

AN ORDINANCE 2018-03-08-0185

**AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE FUND (EDIF) GRANT AGREEMENT WITH IPSECURE, INC. IN AN AMOUNT NOT TO EXCEED \$420,000.00 FOR THE CREATION OF 60 NEW FULL-TIME JOBS PAYING AT LEAST \$100,000.00 ANNUALLY, 20 NEW FULL-TIME JOBS PAYING AT LEAST \$50,000.00 ANNUALLY, AND THE RETENTION OF 115 EXISTING FULL-TIME JOBS AT THE PORT AUTHORITY OF SAN ANTONIO.**

\* \* \* \* \*

**WHEREAS**, IPSecure, Inc. (“IP Secure”) was founded in 2000, is headquartered at Port San Antonio, and provides primarily cybersecurity services to government and private sector companies; and

**WHEREAS**, IPSecure plans to expand at its current location at Port San Antonio investing approximately \$1.3 million over five years, retaining the 115 people it currently employs with average salaries of \$85,000.00 annually, and creating 80 new cybersecurity jobs of which 20 will earn \$50,000.00 or more annually, with the remaining 60 earning \$100,000.00 or more annually, exclusive of benefits (the “Project”); 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 IPSecure 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 IPSecure, Inc.

**SECTION 2.** The City Manager or her designee is authorized to execute an Economic Development Incentive Fund (EDIF) Grant Agreement with IPSecure, Inc. 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.

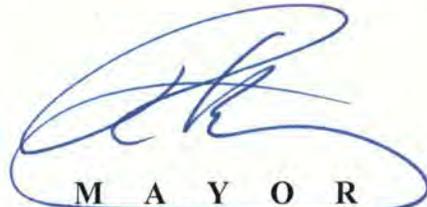
**SECTION 3.** Funding for this Ordinance in the amount of \$420,000.00 is available in Fund 29059000, Cost Center 1604010001 General Ledger 5201040 as part of the Fiscal Year 2018 Budget.

**SECTION 4.** Payment not to exceed the budgeted amount is authorized to IPSecure 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.

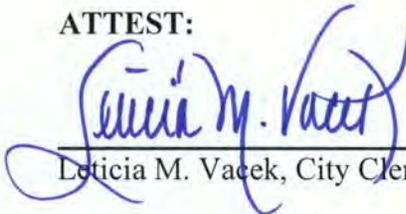
**SECTION 6.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

**PASSED AND APPROVED this 8<sup>th</sup> day of March, 2018.**



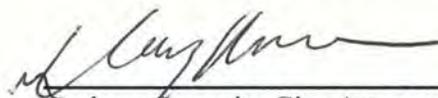
**M A Y O R**  
Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	18						
<b>Date:</b>	03/08/2018						
<b>Time:</b>	10:00:22 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving an Economic Development Incentive Fund Grant Agreement with IPSecure Inc. in an amount up to \$420,000.00 based on a capital investment of approximately \$1.3 million, the creation of at least 80 new high-wage full-time jobs, and the retention of 115 full-time jobs. [Roderick Sanchez, Assistant City Manager; Rene Dominguez, Director, Economic Development]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
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					

KRH  
03/08/18  
Item No. 18

# Attachment I

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND IPSECURE INC.**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "GRANTOR"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and IPSecure Inc., a Texas corporation (hereinafter referred to as "GRANTEE"). Together, GRANTOR and GRANTEE may be referred to herein as the "Parties."

