

STATE OF TEXAS

COUNTY OF BEXAR

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**FUNDING AGREEMENT  
FOR TRICENTENNIAL PLANNING  
AND DEVELOPMENT SERVICES**

This FUNDING AGREEMENT FOR TRICENTENNIAL PLANNING AND DEVELOPMENT SERVICES (this "**Agreement**") is entered into as of the Effective Date provided on the signature page by and between the CITY OF SAN ANTONIO, a Texas municipal corporation (the "**City**"), and the SAN ANTONIO TRICENTENNIAL CELEBRATION COMMISSION ("SATCC"), a public, nonprofit local government corporation authorized under Subchapter D of Chapter 431 of the Texas Transportation Code. The City and SATCC may sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, SATCC is a local government corporation created by the City to act on the City's behalf in the performance of the City's governmental functions; and

**WHEREAS**, SATCC has been charged by the City Council with providing a means of assisting the City with planning, developing, identifying potential partners, fundraising, managing, and financing projects involved in the City of San Antonio's Tricentennial Celebration ("Tricentennial Celebration") activities; and

**WHEREAS**, the City desires to provide funding to SATCC so that it may initiate efforts associated with its charge to include hiring a marketing firm and book publisher; and

**WHEREAS**, it is anticipated that Bexar County and other public and private partners will also provide funding to SATCC to carry out its charge.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the City and SATCC agree as follows:

**I. TERM**

Term. The term of this Agreement shall commence on October 1, 2015, and will remain in full force and effect through September 30, 2016. ("**Term**") unless sooner terminated, as provided below.

This Agreement may be extended for 3 additional 1 year terms, subject to and contingent upon future appropriations by City Council.

**II. SCOPE OF SERVICES**

2.1 Services for Compensation. SATCC agrees to provide the services described below in exchange for the compensation described hereafter (as listed in Section 2.2, the "**Services**").

2.2 Scope of Services. Subject to being supplied the funding pursuant to Section 3.2 below, SATCC shall carry out the actions described below related to the planning and developing of the Tricentennial Celebration.

2.2.1 Marketing. SATCC shall hire a marketing firm to perform marketing services for the Tricentennial Celebration based upon the solicitation instituted by the City of San Antonio.

2.2.2 Publishing. SATCC shall comply with any applicable procurement requirements to solicit and hire a publishing company to perform publishing services for the Tricentennial Celebration. SATCC shall coordinate such efforts with designated City staff to include developing a solicitation document and scope of services for publishing a book on the history of the City of San Antonio.

2.3 City's Satisfaction. SATCC shall perform its obligations under this Agreement to the City's satisfaction and consistent with applicable governmental standards, including meeting all state and federal regulatory requirements.

### **III. COMPENSATION**

3.1 Compensation. As compensation for the Services described in Article II above, the City shall pay to SATCC a cumulative amount not to exceed TWO HUNDRED SIXTY THOUSAND DOLLARS AND 0 CENTS (\$260,000.00) (the "Compensation") to be spent by the SATCC as follows:

(a) the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) shall be allocated for the marketing effort described in Section 2.2.1; and

(b) the amount of SIXTY THOUSAND DOLLARS (\$60,000.00) shall be allocated for the publishing effort described in Section 2.2.2; and

No additional fees or expenses of SATCC shall be charged by SATCC nor be payable by the City for the Services provided under this Agreement. The parties hereby agree that all expenses of SATCC that are compensable by the City have been provided for in the total payment to SATCC. Those total payments cannot exceed the amount set forth above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council's passage of an ordinance.

3.2 Reallocation of Funds. Upon written approval by City, SATCC may reallocate the amounts described in Sections 3.1(a), (b) and (c) so long as the cumulative amount does not exceed the Compensation.

3.3 Use of Funds. The funding provided by the City under this Agreement shall be used solely in connection with SATCC's providing the Services described in Article II. SATCC shall provide records of expenditures for City provided funding upon reasonable request by the City.

3.4 Additional Services. Should any additional services outside the scope of this

Agreement be requested and authorized by the City, and accepted by SATCC, SATCC shall be separately compensated for those services over and above the Compensation in this Article III, at an amount agreed to by the City and SATCC.

