

ORDINANCE 2018-06-21-0498

AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE FUND (EDIF) GRANT AGREEMENT WITH THE HUT GROUP IN AN AMOUNT NOT TO EXCEED \$500,000.00 FOR THE RELOCATION OF THE COMPANY'S U.S. DIVISIONAL INGENUITY HEADQUARTERS AND THE CREATION OF 165 NEW FULL-TIME JOBS PAYING AT LEAST \$70,000.00 OR MORE ANNUALLY IN DOWNTOWN SAN ANTONIO.

* * * * *

WHEREAS, The Hut Group was founded in 2004, is headquartered in Northwich, Cheshire, United Kingdom, and is a private British e-commerce company that operates over 100 international websites selling health, beauty, and lifestyle products, in addition to a business-to-business division that includes several web hosting brands; and

WHEREAS, the company is looking to relocate its U.S. Divisional Ingenuity Headquarters and create 165 new, high-paying full-time jobs over five years at The Commerce Building, located at 314 E. Commerce Street. The location will be a launching point for the company's growth in the U.S. and for operations related to its platform division, which focuses on web hosting properties and brands, and these operations will include high-skill jobs, including software developers, engineers, technical development, as well as the company's U.S. executive suite; and

WHEREAS, the project falls in-line with several of the key long-term economic goals laid out in the City's *SA Tomorrow Comprehensive Plan*, as well as those presented in *Forefront SA*; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the "City") is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting The Hut Group in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council approves the terms and conditions of an Economic Development Incentive Fund (EDIF) Grant Agreement with The Hut Group.

SECTION 2. The City Manager or her designee is authorized to execute an Economic Development Incentive Fund (EDIF) Grant Agreement with The Hut Group in accordance with this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution.


SECTION 3. Funding for this Ordinance in the amount of \$500,000.00 is available in Fund 29059000, Cost Center 1604010001 General Ledger 5201040 as part of the Fiscal Year 2018 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to The Hut Group and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

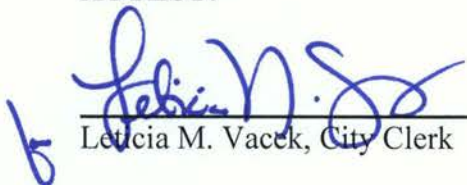
SECTION 6. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 21st day of June, 2018.



M A Y O R
Ron Nirenberg

ATTEST:



Lucía M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	40 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 19, 20, 21, 22, 23, 24, 25A, 25B, 25C, 27, 28, 29, 30, 31, 34, 35A, 35B, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 49, 50, 51, 52, 53, 54, 56A, 56B, 56C, 56D, 56E)						
Date:	06/21/2018						
Time:	09:39:05 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance authorizing a \$500,000.00 Economic Development Incentive Fund Grant Agreement with The Hut Group. [Roderick Sanchez, Assistant City Manager; Rene Dominguez, Director, Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SB
06/21/18
Item No. 40

ATTACHMENT I

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND THE HUT GROUP**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among Grantor, the City of San Antonio (the "CITY"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and the Grantee, Hosting Services, Inc., a UK corporation which is part of the THG Ingenuity division of The Hut Group (hereinafter referred to as "GRANTEE"). Together, the CITY and GRANTEE may be referred to herein as the "Parties."

WHEREAS, GRANTEE is a British e-commerce company that operates over 100 international websites selling health, beauty, and lifestyle products, in addition to a B2B division that includes several web hosting brands; and

WHEREAS, GRANTEE is engaged in an economic development project consisting of the establishment of a U.S. Divisional Ingenuity Headquarters in San Antonio, as more specifically depicted on **Exhibit A** (the "Project Site") attached hereto and incorporated herein, that will result in the creation of 165 full-time jobs (as defined below) (the "Project"); and

WHEREAS, GRANTEE has requested economic development incentive funds to assist GRANTEE to defer costs associated with undertaking and completing the Project at the Project Site; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and pursuant to City Ordinance No. 100684, the CITY adopted an economic development program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

WHEREAS, CITY has determined that GRANTEE meets the criteria for providing a grant of funds pursuant to Chapter 380 based on GRANTEE desiring to establish the Project within the CITY which, if so established, will promote local economic development and stimulate business and commercial activity in the CITY.

