

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND CREDIT HUMAN FEDERAL CREDIT  
UNION**

THIS CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT (hereinafter referred to as this “**Agreement**”) is made and entered into by and between the City of San Antonio (hereinafter referred to as “**GRANTOR**”), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and Credit Human Federal Credit Union (hereinafter referred to as “**GRANTEE**”), a federally chartered credit union. Together, GRANTOR and GRANTEE may be referred to herein as the “**Parties**,” or individually as a “**Party**.”

**WHEREAS**, GRANTEE is engaged in an economic development project consisting of the development and construction of a new corporate headquarters; ~~located on~~ its allocable share of a parking garage; and other general and limited common elements (the “**Project**”) to be located on a portion of the land generally known as 1803 Broadway Avenue, San Antonio, Texas 78215 and more specifically described in **EXHIBIT A** (such portion of the land being referred to herein as the “**Project Site**”); and

**WHEREAS**, the Project is anticipated to result in a capital investment in Project Costs (as defined in Section 2.13 below) on the Project Site of at least \$113,000,000, and the Project will be owned or occupied by GRANTEE where it will conduct its Business Activities (as defined in this Agreement), retain at least four hundred thirty-five (435) “Full-Time Jobs”; and create at least fifty (50) “New Full-Time Jobs” as those requirements are set forth in the Tax Abatement Agreement between the Parties and attached hereto as Exhibit Bas well as the construction of certain public improvements listed on EXHIBIT C (the “**Required Public Improvements**”) and the GRANTOR’s acceptance thereof; and

**WHEREAS**, GRANTEE has requested economic development incentive funds to assist GRANTEE to defer costs associated with undertaking the Project and completing the Required Public Improvements 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. 2017-10-19-\_\_\_\_\_, passed and approved on \_\_\_\_\_, 2017 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

GRANTOR and GRANTEE have as of even date herewith also entered into that certain Tax Abatement Agreement approved by City Ordinance No. 2017-10-19-\_\_\_\_\_ (the “**Tax Abatement Agreement**”), whereby GRANTEE is entitled to a 10-year, one hundred percent (100%) tax abatement of ad valorem real and personal property taxes on the Project Site, up to an amount not to exceed FIVE MILLION NINE HUNDRED TWENTY-THREE THOUSAND EIGHT HUNDRED EIGHTY-TWO DOLLARS AND NO CENTS (\$5,767,844.00) (the “**Maximum Benefit**”) provided GRANTEE complies with the terms and conditions set forth therein.

The purpose of this Agreement is to provide an economic development grant to GRANTEE in an amount necessary to supplement the Tax Abatement Agreement to meet up to an amount 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 through (a) the completion of the Required Public Improvements, (b) the construction of a corporate headquarters for a federally chartered credit union with at least \$2 billion in assets, (c) the retention of at least four hundred thirty-five (435) Full-Time Jobs (as defined below), and (d) the creation of fifty (50) New Full-Time Jobs (as defined below) as set forth in the Tax Abatement Agreement. 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 pay or defer Required Public Improvements costs associated with the Project.

### SECTION 2. PROJECT INCENTIVE CONDITIONS

In order to receive the economic development grants provided in Section 3 of this Agreement, GRANTEE must satisfy the following conditions:

A. Project Site. GRANTEE shall own, hold an interest in or otherwise control the Project Site for the Term of this Agreement.

