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**CITY OF SAN ANTONIO AGENDA ITEM NO. 22**  
**ECONOMIC DEVELOPMENT DEPARTMENT**  
**CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Ramiro A. Cavazos, Director

**SUBJECT:** San Antonio Technology Accelerator Initiative (SATAI) Grant Agreement

**DATE:** February 24, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes an agreement between the City of San Antonio and the San Antonio Technology Accelerator Initiative (SATAI) Network, L.L.C., a single-member Texas Limited Liability Corporation acting through its fiscal agent, the Texas Research Park Foundation. The purpose of the agreement is to establish the terms and conditions of a \$500,000 grant to assist the SATAI Network in promoting and facilitating the community's technology initiatives.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Through the completion of a technology strategic plan commissioned by the City in February 2000, it was determined that an organization focused on accelerating technology-driven new enterprise growth was a necessary component in the development of San Antonio's economy. SATAI was created in April 2001, and has been financially assisted by the City in subsequent budgetary processes.

The mission of SATAI is to identify, aggregate, and coordinate resources, initiatives, and networks necessary to foster the growth of San Antonio's technology-based growth industries. In order to achieve this mission, SATAI operates four programs:

1. The Enterprise Services program provides entrepreneurs developing technology-based ventures with direct hands-on technical assistance in achieving their business objectives.
2. The Capital Network focuses on developing capital resources for San Antonio's emerging technology sectors.
3. The Network Services program coordinates and facilitates communication and interaction among the city's investor, service provider and entrepreneurial organizations.
4. The Special Projects program provides assistance to the City, academic institutions, government, and development authorities in pursuing San Antonio initiatives designed to advance technology-related economic development opportunities. These projects and initiatives often require legislative efforts at the state or federal level. Under this program, SATAI coordinates the Southwest Enterprise for Regional Preparedness (SERP).

SATAI has been very successful in achieving its mission. The following table highlights some of their results.

Measure	2003-2004
Total clients served	228
Commercialization potential clients	54
Commercialization activity clients	26
New high-tech jobs created	187
Investor portfolio clients	15
Clients securing investments	9
Rounds of investments	16
Accredited investors in network	62
Client presentations to investors	67
Total seed investment in SATAI clients	\$9.44 million
Total VC investment in SATAI clients	\$12.6 million
Total investment	\$22.04 million

In 2004, SATAI also created SATAI U Executive Seminar Series. This program offers entrepreneurs in early stage companies a comprehensive opportunity to receive accelerated education on key issues related to taking their business to the next level. Topics include current trends in valuation, creation and compensation of executive teams, negotiation of investment terms, and preparing for the due diligence process.

SATAI also created and hosted the Stars of Innovation Gala, which honored some of the scientists, engineers, and business persons who have made significant technological contributions.

### **POLICY ANALYSIS**

This contract is consistent with City Council budgetary priorities and the FY2005 City operating Budget, which authorized funds for this purpose. It is also consistent with the City's *Strategic Plan for Enhanced Economic Development*.

### **FISCAL IMPACT**

This agreement will be funded by \$500,000 authorized in the FY2005 Budget. The money will be used to fund the continued operations of SATAI, as indicated in the attached budget. Funds will be transferred to SATAI in one lump-sum payment.

### **COORDINATION**

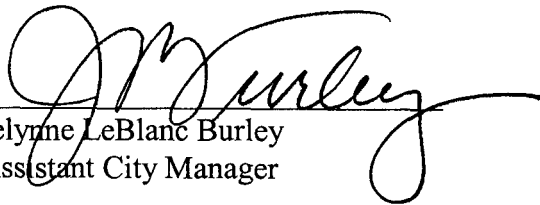
The Economic Development Department (EDD) staff has met with the City Attorney's Office to finalize the agreement.

**SUPPLEMENTARY COMMENTS**

The Discretionary Contracts Disclosure Forms are attached.

A handwritten signature in black ink, appearing to read "Ramiro Cavazos", written over a horizontal line.

Ramiro A. Cavazos, Director  
Economic Development Department

A handwritten signature in black ink, appearing to read "J. LeBlanc Burley", written over a horizontal line.

Jelynn LeBlanc Burley  
Assistant City Manager

A handwritten signature in black ink, appearing to read "J. Rolando Bono", written over a horizontal line.