WHEREAS, as more particularly described in this Agreement below, the CITY has identified certain grant funds from the CITY's Economic Development Incentive Fund ("EDIF") to be made available to incentivize GRANTEE to undertake and complete the Project at the Project Site; and

WHEREAS, the City Council of the CITY has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2018-0__-__, passed and approved on _____, 2018 to grant said funds (the "Ordinance"); **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

The purpose of this Agreement is to provide an economic development grant to GRANTEE as an incentive for GRANTEE to undertake the Project at the Project Site. The CITY anticipates that if the Project is undertaken at the Project Site, the Project will promote local economic development and

stimulate business and commercial activity in the City of San Antonio. As such, the CITY is willing to support the Project through the economic development grant, as further described in Section 3 of this Agreement, to provide funds to be used to defer costs associated with undertaking and completing the Project.

SECTION 2. PROJECT REQUIREMENTS

A. In consideration of the CITY providing the economic development grants provided in Section 3 of this Agreement, GRANTEE shall:

- i. own, hold an interest in or otherwise control the Project Site (or an alternative site within the San Antonio city limits) for the Term of this Agreement, as further defined in Section 5 below;
- ii. upon the expiration of the Lease term, GRANTEE shall use reasonable commercial efforts to remain within CITY's Central Business District ("CBD"), and in any case, shall remain within CITY's city limits for the remainder of the Term of this Agreement. Before any decision to relocate outside of the CITY's CBD prior to the end of the Term of this Agreement, GRANTEE must provide reasonable notification to and where reasonably practicable consult with the Director of CITY's Economic Development Department (EDD) in order to identify any commercially viable, market- based equivalent real estate options within CITY's CBD that satisfy the GRANTEE's needs and space constraints.
- ii. establish and maintain its U.S. Divisional Ingenuity Headquarters at the Project Site (or an alternative site within the San Antonio city limits) for the duration of the Term of this Agreement; and
- iii. create at least one hundred sixty-five (165) new Full-Time Jobs at the Project Site which pay an annual salary of at least SEVENTY THOUSAND DOLLARS AND 0 CENTS (\$70,000.00) in accordance with the schedule in Section 3.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

In exchange for GRANTEE undertaking and completing the Project at the Project Site, CITY will provide an economic development incentive grant to GRANTEE as follows:

A. Economic Development Program Grant. CITY will provide GRANTEE with a grant from the EDIF in the amount of FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$500,000.00) (the "Grant Funds"), subject to GRANTEE meeting the terms and conditions of this Agreement. The Grant Funds represent an amount equivalent to THREE THOUSAND THIRTY DOLLARS AND THIRTY CENTS (\$3,030.30) per Full-Time Job; however, only Full-Time Jobs qualifying under the terms of this Agreement and hired in accordance with the terms of this Agreement are eligible for Grant Funds.

B. Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement, CITY will make the Grant Funds as follows:

- (i) within 60 days after adoption of the Ordinance approving this Agreement and Grantee providing evidence that it has entered into a lease agreement for the Project Site, and as set forth in 2.a.ii, Grantee agrees to remain within City Limits for the term of this Agreement and to consult with the Director of CITY's Economic Development Department (EDD) in order to identify any commercially viable, market- based

equivalent real estate options within CITY's CBD that satisfy the GRANTEE's needs and space constraint, CITY shall make ONE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$100,000.00) available to GRANTEE (the "Initial Payment");

- (ii) No sooner than twelve (12) months following the Initial Payment, CITY shall make an annual payment to Grantee available as follows:
 - (a) So long as Grantee hires at least ten (10) Full-Time Jobs prior to December 31, 2018, CITY shall make available TWENTY-FOUR THOUSAND TWO HUNDRED FORTY-TWO DOLLARS AND FORTY CENTS (\$24,242.40);
 - (b) So long as Grantee hires at least twenty (20) Full-Time Jobs prior to December 31, 2019, CITY shall make available FORTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY-FOUR DOLLARS AND EIGHTY-FOUR CENTS (\$48,484.84);
 - (c) So long as Grantee hires at least thirty-five (35) Full-Time Jobs prior to December 31, 2020, CITY shall make available EIGHTY-FOUR THOUSAND EIGHT HUNDRED FORTY-EIGHT DOLLARS AND FORTY CENTS (\$84,848.40);
 - (d) So long as Grantee hires at least forty (40) Full-Time Jobs prior to December 31, 2021, CITY shall make available NINETY SIX THOUSAND NINE HUNDRED SIXTY-NINE DOLLARS AND SIXTY-NINE CENTS (\$96,969.69);
 - (e) So long as Grantee hires at least sixty (60) Full-Time Jobs prior to December 31, 2022, CITY shall make available ONE HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED FIFTY-FOUR DOLLARS AND FIFTY-FOUR CENTS (\$145,454.54).