B. Investment. Prior to December 31, 2020 GRANTEE shall have invested at least ONE HUNDRED THIRTEEN MILLION DOLLARS AND NO CENTS (\$113,000,000.00) in ~~real property~~ Project Costs (the “**Required Capital Investment**”). For purposes hereof and the Tax Abatement Agreement, “**Project Costs**” shall include all expenditures made by GRANTEE, directly or indirectly, and/or its parent, partners, subsidiaries and/or affiliates to acquire the Project Site and to develop, construct and/or acquire real property improvements and new personal property improvements at the Project Site (the “**Required Capital Investment**”) on or at the Project Site, including without limitation: architectural, engineering and surveying

expenses, financing costs and fees, construction period interest, closing and settlement expenses, demolition, construction, site preparation, Required Public Improvements, fencing, paving, landscaping, permit fees, title insurance, installation of equipment (including the full value of equipment installed pursuant to a lease purchase agreement and paid through periodic installments by GRANTEE and/or affiliates) and other related expenses. The Required Capital Investment shall be calculated in the same manner and shall include the same costs and expenses as are included in the term "Required Capital Investment" under the Tax Abatement Agreement.

C. The Parties acknowledge that pursuant to the terms and conditions of the Tax Abatement Agreement, GRANTEE is entitled to a 10-year, one hundred percent (100%) tax abatement of ad valorem real and personal property improvement taxes on the Project Site, up to an amount not to exceed the Maximum Benefit, provided GRANTEE makes the Required Capital Investment, completes the Required Public Improvements and meets the jobs retention and creation requirements, and all other requirements set forth therein. This Agreement requires GRANTEE's compliance with and/or satisfaction of the Required Capital Investment, the completion of the Required Public Improvements, and Full-Time Jobs and New Full-Time Jobs retention and creation requirements set forth herein, and all other GRANTEE obligations contained herein. The Parties further acknowledge that, notwithstanding anything contained in this Agreement, upon GRANTEE ~~receiving's~~ having received the Maximum Benefit under either the Tax Abatement Agreement alone or in combination with this Agreement (e.g., the cumulative benefit to GRANTEE under both the Tax Abatement Agreement and this Agreement), GRANTEE shall have no further right, to any rebate of ad valorem taxes hereunder or to receive any further abatement of ad valorem taxes under the Tax Abatement Agreement, and following such date GRANTOR shall not be obligated to perform any obligations hereunder and under the Tax Abatement Agreement.

D. Notwithstanding anything contained herein, ~~if and on~~ the fact that GRANTEE ~~receives~~ may have received the Maximum Benefit, shall not limit, impair or terminate GRANTEE's obligations hereunder and under the Tax Abatement Agreement prior to the expiration of the respective Terms of such agreements, including, without limitation, GRANTEE's job creation, job retention, Required Capital Investment, and Required Public Improvements completion obligations, all of which shall continue in full force and effect ~~through~~ throughout the remainder of the respective Terms of this Agreement and the Tax Abatement Agreement.

E. Public Improvements. As a condition precedent to GRANTOR's obligation to rebate personal and real property improvement ad valorem taxes hereunder, GRANTEE shall have completed construction of the Required Public Improvements and ~~the~~ GRANTOR shall have accepted such Required Public Improvements in accordance with GRANTOR's customary acceptance requirements for similar public improvements prior to the commencement of the Rebate Term under this Agreement.

F. Business Activities. On or before December 31, 2020, GRANTEE shall own, hold an interest in or otherwise control the Project Site and will conduct certain business activities including, but not limited to, those activities typically conducted at the corporate headquarters of a federally chartered credit union with assets if at least \$2 billion or the business activities of a

Related Organization (as such term is defined below), so long as such business activities include the business activities of a corporate headquarters of a federally chartered credit union with assets of at least \$2 billion, or an approved credit union service organization activity or service with similar value and assets of GRANTEE (all of such activities hereinafter collectively referred to as the “**Business Activities**”). Except as provided herein, GRANTEE shall use the Project Site only in connection with Business Activities, provided that the master lease of the ground floor or the incidental use, lease or occupancy of other portions of the headquarters building for retail, service or other uses that GRANTEE determines to be incidental or ancillary to or compatible with, the Business Activities (collectively, the “**Incidental Uses**”) shall be permitted. For the purposes of this Agreement and the Tax Agreement only, GRANTEE or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any component thereof (hereinafter “**Related Organization**”) may, without additional consent or approval by the City Council occupy and use portions of the Project Site for such Related Organization’s normal business activities, so long as such business activities are those of a federally chartered credit union headquarters, or an approved credit union service organization, comparable to the Business Activities and value and assets of GRANTEE and such activities and uses are otherwise in compliance with all terms of this Agreement. To be eligible for the tax abatements as provided in this Agreement, such Related Organizations, other than a GRANTEE Subsidiary (as defined in the Tax Abatement Agreement), must agree in writing to assume and fully comply with all applicable terms of this Agreement. Except as authorized above, GRANTEE shall not change the principal use of the Project Site without prior approval by the City Council, as evidenced in a duly-approved ordinance.

