

STATE OF TEXAS § **SECOND AMENDMENT TO FUNDING**
 § **AGREEMENT BETWEEN THE CITY OF**
COUNTY OF BEXAR § **SAN ANTONIO AND ACCD**

SECOND AMENDMENT TO FUNDING AGREEMENT

A FUNDING AGREEMENT (the “Agreement”) was made by and between the **CITY OF SAN ANTONIO, TEXAS** (the “City”), a Texas Municipal Corporation, acting through its City Manager pursuant to Ordinance No. 2011-12-15-1023 passed and approved by the City Council on the 15th day of December, 2011, **ALAMO COMMUNITY COLLEGE DISTRICT** (the “ACCD”), a political subdivision of the State of Texas, acting through its Board of Trustees on the 23rd day of August, 2010, and whom together may be referred to as the “Parties.” A First Amendment to the Funding Agreement was entered in by City acting through its City Manager pursuant to Ordinance No. 2013-02-14-0112 passed and approved by City Council on the 14th day of February, 2013.

NOW THE FOLLOWING SECOND AMENDMENT TO THE Agreement is made by and between the City, acting through its City Manager pursuant to Ordinance No. 2016-__-__-__ passed and approved by the City Council on _____2016, the ACCD, acting through its Board of Trustees on October 27, 2015.

RECITALS

WHEREAS, ACCD is willing to renovate the historic Good Samaritan Building located at 1602 Dakota Street, San Antonio, Texas 78203 (the “Building”) for the operation of a veterans Outreach program associated with St. Phillip’s College of ACCD (“Project”); and

WHEREAS, City, and ACCD entered into a Funding Agreement (the “Agreement”) authorized by City of San Antonio Ordinance No. 2011-12-15-1023, passed and approved on December 15, 2013, and a first amendment authorized by City of San Antonio Ordinance No. 2013-02-14-0112, passed and approved on February 14, 2013 and attached hereto as EXHIBIT A; and

WHEREAS, the City and ACCD seek to amend the Funding Agreement to account for changes in funding and project milestones; and

WHEREAS, prior to this **SECOND AMENDMENT**, the Agreement was in full effect and, subject to the terms of this **SECOND AMENDMENT**, all parties were in compliance with all terms and conditions of the Agreement; and

WHEREAS, the Parties, now seek to amend the terms and conditions of the Agreement as stated in this Second Amendment and affirm that all other provisions of the Agreement remain in full force and effect; and

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in the Agreement, the City, and the ACCD hereby agree to amend the Agreement as follows except as herein modified or amended, the recitals, provisions, conditions and terms of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the date hereof;:

AMENDMENT

1. Amendment. The Parties hereby mutually agree to amend the Funding Agreement as follows:

(A) Under “RECITALS” the Agreement is amended by deleting the third WHEREAS lines and substituting the following in its place respectively:

“**WHEREAS**, the City has agreed to commit up to but not to exceed Six Million Twenty Thousand Four Hundred and Twenty-Six Dollars (\$6,020,426.00), divided as follows: 1) Two Million Dollars (\$2,000,000.00) in City Fiscal Year 2010 Certificate of Obligation funds; 2) One Million Dollars (\$1,000,000.00) in Section 108 Funds; 3) Five Hundred Thousand Dollars (\$500,000.00) in City Fiscal Year 2016 Certificate of Obligation funds; 4) Five Hundred Thousand Dollars (\$500,000.00) in Greehey Family Foundation Grant funds; 5) Four Hundred and Seventy Thousand Four Hundred and Twenty-Six Dollars (\$470,426.00) in ICIF funds; 6) Six Hundred Thousand Dollars (\$600,000.00) in the form of a HUD grant to be funded under the terms and conditions of a separate agreement with SAHA (expected to be funded by SAHA/HUD, but nevertheless hereinafter committed by City); and 7) Nine Hundred Fifty Thousand Dollars (\$950,000.00) in Inner City Number Eleven TIRZ Funds under the terms and conditions of a separate agreement.”

