

**FUNDING AND DEVELOPMENT AGREEMENT**

**FOR THE ALAMEDA THEATER**

**AMONG**

**THE CITY OF SAN ANTONIO,**

**BEXAR COUNTY,**

**THE ALAMEDA THEATER CONSERVANCY**

**AND**

**TEXAS PUBLIC RADIO**

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STATE OF TEXAS	§	FUNDING AND DEVELOPMENT
	§	AGREEMENT FOR THE
COUNTY OF BEXAR	§	ALAMEDA THEATER

This Funding and Development Agreement for the Alameda Theater (this “*Agreement*”) is entered into by and among the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “*City*”) acting by and through its City Manager, Bexar County, a political subdivision of the State of Texas (hereinafter referred to as “*County*”), The Alameda Theater Conservancy, a Texas nonprofit corporation (hereinafter referred to as “*ATC*”), and Texas Public Radio, a Texas nonprofit corporation (hereinafter referred to as “*TPR*”). City, County, ATC and TPR may each be referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

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.

### RECITALS

**WHEREAS**, City owns certain property legally described on the attached **Exhibit “A”** (the “*Alameda Property*”), which is known as the Alameda Theater Complex and has an address of 318 West Houston Street, San Antonio, TX 78205;

**WHEREAS**, certain renovations to the Alameda Property have been made through County’s previous contribution of SIX MILLION DOLLARS (\$6,000,000.00) utilizing voter approved venue funding and ONE MILLION DOLLARS (\$1,000,000.00) in additional funding;

**WHEREAS**, City created the Houston Street Tax Increment Reinvestment Zone #9 dated August 24, 2000 (“*Houston Street TIRZ*”), as amended by First Amendment to Interlocal Agreement dated September 20, 2007, for the purpose of supporting the revitalization of downtown San Antonio within the area comprising the Houston Street TIRZ;

**WHEREAS**, the Houston Street TIRZ, as amended was subsequently amended by the Second Amendment to Interlocal Agreement Bexar County Houston Street TIRZ #9 which extended the term of the Houston Street TIRZ to September 30, 2037 (“*Second Amendment*”);

**WHEREAS**, through the Second Amendment, County committed Ten Million Dollars (\$10,000,000.00) towards the completion of the renovations to the Alameda Property with the County to be reimbursed by the TIRZ for that financial contribution;

**WHEREAS**, County additionally will be commissioning and funding a mural on the east wall of the Theater Phase of the Alameda Project, as defined below, to complement the art work at the adjacent San Pedro Creek Renovation Project;

**WHEREAS**, as shown on the site plan attached hereto as **Exhibit “B”**, the existing improvements to the Alameda Property consist of the historic Alameda Theater building (the

“**Theater Building**”), the adjacent annex building (the “**Annex**”) and the Casa de Mexico building (the “**Casa de Mexico**”);

**WHEREAS**, the Parties desire to fund and implement a project (the “**Alameda Project**”) that will cause the preservation of the historic Alameda Theater and contribute to the revitalization of downtown San Antonio and include the following project phases (each a “**Project Phase**”): (a) the renovation of the Theater Building and a portion of the Casa de Mexico as a community and heritage resource (the “**Theater Phase**”); and (b) the renovation of the Annex into space that will include TPR’s headquarters, TPR’s studio operations and a black-box theater performance space and the renovation of certain common areas, generally depicted on the attached **Exhibit "B"**, that will service the uses in both the Theater Building and the Annex (collectively, the “**Annex Phase**”);

**WHEREAS**, ATC was formed for the purpose of overseeing the redevelopment and preservation of the Alameda Property and managing operations in the Theater Building following completion of the Theater Phase;

**WHEREAS**, ATC will be responsible for completing the Theater Phase and entering into all contracts related to such project and TPR will be responsible for completing the Annex Phase and entering into all contracts related to such project (ATC and TPR in such capacities each referred to herein sometimes as the “**Contracting Party**”);

**WHEREAS**, City is leasing to ATC the Alameda Property pursuant to that certain Master Lease between City and ATC dated as of even date herewith (the “**Master Lease**”) and ATC is subleasing to TPR the Annex pursuant to that certain Sublease between ATC and TPR dated as of even date herewith (the “**Sublease**”);

**WHEREAS**, the estimated cost to complete all desired improvements to the Alameda Property is approximately TWENTY SEVEN MILLION DOLLARS (\$27,000,000);

**WHEREAS**, TWENTY-THREE MILLION DOLLARS (\$23,000,000) in funds towards the redevelopment of the Alameda Property will be made available pursuant to this Agreement with additional funds anticipated to become available through state and federal tax credit programs and philanthropic donations;

**WHEREAS**, a scope of work with an estimated cost of TWENTY-THREE MILLION DOLLARS (\$23,000,000) has been identified and the Parties desire to proceed in implementing such scope of work pending the supplemental funding sources that may be made available;

**WHEREAS**, the Parties agree to diligently pursue tax credits, including historic and new market tax credits, for the benefit of the Alameda Project and to take necessary steps in the future to pursue and obtain such tax credits, to include amending the terms of this Agreement should it be necessary, in an expedient manner;

**WHEREAS**, this Agreement outlines the terms and conditions under which the Parties agree to contribute specified amounts towards the Alameda Project and the manner in which such project shall be undertaken;

**NOW THEREFORE**, in consideration of the mutual promises and commitments under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to act as follows:

## **ARTICLE 1. PURPOSE**

1.1 The purpose of this Agreement is to establish the rights and obligations of the Parties and the procedures by which City, County, TPR and ATC shall contribute funds for the Alameda Project and the process under which ATC and TPR will undertake the design and construction of the Alameda Project.

1.2 The Parties agree that the Alameda Project is not a joint enterprise, joint venture or any other type of legal partnership among the City, County, TPR and ATC.

1.3 Notwithstanding Section 1.2 above, the Parties will cooperate to ensure that the Alameda Project is completed in accordance with the terms of this Agreement and in a timely manner.

## **ARTICLE 2. TERM**

2.1 The term (the “***Term***”) of this Agreement shall commence on the date (the “***Effective Date***”) upon which the last of the Parties executes this Agreement, and shall continue in force until Final Completion of the Alameda Project unless terminated on an earlier date in accordance with this Agreement. If this Agreement does not take effect or is terminated by mutual agreement of the Parties or other event, the Parties shall promptly execute a document confirming the termination of this Agreement.

## **ARTICLE 3. CITY OBLIGATIONS**

3.1 City shall contribute funding in the amount of NINE MILLION TWO HUNDRED THOUSAND DOLLARS (\$9,200,000.00) (the “***City Contribution***”) toward the Alameda Project with such funding to be deposited in the applicable Project Disbursement Fund pursuant to the schedule provided in **Exhibit “C”** (the “***Funding Schedule***”) and in accordance with this Agreement.

3.2 City shall assist ATC in managing the solicitation and selection of the Project Architect (as defined below).

3.3 City shall appoint a representative to participate on the Oversight Committee overseeing the design and construction of the Alameda Project.

