

STATE OF TEXAS
COUNTY OF BEXAR

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**FUNDING AGREEMENT
FOR ECONOMIC
DEVELOPMENT ACTIVITIES**

This Funding Agreement For Economic Development Activities (this "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager and the San Antonio Economic Development Corporation (hereinafter referred to as "SAEDC"), acting by and through its Executive Director, both of which may be referred to herein 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.

I. DEFINITIONS

1.1 As used-in this Agreement, the following terms shall have meanings as set out below:

1.1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.1.2 "SAEDC" is defined in the preamble of this Agreement and includes its successors.

1.1.3 "Director" shall mean the acting director of City's Economic Development Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the Term of this Agreement shall commence upon execution of this agreement and terminate upon completion of the final payment.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 SAEDC agrees to provide the services described in this Article III. entitled "Scope of Services" in exchange for the compensation described in Article IV. entitled "Compensation."

3.2 GRANTEE shall collaborate with the City and other community economic development partners in focusing on the achievement of the following goals during the Term of this Agreement:

- A. GRANTEE shall establish a San Antonio Military Medical Innovation (SAMMI) Director position, in alignment with Life Science Working Group's recommendations.
- B. GRANTEE shall hire and manage this person ("SAMMI Director") as a full-time contract employee of the SAEDC; this position shall report to the Executive Director.
- C. GRANTEE shall ensure the SAMMI Director is responsible for identifying and facilitating collaborations that help meet military medical mission requirements and create commercialization opportunities for San Antonio.

- D. GRANTEE shall require that the SAMMI Director have knowledge of military medical research activities and structure, community resources and assets, Department of Defense tech transfer process, commercialization pathways, and funding opportunities.
- E. GRANTEE shall require that the SAMMI Director have experience in the life science industry, commercializing a medical device/technology and/or working for the military in a medical R&D capacity.
- F. GRANTEE shall ensure that the SAMMI Director serve as a neutral party as well as a resource to the community at large.
- G. GRANTEE shall enter into an employment contract with the SAMMI Director and ensure the SAMMI Director complies with said employment contract.
- H. GRANTEE shall ensure the SAMMI Director is available to provide periodic updates to City staff, City Council, the Life Science Working Group and other community groups as requested by the City.

3.3 All work performed by SAEDC hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by SAEDC, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should SAEDC's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO SAEDC

4.1 In consideration of SAEDC's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay SAEDC an amount equal to exceed THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$300,000.00) as total compensation, to be paid to SAEDC as follows:

- A. ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000) shall be payable to SAEDC within 30 days following execution of the Funding Agreement but no later than September 30, 2019.
- B. ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000) shall be payable to SAEDC on June 30, 2020.
- C. ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000) shall be payable to SAEDC on June 30, 2021.

4.2 No additional fees or expenses of SAEDC shall be charged by SAEDC nor be payable by City with respect to the SAMMI Director. The parties hereby agree that all compensable expenses of SAEDC to be paid for with City funds with respect to the SAMMI Director have been provided for in the total payment to SAEDC as specified in section 4.1 above. Total payments to SAEDC cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore. The City recognizes that the SAEDC may raise additional funding through third party contributions or grants to cover additional expenses and projects pertaining to SAMMI and/or the SAMMI Director approved by the SAEDC Board and by City Council if required.

4.3 Final acceptance of work products and services performed at the request of the City require written approval by City. The approval official shall be Director. City shall not be obligated or liable under this Agreement to any party, other than SAEDC, for the payment of any monies or the provision of any goods or

services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by SAEDC for the City at the request of the Director pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by SAEDC.

5.2 SAEDC understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 SAEDC and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 SAEDC shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, SAEDC shall retain the records until the resolution of such litigation or other such questions. SAEDC acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require SAEDC to return said documents to City prior to or at the conclusion of said retention.

6.3 SAEDC shall notify City, immediately, in the event SAEDC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SAEDC understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon THIRTY (30) calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

7.4 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as

provided in Article XII. Assignment and Subcontracting.

7.5 Defaults With Opportunity for Cure. Should SAEDC default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. SAEDC shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAEDC fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Economic Development Corporation to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new SAEDC against SAEDC's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

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

7.7 Regardless of how this Agreement is terminated, SAEDC shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by SAEDC, or provided to SAEDC, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SAEDC in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at SAEDC's sole cost and expense. Payment of compensation due or to become due to SAEDC is conditioned upon delivery of all such documents, if requested.