**WHEREAS**, GRANTEE provides cyber security, information assurance and program management to government and private sector companies worldwide from its operations located at Port San Antonio; and

**WHEREAS**, GRANTEE is engaged in an economic development project consisting of the expansion of its operations located at Port San Antonio, as more specifically depicted on Exhibit A (the "Project Site") attached hereto and incorporated herein, that will result in the retention of 115 full-time jobs and the creation of 80 new high-wage 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, GRANTOR 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 GRANTOR adopted an economic development program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, GRANTOR has identified funds to be made available to incentivize GRANTEE to undertake and complete the Project at the Project Site; and

**WHEREAS**, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2018-03-8-\_\_\_\_\_, passed and approved on March 8, 2018 to grant said funds; **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. GRANTOR 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, GRANTOR is willing to support the Project through the economic development grants provided in 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 GRANTOR 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 for the Term of this Agreement, as further defined in Section 5 below;
  - ii. maintain its headquarters within the city limits of the City of San Antonio, Texas for the duration of the Term of this Agreement;
  - iii. invest, or cause to be invested, approximately ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000.00) in personal property improvements to the Project Site within five (5) years of the Effective Date;
  - iv. retain the one hundred fifteen (115) jobs existing as of the Effective Date, at or above the compensation rate in effect as of the Effective Date, throughout the Term of the Agreement; and
  - v. create at least eighty (80) new Full-Time Jobs at the Project Site, of which at least sixty (60) will have an annual salary of at least \$100,000 and at least twenty (20) will have an annual salary of at least \$50,000 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, GRANTOR will provide an economic development incentive grant to GRANTEE as follows:

- A. Economic Development Program Grant. GRANTOR will provide GRANTEE with a grant from the Economic Development Fund ("EDIF") in the amount of up to FOUR HUNDRED TWENTY THOUSAND DOLLARS AND 00 CENTS (\$420,000.00) (the "Grant Cap"), subject to the actual number of new Full-Time Jobs GRANTEE creates at each pay level and the minimum job creation requirement set forth in Section 16 B. (iii). The grant amount is based on the creation of high-wage Full-Time Jobs with \$6,000 per new Full-Time Job created paying at least \$100,000 annually and \$3,000 per new Full-Time job paying at least \$50,000 annually, up to the Grant Cap.
- B. Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement, GRANTOR will make the Grant Funds available to GRANTEE within 45 days after the receipt and review by GRANTOR of the Semi-Annual Certification (defined below) due from GRANTEE for the December 31<sup>st</sup> year-end report. The Parties acknowledge and agree the grant payments made by GRANTEE will be determined by how many actual new jobs GRANTEE creates at each pay level set forth above in Section 3. A. each year during the Grant Term. GRANTOR will make an initial payment of \$75,000 to GRANTEE in 2018 (Year 1) upon the earlier of Grantee commencing business operations at, or obtaining a certificate of occupancy for, the Project Site. The total amount of grant funds shall not exceed the Grant Cap, which is inclusive of the initial \$75,000 payment in 2018.
- C. Grantee shall retain the newly created Full-Time Jobs for which it receives grant funds during the Grant Term, at or above the required compensation levels set forth above in Section 3. A., throughout the Term of the Agreement, including the Recapture Period.

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 GRANTOR's Economic Development Incentive Fund 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 Sections 2 A, B and C above shall be exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages,

H. GRANTEE also covenants and agrees that it shall offer all of its non-temporary full-time employees employed 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, within one year after the Effective Date, to partner with SA Works to provide, at the Project Site during the Term of this Agreement, experiential learning opportunities by: (i) sponsoring at least two student internships (paid or unpaid without necessarily working towards a specific job classification) each year (high school and/or college); (ii) providing at least two apprenticeships for college and/or technical school students (which includes both classroom and on-the-job training and working towards a specific job classification), job-shadows and/or teacher externships each year; (iii) increasing its workforce development and community support by participating in at least 3 local job fairs in coordination with Workforce Solutions Alamo over the Term of this Agreement; (iv) and use best efforts to hire the new Full-Time Jobs it creates from local universities and veterans; and increase its current participation in CyberPatriot by 20% through in-kind support.