3.4 City shall lease the Alameda Property to ATC pursuant to that certain Master Lease attached hereto as **Exhibit "H"** and agree to recognize TPR’s rights under the Sublease pursuant to that certain Recognition Agreement attached hereto as **Exhibit "I"** (the “***Recognition Agreement***”).

## ARTICLE 4. COUNTY OBLIGATIONS

4.1 County shall contribute funding in the amount of NINE MILLION DOLLARS (\$9,000,000.00) (the “*County Contribution*”) for capital improvements under this Agreement and an additional TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) for operational costs upon approval of its Commissioners Court toward the Alameda Project with such funding to be deposited in the applicable Project Disbursement Fund pursuant to the Funding Schedule and in accordance with this Agreement.

4.2 County is commissioning and funding a mural to be located on the east wall of the Theater Phase which will complement adjacent art work located on the San Pedro Creek Renovation Project. Due to the importance to the community of the San Pedro Creek Renovation Project, which is largely funded by the County, and the proximity of the Alameda Project to the San Pedro Creek Renovation Project, the Parties have agreed to allow the County to have exclusive approval rights over the design of the east wall as well as the exterior wall treatment of the east wall of the Alameda Project so long as such mural is not detrimental to the acquisition of historic tax credits.

4.3 County shall appoint a representative to participate on the Oversight Committee overseeing the design and construction of the Alameda Project.

## ARTICLE 5. ATC OBLIGATIONS

5.1 ATC shall manage the selection of the Project Architect through a process that includes a publicly-issued request for qualifications (RFQ) with a subsequent request for proposals (RFP) issued to the respondents to the RFQ that are shortlisted by ATC. For purposes hereof, the “*Project Architect*” is understood to be the architecture firm selected by ATC to be the primary architect for the Alameda Project, it being understood that other firms may be selected by ATC or TPR for the design and site planning of certain aspects of the Project Phases that such Parties control, including without limitation a theater designer who may be primarily responsible for the design of the theater interior and acoustics.

5.2 ATC shall contract with the Project Architect for the design and engineering of the Theater Phase in accordance with the requirements set forth in ARTICLE 9 below.

5.3 ATC shall cause the construction and completion of the Theater Phase in accordance with the applicable requirements set forth in ARTICLE 11 and ARTICLE 12 below and in accordance with the schedule for development milestones (the “*Development Milestones*”) attached hereto as **Exhibit “D”**.

5.4 ATC shall enter into the Master Lease with City and the Sublease with TPR.

5.5 ATC shall be responsible for meeting all applicable legal, regulatory, and code requirements for the Theater Phase.

5.6 ATC shall appoint a representative to participate on the Oversight Committee overseeing the design and contribution of the Alameda Project.

## ARTICLE 6. TPR OBLIGATIONS

6.1 TPR shall contribute funding in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) (the “**TPR Contribution**”) toward the Annex Phase with such funding to be deposited in the applicable Project Disbursement Fund pursuant to the Funding Schedule and in accordance with this Agreement.

6.2 TPR shall assist ATC in the selection of the Project Architect.

6.3 TPR shall contract with the Project Architect for the design and engineering of the Annex Phase in accordance with the requirements set forth in ARTICLE 9 below.

6.4 TPR shall cause the construction and completion of the Annex Phase in accordance with the applicable requirements set forth in ARTICLE 11 and ARTICLE 12 below and in accordance with the Development Milestones.

6.5 TPR shall enter into the Sublease with ATC and the Recognition Agreement with the City.

6.6 TPR shall be responsible for meeting all applicable legal, regulatory, and code requirements for the Annex Phase.

6.7 TPR shall appoint a representative to participate on the Oversight Committee overseeing the design and contribution of the Alameda Project.

## ARTICLE 7. PROJECT BUDGETS

7.1 Project Budget. Each Contracting Party shall prepare and submit a project budget (each a “**Project Budget**”) providing for the completion of the applicable Project Phase in accordance with the Approved Plans (as defined in Section 10.2 or Section 10.3 below) for an amount (“**Project Costs**”) equal to or less than the Maximum Cost (as defined below) for the applicable Project Phase. Such Project Budget shall be submitted to the City and County for approval at least sixty (60) days prior to the anticipated construction commencement date for the applicable Project Phase, such approval not to be unreasonably withheld, conditioned or delayed. For purposes hereof, the “**Maximum Cost**” shall mean [\$12,516,135] with respect to the Annex Phase and [\$10,483,865] with respect to the Theater Phase; provided, however, that each Contracting Party may increase the Maximum Cost for its respective Project Phase if such Contracting Party is able to raise additional capital funds for its Project Phase (any additional funds in the case of ATC and any funds in excess of the TPR Contribution in the case of TPR). The Parties agree that if federal and/or state historic tax credits are realized with respect to the Alameda Project, all of the additional funding resulting from the tax credits investment in the Alameda Project shall be allocated towards the Theater Phase; provided, however, that in such event [\$\_\_\_\_\_] in funds allocated to the Theater Phase Maximum Cost pursuant to this Agreement shall be reallocated to the Annex Phase Maximum Cost through a transfer from the Theater Phase Project Disbursement Fund to the Annex Phase Project Disbursement Fund. If a Project Phase cannot be designed to a Project Budget equal to or less than the applicable Maximum Cost, as determined in the reasonable opinion of the Contracting Party prior to commencing construction, then the Contracting Party shall be relieved of its obligation to

complete such Project Phase and the remaining funds in the applicable Project Disbursement Fund shall be returned to the contributing Parties in pro rata shares equal to the contributions made by such Parties.

7.2 Preconstruction Costs. Commencing on the Effective Date of this Agreement, each Contracting Party shall be able to submit Disbursement Requests (as defined below in Section 8.2) and receive disbursements from the applicable Project Disbursement Fund for out-of-pocket costs incurred by such Contracting Party towards the design of the applicable Project Phase prior to approval of the Project Budget (the "**Preconstruction Costs**"), including costs incurred prior to the Effective Date of this Agreement. Such Preconstruction Costs shall be included in the applicable Project Budget and shall be counted towards the applicable Maximum Cost.

7.3 Modifications to Project Budgets. Each Contracting Party shall have the right, from time to time to reallocate budgeted amounts from one category to any other category of the Project Budget, subject to the requirement that any material deviation from the Approved Plans, as defined in Sections 10.2 and 10.3, requires the Oversight Committee's review and approval.

7.4 Cost Overruns. TPR shall be solely responsible for completion of design and construction of the Annex Phase within the Maximum Cost allocated to that Project Phase and ATC shall be solely responsible for the completion of design and construction of the Theater Phase within the Maximum Cost allocated to that Project Phase. In the event costs are incurred by TPR or ATC in excess of each Project Phase's Maximum Cost, neither TPR nor ATC may allow funds from its respective Project Phase to cover cost overruns on the other Party's Project Phase. To the extent that such cost overruns result from a change in laws, regulations or requirements enacted or imposed by the County or the City following the date of the Project Budget, such additional costs shall be paid by whichever of the County or City enacts or imposes such change. To the extent a Project Phase is completed for less than the Maximum Cost, the Contracting Party may allocate the remaining funds in the Project Disbursement Fund towards additional equipping and furnishing of the applicable Project Phase or towards operational expenses related to such Project Phase.

