

STATE OF TEXAS §  
COUNTY OF BEXAR §

**FUNDING AGREEMENT  
WITH  
THE WITTE MUSEUM**

This 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 The Witte Museum (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation. GRANTEE and CITY shall collectively be referred to as "the Parties."

**PREAMBLE**

WHEREAS, City owns the property identified as The Witte Museum which is located within Brackenridge Park; and

WHEREAS, City and The Witte Museum entered into a Lease with Operating Standards Agreement on September 8, 1997 for the use and operation of The Witte Museum as a vital educational and recreational benefit to the community and visitors; and

WHEREAS, City owns the historic Twohig House which was built in 1841 and in 1942 was moved to the current premises of The Witte Museum; and

WHEREAS, the City and The Witte Museum have jointly identified the deterioration of the city-owned Historic Twohig House; and

NOW THEREFORE, the parties hereto ("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**

1.1 This Agreement shall commence upon execution by the Parties and shall terminate September 30, 2020, or upon completion of the Project whichever shall occur later.

**II. GENERAL RESPONSIBILITIES OF GRANTEE**

2.1 GRANTEE shall provide the services as outlined in the attached Exhibit A – Scope of Services and Budget.

**III. FUNDING BY CITY**

3.1 In consideration of GRANTEE'S performance of all services and activities set forth in this Agreement, CITY agrees to pay GRANTEE for all eligible expenses as related to Exhibit A – Scope of Services and Budget. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$150,000.00.

**IV. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

4.2 GRANTEE agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. GRANTEE further agrees:

- a) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this Agreement.
- b) That GRANTEE'S record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

4.3 GRANTEE agrees to retain all books, records documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

4.4 Disbursement of funds shall be based upon invoices submitted by GRANTEE. Invoices shall be submitted no more than monthly and no less than twice per year. Subsequent to disbursement, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.5 If necessary, GRANTEE may request an advance payment to partially offset GRANTEE'S expenses associated with the services outlined in Exhibit A – Scope of Services and Budget. If advance payments are requested, GRANTEE shall provide an advance payment request. Prior to the next payment request, GRANTEE shall provide CITY with evidence of funds expended which shall include but not limited to: payee, date paid, service provided and copy of paid invoice(s).

4.6 Eligible expenses shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state, and federal laws, regulations and/or ordinances.

4.7 CITY agrees to provide GRANTEE written notice regarding any expenditure the CITY reasonably determines to be outside the permissible parameters of this Agreement. GRANTEE shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to GRANTEE, refund to the CITY those funds, 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.

4.8 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) calendar days of receipt of a request for reimbursement as defined above.

4.9 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out herein as a result of any auditing or monitoring by City, GRANTEE shall refund such amount to CITY within thirty (30) calendar days of CITY'S written request therefore wherein the amount disallowed or disapproved shall be specified.

4.10 CITY shall not be obligated nor liable under this Agreement to any party, other than GRANTEE for payment of monies or provisions of any goods or services.

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

5.1 Grantee warrants and represents that it will comply with all federal, state and local laws and regulations applicable to Grantee, and to Grantee's use of City Funds, and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors.

5.2 Grantee agrees to comply with any and all Small Business Economic Development Advocacy (SBEDA) goals assigned to this Agreement.

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

6.1 GRANTEE further represents and warrants that as of the date hereof:

- a) All information, data or reports heretofore or hereafter provided to CITY in regards to this Agreement 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 have undergone any significant change without written notice to CITY.
- b) It is financially stable and capable of fulfilling 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 impact performance under this Agreement.

- 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.

#### VII. ACCESSIBILITY OF RECORDS

7.1 At any time during normal business hours and as so often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all relevant records pertaining to this Agreement available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

7.2 GRANTEE agrees and represents that it will reasonably cooperate with CITY, at no charge to the CITY, to satisfy, to the extent required by law, any and all requests for information received by CITY under the Texas Public Information Act or related laws pertaining to this Agreement.

#### VIII. MONITORING AND EVALUATION

8.1 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities, and GRANTEE shall provide reasonable access to CITY for such activities, so as to ensure compliance by GRANTEE with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

#### IX. INSURANCE

9.1 GRANTEE shall be responsible for insuring their own Property, Equipment, Autos and Legal Liability, In no event shall the CITY be required to maintain any insurance coverage for the GRANTEE or held liable for the actions or injuries whether it be property or bodily as result caused by the contracted. In no way is the CITY liable for any monies given or to be held responsible for anything the monies are used for.