K. Business Activities. GRANTEE shall conduct, at the Project Site, business activities typically conducted by a cybersecurity and information assurance company with over 100 full-time employees (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 GRANTOR, 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 GRANTOR, 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 GRANTOR 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 GRANTOR, 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. LIENS.**

GRANTOR will have a first lien on all the personal property on the inventory list attached hereto and incorporated herein as **Exhibit B**. In connection with such lien(s), GRANTEE shall, within 30 days after the Effective Date of this Agreement, file all necessary paperwork requested by GRANTOR to secure GRANTOR's lien against the personal property, including Uniform Commercial Code filings, and shall record these filings in the appropriate public records as directed by GRANTOR.

#### **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 ten (10) 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, shall commence upon the expiration of the Grant Term and continue for a period of five (5) years ("Recapture Term"), unless terminated as otherwise provided herein.

#### **SECTION 6. GRANTOR'S OBLIGATIONS**

A. Payment. GRANTEE acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of GRANTOR 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 GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the Grants in any budget year (as reflected in GRANTOR's adopted budget for such year), GRANTOR 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 GRANTOR 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 GRANTOR does not appropriate funds necessary to pay GRANTEE in a particular budget year, GRANTOR shall appropriate funds the following budget year(s) to pay funds due to GRANTEE. Failure of GRANTOR to appropriate funds in a particular budget year in which they are due and owing to GRANTEE shall not relieve GRANTOR of obligation to pay GRANTEE these funds in the subsequent year(s).

B. No Liability for Costs. Except as set forth in this Agreement, GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement, including, without limitation, contracts GRANTOR 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 amount of Required Capital Investment in real and personal property at the Project Site; (2) the hire and termination dates of each new and retained full-time employee at the Project Site; (3) employee records sufficient to determine if they live within Bexar County; (4) the fulfillment of all obligations of GRANTEE under this Agreement; and (6) 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 GRANTOR's right to inspect the Records as set forth below, are required in order to permit GRANTOR'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 GRANTOR 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 GRANTOR to inspect the Records within Bexar County. Any information that is prohibited by law to be made public shall be kept confidential by GRANTOR. Should any good faith dispute or question arise as to the validity of the data inspected, GRANTOR 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 GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise GRANTOR's right to recapture all disbursed grant funds. GRANTEE may require GRANTOR'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 July 1 of each year during the Term of this Agreement, GRANTEE shall provide GRANTOR'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 31<sup>st</sup> and June 30<sup>th</sup> 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, and (v) the aggregate investments made prior to such date that qualify toward the Required Capital Investment hereunder. 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 GRANTOR 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 GRANTOR 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 GRANTOR required for GRANTOR 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 GRANTOR 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 GRANTOR who would be subject to GRANTOR’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 GRANTOR’s ethics ordinance in dealings between GRANTOR 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 GRANTOR 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 GRANTOR within thirty (30) calendar days after receipt or issuance, as applicable.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR 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 GRANTOR 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, GRANTOR 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 GRANTOR'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, GRANTOR 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 GRANTOR of the term(s) in question.
- C. No Liability. GRANTOR 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 Port San Antonio 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 of San Antonio, then GRANTOR 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, GRANTOR's determination shall be final and conclusive. Upon termination, GRANTOR 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 GRANTOR in accordance with the recapture schedule set forth in Section 16(C) below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) 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 GRANTOR 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, GRANTOR's determination of a date of cessation shall be final and conclusive. Upon termination, GRANTOR 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 GRANTOR in accordance with the recapture schedule set forth in Section 16(C) below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
  