## ARTICLE 8. PROJECT DISBURSEMENTS

8.1 The Project Disbursement Fund. The Parties shall establish a project disbursement fund (each a "**Project Disbursement Fund**") for each applicable Project Phase. Such Project Disbursement Fund shall be held by \_\_\_\_\_ (the "**Disbursing Agent**") and shall be maintained as a fund separate and apart from any other funds of the City, County and TPR. The City Contribution, County Contribution and TPR Contribution shall be deposited into the Project Disbursement Funds as required in accordance with the Funding Schedule. The entirety of the TPR Contribution shall be deposited in the Project Disbursement Fund for the Annex Phase.

8.2 Disbursement Requests. As costs are incurred towards completion of the applicable Project Phase throughout the Term of this Agreement, each Contracting Party may submit payment requests (each a "**Disbursement Request**") on a monthly basis for disbursement of funds from the applicable Project Disbursement Fund. Such Disbursement Requests shall be submitted using the form attached hereto as **Exhibit "E"** (the "**Disbursement Request Form**")



and shall be sent to \_\_\_\_\_ (the “*City Disbursement Review Officer*”) and \_\_\_\_\_ (the “*County Disbursement Review Officer*,” and together with the City Disbursement Review Officer, collectively, the “*Disbursement Review Officers*”) with a copy to the Disbursing Agent. Any such submission may contain reference to information available for inspection at the offices of the Contracting Party. The Disbursement Review Officers shall promptly review each Disbursement Request and in all cases either approve or reject such request within ten (10) days after submission. If all or part of a Disbursement Request is approved, each Disbursement Review Officer shall promptly forward the Disbursement Request to the Disbursing Agent and the Contracting Party indicating such approval or partial approval. If there is a rejection of all or part of a Disbursement Request, the accepted portion of the Disbursement Request shall be processed as provided in this Agreement and the rejected portion will be returned to Disbursing Agent and the Contracting Party within ten (10) business days after the date of submission with a reasonable and detailed explanation of the rejection; provided, however, that it shall not be reasonable to reject a submission based solely upon insufficient information if such information was specifically made available to the Disbursement Review Officers for review at the offices of the Contracting Party as permitted above.

8.3 Disbursements from the Project Disbursement Fund. Upon receipt of notice of an approval of a Disbursement Request or any portion thereof, the Disbursing Agent shall pay the amount so approved to the Contracting Party or the payee designated in the Disbursement Request within ten (10) business days.

## **ARTICLE 9. DESIGN AND ENGINEERING SERVICES**

9.1 Project or Program Manager. Each Contracting Party shall be permitted to hire a project or program manager (each, a “*Project Manager*”) separate from the Project Architect to oversee and review all aspects of the applicable Project Phase, the cost of which shall be included as a Project Cost. ATC and TPR may together elect, in each Party’s sole discretion, to utilize the same Project Manager for both Project Phases or to utilize different Project Managers for their respective Project Phases.

9.2 Design and Engineering Services. Each Contracting Party shall contract with the Project Architect and with all such other architects and engineers (collectively, the “*Design and Engineering Professionals*”) as may be necessary for the engineering and design services necessary for the completion of the applicable Project Phase (collectively, the “*Design and Engineering Services*”), the cost of which shall be included as a Project Cost. Notwithstanding the retention of Design and Engineering Professionals by each Contracting Party, the Project Architect shall retain ultimate authority and responsibility as to coordination and resolution of any conflicts that may arise between the respective Design and Engineering Professionals and the Design and Engineering Services to be rendered and shall have final approval rights as to the aesthetic components of each Project Phase subject to any approval rights granted to the Oversight Committee pursuant to Section 10.12 and 10.3 below.

9.3 Service Requirements. Each Contracting Party shall require that the Design and Engineering Services for its Project Phase are provided in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

9.4 Construction Documents. Each Contracting Party shall provide the Oversight Committee with a complete set of construction documents (the “**Construction Documents**”) for such Contracting Party’s applicable Project Phase meeting the requirements of this Agreement and in conformance with applicable local, state and federal codes and regulations and customary engineering practices. The Construction Documents shall be prepared by and bear the seal of the applicable architect and/or engineer. The Contracting Party shall cause the engineer to commence preparation of the Construction Documents promptly upon completion of engineering and design, and to diligently continue same to completion.

9.5 Availability. Each Contracting Party shall ensure that the Design and Engineering Professionals are available to:

- a. advise and consult with the Parties throughout the progress of the applicable Project Phase; and
- b. attend meetings of any official nature concerning the Alameda Project, including but not limited to scope meetings, review meetings, pre-bid meetings, pre-construction meetings, and meetings of City’s and County’s governing bodies for status updates, if requested.

## **ARTICLE 10. OVERSIGHT COMMITTEE AND PLAN APPROVAL PROCESS**

10.1 Oversight Committee. A committee (the “**Oversight Committee**”) with one member representing each Party shall be established to review and approve project plans, schedules, and other project related matters. The initial representative of the City on the Oversight Committee shall be Lori Houston; the initial representative of the County on the Oversight Committee shall be David Smith; the initial representative of TPR on the Oversight Committee shall be Joyce Slocum; and the initial representative of ATC on the Oversight Committee shall be Pete Cortez and shall never be an individual who is employed by the County, City or TPR. Each Party may from time to time designate a new representative the Oversight Committee by written notice to the other Parties and their representatives on the Oversight Committee. The purpose of the Oversight Committee will be to continue the collaborative effort between the Parties throughout the duration of the Alameda Project and all actions of the Oversight Committee shall require the affirmative vote of three of the four members of the Oversight Committee. The Oversight Committee may establish its own rules and procedures with respect to the discharge of its duties and responsibilities under this Agreement but each member of the Oversight Committee shall be provided with written notice (which may given via e-mail) of all meetings and other actions to be taken by the Oversight Committee. The written notices shall be submitted to the Oversight Committee members on a business day a minimum of twenty-four (24) hours prior to the meeting or other action, which shall take place on a business day unless there is need for an earlier meeting or action.

10.2 Plans for Annex Phase. TPR shall cause the Project Architect to prepare schematic design plans for the Annex Phase (the “**Annex Schematic Plans**”) and deliver such Annex Schematic Plans to the Oversight Committee for its review and approval, which shall not be unreasonably withheld, delayed or conditioned so long as (a) the exterior design of the Annex Phase does not interfere with the historic architecture of the Theater Building and (b) the

common areas being constructed as part of the Annex Phase are compatible with the Theater Phase based upon the information available at the time of approval. Following approval of the Annex Schematic Plans, TPR shall cause the Project Architect to prepare and submit for approval by the Oversight Committee (a) 50% construction plans, which shall be approved so long as they are consistent with the Annex Schematic Plans and the Maximum Cost; and (b) 100% construction plans, which shall be approved so long as they are consistent with the 50% construction plans and the Maximum Cost. Upon approval of the 100% plans, such plans shall be deemed the “**Approved Plans**” for purposes of this Agreement. The Oversight Committee shall complete its review of any submittal or re-submittal of plans within five (5) business days after receipt of the applicable plans. The Oversight Committee’s failure to provide a written response within such five (5) business day period shall be deemed an approval of the applicable plans. If the Oversight Committee does not approve the plans, it shall provide TPR with its written comments to such plans within such five (5) business day period. Provided that such comments are consistent with the criteria for approval set forth in this Section 10.2 above, TPR shall cause the Project Architect to revise the plans accordingly and resubmit such plans for approval by the Oversight Committee whereupon such re-submittal shall be reviewed in the same manner as the initial submittal pursuant to this Section 10.2.