7.8 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SAEDC shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by SAEDC to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by SAEDC of any and all right or claims to collect moneys that SAEDC may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.9 Upon the effective date of expiration or termination of this Agreement, SAEDC shall "cease all operations of work being performed by SAEDC or any of its subcontractors pursuant to this Agreement.

7.10 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue SAEDC for any default hereunder or other action.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by

such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio Attn: Director
Economic Development Dept.
P.O. Box 839966
San Antonio, TX 78283

If intended for SAEDC, to:

SAEDC
Attn: Executive Director
P.O. Box 839966
San Antonio, TX 78283

IX. RESERVED

X. INSURANCE

10.1 The parties acknowledge that SAEDC's insurance consultant, McGriff, Siebels & Williams, Inc., has confirmed that SAEDC's existing liability insurance policy will cover the SAMMI Director. The City has previously been provided with and has approved the Certificate for such policy. As such, except as may be required pursuant to Section 10.2 below, no additional liability insurance shall be required with respect to the SAMMI Director but SAEDC shall cause such liability policy (or renewals thereof) to remain in effect throughout the term of this Agreement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 SAEDC's financial integrity is of interest to the City-; therefore, subject to SAEDC's right to maintain reasonable deductibles in such amounts as are approved by the City, SAEDC shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAEDC's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by AM. Best Company and/or otherwise acceptable to the City, in the minimum amounts required by state statute and the SAEDC governing board.

SAEDC SHALL BE INSURED TO THE EXTENT REQUIRED BY STATE LAW

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). SAEDC shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. SAEDC shall pay any costs incurred resulting from said

changes.

10.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, SAEDC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if SAEDC knows of said change in advance, or ten (10) days' notice after the change, if the SAEDC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

10.6 If SAEDC fails to maintain the aforementioned insurance, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of SAEDC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon SAEDC's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order SAEDC to stop work hereunder, and/or withhold any payment(s) which become due to SAEDC hereunder until SAEDC demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which SAEDC may be held responsible for payments of damages to persons or property resulting from SAEDC's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that SAEDC's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

XI. RESERVED

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 SAEDC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of SAEDC. SAEDC, its employees or its subcontractors shall perform all necessary work.

12.2 RESERVED.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of SAEDC. City shall in no event be obligated to any third party, including any subcontractor of SAEDC, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, SAEDC may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, SAEDC shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SAEDC, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should SAEDC assign,

transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of SAEDC shall thereupon cease and terminate, in accordance with Article VII Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by SAEDC shall in no event release SAEDC from any obligation under the terms of this Agreement, nor shall it relieve or release SAEDC from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 SAEDC covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that SAEDC shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and SAEDCs; that the doctrine of respondent superior shall not apply as between City and SAEDC, its officers, agents, employees, contractors, subcontractors and SAEDCs, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and SAEDC. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the SAEDC under this Agreement and that the SAEDC has no authority to bind the City.

XIV. RESERVED

XV. CONFLICT OF INTEREST

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

15.2 Pursuant to the subsection above, SAEDC warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. SAEDC further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

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

XVII. SEVERABILITY

17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such

invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XIII. RESERVED

XIX. COMPLIANCE

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

XX. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article **XVI**. Amendments. 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.

XXI. LAW APPLICABLE

21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

24.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXV. INCORPORATION OF EXHIBITS

25.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

XXVI. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

26.1 The following provisions shall only apply to Grantee in the event that it meets the definition of Company found below:

26.2 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

26.3 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli- controlled territory, but does not include an action made for ordinary business purposes.

26.4 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company,

including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

26.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED
IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST
ORGANIZATION**

27.1 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

XXVIII. ENTIRE AGREEMENT

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

EXECUTED and AGREED to this ____ day of June.

CITY OF SAN ANTONIO

SAN ANTONIO ECONOMIC
DEVELOPMENT CORPORATION

Assistant City Manager

Ed Davis
Executive Director

Approved as to Form:

ATTEST:

Assistant City Attorney

Leticia Vacek, City Clerk