G. Full-Time Jobs. By December 31, 2025, GRANTEE must have at least four hundred eighty-five (485) Full-Time Jobs at the Project Site. For the purposes of this Agreement, the term “Full-Time Job” shall have the same meanings ascribed to such term in the Tax Abatement Agreement.

H. Employee Benefits. GRANTEE shall offer all Full-Time Employees at Project Site their eligible dependents substantially similar employee benefits as those employee benefits offered to similarly-situated employees of GRANTEE as set forth in **EXHIBIT “E”** of the Tax Abatement Agreement. The term “**Full-Time Employee**” shall mean each employee of GRANTEE who has a Full-Time Job.

I. Certification. On or before February 1 and August 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, (v) the sublease of any portion of the Project Site owned by GRANTEE other than for Incidental Uses or to a Related Organization (which certification shall include the number of square feet subleased, the uses permitted under the sublease and the trade name and parent

company name of the ~~sublessee~~lessee), and (vi) 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 Reporting Form” attached as **EXHIBIT “C”**, as the same may be revised by GRANTOR from time to time.

J. Tax Abatement Agreement. A default hereunder shall be deemed a default under the Tax Abatement Agreement.

K. Notwithstanding anything contained herein to the contrary, in the event GRANTEE fails to locate all of the 485 required Full-Time Jobs to the Project Site by December 31, 2025 as provided in Section 2G above, such failure shall be an event of default hereunder. GRANTEE shall have sixty (60) days to cure the default. If GRANTEE fails to cure the default within such sixty (60) day period, GRANTOR may exercise its rights under Section 16B(3) of this Agreement.

### **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. **Annual Property Tax Rebate.** Subject to the terms and conditions of this Agreement and conditioned upon GRANTEE not being in default under the Tax Abatement Agreement, for each of the five (5) tax ~~year~~years commencing with the 2030 tax year (beginning on January 1, 2030) and ending with the 2034 tax year (ending on December 31, 2034) (the “**Rebate Term**”) until such time as the cumulative benefit to GRANTEE under the Tax Abatement Agreement and this Agreement has reached the Maximum Benefit, GRANTOR shall pay GRANTEE an “**Annual Property Tax Rebate.**” The Annual Property Tax Rebate shall be paid to GRANTEE by GRANTOR within forty-five (45) days following the submission of a tax statement indicating payment of taxes by GRANTEE, in an amount equal to:

1. the actual amount of real property and personal property taxes paid by GRANTEE to GRANTOR with respect to the Project Site (including both land and improvements thereon) for the subject year during the Rebate Term, *less*:

- (a) the actual amount of real property and personal property taxes paid by GRANTEE to GRANTOR with respect to the Base Year Value for the Project Site real property and personal property. The “**Base Year Value**” is the taxable property value (as determined by the Bexar County Appraisal District), as of January 1, 2018 (the “**Base Year**”); and

- (b) The actual amount of real property and personal property taxes paid by GRANTEE to GRANTOR with respect to the Project Site (including improvements) attributable to the ad valorem tax levied by GRANTOR exclusively for municipal debt purposes. GRANTEE acknowledges GRANTOR is not permitted by GRANTOR’s Charter to rebate portions of the ad valorem

taxes collected exclusively for municipal debt purposes, *as set each year* based upon the approved property tax rate. As of the Effective Date, THIRTY-SEVEN AND EIGHTY-EIGHT ONE HUNDREDTH PERCENT (37.88%) of GRANTOR's ad valorem tax rate is collected exclusively for municipal debt purposes.