J. Rolando Bono  
Interim City Manager

## SATAI BUDGET

<b>Personnel</b>	\$ 355,000
Includes salary and benefits for 3 full-time staff plus salaries for 1 paid full-time intern and one paid intern for special events.	
<b>Program operations</b>	\$ 42,000
<b>Marketing, outreach, &amp; publications</b>	\$ 65,000
<b>Legal &amp; accounting fees</b>	\$ 13,000
Includes anticipated legal for establishment of a pre-seed fund plus fees for audit of financial statements.	
<b>Overhead</b>	\$ 25,000
Includes costs for equipment, supplies, postal fees, etc. necessary for operations.	
<b>Total</b>	\$ 500,000

**City of San Antonio**  
**Discretionary Contracts Disclosure\***

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2*

*Attach additional sheets if space provided is not sufficient.*

*State "Not Applicable" for questions that do not apply.*

*\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

N/A

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

N/A

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

N/A

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

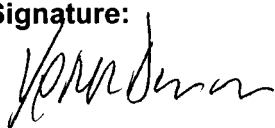
### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A		

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: <i>PRESIDENT</i> Company: <i>TEXAS RESEARCH PANEL FOR</i>	Date: <i>2/9/05</i>

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

# City of San Antonio

## Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

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(1) the identity of any **individual** who would be a party to the discretionary contract:

NA

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

NA

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

NA

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

NA

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

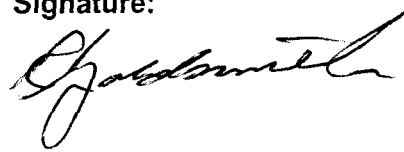
### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A		

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: <i>President</i> Company: <i>SATFI</i>	Date: <i>02/11/05</i>

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.



## GRANT AGREEMENT

STATE OF TEXAS                   §  
  §  
COUNTY OF BEXAR               §

This Agreement is entered into by and between the SATAI Network, L.L.C. ("SATAI Network"), a single member Texas limited liability company; the Texas Research Park Foundation, a Texas non-profit corporation which is tax-exempt as an organization described in section 501(c)(3) of the Internal Revenue Code (hereinafter called "GRANTEE"); and the CITY OF SAN ANTONIO, a home-rule municipality, situated within Bexar County, Texas (hereinafter called "CITY"), acting by and through its Interim City Manager or City Manager (as applicable), pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, 2005, and pursuant to Article III, Section 52-a, of the Texas Constitution and Chapter 380.002 of the Local Government Code entitled "Economic Development Grants by Certain Municipalities".

### **W I T N E S S E T H:**

**WHEREAS**, one of the governmental purposes of the CITY is economic development; and

**WHEREAS**, the CITY previously commissioned a study with Information Design Associates, L.L.C. to determine the most efficient manner to accelerate the technology-driven new enterprise growth, which study resulted in the concept of the San Antonio Technology Accelerator Initiative (the "SATAI Initiative"); and

**WHEREAS**, the CITY adopted the concept of the SATAI Initiative as an important strategic initiative of the CITY; and

**WHEREAS**, GRANTEE operates as a Texas non-profit corporation described in section 501 (c)(3) of the Internal Revenue Code in Bexar County, Texas, with a mailing address at 14815 Omicron Drive, Suite 100, San Antonio, Texas, 78245, to lessen the burdens of the City by implementing the concept of the SATAI Initiative to promote economic growth by identifying and capitalizing on the City's technological assets and resources, guiding and accelerating economic development efforts in targeted technology clusters, and organizing and communicating a community-wide strategy; and

**WHEREAS**, the CITY has designated five hundred thousand dollars (\$500,000.00) in the Fiscal Year 2005 Budget for the operations of the SATAI Initiative and has determined that said funds should be granted to GRANTEE; and

**WHEREAS**, the CITY hereby determines that GRANTEE will reduce the burdens of the CITY by undertaking the SATAI Initiative activities which would have otherwise been undertaken by CITY; and

**WHEREAS**, the CITY'S total contribution of five hundred thousand dollars (\$500,000.00) is designated solely for the public purposes of development and diversification of the economy, increased employment, and expansion of commerce, and its distribution is to be governed by Texas Local Government Code §380.002; and

**WHEREAS**, GRANTEE has created SATAI Network to undertake the SATAI Initiative as a single member limited liability company which will be disregarded for federal income tax purposes and treated as an operating division of GRANTEE;

**NOW THEREFORE**, the parties agree as follows:

## **ARTICLE I**

### **PURPOSE**

1.01 The purpose of this Agreement is to establish the terms and conditions of a transfer and grant of public money from CITY to GRANTEE to lessen the burdens of the CITY by assuming in part its obligations to develop and diversify the San Antonio regional economy and the Texas economy, through the operations of the SATAI Network.