- iii. Number of Jobs. If GRANTEE, its affiliates, subsidiaries, or Related Organization, for any reason other than a Force Majeure Event, fails to create at least: (i) fifty percent (50%) of either the 60 jobs paying at least \$100,000 annually or the 20 jobs paying at least \$50,000 annually, as evidenced by the Semi-Annual Certification due on July 1, 2020; or (ii) fifty percent (50%) of the 80 new jobs at the requisite compensation rates (at least 60 jobs paying at least \$100,000 annually and at least 20 jobs paying at least \$50,000 annually) in accordance with Sections 2 and 3 above by the end of the Grant Term, GRANTOR may, in either event, terminate this Agreement with respect to the group of jobs in the particular compensation level not meeting at least the 50% threshold. Upon such termination, GRANTOR may recapture all funds previously disbursed by GRANTOR for such compensation level. GRANTOR shall be entitled to the payment of such recaptured funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of the termination and recapture. Notwithstanding anything contained herein to the contrary, GRANTEE shall have the obligation to maintain the number of jobs created for which it receives grant funds for the Term of this Agreement, the failure of which shall provide GRANTOR the right to recapture grant funds on a per job basis or, in the event the jobs fall below the fifty percent (50%) thresholds set forth above, Grantor shall have the right to recapture all grant funds previously disbursed by GRANTOR for such compensation level.

C. Limitation on Recapture. Notwithstanding 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 GRANTOR-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 GRANTOR'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 GRANTOR’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 GRANTOR 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 GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR under this **Section 18** at the rate of five percent (5%) 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. GRANTOR 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 GRANTOR. If GRANTEE so assigns this Agreement to a Related Organization, it will provide notice of such assignment to GRANTOR on or before the ninetieth (90<sup>th</sup>) calendar day following the date of assignment. Any assignment of this Agreement in violation of this Section shall enable GRANTOR 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 GRANTOR'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 GRANTOR:

(Whether personally delivered or mailed):

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

- If by personal or overnight delivery:

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

### TO GRANTEE:

IPSecure, Inc.  
12001 Network Blvd  
Suite 200  
San Antonio, Texas 78249

## 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 – Personal Property Subject to Lien  
Exhibit C - Incentive Monitoring Form

*Signatures appear on next page.*

WITNESS OUR HANDS, EFFECTIVE as of March 8, 2018 (the "Effective Date").

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2018-03-08-\_\_\_\_\_ and GRANTEE pursuant to its authority.

**CITY OF SAN ANTONIO (GRANTOR),**  
a Texas municipal corporation

\_\_\_\_\_  
Sheryl L. Sculley  
CITY MANAGER

ATTEST:

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

APPROVED AS TO FORM:

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

**IPSECURE INC. (GRANTEE),**  
a Texas corporation

Jesse A  
Rodriguez:A01097C0000  
014FF0E9666E0000A703  
Name: Jesse Rodriguez  
Title: President and Chief Executive Officer

Digitally signed by Jesse A  
Rodriguez:A01097C000014FF0E9666E0000A703  
DN: c=US, o=U.S. Government, ou=ECA,  
ou=IdemTrust, ou=IPSECURE INC, cn=Jesse A  
Rodriguez:A01097C000014FF0E9666E0000A703  
Date: 2018.03.02 14:08:34 -0600