10.3 Plans for Theater Phase. ATC shall cause the Project Architect to prepare schematic design plans for the Theater Phase (the “**Theater Schematic Plans**”) and deliver such Theater Schematic Plans to the Oversight Committee for its review and approval. Following approval of the Theater Schematic Plans, ATC shall cause the Project Architect to prepare and submit for approval by the Oversight Committee (a) 50% construction plans, which shall be approved so long as they are consistent with the Theater Schematic Plans and the Maximum Cost; (b) 75% construction plans, which shall be approved so long as they are consistent with the 50% construction plans and the Maximum Cost; and (c) 100% construction plans, which shall be approved so long as they are consistent with the 75% construction plans and the Maximum Cost. Upon approval of the 100% plans, such plans shall be deemed the “**Approved Plans**” for purposes of this Agreement. The Oversight Committee shall complete its review of any submittal or re-submittal of schematic or construction plans within ten (10) business days after receipt of the applicable plans. The Oversight Committee’s failure to provide a written response within such ten (10) business day period shall be deemed an approval of the applicable plans. If the Oversight Committee does not approve the plans, it shall provide ATC with its written comments to such plans within such ten (10) business day period. Provided that such comments are consistent with the criteria for approval of plans set forth in this Section 10.3 above, ATC shall cause the Project Architect to revise the plans accordingly and resubmit such plans for approval by the Oversight Committee whereupon such re-submittal shall be reviewed in the same manner as the initial submittal pursuant to this Section 10.3.

10.4 Project Boundary Changes. Notwithstanding any other provision of this Article to the contrary, any revision to the Schematic Plans, Approved Plans or any subsequent Construction Documents that alters or revises the boundary wall between the Theater Phase and Annex Phase must be approved by unanimous vote of the Oversight Committee.

## ARTICLE 11. CONSTRUCTION REQUIREMENTS

11.1 Permits and Bids. The Contracting Party shall cause construction of its applicable Project Phase to commence within sixty (60) days after the later of (i) approval of the Approved Plans, (ii) receipt by the Contracting Party of all governmental and regulatory permits and approvals required in connection with the construction of the applicable Project Phase (the “*Permits*”), and (iii) receipt of qualifying bids which enable the applicable Project Phase to be fully constructed according to the Construction Documents. Construction of any part of the applicable Project Phase shall in no event commence prior to the City’s issuance of a building permit. Construction shall be deemed to have “*commenced*” under this Agreement for all purposes on the date that on-site construction activities have commenced on the applicable Project Phase following receipt of the building permit. The Contracting Party’s obligation to commence construction of its applicable Project Phase is conditioned upon the receipt by the Contracting Party of the Permits and construction bids consistent with the terms of this Agreement and on such terms and conditions as the Contracting Party may deem to be acceptable in the Contracting Party’s reasonable discretion. The City agrees to use its best efforts (without cost or expense to the City) to obtain and shall assist the Contracting Party in obtaining Permits when necessary. Without limiting the foregoing, the Contracting Party agrees to use its good faith efforts (without cost or expense to the City) to apply for and obtain all requisite approvals from any regulatory authority in connection with the construction of the applicable Project Phase. If a Contracting Party anticipates that it may not receive qualified bids within the Maximum Cost, the Contracting Party may bid the applicable Project Phase utilizing a base bid and add/alternate structure for portions of the applicable Project Phase that could be eliminated or redesigned to come within the Maximum Cost, and in the event the amount of the bids are greater than the Maximum Cost, the Contracting Party may redesign and rebid the applicable Project Phase until it is within the Maximum Cost, subject to the requirements of Section 11.5 below. The Oversight Committee shall be consulted if the need to materially redesign portions of the applicable Project Phase becomes necessary due to the actual costs exceeding the cost estimates.

11.2 Construction Contract. Each Contracting Party shall enter into a contract (a “*Construction Contract*”) for construction of its applicable Project Phase with a Contractor selected by the Contracting Party. The Construction Contracts are not required to be in any specific form, but shall be subject to Oversight Committee review for purposes of confirming compliance with this Agreement, such review to be completed within five (5) business days following receipt of the Construction Contract by the Oversight Committee. Each Construction Contract must contain provisions acknowledging that no Party other than the Contracting Party is obligated to the Contractor for payment or otherwise under the Construction Contract. The Construction Contract shall also (a) prohibit third-party beneficiaries other than the City, and ATC with respect to the Annex Phase, which shall be specifically designated as a third-party beneficiaries; (b) not be assignable by the Contractor; and (c) provide the City, and ATC with respect to the Annex Phase, access to the applicable Project Phase at all reasonable times for inspection purposes. The Contractor shall acknowledge therein that it has read this Agreement and understands that the City, and ATC with respect to the Annex Phase, have certain rights hereunder pursuant to the Construction Contract.

11.3 Assurances. Prior to the commencement of construction, the Contracting Party shall cause the Contractor to provide the City and County with respect to both Project Phases, and ATC with respect to the Annex Phase, with (i) a performance bond in a sufficient amount to ensure the completion of construction of the applicable Project Phase and in accordance with and in satisfaction of Section 212.073 of the Texas Local Government Code, reflecting the City and County as beneficiaries thereunder (it being understood and agreed that the Contracting Party itself shall have no obligation to provide any bond other than the bond to be provided by Contractor), (ii) a payment bond as security for all persons supplying labor and material in the performance of the Construction Contract, executed by a corporate surety, licensed pursuant to the Texas Insurance Code in the full amount of the contract price and attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety; and (iii) insurance certificates evidencing the insurance requirements set forth in **Exhibit "F"** to this Agreement. City and County shall be named as additional insureds on the Commercial General Liability Insurance, All Builder's Risk Insurance/Installation Floater, and Umbrella Liability Insurance. The foregoing shall remain in force and effect throughout the course of construction of the applicable Project Phase.

11.4 Construction Execution. The Contracting Party shall use commercially reasonable efforts to cause the Contractor to construct the applicable Project Phase, in accordance with the Construction Documents, in a diligent and continuous fashion until Substantial Completion (as defined below in Section 11.7). Construction of the applicable Project Phase shall at all times be performed in a good and workmanlike manner using only new, high-quality materials as shall be specified in the Construction Documents. The Director of the City's Center City Development Office, in conjunction with the City's TCI Department, shall have the authority to approve completion of the applicable Project Phase on behalf of the City. Each Project Phase may be designed and built in stages as the Contracting Party may determine subject to the City's reasonable approval, provided that all stages must be completed to complete the applicable Project Phase. The Contracting Party's obligation to complete the applicable Project Phase shall be suspended or delayed as reasonably necessary as a result of any failure or delay in obtaining any of the approvals required for the applicable Project Phase. During construction of the applicable Project Phase, the Contracting Party shall provide the other Parties, upon request, status reports showing the percentage of completion of the work and expenditures incurred in connection with the construction of the applicable Project Phase, all in accordance with current project management practices.

