

**SECOND AMENDMENT
TO FUNDING AGREEMENT**

FOR VALUE RECEIVED, the receipt and sufficiency of which is acknowledged, this Second Amendment to the Funding Agreement (“Second Amendment”) is entered into by the City of San Antonio (“City”), a Texas Municipal corporation, acting by and through its City Manager pursuant to and duly authorized by Ordinance No. 2018-12-__-____, passed and approved on December __, 2018, and the Guadalupe Cultural Arts Center (“Grantee”), a Texas Non-profit Corporation, acting by and through its duly authorized designated officer.

A. City and Grantee entered into the Funding Agreement (“Agreement”) pursuant to City of San Antonio Ordinance No. 2013-09-05-0585, dated September 5, 2013, which was amended by the First Amendment to the Funding Agreement pursuant to City of San Antonio Ordinance No. 2015-05-21-0443, dated May 21, 2015.

B. City and Grantee agree to amend specific provisions of the Agreement as set out in this Second Amendment.

1. All references to the City’s CIMS Department are modified to read “TCI.”
2. The first four Whereas clauses in the Agreement are deleted in their entirety and replaced with the following:

“WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Library, Museum & Cultural Arts Improvements and City held a Bond Election on May 6, 2017 and received approval from the voters to fund Library & Cultural Facilities Improvements (both Proposition 4 on the ballot); and

WHEREAS, among the Proposition 4 projects approved in both Bond Elections is a project titled “Guadalupe Cultural Arts Center” (“Project”); and

WHEREAS, the official brochures for the Bond Elections described this two-phased Project as follows: “Guadalupe Cultural Arts Center LF: Leverage funding for the renovation of the pharmacy building” (“Phase I”) and “Renovations and Improvements to the Guadalupe Cultural Arts Center” (“Phase II”); and

WHEREAS, the City is bound to comply with the terms and conditions contained in the official brochures as presented to the voters; and”

3. Section 1.01 shall be numbered, deleted in its entirety and replaced with the following:

“This Agreement shall commence on the later of: (a) the effective date of the Authorizing Ordinance or (b) the signatures of the Parties. Unless terminated early as provided in this Agreement, the Term shall expire upon the later to occur of: (a) final payment by the City of all of City’s Funding under this Agreement; (b) completion of construction; or (c) life of the last Bonds utilized to provide City’s Funding.”

4. Section 2.02 is deleted in its entirety and replaced with the following:

“The Project, which Grantee is responsible for, shall be completed in two phases. Phase I, to be completed with 2012 Bond funds, includes the design and construction of portions of the Pharmacy Building Renovation in compliance with the approved Plans described below. Grantee will complete design and construction of Phase I by May 1, 2017. Phase II, to be completed with 2017 Bond funds, encompasses the completion of first floor interior renovations, including expanding gallery space, adding restrooms, adding electrical power, lighting, HVAC, staging and archival spaces and associated work in compliance with the approved Plans described below. Grantee will complete design and construction of Phase II by December 31, 2019.”

5. Section 2.03 is deleted in its entirety and replaced with the following:

“The current budget estimate for Phase I of the Project is \$828,000. A copy of the Budget for Phase I is attached and incorporated into this Agreement as Exhibit C. The current budget estimate for Phase II of the Project is \$450,000. A copy of the Budget for Phase II is attached and incorporated into this Agreement as Exhibit C-1. The value of the property described in Exhibit A is estimated at \$681,677. Additionally, Grantee shall provide all necessary funding for the Project beyond the City’s commitment set forth in this Agreement. In the event the scope of either Phase of the Project is adjusted downward, City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.”

6. Section 2.04 is modified by adding “each Phase of” after the word “for” in the first sentence.

7. Section 3.07 is added as follows:

“COMPLIANCE WITH BOND COVENANTS

Grantee shall not use, or permit the use of, City Funds, or earnings thereon, or any other amounts or any property, the acquisition, construction, or improvement of which is to be financed directly or indirectly with City Funds or earnings thereon, in a manner which, if used or permitted to be used, respectively, would cause the interest on the City's debt to be includable in the gross income of the bond owners for federal income tax purposes. In addition, purposes which are NOT

permissible include, but are not limited to religious activities, and, restaurants, cafés, and retail stores.”

8. Section 4.03 is deleted in its entirety and replaced with the following:

“The Project improvements shall include (i) a public space to house archival cultural artifacts, a historical museum, improvements to vertical circulation and ADA accessibility for the upstairs areas (Phase I), and (ii) the completion of first floor interior renovations, including expanding gallery space, adding restrooms, staging and archival spaces and associated work (Phase II), all of which shall be available to City and open to the public during the entire term of the Lease, attached as Exhibit A, and the term of the Bonds issued in connection with the Project.”

9. Section 5.01 is deleted in its entirety and replaced with the following:

“For Phase I, City shall reimburse Grantee for all eligible expenses incurred under this Agreement. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City for Phase I shall not exceed the sum of \$828,000, plus the sum of \$17,000 that City shall retain for fiscal and project oversight, for total Phase I funding by City of \$845,000. For Phase II, City shall reimburse Grantee for all eligible expenses incurred under this Agreement. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City for Phase II shall not exceed the sum of \$441,000, plus the sum of \$9,000 that City shall retain for fiscal and project oversight, for total Phase II funding by City of \$450,000.”

10. Section 5.03 is deleted in its entirety and replaced with the following:

“Funding for Phase I shall consist of reimbursements paid to Grantee for costs of design and construction of Phase I of the Project, not to exceed \$828,000, and with \$17,000 to be retained by City. Funding for Phase II shall consist of reimbursements paid to Grantee for costs of design and construction of Phase II of the Project, not to exceed \$441,000, and with \$9,000 to be retained by City. City funding provided under this Agreement may only be used for the portions of the Project dedicated to public use/public purpose.”

11. Section 6.01 is modified by adding Subsection 6.01(C) as follows:

“(C) The funds received for each Phase of the Project shall be maintained and accounted for separately.”

12. Section 6.03 is deleted in its entirety and replaced with the following:

“Grantee shall submit itemized support documentation pertaining to the use of City funds provided under this Agreement for each pay application for construction of that Phase of the Project in accordance with the provisions of this Agreement. Grantee will be paid on a reimbursement basis”

13. Section 6.04 is modified by adding the following sentence at the end of the Section:

“Each invoice must be submitted under the applicable Phase of the Project.”

14. Exhibit C-1, which is attached to this Second Amendment, is incorporated into the Agreement for all purposes.

Except as otherwise expressly modified, all terms and provisions of the Agreement are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.

EXECUTED AND SIGNED this _____ day of December, 2018.

CITY OF SAN ANTONIO

**GUADALUPE CULTURAL ARTS
CENTER**

Sheryl Sculley
City Manager

Jerry Ruiz
Executive Director

APPROVED AS TO FORM:

City Attorney

**EXHIBIT C-1
PHASE II PROJECT BUDGET**

A	B	C	D
Project Line Items	Partner/Agency Funds <i>(Rounded to nearest dollar)</i>	City Funds	Total Line Item Cost equals B + C
Renovations to gallery, building, and associated work		\$213,500	\$213,500
New HVAC		\$28,000	\$28,000
New electrical lighting and power		\$33,000	\$33,000
New public restrooms including plumbing		\$90,000	\$90,000
Project Contingencies		\$44,000	\$44,000
Architect/Engineer Fees		\$32,500	\$32,500
CoSA Project Management Fees		\$9,000	\$9,000
	Total:	Total: \$450,000	Total Project Funds: \$450,000