

FIRST AMENDMENT TO THE FUNDING AGREEMENT FOR THE WITTE MUSEUM

FOR VALUE RECEIVED, the receipt and sufficiency of which is acknowledged, this First Amendment to the Funding Agreement ("First Amendment") is entered into by and between the City of San Antonio, a Texas Municipal Corporation in Bexar County, Texas ("City"), the Board of Directors ("Board") for Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, and The Witte Museum ("Developer"), a nonprofit corporation registered in the State of Texas, whom together may be referred to as the "Parties".

RECITALS

WHEREAS, City, Board and Developer entered into a Funding Agreement (the "Agreement") authorized by City of San Antonio Ordinance No. 2022-02-10-0093, passed and approved on February 2, 2022, and attached hereto as EXHIBIT A; and

WHEREAS, the Parties now seek to amend the terms and conditions of the Agreement in order to extend the deadline for completion of the Project; and

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. The Parties mutually agree to amend the following sections of the Agreement:

(A) The Introductory Paragraph on Page 1 of the agreement is deleted in its entirety and replaced with the following:

This Funding Agreement ("Agreement"), pursuant to City Ordinance No. 2022-02-10-0093 and subsequently amended by City Ordinance No. 2023-_____ is entered into by and between the City of San Antonio, a Texas Municipal Corporation in Bexar County, Texas ("City"), the Board of Directors ("Board") for Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, and The Witte Museum ("Developer"), a nonprofit corporation registered in the State of Texas, whom together may be referred to as the "Parties".

(B) The **BACKGROUND** section on Page 1 of the agreement is amended by adding a ninth, tenth and eleventh paragraph as follows:

WHEREAS, the enhancements being undertaken in connection with the Agreement have caused a change in elevation of the Premises, such that additional ADA improvements are required in the amount of FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$500,000.00); and

WHEREAS, the initial Agreement did not provide for capital administration fees in the amount of SEVENTY THOUSAND DOLLARS AND NO CENTS (\$70,000.00) payable to the City's Public Works Department for oversight of the Project; and

WHEREAS, on December 13, 2022, the Board approved Resolution T31 2022-12-13-01R authorizing the additional funding for the Project; and

(C) **ARTICLE II. DEFINITIONS** is amended by deleting all of subsection 2.4 and substituting the following in its place:

CITY'S REVENUE FUND – A fund established by City for the deposit of Three Million Five Hundred Seventy Thousand Dollars and No Cents (\$3,570,000) from the issuance of the Certificates of Obligation.

(D) **ARTICLE IV. THE PROJECT** is amended by deleting all of subsection 4.1 and substituting the following in its place:

PROJECT. The Project shall consist of the construction, renovation and expansion of the auditorium and related facilities at The Witte Museum, such related improvements and facilities including without limitation the expansion of the auditorium, the installation of a new roof, the construction of prep kitchen and an AV/IT room for use in connection with the auditorium. The Project shall also include ADA improvements. The Project is located at 3801 Broadway St, San Antonio, Texas, in City Council District 2, and within the TIRZ.

(E) **ARTICLE V. DUTIES AND OBLIGATIONS OF DEVELOPER** is amended by deleting all of subsection 5.2 and substituting the following in its place:

PROJECT ESTIMATION. The current budget estimates of the Project are approximately \$6,000,000.00 ("Project Estimation"). Developer shall provide all necessary funding for the Project Estimation beyond the Board's commitment of \$3,570,000.00. Developer shall provide evidence to the Board that all Project Estimation funds have been secured prior to the receipt of any funding under this Agreement. The Board is not responsible for any costs exceeding the Project Estimation unless agreed to in writing in the form of an amendment to this Agreement. All funding for the Project must be secured by June 1, 2025, otherwise this Agreement can be terminated and the funds released to the Board for reallocation in the TIRZ.

(F) **ARTICLE VII. OBLIGATIONS OF THE BOARD** is amended by deleting all of subsection 7.2 and substituting the following in its place:

PLEDGE OF FUNDS. The Board hereby pledges TIF Funds, as payment to City for debt service on Three Million Five Hundred Seventy Thousand Dollars and No Cents (\$3,570,000.00) in Certificates of Obligation issued for eligible project costs, subject to the terms and conditions in this Agreement, priority of payment schedule, and termination of the TIRZ.

(G) **ARTICLE X. REIMBURSEMENT** is amended by deleting all of subsections 10.3, 10.4 and 10.5 and substituting the following in its place:

10.3 **AVAILABLE FUNDS.** The sole source of the funds to reimburse Developer for Project Costs shall be Three Million Five Hundred Seventy Thousand Dollars and No Cents (\$3,570,000.00) held in the City's Revenue Fund and funded through the issuance of Certificates of Obligation.

10.4 **MAXIMUM REIMBURSEMENT.** Following *PRIMELink* approval, Developer shall receive in accordance with this Agreement, from the City's Revenue Fund a total maximum reimbursement of THREE MILLION FIVE HUNDRED SEVENTY THOUSAND DOLLARS AND NO CENTS (\$3,570,000.00) for eligible Project Costs.

10.5 **REIMBURSEMENT OF CITY FEES.** Departments of the City may seek reimbursement for their customary service charges and fees for management of the Project as eligible Project Costs, but only to the extent that reimbursement of such charges and fees shall not cause the Project to exceed the total maximum reimbursement of THREE MILLION FIVE HUNDRED SEVENTY THOUSAND DOLLARS AND NO CENTS (\$3,570,000.00). The City's estimated cost of capital administration services for the Project will be \$70,000.00.

2. All other terms, conditions, covenants and provisions of the Agreement are hereby continued and shall remain in effect in their original form, except for the provisions expressly modified by this First Amendment.

This First Amendment has been fully executed as of the date of signature of the last party to sign.

SIGNATURE PAGE TO FOLLOW

CITY OF SAN ANTONIO,
a Texas Municipal Corporation



Erik Walsh
CITY MANAGER
Date: 2/6/2023

BOARD OF DIRECTORS
Midtown TIRZ #31



Lori Houston
PRESIDING OFFICER
Date: 2/6/2023

THE WITTE MUSEUM



Name: Marise McDermott
Its: President and CEO
Date: 2/1/2023

APPROVED AS TO FORM:

Thomas Rice

ASSISTANT CITY ATTORNEY