The Parties acknowledge and agree that the grant payments made by CITY will only be for actual new Full-Time Jobs created at the Project Site by Grantee that pay an annual salary at or above SEVENTY THOUSAND DOLLARS (\$70,000.00).

C. Once hired, Grantee shall retain the created Full-Time Jobs for which it receives grant funds for the Term of this Agreement, including the Recapture Period, as described below.

D. "Full-Time Job," for the purposes of this Agreement, shall be a job by which an individual who works at the Project Site as an employee of GRANTEE, is paid for the equivalent of approximately two thousand eighty (2,080) straight-time paid hours in a fiscal year.

E. In accordance with CITY's EDIF Guidelines, GRANTEE must pay 100% of all employees located at the Project Site, without regard to the number of jobs required to be created or maintained hereunder, at least the minimum "living wage" of ELEVEN DOLLARS AND EIGHTY-THREE CENTS (\$11.83) an hour.

F. In addition to the "living wage" requirement, after one year of initiating full operations at the project location; but not more than two years after execution of this Agreement, at least seventy percent (70%) of all new and existing employees at the Project Site, without regard to the number of jobs required

to be created or maintained hereunder, must earn a cash "all industry wage" at or exceeding SIXTEEN DOLLARS AND TWENTY-NINE CENTS (\$16.29) an hour.

G. All wage requirements set forth in this Agreement shall be exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages. However, wages may include industry standard salary enhancements and/or profit-sharing incentives that employees are entitled to receive due to their job classification.

H. GRANTEE also covenants and agrees that it shall offer all of its non-temporary employees with Full-Time Jobs at the Project Site an opportunity to participate in the employee benefits program to include a health plan which provides coverage for their eligible dependents.

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

J. GRANTEE agrees that within one year after the Effective Date it shall coordinate with the City's Economic Development Department to partner with SA Works to sponsor internships at the Project Site during the Term of this Agreement. Additionally, GRANTEE shall participate in no less than two job fairs within the San Antonio city-limits during the first two years of operations. Such participation shall be determined by the CITY's Economic Development Department.

K. GRANTEE must commit to participating in a corporate commuter benefits program, which may include, but not limited to, participation as a corporate member of VIA's EZ Rider Program, alternative work schedule programs, and/or transit, carpool, or vanpool subsidies.

L. Business Activities. GRANTEE shall conduct, at the Project Site, business activities that include several web hosting brands (all of such activities hereinafter collectively referred to as the "Business Activities"), and operate the same at the Project Site for the Term of this Agreement, except to the extent said Project Site may be rendered unsuitable for such use due to a Force Majeure Event (as defined in Section 17 of this Agreement). Except as provided herein, GRANTEE covenants and agrees that the Business Activities will not be changed without the prior written consent of the CITY, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization (being defined as a parent, subsidiary or affiliate organization of GRANTEE or any entity which succeeds to or receives an assignment of GRANTEE's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any parent, subsidiary or affiliate of such entity) occupies the Project Site and continues to use the premises for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to assume and comply with all applicable terms herein from and after the date it succeeds to GRANTEE's interest in this Agreement, and if requested by the CITY, the Related Organization must enter into an assumption of or amendment to this Agreement evidencing such agreement. In the event of any such transfer to a Related Organization, GRANTEE must notify the CITY in writing prior to the effective date of such transfer. GRANTEE acknowledges that any change in the principal use of the Project Site from that contemplated herein without the prior written approval of the CITY, to the extent same is required under this Agreement, may result in a loss or recapture of the economic development grants to be provided to GRANTEE under this Agreement.

SECTION 4. RESERVED

SECTION 5 TERM PERIOD

The Term referenced in this Agreement shall commence upon the Effective Date and shall continue in effect for a period of eight (8) years (the "Term") unless terminated as otherwise provided herein. The period when the grant disbursements will occur shall commence upon the Effective Date and continue for a period of five (5) years ("Grant Term"), unless terminated as otherwise provided herein. The period when no further grants are to be made hereunder and GRANTEE remains subject to the terms hereof, including termination and recapture, and shall commence upon the expiration of the Grant Term and continue for a period of three (3) years ("Recapture Term"), unless terminated as otherwise provided herein.