B. The Annual Property Tax Rebate contemplated hereunder shall be payable by GRANTOR to GRANTEE upon satisfaction of the following: (1) the expiration of the Abatement Term of the Tax Abatement Agreement; (2) the submission by GRANTEE of evidence of expenditures meeting the Required Capital Investment; (3) the submission by GRANTEE of evidence of completion of the Required Public Improvements; and (4) submission of the Semi-Annual Certification evidencing GRANTEE's satisfaction of the job creation and retention requirement under the Tax Abatement Agreement and hereunder.

C. **Maximum Benefit Reconciliation.** In no case shall (i) rebates made to GRANTEE under this Agreement *plus* (ii) the abatements of ad valorem real property improvement and personal property improvement taxes under the Tax Abatement Agreement *exceed* the Maximum Benefit. Should such rebates and/or abatements exceed the Maximum Benefit, no further disbursements shall be due to GRANTEE and any excess funds disbursed shall be due and payable by GRANTEE to GRANTOR within sixty (60) calendar days following written notice from GRANTOR to GRANTEE.

D. The Parties acknowledge and agree this Agreement does not provide for the rebate of taxes on real property improvements and personal property improvements brought on or made to the Project Site on or before the Effective Date.

E. GRANTEE acknowledges GRANTEE shall continue to pay all taxes owed on the Project Site as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District, Bexar Appraisal Review Board or court of competent jurisdiction. Prior to GRANTOR disbursing funds under this Section 3, GRANTEE must provide to GRANTOR evidence indicating that all taxes owed on the Project Site have been paid in full for the tax year for which payment of the Annual Property Tax Rebate is sought, subject to GRANTEE's right to protest taxes as permitted by law; provided, however, any reductions to ~~the appraised value of~~ the ad valorem taxes, real or personal, shall cause a proportional decrease to the taxes rebated under this Agreement or those abated under the Tax Abatement Agreement, and GRANTOR shall be entitled to the payment of such decrease in rebated taxes within thirty (30) calendar days from the date GRANTEE receives a refund of any overpayment of taxes. GRANTEE shall notify GRANTOR of the tax protest within ninety (90) days after the tax protest is initiated.

F. GRANTEE shall not allow its ad valorem taxes due on the land, real and personal property or inventory and supplies to become delinquent or fail to timely and properly follow the legal procedures for their protest and/or contest. A violation of this Section 3, Paragraph F may, at CITY's discretion, subject GRANTEE to the termination and recapture provisions of Section 16 of this Agreement, subject to GRANTEE having thirty (30) calendar days from the date it receives notice from the taxing authority of such violation to cure the violation.

#### **SECTION 4. TERM**

As used herein, the “**Term of this Agreement**” shall mean the period of time commencing on the Effective Date and ending on December 31, 2034, unless earlier terminated as set forth herein.

#### **SECTION 5. CONTINUING OBLIGATIONS AND CROSS DEFAULT.**

A. Notwithstanding receipt of the Maximum Benefit prior to the expiration of the Term of this Agreement, GRANTEE’s obligations hereunder (including, without limitation, GRANTEE’s job creation, job retention, Required Capital Investment, and Required Public Improvements completion obligations) shall continue in full force and effect through the Term of this Agreement.

B. 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 rebates herein provided 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 use reasonable efforts to 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 the obligation to pay GRANTEE such funds in the subsequent year(s) when funds are appropriated.

C. If, during the Term of this Agreement, GRANTEE defaults under the Tax Abatement Agreement, then GRANTEE shall be deemed to be in default hereunder and the termination and recapture provisions of Section 16 of this Agreement shall apply against GRANTEE.