Exhibit B - Personal Property Subject to Lien

**Exhibit C - Incentive Monitoring Form**



**City of San Antonio  
Economic Development Department  
Incentive Reporting Form**

Company Name: \_\_\_\_\_

Reporting Period: \_\_\_\_\_

Contact Information: \_\_\_\_\_

<b>Real Property: expenditures associated with real property improvements during reporting period (Verification may include AIA forms, receipts, invoices, request for payment from contractor, etc.)</b>	
1. Real Property improvements reported last reporting period	\$
2. Real Property improvements made since last reporting period	\$
3. Total cumulative Real Property improvements made (Attach supporting documents.)	\$
<b>Personal Property: expenditures associated with personal property improvements during reporting period (Verification may include receipts, invoices, requests for payment, etc.)</b>	
4. Personal Property improvements reported last reporting period	\$
5. Personal Property improvements made since last reporting period	\$
6. Total cumulative Personal Property improvements made (Attach supporting documents.)	\$
<b>Inventory/Supplies: (Verification may include receipts, invoices, requests for payment, etc.)</b>	
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 (Attach supporting documents.)	\$
<b>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.)</b>	
10. Total number of jobs reported at the facility last reporting period (For supporting documents, see above.)	
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 (For supporting documents, see above.)	
14. Percent of workforce receiving premium wages. (Refers to percentage of workforce earning the all-industry wage)	
<b>Additional Contractual Obligations (As applicable per your Agreement)</b>	
15. Percent of workforce that is local.	
16. Percent of workforce that is economically disadvantaged (attach information regarding company's good-faith efforts)	
17. Regarding employee benefits, please attach separate sheet demonstrating compliance with your agreement.	
<b>Certification:</b>	
<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](mailto:monitoringandops@sanantonio.gov).

# CITY COUNCIL A SESSION



## EDIF Grant Agreement with IPSecure Inc.

March 8, 2018

Rene Dominguez, Director, Economic Development Department

# BACKGROUND



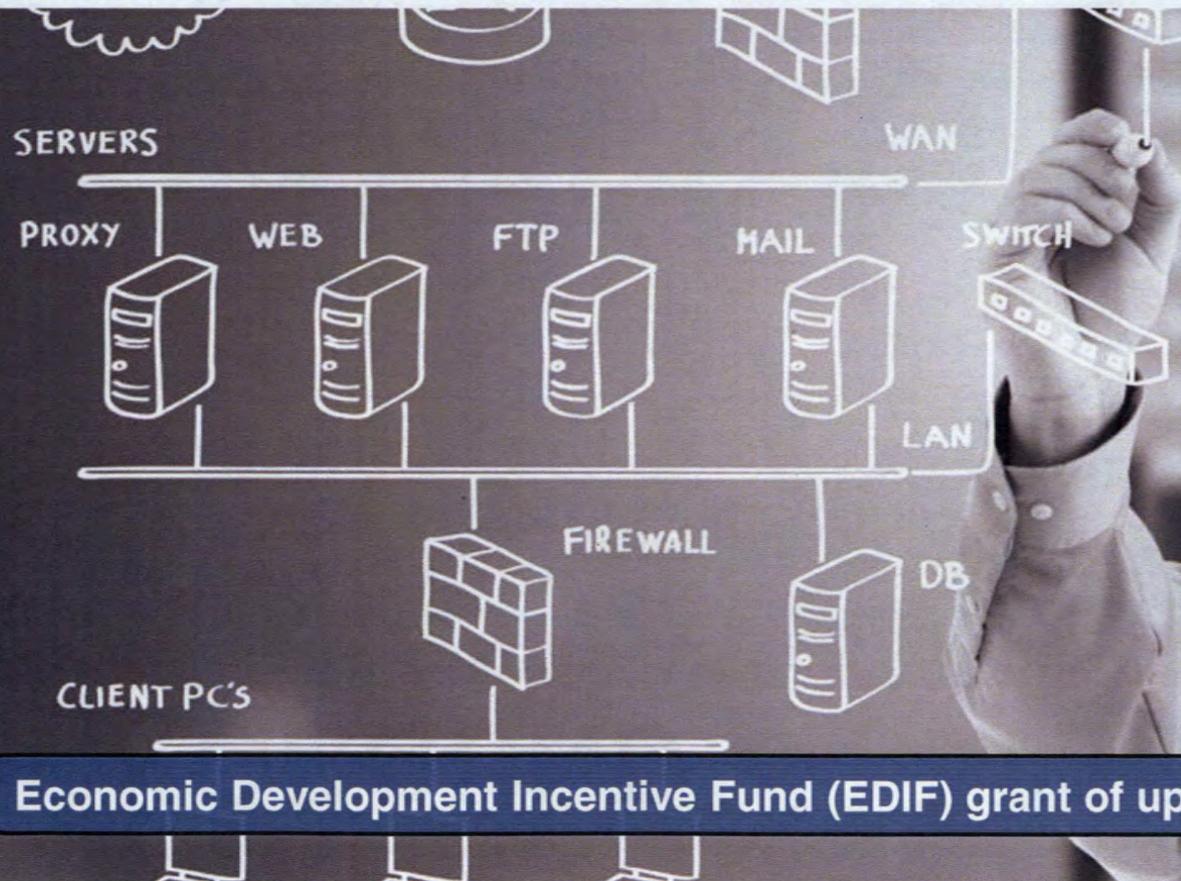
- Founded in 2000, IPSecure is a local cybersecurity company at Port San Antonio
- Provides IT services to government and private sector companies worldwide
- 12 years experience supporting the intelligence community