(B) Under “RECITALS” the Agreement is amended by adding a sixth, seventh, eighth, ninth, tenth and eleventh WHEREAS lines as follows:

“**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and within the TIRZ; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, CITY created such a program for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, part of this Agreement shall be a Chapter 380 Economic Development Program Grant in the amount of Four Hundred and Seventy Thousand Four Hundred and Twenty-Six Dollars and Zero Cents (\$470,426.00) in Inner City Incentive Funds (“ICIF”); and”

WHEREAS, the CITY and ACCD have negotiated a triparty agreement with the San Antonio Housing Authority (“SAHA”) providing for the application of Six Hundred Thousand Dollars (\$600,000.00) in United States Department of Housing and Urban Development (“HUD”) Promise Zone funds to the Project (“SAHA/HUD Funding”), which agreement awaits final approval by the governing bodies of CITY, ACCD, SAHA and HUD; and

WHEREAS, the CITY has obtained City Council approval for the application of up to an additional Six Hundred Thousand Dollars (\$600,000.00) in ICIF funds for the Project, but only in substitution for any failure of application of SAHA/HUD funding of Six Hundred Thousand Dollars (\$600,000.00) hereinabove referenced (“Contingent Funding Authorization”); and

WHEREAS, the CITY has proposed, and obtained TIRZ Board of Directors approval for, the application of Nine Hundred Fifty Thousand Dollars (\$950,000.00) in funding from the Inner City TIRZ Number Eleven fund to reimburse ACCD under the terms and conditions of a separate agreement for eligible Project costs (“TIRZ #11 Funding”); and

(C) Under “ARTICLE III”, the Agreement is amended by deleting Section 3.01, 3.02, 3.04, and 3.05 and replacing it with the following respectively:

“Section 3.01 Feasibility Milestones. By April 1, 2016, ACCD will prepare the Development Plan for the Building, the Schedule, the Operating Manifest, and Operating Budget and shall determine the Quality Standard and obtain the CITY’s approval thereof.”

“Section 3.02 Commencement of Construction. The Construction Commencement Date shall occur not later than April 1, 2016, and ACCD shall provide the Certificate of Commencement of Construction to the CITY on or before such date. The Certificate of Commencement of Construction form is attached as Exhibit B hereto and incorporated herein for all purposes.

“Section 3.04 Substantial Completion. Subject to Force Majeure Events, as provided in Section 18.01, ACCD shall cause the Substantial Completion of the Project not later than the Scheduled Completion Date of February 18, 2018, and to evidence and confirm such Substantial Completion, ACCD shall deliver to the CITY a certificate of substantial completion for the Project in the form set forth in Exhibit C attached hereto and incorporated herein.”

“Section 3.05 Preconstruction Milestones. Not later than the date specified herein, or if no date is specified, not later than April 1, 2016”:

- A. Completion of Final Plans. Not later than *April 1, 2016*, ACCD shall complete and submit to the CITY and obtain the CITY's approval of the Final Plans for the Project.
- B. Pre-Construction Consultation. Prior to awarding any Construction Contracts for the Project, ACCD shall cause the completion of a Phase 1 environmental analysis of the Property, shall submit the Plans and Specifications to the CITY's Historic Design and Review Commission (at the meeting of which CITY agrees to send representatives to appear in support of approving the Project substantially as submitted), obtain preliminary CITY review of the Plans and Specifications, and solicit proposals from prospective General Contractors for the Project. ACCD shall thereafter, either prior to selecting a General Contractor or, at its election, thereafter but prior to the CITY issuing a building permit for the Project, meet with the CITY Representative to determine whether the Project as specified in the Plans and Specifications, as they may have been revised by interaction with the CITY, can reasonably be expected to be completed, including comprehensive completion bonding and a contingency reserve of approximately ten percent (10%) of the costs of the proposal of ACCD's intended General Contractor, without total Project Costs exceeding the amount of the Available Project Funds. If ACCD reasonably expects that the Project cannot be completed without total Project Costs exceeding the amount of the Available Project Funds, then unless the parties renegotiate the Plans and Specifications and the Capital Budget to reduce total Project Costs, or the City determines, in its absolute discretion, and subject to CITY Council approval, to increase the amount of the CITY Contribution, or both, with the result that anticipated total Project Costs will not exceed the amount of the Available Project Funds, then neither party shall be under any obligation to proceed further, nor will either party have any liability to the other by reason thereof or otherwise under this Funding Agreement.
- C. Construction Contracts. ACCD shall provide a copy of each of the Construction Contracts for all Work, services, and purchase orders for all materials to be supplied for construction of the Project to the CITY at least ten (10) Business Days following the execution of a Construction Contract or purchase order, with all Construction Contracts required to be furnished to the CITY on or before *April 1, 2016*.
- D. Operating Budget. ACCD shall provide the CITY with a final Operating Budget projecting the anticipated income and expenses on a five (5) year rolling budget. The Operating Budget shall demonstrate that ACCD can operate the Building on a fiscally sound basis.
- E. Operating Reserve. The Operating Budget will include an Operating Reserve to cover operating deficits. ACCD's Contribution will include the Operating Reserve.