D. Except as set forth in this Agreement, GRANTOR shall not be liable to GRANTEE or any other entity or third party for any costs incurred by GRANTEE in connection with this Agreement.

#### **SECTION 6. RESERVED**

#### **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 Full-Time Employee and New Full-Time Employee in GRANTEE’s offices at the Project Site; (3) employee records sufficient to determine if they live within Bexar County when hired; (4) the creation, maintenance and retention of Full-Time Jobs and New Full-Time Jobs in GRANTEE’s offices at the Project Site; (5) the fulfillment of all obligations of GRANTEE under this Agreement; and (6) the wages and healthcare benefits offered to all Full-Time Employees at the Project Site. GRANTEE shall retain records pertaining to the amount of the Project Costs 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 shall provide copies of the applicable Records to CITY (other than those: (i) pertaining to the Required Capital Investment and any supporting documentation; and (ii) which GRANTEE is prohibited by law from disclosing) when it delivers the Semi-Annual Certification to City. Within ninety (90) days following receipt of the Records applicable to the first Semi-Annual Certification delivered hereunder to GRANTOR, GRANTOR shall notify GRANTEE of any additional information required to reasonably satisfy GRANTEE’s obligation to provide Records in connection with such Semi-Annual Certification and for all subsequent Semi-Annual Certifications hereunder. 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.

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 not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. 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 abated taxes. 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**

On or before February 1 and August 1 of each year during the Term of this Agreement (including the Recapture Period), GRANTEE shall provide 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 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, (v) the sublease of any portion of the Project Site for Incidental Uses or to GRANTEE's Subsidiary (which certification shall include the number of square feet subleased, the uses permitted under the sublease and the trade name and parent company name of the sublessee), and (vi) the aggregate investments in Project Costs made prior to such date that qualify toward the Required Capital Investment hereunder. The information provided shall be on the Incentive Reporting Form, as the same may be revised by GRANTOR from time to time.

## **SECTION 9. CONFLICT OF INTEREST**

A. GRANTEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee of the CITY has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

B. Pursuant to Section 9(A) above, GRANTEE warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. GRANTEE further warrants and certifies that it has tendered to the CITY a Contracts Disclosure Form in compliance with the CITY's Ethics Code.

## **SECTION 10. SECTARIAN ACTIVITY**

A. 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 respective 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 GRANTOR. GRANTEE shall give GRANTOR immediate notice in writing of: (i) any OSHA investigation of GRANTEE concerning the Business Activities at the Project Site; (ii) bankruptcy of GRANTEE; and (iii) any notice given by GRANTEE to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at the Project Site. GRANTEE shall submit a copy of each such notice required hereunder to GRANTOR within fifteen (15) 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 is performable in Bexar County, Texas and shall be interpreted according to the Constitution and the laws of the State of Texas. Venue and jurisdiction of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## **SECTION 13. ATTORNEY'S FEES**

In the event GRANTEE or GRANTOR should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees to pay to the other Party its reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party so ordered by a court having jurisdiction over the Parties.

## **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. Economic Development 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. DEFAULT. SUSPENSION**

A. Notice and Cure Period. If GRANTEE fails to comply with any of the terms of this Agreement (including Section 16), then such non-compliance shall be deemed an “event of default.” Upon the occurrence of an event of default, GRANTOR shall provide GRANTEE with written notification as to the nature of the default, whereupon GRANTEE shall have sixty (60) calendar days following the date of GRANTEE’s receipt of GRANTOR’s written notification (the “**Cure Period**”) to cure such event of default. Subject to Section 16(B)(3) below, as applicable, if GRANTEE fails to cure an event of default within its applicable Cure Period, or such longer period of time as may be reasonably necessary for GRANTEE to cure the default in question if the same cannot reasonably be cured within such sixty (60) calendar 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 reason 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 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 for costs incurred during any term of suspension of this Agreement.