1.02 The GRANTEE shall cause SATAI Network to carry out the purposes of the Grant, as defined below, and to implement the SATAI Initiative. The GRANTEE and SATAI Network will not use the proceeds of the Grant to make grants to other entities, invest in other entities, or make loans to other entities. The GRANTEE shall, if necessary, exercise its sole membership rights to ensure SATAI Network's compliance with this Agreement. Furthermore, GRANTEE assumes full responsibility for SATAI Network's compliance with the terms and provisions of this Agreement.

## **ARTICLE II**

### **TERMS**

2.01 The Interim City Manager or City Manager (as applicable) designates the Director of the Department of Economic Development of the City of San Antonio (the "Director") as the administrator of this GRANT. The Interim City Manager or City Manager (as applicable) may designate a new administrative entity by giving GRANTEE notice thereof, pursuant to Article XX. GRANTEE shall report directly to the Director or his designee.

2.02 Pursuant to City Council authorization granted in Ordinance No. \_\_\_\_\_, passed and approved on \_\_\_\_\_, 2005, CITY agrees to transfer five hundred thousand dollars (\$500,000.00) to GRANTEE. After the award, these monies shall be deposited in an account separate from all other GRANTEE and SATAI Network funds and shall not be commingled with any other account of GRANTEE or SATAI Network. Together with any and all interest earned subsequent to these deposits and/or investment income and/or any other source of revenue from these funds, these monies, for the purposes of this Agreement, shall be known as the "GRANT." The Grant shall be used by GRANTEE and SATAI Network only for the purposes set forth in Section 2.04 hereof, and shall be expended by GRANTEE and SATAI Network in accordance with the terms of this Agreement. It is expressly understood by the

parties to this Agreement that, except as provided herein, this grant of funds in no way obligates the General Fund or any monies or credits of the City of San Antonio and creates no debt of, nor any liability to, CITY.

2.03 Within thirty (30) days of the execution of this Agreement, CITY shall transfer the full sum of five hundred thousand dollars (\$500,000.00) to GRANTEE.

2.04 GRANTEE and SATAI Network shall be limited to using the GRANT for actual and reasonable expenditures incurred in promoting economic growth by identifying and capitalizing on the City's technological assets and resources, guiding and accelerating economic development efforts in targeted technology clusters, and organizing and communicating a community-wide strategy.

### ARTICLE III

#### CONSIDERATION

3.01 In consideration for the GRANT of public funds, GRANTEE agrees to further develop the SATAI Network in order to accelerate the entrepreneurial job creation and increase in community income through the growth of the technology sectors of the San Antonio economy.

#### COMPLIANCE

3.02 GRANTEE and SATAI Network agree to comply with, and require compliance by, any and all contractors and professional consultants performing work in connection with any procurement of product, infrastructure or service that will be paid for out of the GRANT, to include compliance with all federal, state and local laws, rules and regulations including, but not limited to, as applicable, the Fair Labor Standards Act, the Equal Pay Act and the Equal Employment Opportunity Act, all as amended.

3.03 GRANTEE and SATAI Network are hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-Owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts (Ordinance #100182). In accordance with Ordinance #69403, GRANTEE and SATAI Network agree that GRANTEE and SATAI Network will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. GRANTEE and SATAI Network further agree that GRANTEE and SATAI Network will abide by all applicable terms and provisions of CITY'S Non-Discrimination Policy, City's Small, Business Economic Development Advocacy (SBEDA) Policy and City's Equal Opportunity Affirmative Action policy, these policies being available in the City's Department of Economic Development and the City Clerk's Office.

3.04 Insofar as practical, in carrying out the terms of this Agreement, GRANTEE and SATAI Network shall use a good faith effort to use the employment and training programs of the City of San Antonio.