SECTION 6. THE CITY'S OBLIGATIONS

A. Payment. GRANTEE acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of the CITY in the budget year in which they are to be paid as may be legally set aside for the implementation of ARTICLE III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the CITY under applicable Texas law, subject to any applicable limitations or procedural requirements; provided, however, as of the Effective Date of this Agreement, the CITY's annual appropriations for the 2018 budget are sufficient to make the Grant Funds as set forth in Section 3(B)(ii)(a) above. In the event that the CITY does not appropriate funds necessary to pay the Grants in any budget year after 2018 (as reflected in the CITY's adopted budget for such year), the CITY shall not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, GRANTEE may, in its sole discretion, terminate this Agreement, in which event GRANTEE and the CITY shall have no further obligations under this Agreement including, but not limited to any obligations for the year in respect to which said unappropriated funds relate. In the event the CITY does not appropriate funds necessary to pay GRANTEE in a particular budget year, the CITY shall appropriate the amount of funds set forth in Section 3 of this Agreement in the following budget year(s) to pay for that budget year's Grant Funds in addition to any and all unpaid Grant Funds due to GRANTEE for prior budgeted years for which no appropriation was made. Failure of the CITY to appropriate funds in a particular budget year in which they are due and owing to GRANTEE shall not relieve the CITY of obligation to pay GRANTEE these funds in the subsequent year(s).

B. No Liability for Costs. Except as set forth in this Agreement, the CITY will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement, including, without limitation, contracts the CITY may have with third parties.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain written and/or digital records and supporting documentation (the "Records") relating to and sufficient to reasonably determine: (1) the hire and termination dates of each new and retained full-time employee at the Project Site; (2) employee records sufficient to determine if they live within Bexar County; (3) the fulfillment of all obligations of GRANTEE under this Agreement; and (4) the wages and healthcare benefits of all full-time employees at the Project Site, irrespective of those required to be created, maintained or retained under this Agreement. GRANTEE shall retain such records and any supporting documentation from and after the Effective Date through the date which falls 4 years after the expiration of the Term of this Agreement. GRANTEE acknowledges and agrees that retention of the Records by GRANTEE and the CITY's right to inspect the Records as set forth below, are required in order to permit the CITY's representatives to determine with certainty GRANTEE's compliance with all of GRANTEE'S obligations under this Agreement, including, without limitation, job

creation and retention requirements, wage requirements, healthcare benefits requirements and residency requirements, if any.

B. Upon at least five (5) business days' prior notice to GRANTEE, GRANTEE shall allow designated representatives of the CITY (at the City's cost and expense) reasonable access to the Records at the Project Site or such other location in Bexar County where the Records are kept during normal business hours for inspection to determine if the obligations of GRANTEE hereunder and the terms and conditions of this Agreement are being met by GRANTEE. If the Records are kept in any location outside of Bexar County, GRANTEE shall provide access to the CITY to inspect the Records within Bexar County. Any information that is prohibited by law to be made public shall be kept confidential by the CITY. Should any good faith dispute or question arise as to the validity of the data inspected, the CITY reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized CITY representatives shall give the CITY the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise the CITY's right to recapture all disbursed grant funds. GRANTEE may require the CITY's representatives to be accompanied by GRANTEE representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of Business Activities at the Project Site, and (b) comply with GRANTEE's reasonable security requirements.

SECTION 8. MONITORING

A. On or before February 1 and August 1 of each year during the Term of this Agreement, GRANTEE shall provide the CITY's Director of Economic Development Department with a certification (the "Semi-Annual Certification") from an officer of GRANTEE attesting to the following information as of the preceding December 31st and June 30th respectively: (i) the number of Full-Time Jobs and New Full-Time Jobs maintained as of such date, (ii) the hire dates of each Full-Time Employee and New Full-Time Employee, (iii) the healthcare benefits offered to all Full-Time Employees and New Full-Time Employees and their respective eligible dependents, (iv) the total wages paid in connection with the Full-Time Jobs and the New Full-Time Jobs during the six months preceding such date. The information provided shall be on the form set forth in, or substantially similar to the form labeled "Incentive Monitoring Form" attached and incorporated herein as **Exhibit C**, as the same may be revised by the CITY from time to time. Failure by GRANTEE to take action specified in the monitoring report, and failure to cure any deficiency in the applicable Cure Period in accordance with Section 15(A) herein, may be cause for suspension or termination of this Agreement, in accordance with Sections 15 and 16 herein.

