be terminated.

D. In the case of default for causes beyond the City's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, Geekdom shall, in its reasonable discretion, extend the cure period provided that the City shall: (1) immediately upon receipt of Notice of Termination advise Geekdom of the City's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

E. Upon termination by either Party, the City shall have the right to recapture from Geekdom all unused funds previously disbursed to Geekdom, and/or for the benefit of Geekdom, under this Agreement and not previously recaptured by the City, and the City shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Geekdom in writing of its election to recapture such amounts. Upon the date Geekdom receives the City's written notice of its election to recapture unused funds, Geekdom shall cease all further and pending payments to Participants and shall use its commercially reasonable efforts to recapture all unused funds, if any, due to Geekdom from Participants pursuant to each Participant Agreement. Notwithstanding anything to the contrary in the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions, or credits to which Geekdom may be entitled at law or under this Agreement.

SECTION 16. NOTICE

A. Any notice, consent, or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to the City:
City of San Antonio
Att: Alex Lopez, EDD Interim Director
P.O. Box 839966
San Antonio, TX 78283-3966

If to Geekdom:
Geekdom, LC
Att: Charles Woodin, CEO
110 E. Houston St., 7th Floor
San Antonio, TX 78205

B. Any time period stated in a notice shall be computed from the time to notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

SECTION 17. SUBCONTRACTS

A. Geekdom shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by Geekdom. Geekdom shall bear full responsibility for performance by all subcontractors.

B. Geekdom, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, the City is in no way liable to Geekdom's subcontractor(s).

C. Geekdom assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

SECTION 18. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any Agreement between Geekdom and the City or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 19. NON-ASSIGNMENT

Except as otherwise stated herein, neither party may sell, assign, pledge, transfer, or convey any interest in this Agreement, nor delegate the performance of any duties hereunder by transferring, assigning, subcontracting, or any other means. Notwithstanding any attempt to assign the Agreement, each Party shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Geekdom shall be held responsible for all funds received or expended on Geekdom's behalf under this Agreement.

SECTION 20. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 21. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

Notwithstanding anything in this Agreement to the contrary, the City shall grant relief from performance of the Agreement if the Geekdom is prevented from compliance and performance due to Force Majeure. The burden of proof for the need for such relief shall rest upon the Geekdom. To obtain release based upon Force Majeure the Geekdom must file a written request with the City in accordance with the notice provisions set forth in this Agreement.

SECTION 22. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS

The provision previously designated and any other right, obligation, or required performance of the Parties in this Agreement, which by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration. In addition, the obligations of the Parties to protect propriety and confidential information and the obligation of Geekdom to indemnify and hold the City harmless for copyright, patent, or trademark infringement contained in this Agreement shall also survive termination of this Agreement.

SECTION 23. SEVERABILITY

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.

Signatures to follow on the next page

EXECUTED and **AGREED** to on this _____ day of _____, 2019.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

GEEKDOM, LC, a Texas Limited
Liability Company

Erik Walsh
City Manager

Charles Woodin
CEO

APPROVED AS TO FORM

Assistant City Attorney

ATTEST:

Leticia Vacek
City Clerk

EXHIBIT A
PROGRAM GUIDELINES

I. Purpose

- a. Support and retain local entrepreneurs, students, and or startups with civic technology ideas and/or products and/or services by providing Participants with targeted grants, advisory services, mentorship, and business support services to further develop and/or prove the concept(s) that could be utilized by the City for innovation projects and/or initiatives as a potential partner and/or customer. Additionally, create an environment in which the Participants maintain a continued presence and business activities in San Antonio that help each company establish roots and grow in the local business community, and an environment that continues to build and support the local entrepreneurial ecosystem.