3.05 GRANTEE and SATAI Network will complete and submit to CITY, a copy of City's Ethic's Disclosure Form prior to GRANTEE'S and SATAI Network's receipt of any GRANT funds.

3.06 GRANTEE and SATAI Network agree that CITY may carry out monitoring and evaluation of activities to ensure GRANTEE'S and SATAI Network's compliance with this Agreement.

## ARTICLE IV

### RECORDS, REPORTS AND AUDIT RIGHTS

4.01 GRANTEE, on behalf of itself and SATAI Network, shall maintain in the San Antonio offices of the Texas Research Park, all books and financial records in accordance with generally accepted accounting principles and as may be reasonably prescribed by the City's Director of Finance, which reflect all expenditures made from the GRANT, including work by subcontractors. Such books and financial records, together with any other documentation necessary for verification of GRANTEE'S and SATAI Network's compliance with the terms of this Agreement, shall be made available to CITY on request, through the Director of Economic Development or the City Auditor or their representatives. CITY shall have the authority to audit, examine and make excerpts or transcripts from said books, records and documentation regarding all expenditures related to this Agreement. GRANTEE'S record system shall contain sufficient documentation to provide full support and justification for each expenditure made from GRANT funds. The City's Auditor or her designee may review and approve GRANTEE'S system of internal accounting and administrative controls at any time during the term of this Agreement to assure compliance by GRANTEE.

4.02 GRANTEE shall submit to CITY, on a **quarterly** basis, the Consolidated Balance Sheet, Statement of Support and Revenue, Statement of Changes in Financial Position of the GRANTEE and SATAI Network and a line item Summary of Expenditures paid from GRANT funds. These reports shall be prepared by the 30th of the month following the end of the reporting quarter. Additionally, GRANTEE and SATAI Network agree to allow CITY to review all books and financial reports on GRANTEE and SATAI Network pertaining to the GRANT funds on an **annual** basis.

4.03 GRANTEE shall submit to CITY, on an **annual** basis, a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards within ninety (90) days of GRANTEE'S fiscal year end. The audited financial statement shall include a detailed schedule of receipts and expenditures of GRANT funds by budgeted cost category. GRANTEE shall submit the audited financial statements and any management letter prepared by the independent CPA to both the Department of Economic Development, P. O. Box 839966, San Antonio, Texas 78238-3966, and to the Office of The City Auditor, 111 Soledad, Suite 600, San Antonio, Texas, 78205.

4.04 SATAI Network shall submit to CITY, on an **annual** basis, reports detailing job creation, new firm formation, increased levels of technology-based commercial activities, new

sources of investment dollars and other performance measures that distinguish the results of the SATAI Network.

4.05 During the term of this Agreement, SATAI Network shall cause to be delivered to CITY copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. SATAI Network understands and agrees that CITY shall have a representative on the Board of Directors and the Executive Council, as outlined in the bylaws.

4.06 GRANTEE and SATAI Network understand that because the Grant is of public money, the expenditures of said funds are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

## ARTICLE V

### BONDING

5.01 All officers, agents, or employees of GRANTEE and SATAI Network handling GRANT funds shall be covered by a commercial crime insurance policy with limits of not less than \$200,000.00 dollars.

5.02 Such insurance as required by this Article shall be conditioned upon the performance by such personnel of all terms and conditions resulting from this Agreement. All such insurance costs shall be paid by GRANTEE and SATAI Network and may come from Grant funds.

## ARTICLE VI

### INSURANCE

6.01 GRANTEE and SATAI Network agree that upon entering a contract for professional services or infrastructure or capital improvement construction, if any, to be paid for out of the GRANT, GRANTEE and SATAI Network shall, in accordance with this agreement, cause its contractors or subcontractors to provide proof of insurance issued by a company admitted to do business in the State of Texas, and rated A- or better by A.M. Best Co., in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation and Employer's Liability	Statutory <u>\$500,000/\$500,000/\$500,000</u>
2. Commercial General Liability - to include coverage for the following where the exposure exists:	Bodily Injury and Property Damage: <u>\$1,000,000</u> , per occurrence; \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Broad Form Property Damage including Fire Legal Liability	
(e) Contractual Liability	
(f) Explosion, Collapse and underground property damage*	