B. GRANTEE acknowledges the CITY is subject to the Public Information Act, which applies to information of every "governmental body" as set forth in section 552.003(1)(A) of the Texas Government Code. Public Information means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), GRANTEE will endeavor to

only report certified information to the CITY required for the CITY to verify GRANTEE is meeting the requirements and obligations of GRANTEE under this Agreement by submitting, for example, information using distinct employee identification numbers, number of new jobs created and those retained, wages, the date a Full-Time-Job was created, and the capital investment at the Project Site. In its efforts to comply with requests for public information under the Public Information Act, GRANTEE shall remain immune from liability under both the State of Texas and federal doctrines of sovereign immunity.

SECTION 9. CONFLICT OF INTEREST

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of the CITY shall participate on behalf of GRANTEE in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of the CITY who would be subject to the CITY's ethics policy, as same exists from time to time, GRANTEE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the CITY's ethics ordinance in dealings between the CITY and GRANTEE.

SECTION 10. SECTARIAN ACTIVITY

None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

SECTION 11. LEGAL AUTHORITY

A. Legal Authority. Each party assures and guarantees to the other that it possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. Each party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such party has been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

SECTION 12. GOVERNING LAW AND VENUE

A. Notice to City. GRANTEE shall give the CITY immediate notice in writing of any (i) OSHA complaint filed by an employee of GRANTEE concerning the Project Site, or (ii) notice of any bankruptcy of GRANTEE, or (iii) any notice given by GRANTEE to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at such premises. GRANTEE shall submit a copy of each such notice required hereunder to the CITY within thirty (30) calendar days after receipt or issuance, as applicable.

B. Texas Torts Claims Act. GRANTEE acknowledges that the CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas, regardless of choice of law rules.

SECTION 13. ATTORNEY'S FEES

GRANTEE and the CITY hereto expressly agree, in the event of litigation, all Parties waive rights to payment of attorneys' fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees.

SECTION 14. CHANGES AND AMENDMENTS

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

SECTION 15. SUSPENSION

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, if applicable, or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, the CITY shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of GRANTEE's receipt of the CITY's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, or such longer period of time as may be reasonably necessary for GRANTEE to cure the default in question if same cannot reasonably be cured within such sixty (60) day period, the CITY may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE until the default is cured. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and (3) in the case of partial suspension, the portion of this Agreement to be suspended.

B. Lifting of Suspension. A suspension under this Section shall be lifted upon a showing by GRANTEE that the event of default has been cured or by a signed written waiver of the CITY of the term(s) in question.

C. No Liability. The CITY shall not be liable to GRANTEE or to GRANTEE's creditors or parties with whom GRANTEE contracts for costs incurred during any term of suspension of this Agreement.

SECTION 16. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES

A. Relocation Defined. For purposes of this section, “Relocation” “Relocated” or “Relocate” shall mean GRANTEE or a Related Organization, or any other permitted transferee of GRANTEE’s rights under this Agreement, which has taken the place of GRANTEE, transferring all Business Activities from the Project Site to a location outside of the city limits CITY for reasons other than the inability to conduct the Business Activities at the Project Site due to casualty, condemnation or other reasons beyond the reasonable control of GRANTEE or its subsidiaries or any such Related Organization or other permitted transferee of GRANTEE’s rights under this Agreement (any of the foregoing being a “Force Majeure Event” as further defined in Section 17 below).