11.5 Change Orders. Any material variations from the Construction Documents shall require approval by the Oversight Committee, which approval shall not be unreasonably withheld, conditioned or delayed. In the event material change orders are necessary in connection with the construction of the applicable Project Phase, the Contracting Party shall submit the same to the Oversight Committee for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon written approval of any change order by both the Contracting Party and the Oversight Committee, the applicable Project Phase costs shall be adjusted accordingly. For purposes of this Section 11.5, "material" shall be defined in relation to the Annex Phase as variations or change orders that (a) affect the exterior of the building, or (b) would increase the cost of the Annex Phase by more than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). For purposes of this Section 11.5, "material" shall be defined in relation to the Theater Phase as variations or change orders that (a) affect the exterior

of the building, (b) affect the appearance or function of the interior of the theater hall, or (c) would increase the cost of the Theater Phase by more than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

11.6 Inspections. Each Project Phase shall be accessible at all reasonable times to the City's designee for inspection during construction of such Project Phase. Each Contracting Party acknowledges that any inspections performed by City during the course of construction for purposes of this Agreement (as opposed to routine building and construction inspections performed by City for permitting and acceptance purposes common to all similar construction projects) are for the benefit of the City only and may not be relied upon by others, be claimed by the Contracting Party as an approval by the City, a permit granted by the City, a waiver by the City, or used for any purpose by the Contracting Party, the Contractor or any third party. Each Contracting Party further acknowledges that the Contracting Party and Contractor are required to perform their own inspections, and inspections by the City do not address any obligations of the Contracting Party or others. Subject to the foregoing, the City shall promptly notify the Contracting Party of any defects or non-conformances discovered during any City inspection.

11.7 Substantial Completion. "***Substantial Completion***" or "***Substantially Complete***" means the point of progress of the applicable work and improvements, in accordance with the Construction Documents and all Applicable Laws, is sufficiently complete that, subject only to minor punch-list type items, (A) such improvements can be occupied lawfully and utilized for the intended purpose, (B) a certificate of occupancy (either permanent or temporary) has been issued by the City of San Antonio, and (C) a certificate has been provided by the Project Architect to the effect that the improvements are "substantially completed."

11.8 Final Completion. "***Final Completion***" with respect to a Project Phase means the completion of such Project Phase substantially in accordance with the Construction Documents, as certified by the Project Architect pursuant to a certificate of final completion, including, but not limited to, the completion of the punch list type items referred to in the definition of the term "Substantial Completion." Substantial Completion of such work is a prerequisite to Final Completion of same.

## **ARTICLE 12. SMALL, MINORITY AND WOMEN-OWNED BUSINESSES**

12.1 City Small Business Economic Development Advocacy Program. City has adopted a Small Business Economic Development Advocacy Ordinance (as amended and restated in Ordinance No. 2016-05-19-0367, also referred to as "***SBEDA***" or "***the SBEDA Program***"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. If a Project Phase receives City funding under this Agreement, it shall be subject to Affirmative Procurement Initiatives (as defined in the SBEDA Program) and goals ("***Goals***") as determined by the SBEDA Goal Setting Committee; provided, however, that (a) such Affirmative Procurement Initiatives and Goals shall only apply to the portion of the applicable Project Phase funded by the City, and (b) the selection of the Project Architect and Project Manager(s) shall be exempt from any such Affirmative Procurement Initiatives or Goals. In order to establish such Affirmative Procurement Initiatives and Goals, each Contracting Party shall, upon completion of the scope of work for design and for construction and prior to issuing bids or solicitations for any prime or subcontractors, submit a

copy of the scope of work to EDD's Small Business Office (the "**SBO**"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative, relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (the "**Plan**").

12.2 County SMWBE Policy. Each Contracting Party shall use its best efforts to comply with Administrative Policy No. 8, Small, Minority, and Women-Owned Business Enterprise (SMWBE) Program for the procurement of all County funded Commodities, Equipment, Services, and Maintenance and Construction, in the award of contracts, subcontracts and other opportunities in the construction of the Alameda Project. The Minority and Women Business Enterprise Participation Goals for the Alameda Project are set out in Exhibit "G" attached hereto and incorporated for all purposes.

12.3 Nondiscrimination. As a condition of entering into this Agreement, each Contracting Party represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section III.C.1 of the SBEDA Ordinance. As part of such compliance, neither of the Contracting Parties shall discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. Each Contracting Party shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace (as defined in the SBEDA Ordinance). Each Contracting Party understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

### **ARTICLE 13.           DEFAULTS AND REMEDIES**

13.1 Each of the following will be an "*Event of Default*":

A. A Party fails to perform or observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Agreement, which failure continues for more than thirty (30) days following written notice of such failure to such Party, or such longer period of time as may be reasonable under the circumstances, if such failure cannot be cured within thirty (30) days because of the nature of the default and during such thirty (30) day period curative action has commenced and is thereafter pursued diligently by such Party.

B. A Party submits a report, application, certificate or other information required under the terms of this Agreement which intentionally or knowingly contains any false or misleading statements of material facts.

C. A Contracting Party fails to achieve one of the Development Milestones within the time period required by this Agreement, as such time period may be extended by agreement of the Oversight Committee, within sixty (60) days following written notice of such failure to such Party, or such longer period of time as may be reasonable under the circumstances, if such failure cannot be cured within sixty (60) days because of the nature of the default and during such sixty (60) day period curative action has commenced and is thereafter pursued diligently by such Party.

D. Either of the Contracting Parties makes a general assignment for the benefit of creditors.

E. A petition under any section or chapter of federal bankruptcy laws or under any similar law or statute of the United States or any state thereof is filed by or against either Contracting Party and is not dismissed, withdrawn or otherwise concluded without adjudication within seventy-five (75) days after being filed.

F. Either Contracting Party admits in writing its inability to pay its debts when due.

G. A bill in equity or other proceeding for the appointment of a receiver of either Contracting Party or other custodian for either Contracting Party's business or assets is filed and consented to by either Contracting Party.

H. A receiver or other custodian (permanent or temporary) of either Contracting Party's assets or property, or any part thereof, is appointed by any court of competent jurisdiction.

I. Proceedings for a composition with creditors under any state or federal law have been instituted by or against either Contracting Party.

J. A final judgment representing a claim or charge against the assets of either Contracting Party in an amount in excess of One Millions Dollars (\$1,000,000.00) remains unsatisfied or of record for one-hundred eighty (180) days or longer (unless a supersedeas or other appeal bond is filed).

K. Either Contracting Party is dissolved.

L. Execution is levied against either Contracting Party's business or its property.

M. Either Contracting Party shall cease to pursue diligently the construction of the their Project Phase for more than sixty (60) consecutive days following the construction commencement date for any cause other than by reason of force majeure, and such cessation has the effect of delaying the scheduled completion date under the Construction Contract by more than one (1) year.