- |  |  |
|--|--|
| 3. Business Automobile Liability Insurance - to include coverage for:                  | Combined Single Limit for Bodily Injury and Property Damage: <u>\$1,000,000.</u> |
| <br>(a) Owned/Leased Automobiles<br>(b) Non-Owned Automobiles<br>(c) Hired Automobiles |  |
| 4. Builders Risk*  | Amount of Contract   |
| 5. Commercial Crime  | Amount of Contract   |

\*Where Applicable

6.02 GRANTEE and SATAI Network agree that contractor(s) shall not commence any work under their contract until all insurance certificates have been provided to and approved by CITY. Neither GRANTEE, the contractor nor any agent thereof, shall commence any work until all insurance required of the contractor(s) has been obtained, reviewed and approved by CITY. Approval by CITY shall not relieve or decrease the liability of the contractor.

6.03 Premiums chargeable for such insurance may come from Grant funds, and the insurance shall remain in force during the term of the contract, or any extension thereof.

6.04 GRANTEE and SATAI Network further agree that with respect to the above required insurance, CITY shall:

- A. Be provided with a Waiver of Subrogation, but only as it pertains to Workers' Compensation and Employer's Liability.
- B. Be provided with thirty (30) days advance notice in writing of non-renewal, cancellation or material change.
- C. Be provided with a Certificate of Insurance(s), evidencing the above required insurance, prior to the commencement of the construction contract. Said Certificates of Insurance(s) and all notices required herein shall be provided to:
  - 1) Director, Department of Economic Development of the City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.
  - 2) City Clerk of the City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

Copies of insurance policies shall be kept in GRANTEE'S office and shall be made available for inspection by CITY.

## ARTICLE VII

### CONSTRUCTION PROVISIONS

It is not anticipated that construction or infrastructure activities will be undertaken. However, to the extent that they are, the following provisions will apply:

7.01 If infrastructure changes or other construction is to be undertaken with GRANT money, then GRANTEE, SATAI Network, or its contractors and subcontractors shall provide payment, performance and subdivision bonds, or such other similar cash equivalent or letter of credit, provided same is approved by the City Attorney and the Director of Finance, that names CITY as Obligee and shall submit proof of same to CITY, before any GRANT-funded infrastructure work commences.

7.02 By subsequent written agreement, GRANTEE, by Board resolution, and CITY, after approval by the City's Director of Public Works and the City Attorney, may agree to hold one or more Federally-insured certificates of deposit or U.S. Treasury security to guarantee subdivision work. Without further approval or authorization of the City Council, the Interim City Manager or City Manager (as applicable) is hereby authorized to execute any such agreement, and CITY and the City Planning Commission may accept such agreement in lieu of the subdivision performance bond normally required. Provided, however, that any agreement reached pursuant to this section must be attached to this agreement as a separate appendix, and shall be included as part of the official, public records of the City Clerk. Provided further that any such agreement shall be valid only if CITY retains the securities set aside in lieu of the subdivision bond. In case of default by GRANTEE on subdivision work, it is also provided that first use of the set-aside funds and interest/investment earnings shall be for performance of the subdivision work by CITY in any legal manner as CITY may choose.

7.03 Compliance with the Davis-Bacon and the Copeland Anti-Kickback Acts shall be required, when and if GRANT funds are spent on infrastructure work, as if this infrastructure work were financed in whole or part by loans or grants from the United States.

7.04 GRANTEE and SATAI Network shall promptly pay when due all taxes, license fees, permit fees, debts and obligations incurred by them in connection with infrastructure activities or capital improvement activities, if any, to the extent that such taxes and fees are not waived by applicable governmental entities or agencies. GRANTEE and SATAI Network shall be responsible for their contractors and subcontractors with regard to securing any fees and paying any taxes, debts or obligations incurred by said contractor or subcontractor.

7.05 If infrastructure projects are to be constructed, GRANTEE shall submit all designs including all drawings, plans, specifications and estimated costs for infrastructure development or capital improvements to be paid for from GRANT funds before procuring construction of same. CITY'S approval may be withheld only if the proposed infrastructure or capital improvement design and construction fails to comply with applicable codes, standards and specifications.



