

STATE OF TEXAS

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**ECONOMIC DEVELOPMENT
GRANT AGREEMENT**

COUNTY OF BEXAR

This Economic Development Grant Agreement ("Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas ("GRANTOR"), acting by and through its City Manager or her designee, and **MISSION HERITAGE PARTNERS**, not-for-profit organization exempt from taxation as described under Section 501(c)(3) of the Internal Revenue Code of 1986 ("GRANTEE"), acting by and through its Board of Directors and Chairman or his designee, and together referred to as the "Parties.

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

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

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is a home-rule municipality with a population of more than 100,000 that has a program for the grant of public money and through this Agreement grants such public money to GRANTEE, a not-for-profit, tax exempt organization; and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within GRANTOR's city limits and will consist of expansion of the San Antonio Missions National Historical Park, and adding access to adjacent community assets such as Mission Marquee Plaza, Mission Branch Library, Najim Family YMCA and the trail leading to the Mission Reach of the San Antonio River, all of which is accessible by the public, and enhancing public safety for visitors, through closure and removal of San Jose Drive located within the park (the "Project"); and

WHEREAS, once completed, the Project is expected to result in the promotion of local economic development and to stimulate business and commercial activity in the GRANTOR area; and

WHEREAS, GRANTEE is seeking an economic development grant from GRANTOR for the purpose of defraying costs associated with the Project, and

WHEREAS, GRANTOR has identified funds, other than from the proceeds of bonds or other obligations payable from ad valorem taxes, available to provide a grant to GRANTEE for use in undertaking and successfully completing the Project; and

WHEREAS, the City Council of the GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with Ordinance No. _____, passed and approved on _____, to grant funds to support the Project; **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

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance with Chapter 380 of the Texas Local Government Code. The Project will include expansion of the parkland available for use by the public, enhancement of safety for park visitors and the public, expansion of public access to the park, and improvement of public access between the park and other public amenities such as Mission Marquee Plaza, Mission Branch Library, Najim Family YMCA and the trail leading to the Mission Reach of the San Antonio River. GRANTOR is supporting the Project through this Economic Development Program Grant to provide funds to be used to defray costs of the Project.

This economic incentive is being offered to GRANTEE to promote development and diversification of the economy of the GRANTOR, assist with elimination of unemployment or underemployment in GRANTOR, and provide for development and expansion of commerce in the GRANTOR. GRANTEE is a non-profit, tax-exempt organization that supports the San Antonio Missions National Historical Park (Park). The Park has been designated a World Heritage site and this designation is anticipated to generate an estimated \$44 to \$105 million in economic activity, 465 to 1,098 additional jobs, up to \$2.2 million in additional local hotel tax revenue to Bexar County, and an increase in visitors to the San Antonio Missions National Park.

SECTION 2. PROJECT REQUIREMENTS

A. GRANTEE shall work with GRANTOR to permanently close the approximate 835 feet of San José Drive that circles Mission San José beginning at the northwest intersection of Roosevelt Avenue and San José Drive, traveling eastward to an intersection with east Pyron Avenue, ending at Napier Avenue.

B. GRANTEE shall remove and dispose of approximately 835 feet of asphalt roadway, described above as a part of San Jose Drive, and replace the material with a seeded grass surface to expand the Park's open space, increase visitor safety, and provide better access to the Park and adjacent areas.

C. GRANTEE shall permanently close the east and west ends of the closed, demolished, landscaped road area with bollards.

D. GRANTEE shall design a section of trail that completes the Mission San Jose to San Antonio River Trail by linking to Mission Drive In and provide such designs to GRANTOR.

E. GRANTEE may complete the trail from Mission San Jose Park to the Najim Family YMCA property if funding allows.

F. GRANTEE may complete construction of a hammerhead turn-around at the southeast end of the San Jose Drive closure if funding allows.