N. Either Contracting Party shall fail, after funding by the Disbursing Agent of a Disbursement Request to pay or cause payment to the general contractor, Project Architect, or others engaged by such Contracting Party in the design and construction of their Project Phase



amounts due and owing to be paid out of such funding and not disputed by the Contracting Party in connection therewith for a period of more than thirty (30) days.

O. Either Contracting Party shall be in default under the Master Lease or Sublease.

13.2 Remedies for Uncured Event of Default. After delivery of any required notice and expiration of any applicable cure period, any non-defaulting Party may pursue against the defaulting Party, at its option and without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to it under this Agreement and/or at law or in equity. The rights and remedies provided in this Agreement shall be in addition to and cumulative of all other rights and remedies available to a Party, and the pursuit of one remedy will not be an election of a sole remedy and will not preclude the right to pursue any or all other available remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

13.3 Takeover Rights.

A. If ATC fails to commence construction on the Theater Phase by December 31, 2018, ATC fails to achieve Substantial Completion of the Theater Phase by December 31, 2019, or this Agreement is terminated with respect to ATC for any reason, then TPR shall have the option of electing to assume the role of the Contracting Party with respect to the Theater Phase by providing written notice to the other Parties. Notwithstanding the foregoing, any assumption by TPR under this provision shall at all times be subject to the approval of the Oversight Committee.

B. If TPR fails to commence construction of the Annex Phase by December 31, 2018, TPR fails to achieve Substantial Completion of the Annex Phase by August 31, 2020, or this Agreement is terminated with respect to TPR for any reason, then ATC shall have the option of electing to assume the role of the Contracting Party with respect to the Annex Phase by providing written notice to the other Parties. Notwithstanding the foregoing, any assumption by ATC under this provision shall at all times be subject to the approval of the Oversight Committee.

13.4 Mediation. In the event of a dispute by the Parties to this Agreement which cannot, within a reasonable time, be resolved, the Parties agree to submit the disputed issue to non-binding mediation. The Parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within three (3) days after the mediation is initiated or ten (10) days after mediation is requested. The Parties participating in the mediation shall share the costs of the mediation proportional to the number of Parties participating. The provisions hereof shall survive any termination of this Agreement.

13.5 Nonwaiver. Unless otherwise specifically provided for in this Agreement, a waiver by any 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 any 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. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges or remedies to be always specifically preserved hereby.

#### **ARTICLE 14. RECORDS, DOCUMENTS AND AUDIT RIGHTS**

14.1 Access. The Parties shall have access to final documents related to the renovation of the Alameda Property and shall receive copies of all executed documents upon request during the Retention Period specified below.

14.2 Records Retention. Each Party shall retain any and all documents related to the design and construction of the Alameda Project pursuant to this Agreement for a period of four (4) years from the date of the execution of this Agreement (the “*Retention Period*”). If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning this documentation, each Party shall retain the records until the resolution of such litigation or other such questions.

14.3 Audits. The City and County shall have the right to examine and/or audit the books and records of the Contracting Parties pertaining to the design and construction of the Alameda Project (at the auditing Party’s expense) during normal business hours and upon not less than three (3) business days’ notice to the applicable Contracting Party(ies).

#### **ARTICLE 15. NOTICES**

15.1 Formal Notice. Any notice, demand, or other communication required to be given or to be served upon any Party under this Agreement shall be in writing and delivered to the person to whom the notice is directed, either: (i) in person with confirmation; (ii) by United States Mail, as a registered or certified item with return receipt required; (iii) delivered by delivery service (including any express mail or overnight delivery service); or (iv) by confirmed facsimile or email transmission. Notices, demands, or other communications delivered by mail shall be deemed given and received when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper, addressed properly, with proper postage affixed. Any notice, demand, or other communication given other than by certified or registered mail, return receipt requested, shall be deemed to have been given and received when delivered to the address of the Party to whom it is addressed as stated below:

To City:                      City of San Antonio  
                                    P.O. Box 839966  
                                    San Antonio, Texas 78283-3966  
                                    Attn:

                                    With Copy to:  
                                    City of San Antonio  
                                    P.O. Box 839966  
                                    San Antonio, Texas 78283-3966

Attn: City Attorney's Office

To County: Bexar County Commissioners Court  
Attn: Bexar County Judge  
Paul Elizondo Tower  
101 W. Nueva St., Suite 1000  
San Antonio, Texas 78205

With Copy To:

Office of the Bexar County Manager  
Attn: David Smith  
Paul Elizondo Tower  
101 W. Nueva Street, Suite 1000  
San Antonio, Texas 78205  
Email: david.smith@bexar.org

To TPR: Texas Public Radio  
Attn: Joyce D. Slocum  
8401 Datapoint Drive, Suite 800  
San Antonio TX 78229  
Email: joyce@tpr.org

With Copy To:

Golden Steves & Gordon LLP  
Attn: Karl P. Baker  
300 Convent Street, Suite 2600  
San Antonio, Texas 78205  
Email: kbaker@goldensteves.com

To ATC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to:

Pete Cortez  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15.2 Changes. A change of address or other contact information for any Party may be given by written notice as provided above.

## **ARTICLE 16. RECOGNITION PLAQUE**

City and County shall approve the design and wording of a plaque recognizing the support of the members of the San Antonio City Council and Bexar County Commissioners Court, in completing the Alameda Project. City and County shall agree on the location for the plaque on the Alameda Theater.

## **ARTICLE 17. MISCELLANEOUS**

17.1 County Reimbursement from TIRZ. The Parties recognize that County is entitled to reimbursement of its total commitment of TEN MILLION DOLLARS (\$10,000,000.00) towards the Alameda Project as set forth in the Houston Street TIRZ-Bexar County, Interlocal Agreement authorized under City Ordinance 2015-10-15-0881.

17.2 Assignment. This Agreement cannot be assigned by any Party without the written consent of the non-assigning Parties.

17.3 Force Majeure. In the event any Party is unable in whole or in part by Force Majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed under this Agreement, excluding monetary obligations, the time for the performance of such covenant, agreement, obligation or undertaking so delayed shall be extended for the period of such delay. The Party claiming Force Majeure will make reasonable attempts to remedy the effects of the Force Majeure and continue performance under this Agreement with all reasonable dispatch. The term "*Force Majeure*" as employed in this Agreement shall include acts of God, acts of terrorism, strikes, lockouts or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, repairs to machinery or pipes, the delays of carriers, shortages of fuel, labor or building materials including by reason of governmental regulation, acts of public authorities, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to overcome.

17.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior oral or written agreement. Any alterations, additions or deletions to the provisions herein shall only be by amendment in writing executed by both Parties; however, any amendments required for the sole purpose of pursuing or acquiring tax credits, including new market and historic, may, for the purpose of City approval, be made by the City Manager or her designee in consultation with the City Attorney's Office.