## **ARTICLE VIII**

### **INDEMNIFICATION**

**GRANTEE and the SATAI Network covenant and agree to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and authorized representatives of CITY, individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature: (1) arising out of GRANTEE and the SATAI Network's activities under the Agreement; and (2) arising out of any act or omission of GRANTEE and the SATAI Network or any of GRANTEE and the SATAI Network's employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to : (a) GRANTEE and the SATAI Network or GRANTEE and the SATAI Network's employees exhibitors, contractors, representatives, patrons, guests or invitees and their respective officers, agents, employees, directors and representatives, or (b) CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY.**

**The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the sole negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.**

**IN THE EVENT GRANTEE AND THE SATAI NETWORK AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL OR INTERNATIONAL LAW.**

**GRANTEE and the SATAI Network shall promptly advise CITY in writing of any claim or demand against CITY or GRANTEE and the SATAI Network known to GRANTEE and the SATAI Network related to or arising out of GRANTEE and the SATAI Network's or CITY's activities under this Agreement. Further, GRANTEE and the SATAI Network shall see to the investigation and defense of any such claim or demand against GRANTEE and the SATAI Network or CITY at GRANTEE and the SATAI Network's sole cost until such time as CITY is found to be negligent by a court of competent jurisdiction. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE and the SATAI Network of any of their obligations under this paragraph.**

**The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

## ARTICLE IX

### POLITICAL ACTIVITIES

9.01 No funds provided from or through CITY shall be contributed to or used for, in whole or in part, the conduct of political activities or the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of any CITY-funded grant or activity be assigned to work for or on behalf of any partisan or non-partisan political activity or candidate. This section 9.01, including A-1 through 4, shall be included in any contract or subcontract.

A. The following is prohibited:

- 1) Working, or directing other staff to work, on any political activities on paid time.
- 2) The use of facilities or equipment, paid for in whole or in part with CITY funds, for political purposes. This includes space, office equipment and supplies, and telephones during agency time as well as after regular duty hours.
- 3) The implicit or explicit coercion of staff to work on political activities on their own time.
- 4) The above statements shall not be construed to prohibit any person from exercising his rights as a citizen to express his opinion and to cast his vote.

B. In order to ensure the above, GRANTEE and SATAI Network must:

- 1) Provide every staff person with a statement of the above prohibition.
- 2) Include on that statement a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policy, to call and report the same to the Director of the Economic Development Department, City of San Antonio, P.O. Box 839966, San Antonio, Texas, 78283; 210-207-8080.
- 3) Have each employee sign the statement and include the same in GRANTEE'S and SATAI Network's personnel files, as appropriate, with copies to CITY.

## ARTICLE X

### CONFLICT OF INTEREST

10.01 GRANTEE and SATAI Network covenant that neither they nor any member of their governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this

Agreement. GRANTEE and SATAI Network further covenant that, in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of their governing body.

10.02 GRANTEE and SATAI Network further covenant that no member of their governing body or their staff, subcontractors or employees shall possess any interest in or use his position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself, or others; particularly those with which they have family, business, or other ties.

10.03 No official or employee of CITY and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall: (1) participate in any decision relating to the Agreement which affects his financial interest or the financial interest in any corporation, partnership, association, or other business entity in which he has a direct or indirect financial interest; or (2) have any financial interest, direct or indirect, in this Agreement or the proceeds thereof.

10.04 GRANTEE and SATAI further covenant that they shall comply in all respects with the CITY's Ethics Code, available for review on the CITY's official website or at the Office of the City Clerk.

## **ARTICLE XI**

### **NEPOTISM**

11.01 GRANTEE and SATAI Network agree that they shall not award a contract, of whatever nature, which is to be paid for from this GRANT, to any person who is related, by law, to a member of GRANTEE'S or SATAI Network's Board of Director's or staff.

## **ARTICLE XII**

### **DEFAULT**

12.01 If GRANTEE fails or refuses to itself comply or fails or refuses to require contractor or subcontractor compliance with the material provisions of this Agreement and/or if at any time CITY learns that a contractor or subcontractor is willfully violating or refusing to observe the material conditions, provisions or stipulations of this agreement, CITY, through the Interim City Manager or City Manager (as applicable) may, if such noncompliance continues for thirty (30) days after receipt of written notice, terminate this Agreement and require reimbursement of all GRANT funds. All costs and expenses of finishing applicable projects shall then be the sole responsibility of GRANTEE.