G. GRANTEE shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT.

A. **Economic Development Program Grant.** GRANTOR is providing GRANTEE with an Economic Development Program Grant in the amount of ONE HUNDRED AND NINETEEN THOUSAND

DOLLARS (\$119,000.00) ("Grant Funds"). The Grant Funds shall be used for the purpose of defraying costs associated with the Project Requirements in accordance with Section 2(A) through 2(F) above.

B. **Grant Disbursement.** Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement, the GRANTOR will make the Grant Funds available to GRANTEE in the amounts described below and upon the execution by the Parties of documentation acceptable to GRANTOR indicating the following:

\$10,000 upon approval of this Agreement to commence design.

\$40,000 upon approval by GRANTOR of closure of San Jose Drive.

\$30,000 upon completion by GRANTEE of removal of approximately 835 linear feet of asphalt roadway and replacement with seeded grass to expand the Park's existing open space.

\$20,000 upon installation by GRANTEE of bollards on east and west ends of the closed, demolished, and landscaped San Jose Drive road area.

\$19,000 upon acceptance and approval by GRANTOR and the National Park Service ("NPS") of the design and cost estimate for the section of the trail that will complete the Mission San Jose to San Antonio River Trail by linking the Project area to Mission Drive In.

C. **Recapture of Program Grant Funds.** Should GRANTEE:

1. Fail to undertake and complete the Project on or before June 14, 2018; or
2. Fail to keep adequate records necessary for the GRANTOR to determine if GRANTEE is in compliance with this Agreement; then

GRANTOR shall have the right to terminate this Agreement and recapture all Grant Funds heretofore advanced either by obtaining repayment of all Grant Funds from GRANTEE after written request delivered to GRANTEE, which written request will afford GRANTEE a 60-day opportunity to either correct the failure resulting in the recapture right or to pay back any Grant Funds previously advanced.

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon execution of this Agreement and terminate on June 14, 2018, unless extended by a mutual agreement in writing (the "Term").

SECTION 5. DEPARTMENT OBLIGATIONS

A. GRANTOR will make an Economic Development Program Grant of ONE HUNDRED AND NINETEEN THOUSAND DOLLARS (\$119,000.00) available to GRANTEE under the terms and conditions of this Agreement.

B. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE other than those which GRANTOR is obligated pursuant to the terms of this Agreement.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the period required for record retention or by any other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access during normal business hours 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 GRANTEE pertaining to the Economic Development Grant (the "Records"). The GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify that the grant funding provided by the GRANTOR is in compliance with the disbursements and completion of activities described in SECTION 3(B) above and to verify that the proceeds of the Economic Development Grant are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to the GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the accuracy of the data provided, the GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE unless the independent firm confirms that the information as provided by GRANTEE is accurate, in which case the GRANTOR will bear the cost of the independent firm. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give the GRANTOR the right to suspend or terminate this Agreement as provided for in Section 14 and 15 below, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of five 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. GRANTEE agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records if required by the Texas Public Information Act on the same terms as the Records are made available to the GRANTOR as set forth above. All of the above notwithstanding, the GRANTOR and the citizens shall have no right to access any confidential or proprietary records of GRANTEE.

SECTION 7. MONITORING

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement by monitoring, subject to the requirements of SECTION 6 above. GRANTOR will provide GRANTEE a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE 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. GRANTEE shall provide to GRANTOR an annual certification with reasonable supporting information evidencing GRANTEE's non-profit and tax exempt status, as specified in this Agreement.

SECTION 8. CONFLICT OF INTEREST

GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE 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 individual 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 and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the GRANTOR's Code of Ethics.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE 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 funds made available under this Agreement.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE 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.

C. GRANTEE shall include the substance of this Section 9 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possess 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.