- F. Development Plan. Not later than *April 1, 2016*, ACCD shall prepare and submit to the CITY a Development Plan for the Project.
- G. Completion of Preconstruction Milestones. ACCD shall not proceed with commencement of construction of the Project until all Preconstruction Milestones have been fully satisfied.”

“**Section 3.06 Extensions**. The CITY may extend the time for performance of any target date, scheduled date, Deadline or Milestone appearing anywhere in this Funding Agreement. All milestones and deadlines set forth in this Agreement shall be adjusted forward if the CITY’s Historical Design and Review Commission delays the Project by postponing a hearing, requiring a second hearing or requiring a substantial revision of the Plans and Specifications. Any such delay shall postpone all such milestones and deadlines by the amount of the delay.”

(D) Under “**ARTICLE IV**”, the Agreement is amended by deleting Section 4.04 and 4.05, and replacing it with the following respectively:

“**Section 4.04 Operation of the Project**. The Building will remain open to the public after the Work is completed. ACCD shall operate the Building according to the Operating Manifest.”

“**Section 4.05 Completion of Project**. By *February 18, 2018*, ACCD shall have completed the renovation of the entire Building according to the Development Plan and Quality Standard, but delay in completion shall not constitute a default until the date specified at Section 15.03Q hereof”.

(E) Under “**ARTICLE VI CONSTRUCTION OF THE PROJECT**”, the Agreement is amended by deleting Section 6.02 Capital Budget, Subsection B.

(F) Under “**ARTICLE VIII NONDISCRIMINATION AND SBEDA POLICY**”, the Agreement is amended by deleting all of Article VIII including Exhibit G and replacing it with the following:

“ARTICLE VIII NONDISCRIMINATION AND SECTARIAN ACTIVITY

ACCD shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, 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 public funds. Further no portion of the funds received shall be used in support of any sectarian or religious activity.”

(G) Under “ARTICLE IX” FINANCING OF THE PROJECT, the Agreement is amended by deleting Section 9.02, and replacing it with the following:

“Section 9.02 The CITY Contribution. The CITY will obtain and secure at least Five MILLION SEVENTY THOUSAND FOUR HUNDRED AND TWENTY-SIX DOLLARS (\$5,070,426.00) for the Capital Budget, to be made when and in the amounts needed to fund the CITY Contribution, which will be funded through the issuance of certificates of obligation or from any other legally available funds of the CITY which the CITY decides to use. In the event construction and/or renovation costs exceed the Available Project Funds, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the Available Project Funds. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023, then CITY shall add said funds to the CITY Contribution. Under no circumstances will this Agreement be construed to obligate ACCD to pay any funds for the Project with the exception of the ACCD-Sourced Funding as defined herein.”

(H) Under “ARTICLE XV”, TERMINATION EVENTS, EVENTS OF DEFAULT, AND REMEDIES, the Agreement is amended by deleting subsection 15.03Q, and replacing it with the following:

“Q. The failure of ACCD to complete the entire Project by February 18, 2018, unless caused by the CITY’s issuance of a Change Order that cannot be implemented without total Project Costs exceeding the amount of the Available Project Funds.”