II. Program

- a. Through this Agreement, the City is establishing a two (2) year Program with a financial commitment of \$250,000.00. The goal of the Program is to have six (6) Participants complete the Program over the course of the two year period (three (3) participants per year).
- b. Geekdom will manage and facilitate the Program's prospect identification, due diligence, and selection process in order to retain and grow successful Participants within the Program.
- c. To identify and select Participants, Geekdom will establish a selection committee consisting of no fewer than five (5) members from Geekdom staff, the City, and the local tech industry and business ecosystem (the "**Selection Committee**"). The Selection Committee shall convene as needed during the Term of this Agreement to identify and recommend eligible Participants for the Program based on the qualities and merits of each applicant. The final selection of Participants is subject to joint approval, provided in writing, by the City's Chief Innovation Officer and Chief Information Officer, or their respective designee(s). Geekdom shall submit a due diligence file for each recommended Participant to assist the City in its decision to approve or deny the recommended Participant, and the City's EDD may retain such file for its records.
- d. Each chosen Participant will be eligible to receive up to \$40,000.00 in grant assistance; provided that this amount may be increased for any or all Participants in Geekdom's discretion if additional funds become available subject to the terms and conditions of this Agreement, or as otherwise agreed upon by the Parties.
- e. Grant assistance may be provided for the following Allowable Costs:

- i. Grant assistance equal to \$17,500 (the “**Grant Installments**”), dispersed in three installments:
 - \$10,000.00 upon signing a Participant Agreement (as defined in Subsection (i) below);
 - \$5,000.00 once mutually agreed upon product and/or business milestones have been met within first six (6) months of Program; and
 - \$2,500.00 once the final set of mutually agreed upon product and/or business milestones have been met within final months of Program participation.
 - ii. Business related activities and expenses, including:
 - Membership, non-dedicated workspace, parking costs (maximum amount for all Participants collectively may not exceed \$10,080.00 over the Term), public transportation costs, and services at Geekdom;
 - Software and/or data-related development and/or services, licenses, subscriptions, etc.;
 - Operational expenses other than wages and salaries;
 - Supplies and equipment costs; and
 - Marketing and branding expenses.
 - iii. Specific pre-approved disbursements for eligible purchases under the Program, to be requested, approved, and disbursed in accordance with the Participant Agreement.
- f. The second and third Grant Installments will be provided to Participant in Geekdom’s discretion based on previous grant dispersal management, Participant needs, and whether or not Participant has met agreed upon Program milestones.
 - g. Participants must provide Geekdom with all receipts for items budgeted for and covered by grant disbursements. Geekdom shall create and maintain a file of such receipts for each Participant and shall provide each file to the City at the end of each calendar year.
 - h. In order to enhance efficiency of the process, the City and Geekdom will collaboratively formulate a simple checklist-overview for Participants to complete upon submission of receipts.
 - i. Geekdom will establish – and provide the City with an opportunity to review – a written commitment (a “**Participant Agreement**”) with each Participant, which will include, in addition to the provision required by Section 2(H) of this Agreement, a defined Scope of Work and further provide that the Participant must:

- Be a civic technology-oriented team and/or company;
 - Maintain, establish, or move a representative of the Participant and/or company presence and base of operation to San Antonio;
 - Provide Geekdom with access to monthly and annual revenue figures (if applicable);
 - Commit to retain business activities and corporate headquarters in San Antonio for a minimum of two (2) years, and if possible, establish or maintain representative(s) and/or company operations in the City's downtown core;
 - Contribute and or participate in tech education-based programs within the San Antonio community, or demonstrate contributions to local ecosystem-related initiatives and events through entities such as, but not limited to Tech Bloc, Launch SA, etc.
- j. Geekdom may reduce or withhold grant disbursements if the Participant fails to comply with the provisions of the Participant Agreement.
- k. If Participant is a business entity, the Participant Agreement will be terminated and the remainder of the grant withheld entirely should the Participant be subject to any of the following termination or acquisition events": (i) cessation of business operations; (ii) the sale or transfer more than 50% of the voting capital stock, membership interest, partnership, or other governing interest of the Participant; or (iii) the sale of all or substantially all of Participant's assets.
- l. If funds are reduced or withheld from a Participant that fails to meet its obligations, Geekdom may use such funds for Allowable Costs resulting from the Program's remaining Participants. All unused funds shall be returned to the City within thirty (30) calendar days of the termination or expiration of this Agreement.
- m. In order to market the Program, Geekdom will collaborate with the City to establish a presentation that highlights the Program and the City of San Antonio as a whole for new Participants and potential participants.