12.02 If GRANTEE fails to comply with the material terms of any other contract or agreement to which CITY is a party, although unrelated to this Agreement, CITY, through the Interim City Manager or City Manager (as applicable) may, by written notice, direct GRANTEE to comply with the terms of said Agreement. If noncompliance continues beyond thirty (30) days from such notice, the Interim City Manager or City Manager (as applicable) may, in

addition to seeking remedies at law and in equity, require reimbursement of all then-unexpended GRANT funds.

12.03 In the event of termination due to material default by GRANTEE, GRANTEE will return to CITY, within sixty (60) calendar days of receiving CITY'S written notice of termination, all funds received from CITY under this Agreement.

### **ARTICLE XIII**

#### **ASSIGNMENT**

13.01 This Agreement is personal to GRANTEE and the SATAI Network and funds received as a result hereof shall only be used by GRANTEE and the SATAI Network for the purposes stated herein. GRANTEE shall not assign this Agreement or subcontract any or all of the rights and duties hereunder, except that, in order to fulfill the purpose outlined in Article 1.01, GRANTEE shall subcontract with the SATAI Network for the performance of the duties hereunder and shall assign its duties and obligations under this Agreement, upon the approval of the Director of Economic Development, to the SATAI Network, should that organization obtain independent 501(c)(3) status.

13.02 If for any reason GRANTEE loses its tax-exempt status and is no longer described in section 501(c)(3) of the Internal Revenue Code, all assets procured by the GRANT shall be transferred to another qualifying corporation upon City Council approval.

### **ARTICLE XIV**

#### **TEXAS LAW TO APPLY**

14.01 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.

### **ARTICLE XV**

#### **LEGAL CONSTRUCTION**

15.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **ARTICLE XVI**

#### **WAIVER**

16.01 No waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall 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.

16.02 No act or omission of either party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **ARTICLE XVII**

### **RELATIONSHIP OF PARTIES**

17.01 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

## **ARTICLE XVIII**

### **TERMINATION**

18.01 The obligations of GRANTEE and SATAI Network hereunder shall cease and terminate after audited financial reports document the expenditure of all GRANT funds, except that the obligations of GRANTEE under Article V hereof shall cease and terminate one (1) year after the disbursement of all GRANT funds.

## **ARTICLE XIX**

### **NOTICES**

19.01 Any notice or other communications to be given in connection with this Agreement must be in writing, and may be given by: (a) actual delivery; or (b) certified or registered mail and shall be deemed to have been given and received either: (i) upon actual delivery (if delivered pursuant to subsection (a) above); or (ii) forty-eight (48) hours after a certified or registered letter containing such notice, properly addressed, with postage prepaid is deposited in the United States mail, addressed as follows:

If to the GRANTEE:

Mr. York Duncan  
President  
Texas Research Park Foundation  
14815 Omicron Drive  
San Antonio, Texas 78245

If to SATAI Network: Dr. Randy Goldsmith  
President and CEO  
SATAI Network  
P.O. Box 461106  
San Antonio, Texas 78246

If to CITY: Director of Economic Development  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Provided, however, that any party may at any time change the place of receiving notice following ten (10) days written notice of such change of address to the other party in accordance with the manner of giving notice described above.

## **ARTICLE XX**

### **ENTIRE AGREEMENT**

20.01 This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement.

## **ARTICLE XXI**

### **AMENDMENTS**

21.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

21.02 Any literature, signs or print advertising of any type appearing on any medium which refers to or which is paid for by funds received as a result of this Agreement shall reference CITY as a sponsoring agency.

## **ARTICLE XXII**

### **AUTHORITY**


22.01 The parties hereto represent and assure that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required. The signers of this Agreement represent and assure that they have full legal authority to execute this Agreement and to bind the party for whom they are signing to all terms, performances and provisions herein contained.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL  
FORCE AND EFFECT OF AN ORIGINAL, THIS THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2005.

**CITY OF SAN ANTONIO**

**TEXAS RESEARCH PARK FOUNDATION**

By: \_\_\_\_\_  
J. Rolando Bono  
Interim City Manager

By:  \_\_\_\_\_  
York Duncan  
President

**SATAI NETWORK**

By:  \_\_\_\_\_  
Dr. Randy Goldsmith  
President and CEO

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Andrew Martin  
City Attorney

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