C. GRANTOR will have the right to suspend or terminate this Agreement in accordance with Sections 16 and 17 herein if there is a dispute as to the legal authority of either GRANTEE, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 11. LITIGATION AND CLAIMS

A. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any subcontract hereunder. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the GRANTOR immediately of any legal action filed against the GRANTEE or any subcontractor of which GRANTEE is actually aware, or of any proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30

calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations. The above notwithstanding GRANTEE is not required to notify GRANTOR of claim or litigation which arises out of GRANTEE's operations on the Project, including without limitation, landlord/tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. GRANTOR and GRANTEE acknowledge that GRANTOR 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.

C. 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 12. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 13. CHANGES AND AMENDMENTS

A. Except as provided below, 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 GRANTOR approval and authorization of GRANTEE.

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 in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE commits a Default Event, GRANTOR shall provide GRANTEE with written notification as to the nature of the Default Event. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any Default Event. Should GRANTEE fail to cure any Default Event within this period of time, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part by withholding further payments to GRANTEE, and prohibit GRANTEE 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 a Default Event that occurs for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its reasonable discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR of GRANTEE'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. A suspension under this Section 14 may be lifted at the reasonable discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement unless GRANTOR improperly exercised its right of suspension.

SECTION 15. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement in the event GRANTEE commits a Default Event that remains uncured past any applicable cure period at any time before the date of completion specified in SECTION 4 of this Agreement. GRANTOR will provide GRANTEE with written notification as to the nature of the Default Event and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any Default Event. Should GRANTEE fail to cure any Default Event within this period of time, the GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, either suspend this Agreement pursuant to the provisions of SECTION 14 above, or terminate this Agreement in whole or in part, in which case the GRANTOR may: (1) withhold further payments to GRANTEE; and/or (2) accelerate the repayment of the grant. 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 a Default Event that occurs for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its reasonable discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR of GRANTEE'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 absence of a Default Event, this Agreement may be terminated in whole or in part only as follows:

1. By the GRANTOR (with the written consent of the GRANTEE), in which case the two parties shall agree upon the termination conditions, including the repayment of funds, the effective date, and, in the case of partial termination, the portion to be terminated; or
2. By GRANTEE upon written notification to the GRANTOR, setting forth the reasons of such termination, a proposed pay-back plan of any funds granted, the effective date, and, in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the GRANTOR determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the GRANTOR may terminate the award in its entirety under SECTION 15.

SECTION 16. SPECIAL CONDITIONS AND TERMS

RESERVED

SECTION 17. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the GRANTOR.

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 other agreements between GRANTEE and the GRANTOR 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

This Agreement is not assignable without the written consent of GRANTOR and the passage of a GRANTOR Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. GRANTEE shall be held responsible for all funds received under this Agreement. Notwithstanding the foregoing, GRANTEE may assign the Agreement, upon consent of GRANTOR, in conjunction with a transfer or merger of the organization so long as the entity that will succeed to GRANTEE's rights under this Agreement assumes in writing all of GRANTEE's obligations hereunder.

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*)

GRANTOR may grant temporary relief from performance of this Agreement if GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain release based upon *force majeure*, GRANTEE must file a written request with the GRANTOR. Should GRANTOR grant temporary relief to GRANTEE, it shall in no case relieve GRANTEE from any repayment obligations as specified in this Agreement.

WITNESS OUR HANDS, EFFECTIVE as of _____:

Accepted and executed in two duplicate originals on behalf of the GRANTOR of San Antonio pursuant to Ordinance Number _____, dated _____, and GRANTEE pursuant to the authority of its _____.

GRANTOR:
CITY OF SAN ANTONIO,
a Texas Municipal Corporation

GRANTEE:
MISSION HERITAGE PARTNERS
a Texas 501(C)(3) Non-Profit Organization

Sheryl L. Sculley
GRANTOR MANAGER

By: _____
Name: **STEPHEN R. SOUTER**
Title: **Chairman, Board of Directors**

ATTEST:

Leticia Vacek
GRANTOR CLERK

ATTEST:

Name: **Deborah K. Rivera**
Title: **Administrative Assistant**

APPROVED AS TO FORM:

CITY ATTORNEY