# BACKGROUND



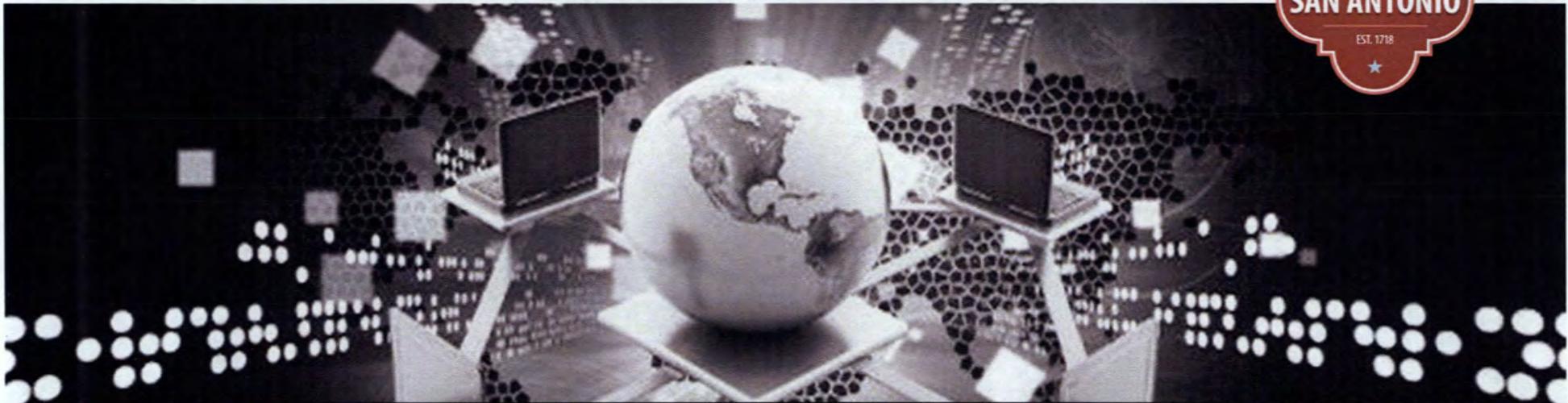
- Expanding to perform R&D on security solution applications
- Creation of state-of-the-art innovation center to showcase products and capabilities
- Investing \$1.3 million in capital and creating 80 new high-wage jobs

# PROPOSED INCENTIVES



Economic Development Incentive Fund (EDIF) grant of up to \$420,000

# PROJECT BENEFITS



- Grow cybersecurity ecosystem in San Antonio by adding to local commercial cybersecurity presence
- Focus on filling new jobs with local university graduates and military veterans
- Retain 115 high-wage jobs and create 80 new high-skill and high-wage jobs