(I) Under “Exhibit A” DEFINITIONS, the Agreement is amended by deleting the definition of “CITY Contribution” and Scheduled Completion Date, and replacing it with the following respectively:

“CITY Contribution” means the funding of up at least \$5,070,426.00 by the City under the terms of this Funding Agreement. In the event construction and/or renovation costs exceed the Available Project Funds, the CITY may, in its sole discretion and with City Council approval, either (1) authorize additional funds as needed; or (2) consider, and approve, reasonable change(s) in the scope of the Project to ensure completion within the amount of the Available Project Funds. Notwithstanding the foregoing, once CITY has completed all real estate acquisitions for the Project, and to the extent funds remain available from the original sum of \$2,000,000.00 which City Council authorized for this Funding Agreement and for real estate acquisition costs under Ordinance 2011-12-15-1023,

then CITY shall add said funds to the CITY Contribution. CITY agrees to apply all or such portion of the Contingent Funding Authorization as may be required to substitute for the SAHA/HUD Funding should that funding fail to attain final approval by the U.S. Department of Housing and Urban Development. Should SAHA/HUD Funding be approved, then the CITY is under no obligation to utilize the Contingent Funding as a funding source under this Agreement. This Funding Agreement shall not be construed to obligate ACCD to pay any of its own funds for the Project with the exception of the ACCD-Sourced Funding as defined herein.

“Scheduled Completion Date” means February 18, 2018.”

(J) Under “Exhibit A” DEFINITIONS, the Agreement is amended by adding the following new definitions:

“ACCD-Sourced Funding” means Project funding sourced through ACCD but not deriving from ACCD’s own funds, which as of the date of this Second Amendment consists of One Million, Twenty-Seven Thousand, Five Hundred Dollars (\$1,027,500) in legislative appropriations and private grants received by ACCD for the Project.

“Available Project Funds” means the total of the CITY Contribution, the ACCD-Sourced Funding and that portion of the TIRZ #11 Funding reasonably anticipated to be payable no later than thirty (30) days after the date of substantial completion of the Project.

“TIRZ #11 Funding” means Nine Hundred Fifty Thousand Dollars (\$950,000.00) in funding from the Inner City TIRZ Number Eleven fund to reimburse ACCD under the terms and conditions of a separate agreement for eligible Project costs.

2. Effective Date. This Second Amendment shall be effective upon the later of the date of the passage of a duly authorized minute order by the Board of Trustees of the Alamo Community College District and the date of passage of a duly authorized ordinance of the City Council of the City of San Antonio authorizing this Second Amendment, which shall be attached hereto and made a part of this Second Amendment.
3. No Default. Neither party is in default under the Funding Agreement and neither party is aware of a cause of action against the other arising out of or relating to the period before the effective date of this Second Amendment.
4. No Other Changes. Except as specifically set forth in this Second Amendment, all of the terms and conditions of the Funding Agreement, as amended by the First Amendment thereto, shall remain the same and are hereby ratified and confirmed. The Funding Agreement, as amended by the

First Amendment thereto, shall continue in full force and effect, and with this Second Amendment shall be read and construed as one instrument. Nothing therein contained shall be interpreted to waive the City's funding obligations to ACCD should funding of ACCD from any component identified hereunder not become available on a timely basis.

5. Choice of Law. This Second Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. Counterparts. This Second Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Third Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures on next page.

IN WITNESS HEREOF, the parties hereto have executed in triplicate originals.

**CITY OF SAN ANTONIO,
a Texas municipal corporation**

**ALAMO COMMUNITY
COLLEGE DISTRICT:**

Sheryl L. Sculley
City Manager or designee

Dr. Bruce Leslie
Chancellor

Date: _____

Date: _____

ATTEST:

ATTEST: (If Necessary)

Leticia Vacek
City Clerk
Date: _____

Name:
Title:
Date: _____

APPROVED AS TO FINANCIAL CONTENT BY ALAMO COMMUNITY COLLEGE
ACCD:

Date: _____

Date: _____

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney
Date: _____