#### X. INDEMNIFICATION

**10.1 GRANTEE 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 directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this Agreement, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, GRANTEE or subcontractor of GRANTEE, 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 CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND 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.**

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

#### XI. NON-DISCRIMINATION

11.1 As 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 exempt by state or federal law, or as otherwise established herein.

## **XII. POLITICAL ACTIVITY**

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

## **XIII. CONTRACTING**

13.1 Compliance by contractor with this Agreement shall be the responsibility of GRANTEE. GRANTEE is responsible to ensure that all permits required for the activities under this Agreement are obtained.

13.2 CITY shall in no event be obligated to any third party, including any sub-contractor or GRANTEE, for performance of or payment for work or services.

## **XIV. CHANGES AND AMENDMENTS**

14.1 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.

14.2 It is understood and agreed by 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.

## **XV. ASSIGNMENTS**

15.1 GRANTEE shall not transfer, pledge or otherwise assign this Agreement, an interest in and to same, or any claim arising thereunder, without first procuring the written approve of CITY. Any attempt to transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

## **XVI. SEVERABILITY OF PROVISIONS**

16.1 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 constructed as if such invalid, illegal or unenforceable clause or provisions 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 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.

## **XVII. DEFAULT**

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

17.2 Upon default by CITY in the performance of its obligations hereunder GRANTEE shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from GRANTEE (or such

reasonably longer time as may be necessary provided CITY commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If CITY fails to timely cure such default, GRANTEE may pursue all remedies available in law or equity and/or other rights GRANTEE may have in this Agreement.

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

18.1 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 option herein contained, shall in no event be construed as a waiver or relinquishment for the future or 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.

18.2 No act or omission of either part 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.

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

#### **XIX. ENTIRE AGREEMENT**

19.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this date hereof and duly executed by the Parties.

#### **XX. NOTICES**

20.1 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

CITY OF SAN ANTONIO:  
Parks & Recreation Department  
Attn: Director  
P.O. Box 839966  
San Antonio, TX 78283-3966

GRANTEE:  
The Witte Museum  
Attn: President / CEO  
3801 Broadway  
San Antonio, TX 78209

#### **XXI. PARTIES BOUND**

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

#### **XXII. RELATIONSHIP OF PARTIES**

22.1 Nothing contained herein shall be deemed or constructed 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 thereto.

#### **XXIII. TEXAS LAW TO APPLY**

23.1 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.

#### **XXIV. GENDER**

24.1 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.

**XXV. CAPTIONS**

25.1 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.

**XXVI. LEGAL AUTHORITY**

22.1 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 and that the undersigned has full legal authority to execute this Agreement on behalf of GRANTEE and to bind GRANTEE to all terms, performances and provisions herein contained.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF SAN ANTONIO  
PARKS AND RECREATION DEPARTMENT**

**THE WITTE MUSEUM**

By: \_\_\_\_\_  
Homer Garcia III, Interim Director

By: \_\_\_\_\_  
Marise McDermott, President / CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

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

**EXHIBIT A: Scope of Work and Budget**

## EXHIBIT A: Scope of Work and Budget

### I. Scope of Work

The Witte Museum has contracted with Speegle- & KIM-Davis Architecture (SKDA) to provide a Historic American Building Survey (HABS) and to renovate the city-owned historic Twohig House at the Witte Museum.

Phase one of the project shall include the following:

- a. Historic American Buildings Survey
- b. Stabilization of the city-owned historic Twohig House
- c. New wood shingle roof
- d. Exterior painting of the wood trim
- e. New doors and frames
- f. Window and window frame repairs
- g. Re-glazing of glass panes

### II. Budget

The budget identifies estimated costs related to the city-owned historic Twohig House stabilization and exterior renovations. The total amount shall not exceed \$150,000.00

<b>Phase 1 Stabilization and Exterior Renovations</b>	<b>Estimated Amount</b>
Proposed – Wood shingle roof	40,500.00
Provide 11 new doors and frames	58,000.00
Install new doors and frames (Labor)	5,000.00
Window repair and re-glazing	4,500.00
Floor repair and cleaning	3,000.00
Exterior paint	8,000.00
General labor	9,000.00
Architecture fee	13,000.00
Completion of Historic American Buildings Survey	9,000.00
<b>TOTAL</b>	<b>\$150,000.00</b>