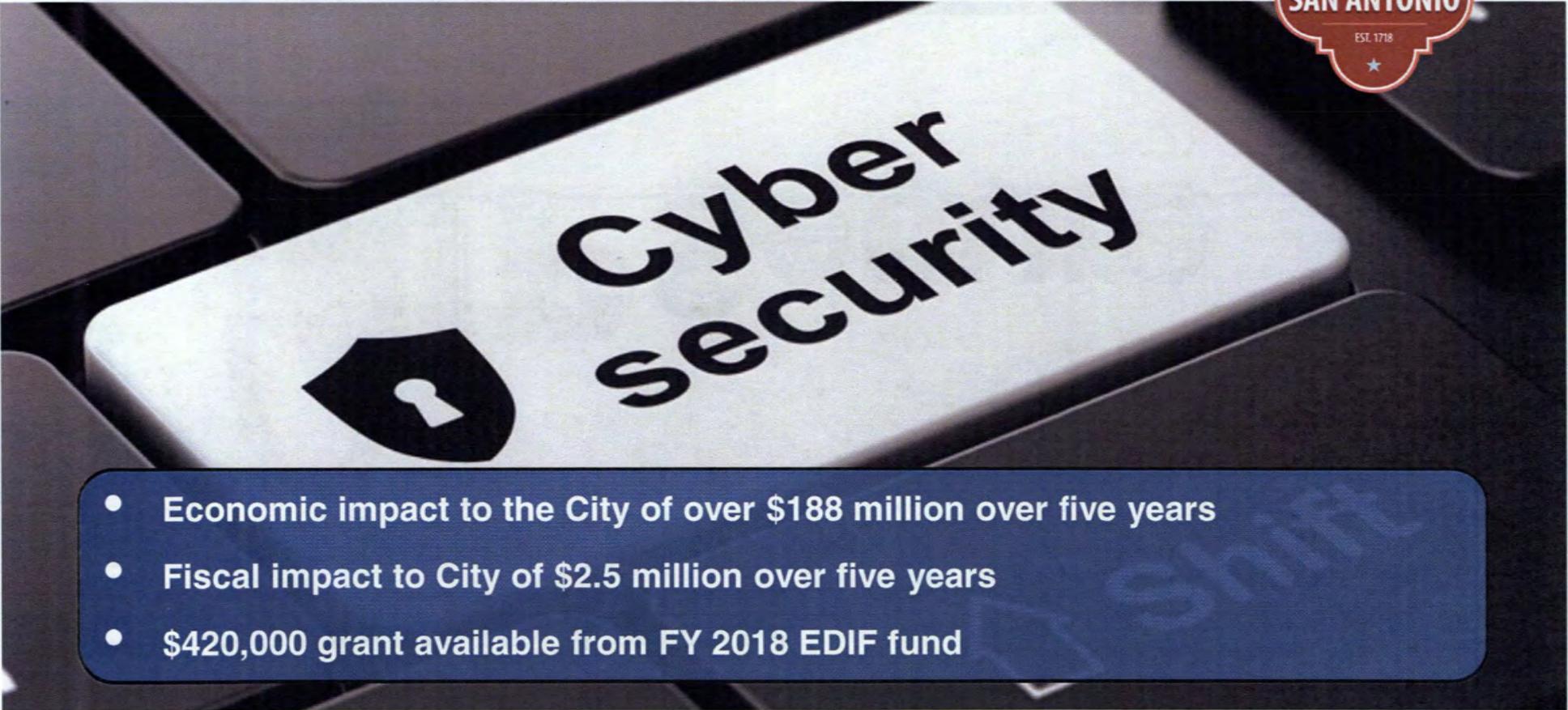
# PROJECT BENEFITS



- **Workforce Development**

- Internships , apprenticeships, job shadows, teacher externships
- Investing in CyberPatriot San Antonio

# FISCAL IMPACT



Cyber  
security

- Economic impact to the City of over \$188 million over five years
- Fiscal impact to City of \$2.5 million over five years
- \$420,000 grant available from FY 2018 EDIF fund

# RECOMMENDATION



Approval of Chapter 380 EDIF Grant Agreement of up to \$420,000 with IP Secure

# CITY COUNCIL A SESSION



## EDIF Grant Agreement with IP Secure Inc.

March 8, 2018

Rene Dominguez, Director, Economic Development Department