3.5 Invoices. SATCC shall submit City invoices to:

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

#### **IV. AUDIT**

4.1 SATCC's Audit. In accordance with its standard practices, SATCC shall obtain an audit conducted by an independent auditing firm annually during the Term of this Agreement. The audit shall include an audit of the separate account, if any, maintained to receive and disburse funds provided by the City to SATCC pursuant to this Agreement. A copy of the Audit Report and Letter of Internal Control and/or Management Letter prepared as a result of the audit shall be provided to City.

4.2 City's Audit. The City or its authorized representative shall at all reasonable times, on five business days' prior written notice, have the right to examine, inspect, and audit all books, papers, and bank records of SATCC directly related to the funds provided to SATCC under this Agreement, to determine the accuracy of reports made under this Agreement. The cost and expenses incurred by the City incident thereto shall be the sole responsibility of and borne by the City. Those records shall be maintained by SATCC for a period of four (4) years after the termination of the Term of this Agreement, and shall be made available for inspection and/or audit by the City or its agents at SATCC's facility. Nothing in this Agreement shall be deemed to give the City authority to direct, question, review, audit, or otherwise influence the expenditure of any funds that are not directly paid to SATCC by the City.

4.3 Dispute Findings. Either SATCC or the City may dispute the findings of audits performed under this Agreement, by giving written notice to the other party within thirty (30) days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

#### **V. DOCUMENTS**

5.1 Documents. The parties acknowledge that certain writings, documents or information produced by or submitted to SATCC in the course of its execution of the Services will be the joint property of SATCC and City. Without waiving any available claim or privilege, SATCC will in good faith share information derived from those writings or documents with City and, if any writings, documents or information are deemed non-proprietary or privileged, provide copies of those writings or documents to City. SATCC understands and acknowledges that the City has the right to use those non-proprietary writings, documents and information as City desires, without restriction. If any "open records" or equivalent request is made of the City relating to this Agreement or the Services, the City shall promptly advise SATCC, and the

parties shall work cooperatively and in good faith to preserve SATCC's trade secrets, proprietary documents, and confidential information. In all events, the City shall not provide any information or documents that SATCC considers proprietary to any third party without SATCC's written consent, unless the City is legally obligated to do so and so advises SATCC in writing. In addition, any third-party requests to SATCC for records relating to this Agreement under the State's Public Information Act shall be coordinated with City. City shall provide SATCC, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the Attorney General.

5.2 Documents to City. Upon expiration or termination of this Agreement, SATCC shall transfer to City true and correct copies of any non-proprietary writings, documents or information in the possession of SATCC and produced pursuant to the terms and conditions of this Agreement.

## **VI. RECORDS RETENTION**

6.1 Records. SATCC and its subcontractors, if any, shall take commercially reasonable care in their maintenance of all documents, papers, and records, and other evidence pertaining to the Services and funding provided for in this Agreement, and shall make such documents available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period for purposes of the audit described in Article IV.

6.2 Retention. SATCC shall retain any and all documents produced as a result of services or funding provided hereunder for a period of four (4) years from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, SATCC shall retain the records until the resolution of such litigation or other such questions.

## **VII. SUSPENSION/TERMINATION**

7.1 Suspension. Subject to the right to cure provisions contained in this Article VII, the City may suspend this Agreement if it reasonably believes that SATCC has breached this Agreement in any material way, including by violating any City, State or Federal laws. The City shall promptly apprise SATCC of the basis of the City's reasonable belief. Any such suspension shall remain in effect until the City determines that appropriate measures have been taken to ensure SATCC's future compliance. Grounds for such suspension include, but are not limited to the following:

7.1.1 Failure to abide by any terms or conditions of this Agreement;

7.1.2 Failure to keep and maintain adequate proof of insurance as required by this Agreement;

7.1.3 The commission or alleged commission of any crime by SATCC, or any officer or director.

7.2 Termination Defined. For purposes of this Agreement, “termination” shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.3.2 Ceasing operations for a period of time exceeding twenty (20) days;

7.3.3 The expenditure of City funds on gratuities in the form of entertainment, gifts, or otherwise offered or given by SATCC, or any agent or representative of SATCC, to any officer or employee of the City, County, State or business prospect with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract.