17.5 Binding Agreement. 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.

17.6 No Joint Venture; No Partnership. Nothing contained in this Agreement is intended by the Parties to create any form of joint venture or partnership, and any implication to

the contrary is hereby expressly disavowed by all Parties. It is understood and agreed that this Agreement does not create a joint enterprise of any kind.

17.7 Third Party Beneficiaries. There shall be no third-party beneficiaries to this Agreement.

17.8 Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. Proper venue for any dispute or litigation shall be only in Bexar County, Texas.

17.9 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.

17.10 Invalid Provisions. If any clause or provision of this Agreement is held invalid, illegal or unenforceable, then it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision herein and that the remainder of this Agreement shall be construed as valid.

17.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, all of which taken together shall constitute one single Agreement among the Parties.

[Signature Page(s) to Follow]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized officers on the dates set forth below.

For the **City of San Antonio**:

\_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

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

For **Texas Public Radio**:

\_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

For **Alameda Theater**  
**Conservancy**:

\_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

For Bexar County

By: \_\_\_\_\_  
NELSON W. WOLFF  
County Judge

ATTEST:

\_\_\_\_\_  
GERARD RICKHOFF  
County Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
PATRICIA G. PROWSE  
Assistant Criminal District Attorney  
Civil Section

APPROVED AS TO FINANCIAL CONTECT:

\_\_\_\_\_  
SUSAN YEATTS  
County Auditor

\_\_\_\_\_  
DAVID SMITH  
County Manager

**EXHIBIT “A”**  
**LEGAL DESCRIPTION OF THE ALAMEDA PROPERTY**

[insert]



**EXHIBIT “B”**  
**SITE PLAN OF ALAMEDA PROPERTY**

[insert - shows divisions between Theater Building, Annex, and Casa de Mexico]

**EXHIBIT “C”  
FUNDING SCHEDULE**

**Annex Phase Disbursement Fund Contribution Schedule**

<b>Date</b>	<b>County</b>	<b>TPR</b>
October 31, 2017	[\$7,516,135]	\$500,000
March 31, 2018		\$2,000,000
July 31, 2018		\$2,500,000
Total	[\$7,516,135]	\$5,000,000

**Theater Phase Disbursement Fund Contribution Schedule**

<b>Date</b>	<b>County</b>	<b>City</b>
October 31, 2017	[\$1,483,865]	\$900,000
October 31, 2018		\$8,100,000
Total	[\$1,483,865]	\$9,000,000

**EXHIBIT “D”  
DEVELOPMENT MILESTONES**

**Annex Phase Development Milestones**

<b>Milestone</b>	<b>Date</b>
Construction Commences	No later than December 31, 2018
Substantial Completion of Construction	No later than December 31, 2019

**Theater Phase Development Milestones**

<b>Milestone</b>	<b>Date</b>
Construction Commences	No later than December 31, 2018
Substantial Completion of Construction	No later than August 31, 2020

**EXHIBIT "E"**  
**DISBURSEMENT REQUEST FORM**

Requisition No. \_\_\_\_\_

Contracting Party: \_\_\_\_\_

Project Disbursement Fund: \_\_\_\_\_

**REQUISITION FOR DISBURSEMENT OF DEVELOPMENT COSTS**

1. All terms capitalized herein shall have the same meaning as in that certain Funding and Development Agreement for the Alameda Theater (this "***Agreement***") entered into by and among the City of San Antonio ("***City***") Bexar County ( "***County***"), The Alameda Theater Conservancy ("***ATC***"), and Texas Public Radio ("***TPR***"). The sums requisitioned hereunder are for the payment of development costs for the Contracting Party's Project Phase. The expenditures for which money is requested hereby have been or will be made and properly recorded on the undersigned's books. The Contracting Party shall keep its books and records relating to amounts for which it seeks reimbursement or payment at its regular business office, which the City and County may examine and/or audit (at the examining party's expense) at all reasonable times during normal business hours upon reasonable prior written notice to Contracting Party.

2. Contracting Party submits the following information for the following sums which are requisitioned for payment:

<u>Item No.</u>	<u>Budgetary Category</u>	<u>Contract Amount</u>	<u>Payee's Invoice No.</u>	<u>Name, Address of Payee</u>	<u>Purpose</u>	<u>Invoice Total</u>	<u>% Completion</u>
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[ADD ADDITIONAL SHEETS AS NEEDED]

3. This Requisition is for development costs which have not been the basis of a prior or contemporaneous Requisition, or if previously requested, were not paid out of the Disbursement Fund.

4. The work, material, and equipment or other property covered by this Requisition have been performed or delivered to the Contracting Party.

5. Attached are copies of all invoices for which reimbursement or payment is sought together with proof of payment therefore, if applicable.

6. The undersigned certifies that, with respect to all items covered by this Requisition, it has complied with the provisions of the Agreement. Submitted herewith are certificates or documents, if any, required to be submitted pursuant to the Agreement.

7. Attached hereto as Rider 1 are Affidavits and Partial Waivers of Lien executed by those consultants or contractors who could otherwise be entitled to a lien against the Project, if applicable.

8. Attached hereto as Rider 2 are AIA Forms G702 and G703.

9. The schedules and attachments to this Requisition are true and correct to the best of the undersigned's knowledge.

**CONTRACTING PARTY:**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**APPROVED:**  
BEXAR COUNTY, TEXAS

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**APPROVED:**  
CITY OF SAN ANTONIO

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Rider 1 to Exhibit “E”**

**AFFIDAVIT AND [PARTIAL] WAIVER OF LIEN<sup>1</sup>**

THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared, \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ (hereinafter called “**Contractor**”) and who, being duly sworn, upon his oath declares and, on behalf of the Contractor, acknowledges as follows:

1. I am the duly authorized agent for the Contractor who has authorized me to make this affidavit, to enter into the agreements and to grant the lien waivers herein set forth, in its behalf and as its act and deeds, and all of the recitations herein are true and correct.
2. Contractor has supplied materials and performed labor in connection with the design of improvements upon the Project.
3. In consideration of and conditioned upon receipt of \$\_\_\_\_\_, Contractor hereby waives and releases any and all liens, rights, and interests (whether choate or inchoate and including, without limitation, all mechanic’s and materialman’s liens under the Constitution and statutes of the State of Texas) owned, claimed, or held by Contractor in and to the land and improvements constituting part of the Project [**but only as they relate to the amounts paid hereunder or previously paid. All lien rights with respect to unpaid amounts are reserved.**]
4. Contractor has paid all suppliers of material, sub-contractors, equipment lessors and others furnishing materials, labor, or equipment with respect to the work for which payment is requested on this Requisition and, to the best of Contractor’s knowledge, there is no claim pending or threatened by any such person with respect to work described in Requisition No. \_\_\_\_\_.
5. Contractor agrees to indemnify and hold the Contracting Party, the City and the County harmless from any and all liens and claims of suppliers of material, subcontractors, equipment lessors and any others furnishing materials, labor or equipment in connection with the development, design and construction of the Project as defined in the Agreement between the Contracting Party, the City and the County.