#### **SECTION 16. TERMINATION AND RECAPTURE, 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 City limits for reasons other than the inability to conduct the Business Activities at the Project Site due to a Force Majeure Event (as defined in Section 17 below).

#### **B. DEFAULT/TERMINATION/RECAPTURE.**

1. 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 Section 16(A) during the Term of this Agreement, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the tax 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.
2. Cessation of Business Activities. If, after the conditions set forth in Section 2(B) 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 tax 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 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.
  3. If GRANTEE, a Related Organization, GRANTEE's Subsidiary, or GRANTOR-approved assignee fails to hire and retain the minimum number of permanent Full-Time Employees and/or New Full-Time Employees as and when required in Section 2 above, or fails to satisfy the requirements for Full-Time Jobs and New Full-Time Jobs set forth in Section 2 above in a given year, then the Annual Tax Rebate shall be reduced that tax year by the same percentage as the percentage deficiency in the total number of Full-Time Jobs and New Full Time Jobs identified in such given year. For example, if GRANTEE employs only ninety percent (90%) of the Full-Time Employees and/or New Full-Time Employees required in a given year under Section 2 above, then GRANTEE shall be entitled to ninety percent (90%) of the Annual Tax Rebate for the Project Site for that tax year. Such Annual Tax Rebate reduction percentage shall be independent from and in addition to any such Annual Tax Rebate reduction percentage applicable in any instance under Section 16, Paragraph B(4) below. Should GRANTEE fail to employ at least fifty percent (50%) of the minimum number of Full-Time Employees and/or New Full Time Employees required in a given year under Section 2, then, at the option of GRANTOR, this failure may be grounds for termination of this Agreement by GRANTOR. Said termination shall be effective for the calendar year during which the number of Full-Time Employees and/or New Full Time Employees falls below fifty percent (50%) of the minimum number of Full-Time Employees and/or New Full-Time Employees in a given year under Section 2. Upon termination, any and all taxes rebated for that tax year and all previously-rebated taxes under this shall be recaptured by GRANTOR and

GRANTOR shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies GRANTEE in writing of the termination. For purposes hereof, compliance with the requirements for the Full-Time Jobs and/or New Full-Time Jobs for each calendar year shall be determined by averaging of the two Semi-Annual Certifications for such calendar year.

4. If GRANTEE fails to make the Required Capital Investment required in Section 2 above by the deadline set forth in Section 2B, then the Annual Tax Rebate shall be reduced in the following tax year and any succeeding tax year in which the Required Capital Investment has not been fully satisfied by the same percentage as the percentage deficiency in the Required Capital Investment identified in such given year. For example, if GRANTEE has completed ninety-five percent (95%) of the Required Capital Investment required in a given year, GRANTEE shall be entitled to ninety-five percent (95%) of the Annual Tax Rebate for the Project Site for that following year. Such Annual Tax Rebate reduction percentage shall be independent from and in addition to any such Annual Tax Rebate reduction percentage applicable in any instance under Section 16, Paragraph B(3) above. Should GRANTEE fail to make at least ninety percent (90%) of the Required Capital Investment as required in ~~a given year~~ under Section 2, then, at the option of GRANTOR, this failure may be grounds for termination of this Agreement by GRANTOR. Said termination shall be effective for the calendar year during which the Required Capital Investment falls below ninety percent (90%) of the minimum Required Capital Investment in a given year under Section 2. Upon termination, any and all taxes otherwise rebated for that tax year under this Agreement and all previously-rebated taxes under this shall be recaptured by GRANTOR and GRANTOR shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies GRANTEE in writing of the termination. For purposes hereof, compliance with the requirements for the minimum Required Capital Investment shall be determined by Semi-Annual Certification, subject to GRANTOR's right to inspect the Records of GRANTEE as set forth herein.
5. Bankruptcy. If GRANTEE, any Related Organization, and/or other GRANTOR-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 which have not been previously recaptured by GRANTOR may be recaptured by GRANTOR according to the schedule set forth in Section 16(C) below.