B. Default of GRANTEE. GRANTEE shall be in default under this Agreement:

- i. Relocation. If during the Term of this Agreement, GRANTEE occupies and uses the Project Site for its Business Activities and subsequently Relocates (as defined in this Section 16 A.) during the Term of the Agreement or relocates its headquarters outside of the city limits of the CITY, then the CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is completed. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, the CITY’s determination of GRANTEE’s Relocation shall be final and conclusive. Upon termination, the CITY shall have the right to recapture from GRANTEE all funds previously disbursed to GRANTEE, and/or for the benefit of GRANTEE, under this Agreement and not previously recaptured by the CITY in accordance with the recapture schedule set forth in Section 16(C) below and the CITY shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
- ii. Cessation of Business Activities. If, after the conditions set forth in Section 2 of this Agreement are met, GRANTEE occupies and uses the Project Site for its Business Activities and subsequently ceases conducting Business Activities at the Project Site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event, then the CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the cessation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of cessation, the CITY’s determination of a date of cessation shall be final and conclusive. Upon termination, the CITY shall have the right to recapture from GRANTEE all funds previously disbursed to GRANTEE, and/or for the benefit of GRANTEE, under this Agreement and not previously recaptured by the CITY in accordance with the recapture schedule set forth in Section 16(C) below and the CITY shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
- iii. Number of Jobs. GRANTEE shall act, at all times, reasonably and in good faith under this Agreement in reaching the creation or maintenance of the number of Full-Time Jobs required under this Agreement. Should the GRANTEE be unable to fully satisfy the job creation requirement under this Agreement, City shall be entitled to Recapture as per the following:
 - iii.a. Should the GRANTEE create or maintain a number of jobs equal to or exceeding 50% of the number of Full-Time Jobs required under this Agreement (greater than or equal to 83 jobs but less than the 165 required jobs), then CITY shall be entitled to recapture a prorata amount of \$3,030.30, the amount granted per full-time job, for each job not created or maintained as set forth in Section 3.A.

iii.b. Should the GRANTEE create or maintain less than 50% of the number of Full-Time Jobs required under this Agreement (less than 83 of the 165 required jobs), the City shall be entitled to recapture all the Grant Funds authorized under this agreement.

- iv. Bankruptcy. If GRANTEE, any Related Organization, and/or other the CITY-approved assignee permitted under this Agreement files any petition for bankruptcy, then this Agreement shall automatically be deemed to have terminated one (1) day prior to the filing of the petition for bankruptcy and, upon such termination, all funds previously disbursed to GRANTEE, and/or for the benefit of GRANTEE, under this Agreement which have not been previously recaptured by the CITY may be recaptured by the CITY according to the schedule set forth in Section 16(C) below, so long as such recapture is permitted under the bankruptcy proceedings.

C. Limitation on Recapture. Notwithstanding anything to the contrary in the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Section 16 are not applicable to situations involving minor changes to the description of the Project Site, or the CITY-approved changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

D. Limitation on Remedies. The foregoing termination and recapture rights shall be the CITY's sole and exclusive remedies in the event GRANTEE shall default under this Agreement.

SECTION 17. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

In addition to relief expressly granted in this Agreement, GRANTEE shall be granted relief from performance of this Agreement to the extent GRANTEE is prevented and/or impaired from compliance and performance by any Force Majeure Event. In addition to the events mentioned in Section 16 above, a "Force Majeure Event" shall also include, but not be limited to, an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of GRANTEE. It also includes an explosion or other casualty or accident, which is not the result of negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain relief based upon this Section 17, GRANTEE must file a written notice with the CITY's Economic Development Department specifying the Force Majeure Event and the performance under this Agreement that such event is impairing, within sixty (60) days of GRANTEE's knowledge of the Force Majeure event that will prevent or impair GRANTEE's compliance with this Agreement.

SECTION 18. SPECIAL CONDITIONS AND TERMS

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay the CITY the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date GRANTEE is notified by the CITY of such violation. The CITY, in its sole discretion, may extend the period for repayment herein. Additionally,

GRANTEE shall pay interest on the amounts due to the CITY under this **Section 18** at the rate of one percent (1%) per annum from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

SECTION 19. TIME IS OF THE ESSENCE & REASONABLENESS

The Parties acknowledge that time is of the essence with respect to their obligations under this Agreement. The Parties further agree to act reasonably and in good faith when acting under the terms of this Agreement.

SECTION 20. NO WAIVER

Failure by either party to exercise any right or remedy hereunder available to it shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future, absent a written agreement to the contrary.