7.4 Defaults With Opportunity for Cure. Should SATCC default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of the default, specifying in detail the matter(s) in default and stating the time permitted for cure, such time to be commercially reasonable. If SATCC fails to cure the default within such time period provided in the notice of default, City shall have the right, without further notice or adoption of a City ordinance, to terminate this Agreement in whole or in part as City deems appropriate. The following actions are defaults that may be cured by SATCC:

7.4.1 Failing to perform or failing to comply with any covenant herein required as reasonably determined by the City.

7.4.2 Bankruptcy or selling substantially all of company’s assets

7.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.7 Ceasing Activity. Upon the effective date of expiration or termination of this Agreement, SATCC shall cease all work being performed by SATCC or any of its subcontractors on behalf of the City.

7.8 Transition Period. Regardless of the method by which this Agreement is terminated, the Parties agrees that they may provide a transition period of termination for a period not to exceed two (2) months upon City’s request. During such transition period, SATCC may continue to provide services as provided for, and for which it will be compensated, under

this Agreement.

## VIII. NOTICE

8.1 Written Notice. 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 City:**

Edward Benavides  
City Manager's Office  
City of San Antonio  
P.O. Box 839966  
San Antonio, TX 78283-3966  
Phone: 210-207-5004  
email: [Edward.Benavides@sanantonio.gov](mailto:Edward.Benavides@sanantonio.gov)

**If to SATCC:**

Executive Director  
San Antonio Tricentennial Office  
Centro de Artes  
101 S. Santa Rosa Ave  
San Antonio, TX 78207  
email: \_\_\_\_\_

8.2 Time. Any time period stated in a notice shall be computed from the time the 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.

## IX. ASSIGNMENT AND SUBCONTRACTING

9.1 Qualified Personnel. SATCC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be under contract with SATCC.

9.2 Written Agreement. Any work or services subcontracted by SATCC hereunder shall be by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of SATCC. City shall in no event be obligated to any third party, including any subcontractor of SATCC, for performance of services or payment of fees.

## X. INDEPENDENT CONTRACTOR

SATCC and the City covenant and agree that SATCC is an independent contractor and not an officer, agent, servant or employee of City; that SATCC shall have control of and right to control, in its sole discretion, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and SATCC; that the doctrine of respondeat superior shall not apply as between City and SATCC, its officers, agents, employees, contractors, subcontractors and SATCC, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and SATCC. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Services to be performed by SATCC

under this Agreement and that the SATCC has no authority to bind the City.

## **XI. CONFLICT OF INTEREST**

City's Ethics Code. SATCC acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

## **XII. LEGAL/LITIGATION EXPENSES**

12.1 Litigation Against City. Under no circumstances will the funds received under this Agreement or any other funds received from City be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other governmental or public entity.

12.2 Termination. During the term of this Agreement, if SATCC files and/or pursues an adversarial proceeding against the City then, at the City's option, this Agreement and all access to the funding provided for hereunder may terminate if it is found that SATCC has violated this Article.

## **XIII. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and SATCC, and subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XIV. 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.

## **XV. LICENSES/CERTIFICATIONS**

SATCC warrants and certifies that, to its knowledge, SATCC and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## **XVI. COMPLIANCE WITH LAWS**

SATCC shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## **XVII. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

## **XVIII. LAW APPLICABLE**

**18.1 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.**

18.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **XIX. LEGAL AUTHORITY**

The signer of this Agreement for SATCC represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of SATCC and to bind SATCC to all of the terms, conditions, provisions and obligations herein contained.

## **XX. PARTIES BOUND**

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

## **XXI. CAPTIONS**



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.

## **XXII. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XII. Amendments.

**IN WITNESS WHEREOF**, the parties hereto have executed the Agreement this \_\_\_\_ day of \_\_\_\_\_, 2015.

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

**SAN ANTONIO TRICENTENNIAL  
CELEBRATION COMMITTEE**  
a Texas local government corporation

\_\_\_\_\_  
**Sheryl Sculley**  
City Manager

\_\_\_\_\_  
**Robert Thrailkill**  
President

**ATTEST:**

\_\_\_\_\_  
**Leticia Vacek**  
City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
**Martha G. Sepeda**  
Acting City Attorney