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<sup>1</sup> Only required to be submitted by consultants and contractors who could be entitled to a lien against the Project, such as surveyors.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me by the said \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to certify which witness my hand  
and seal of office.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the State of Texas

(Printed Name of Notary) \_\_\_\_\_

My commission expires: \_\_\_\_\_

THE STATE OF TEXAS

§

§

COUNTY OF BEXAR

§

This instrument was acknowledged before me on the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_  
corporation, on behalf of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the State of Texas

(Printed Name of Notary) \_\_\_\_\_

My commission expires: \_\_\_\_\_

**Rider 2 to Exhibit “F”**

DEVELOPMENT COST PAYMENT/REIMBURSEMENT REQUEST

[Attach AIA G702 and G703 Forms]



**EXHIBIT “F”**  
**CONTRACTING PARTY INSURANCE REQUIREMENTS**

1. **Commercial General Liability Insurance** (combined single Limit for Bodily Injury and Property Damage Liability). This policy (the “**CGL Policy**”) shall be written on an occurrence basis, state that the insurance is primary insurance as regards any other insurance carried by the Contracting Party, and shall be in such amount and such policy limits so that the coverage and limits are adequate to maintain the Umbrella Policy described below without gaps in coverage between the CGL Policy and the Umbrella Policy and the following minimum policy limits:

- a. \$2,000,000 General Aggregate
- b. \$2,000,000 Products/Completed Operations Aggregate
- c. \$2,000,000 Personal Injury
- d. \$2,000,000 Each Occurrence

Coverage provided shall include the following:

- (1) Premises/operations,
- (2) Contractor’s Protective for Contractor’s liability arising out of the hire of Subcontractors (Independent Contractors),
- (3) Aggregate Limits of Insurance Per Project,
- (4) Broad Form Contractual Liability specifically in support of, but not limited to, the indemnity provisions of the Contract Documents,
- (5) Personal Injury Liability with Employment and Contractual exclusions removed,
- (6) Broad Form Property Damage including Completed Operations,
- (7) Product/Completed Operations for a period of two years following acceptance of Contractor’s Work,
- (8) All other “Broad Form CGL” coverages, without limitation, and
- (9) Explosion, collapse, and underground damage to property of others (XCU) where such exposures exist.

2. **All Builder’s Risk Insurance / Installation Floater.** This All Risk Builder’s Risk Insurance (“**Builder’s Risk Policy**”), insuring the interest of the Contracting Party, the County, the City, ATC (if applicable) and the Contractor as their interest may appear, set forth in the single policy, including coverage against collapse and the coverage available under the so-called Installation Floater, written on the completed value basis in an amount not less than the Contract Price of Contractor’s contract (including subcontracts) and all authorized and approved Change Orders. Coverage will include all materials, supplies and equipment that are specifically intended for installation into the Work while such materials, supplies and equipment are temporarily located off the Site of the Work on the purpose of repair, adjustment or storage at the risk of one of the insured parties. Coverage will not include any tools or clothing of workmen or of any tools, equipment,

protective fencing, scaffolding, temporary structures, forms and equipment, or other property owned, rented, or used by Contractor, any Subcontractors or Subcontractors and used in the performance of the Work, unless the value of such items is included in the Cost of the Work and such items are specifically identified in the contract documents.

3. **Workers' Compensation/Employers' Liability.** Statutory Workers' Compensation Insurance Coverage [as defined in Sec. 402.011(44) of the Texas Labor Code (1995)] with statutory limits for all of Contractor's workers at the site of the project. In case any work is sublet, the Contractor shall require all Subcontractors similarly to provide Workers' Compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the Contractor, or, when applicable, Contractor has complied with the requirements for joint agreements with independent contractors under Sections 406.141- 406.145, Texas Labor Code (1995).

Additionally, employer's liability insurance policy affording protection of not less than the following amounts:

\$1,000,000	Bodily Injury by Accident — Each Accident
\$1,000,000	Bodily Injury by Disease — Each Employee
\$1,000,000	Bodily Injury by Disease — Policy Limit

4. **Umbrella Liability Insurance.** An excess or umbrella liability insurance policy (the "**Umbrella Policy**") providing coverage in excess of the limits specified above (except for Workers' Compensation Insurance). Such policy shall have the same inception and expiration dates as the underlying liability policies and coverage no less broad than those in the primary policies or program. Minimum limits shall be:

\$50,000,000	Each occurrence
\$50,000,000	Annual aggregate

When commercially available, all such policies described above shall be written on an Occurrence (not Claims made) basis. In addition, the foregoing insurance coverages may be provided under an Owners Controlled Insurance Policy ("**OCIP**") acceptable to the City and County, such acceptance not to be unreasonably withheld, conditioned, or delayed.

5. **Error and Omissions Insurance.** An owner's protective professional indemnity umbrella policy ("**OPPI Policy**") specific to the Project. The OPPI Policy shall be in the amount of \$5,000,000 and shall have an extended reporting period two (2) years after the date of Final Completion.

**EXHIBIT “G”**  
**MWBE BUSINESS ENTERPRISE PARTICIPATION GOALS**

1. The Contracting Party will use good faith efforts to cause local, minority owned (“MBE”) and women owned (“WBE”) business enterprises (collectively, “MWBE”) to be engaged in the construction of the Alameda Project or at least up to the levels of the Construction Goals described below.

2. The Contracting Party has established the following participation percentages as its minimum Construction goals based upon the total dollar amounts funded by the County for the applicable Project Phase (the “Construction Goals”):

(1)	MWBE	20%
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3. The Construction Goals are percentages of the total dollar amounts funded by the County of all procurement and contracts (other than those available from limited sources or suppliers) for the applicable Project Phase, but may not necessarily be achieved in each trade and may be met by general contractors or subcontractors meeting the definitions set forth below. Such Construction Goals shall not apply to the extent of funding for either Project Phase that is provided by any party other than the County.

4. The Contracting Party will use good faith efforts to meet and, if possible, exceed the minimum percentage for Construction Goals.

5. The Contracting Party will use good faith efforts to engage qualified MWBE’s who are certified by the South Central Texas Regional Certification Agency in third-party contracts for services.

a. Women’s Business Enterprise or WBE. A sole proprietorship, partnership or corporation that is locally owned, operated, and controlled by a woman or women with at least 51% control. The woman member(s) must have operational and managerial control, interest in capital, EXPERTISE and earnings commensurate with the percentage of ownership.

b. Minority Business Enterprise or MBE. A sole proprietorship, partnership or corporation that is locally owned, operated, and controlled by a minority group member(s) with at least 51% control. The minority group member(s) must have operational and managerial control, interest in capital, EXPERTISE and earnings commensurate with the percentage of ownership.

c. Certification. Certification of MWBE qualification will be performed by the South Central Texas Regional Certification Agency.

6. Notwithstanding the goals outlined above, the Contracting Party shall always have the right to accept the lowest qualified bid.

7. The Contracting Party agrees that it will provide quarterly reports to the COUNTY’S MWBE Committee on its progress in connection with the provisions of this Exhibit “G”.

**EXHIBIT “H”  
MASTER LEASE**

[TO BE ATTACHED]

**EXHIBIT “T”  
RECOGNITION AGREEMENT**

[TO BE ATTACHED]