SECTION 21. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the advance written consent of the non-assigning party. The CITY shall not unreasonably withhold, condition, or delay its consent to any such assignment by GRANTEE. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a Related Organization, without the written consent of the CITY. If GRANTEE so assigns this Agreement to a Related Organization, it will provide notice of such assignment to the CITY on or before the ninetieth (90th) calendar day following the date of assignment. Any assignment of this Agreement in violation of this Section shall enable the CITY to terminate this Agreement and exercise its rights under this Agreement, subject to Section 15 of this Agreement. Any assignment of this Agreement by GRANTEE shall relieve GRANTEE of all obligations and liabilities under this Agreement. Notwithstanding the foregoing, GRANTEE and/or any successor to GRANTEE's interest in the this Agreement may collaterally assign and/or grant a security interest in the payments to be received by GRANTEE hereunder without the CITY's consent if required by any lender providing financing to any such entity or any parent, subsidiary, or affiliated company of such entity.

SECTION 22. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be

effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO THE CITY:

TO GRANTEE:

(Whether personally delivered or mailed):

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

Hosting Services, Inc.
Attn: Mark Foster, Legal Director
The Stables, Gadbrook Park, Rudheath,
CW9 7RA
Norwich, UK

(If by personal or overnight delivery):

(With a copy only to):

Economic Development Department
Attn: Director
19th Floor
100 Houston St.
San Antonio, Texas 78205

DLA Piper, LLP (US)
Attn: Carey Gunn Venditti, Esq.
401 Congress Ave., Suite 2500
Austin, Texas 78701

SECTION 24. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments 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:

- Exhibit A- Project Site Location
- Exhibit B – _____
- Exhibit C – Incentive Monitoring Form

Signatures Appear on Next Page

WITNESS OUR HANDS, EFFECTIVE as of _____, 2018 (the "Effective Date").

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2018-__-__-_____ and GRANTEE pursuant to its authority.

GRANTOR:

GRANTEE:

CITY OF SAN ANTONIO
a Texas municipal corporation

HOSTING SERVICES, INC.
a UK corporation

Sheryl L. Sculley
CITY MANAGER

Name:
Title:

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit A- Project Site Location

Exhibit B -

Exhibit C - Incentive Monitoring Form



City of San Antonio Economic Development Department Incentive Reporting Form

Company Name: _____

Reporting Period: _____

Contact Information: _____

Real Property: expenditures associated with real property improvements during reporting period (Verification may include AIA forms, receipts, invoices, request for payment from contractor, etc.)	
1. Real Property improvements reported last reporting period	\$
2. Real Property improvements made since last reporting period	\$
3. Total cumulative Real Property improvements made <i>(Attach supporting documents.)</i>	\$
Personal Property: expenditures associated with personal property improvements during reporting period (Verification may include receipts, invoices, requests for payment, etc.)	
4. Personal Property improvements reported last reporting period	\$
5. Personal Property improvements made since last reporting period	\$
6. Total cumulative Personal Property improvements made <i>(Attach supporting documents.)</i>	\$
Inventory/Supplies: (Verification may include receipts, invoices, requests for payment, etc.)	
7. Inventory and Supplies improvements reported last reporting period	\$
8. Inventory and Supplies improvements made since last reporting period	\$
9. Total cumulative investment on Inventory and Supplies made <i>(Attach supporting documents.)</i>	\$
Jobs: full-time (2,080 straight-time paid hours) jobs created during reporting period (Verification: payroll registers with total number of employees, dates of hire, hourly wages, etc.)	
10. Total number of jobs reported at the facility last reporting period <i>(For supporting documents, see above.)</i>	
11. Jobs created during reporting period	
12. Total number of jobs reported at the facility this reporting period	
13. What is the minimum hourly wage paid at the facility <i>(For supporting documents, see above.)</i>	
14. Percent of workforce receiving premium wages. <i>(Refers to percentage of workforce earning the all-industry wage)</i>	
Additional Contractual Obligations: (As applicable per your Agreement)	
15. Percent of workforce that is local.	
16. Percent of workforce that is economically disadvantaged <i>(attach information regarding company's good-faith efforts).</i>	
17. Regarding employee benefits, please attach separate sheet demonstrating compliance with your agreement.	
Certification:	
<i>I certify, under penalty of perjury, that the information provided in this report and the attached documents is correct, and that the company has complied with all terms and conditions of its agreement with the City of San Antonio.</i>	

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Mail original signed form, with supporting documents, to: Economic Development Department, Operations & Monitoring, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283-3966. For questions regarding this report, please contact Pamela Cruz, Sr. Management Analyst, at 210/207-0150 or e-mail: monitoringandops@sanantonio.gov.