C. In any circumstance that GRANTOR is entitled to and elects to recapture funds disbursed hereunder, the portion subject to recapture shall be as follows:

<b>TERM YEAR IN WHICH RECAPTURE OCCURS</b>	<b>TOTAL PERCENTAGE OF FUNDS TO BE RECAPTURED:</b>
1-5	100%

6	90%
7	70%
8	50%
9	30%
10	10%

That period of time beyond the Rebate Term set forth above as years \_\_\_ through \_\_\_ is referred to herein as the “**Recapture Period**”. GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing.

D. **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 and assumes in writing joint and severable liability for all of GRANTEE’s obligations hereunder and under the Tax Abatement Agreement and, in such event, GRANTEE shall remain liable for GRANTEE’s obligations hereunder and under the Tax Abatement Agreement.

E. **GRANTOR Default.** If the GRANTOR fails to make payment of any of the Annual Property Tax Rebates when due and fails to cure such failure within thirty (30) days following receipt of written notice thereof from GRANTEE, then the GRANTOR shall be deemed in default under this Agreement and (i) GRANTEE shall be excused from performance of any of the conditions or requirements hereunder (including the job and investment requirements) until such time as such default has been cured, provided, however, GRANTOR shall only be liable to GRANTEE for the Annual Property Tax Rebates, which shall be GRANTEE’s sole and exclusive remedy, and shall not be liable for any other damages including alleged consequential damages.

**SECTION 17. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

In addition to relief expressly granted in this Agreement, GRANTEE may 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. For purposes of this Agreement, a “**Force Majeure Event**” shall include an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster casualty, condemnation or other event beyond the reasonable control of GRANTEE. The burden of proof 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 for approval, specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

**SECTION 18. RESERVED**

## **SECTION 19. REASONABLENESS**

The Parties 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 AND DEBARMENT**

A. This Agreement is not assignable by any Party without thirty (30) calendar days' prior written consent of the non-assigning Party. GRANTOR will 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 or GRANTEE's Subsidiary, without the written consent of GRANTOR. If GRANTEE so assigns this Agreement to a Related Organization or GRANTEE's Subsidiary, it shall provide notice of such assignment to GRANTOR on or before the thirtieth (30<sup>th</sup>) calendar day following prior to 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, with the exception of an assignment to a Related Organization or GRANTEE Subsidiary, shall relieve GRANTEE of all obligations and liabilities under this Agreement.

B. By signing this Agreement, GRANTEE agrees that it will not knowingly award or pay funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by GRANTOR.

## **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  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**TO GRANTEE:**

Credit Human Federal Credit Union  
Attn: Steve Hennigan  
6061 IH-10 West  
San Antonio, TX 78201

- If by personal or overnight delivery:

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

Copies to:

Martin & Drought, P.C.  
Attn: Frank Burney  
300 Convent #2500  
San Antonio, TX 78205

**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 Description  
Exhibit B – Public Improvements  
Exhibit C-Incentive Reporting Form

*[Signatures appear on next page.]*



**WITNESS OUR HANDS**, effective as of \_\_\_\_\_, 2017 (the “**Effective Date**”):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2017-10-12-\_\_\_\_\_ and GRANTEE pursuant to its authority.

**CITY OF SAN ANTONIO**,  
a Texas municipal corporation

**CREDIT HUMAN FEDERAL  
CREDIT UNION**  
a federally-chartered credit union

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

\_\_\_\_\_  
Name:  
Title:

ATTEST:

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

APPROVED AS TO FORM:

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





**EXHIBIT B**  
Public Improvements

**Street Infrastructure**

- (1) Street Improvements - Ave B (includes lane striping at E. Grayson & Josephine) & Bike Lane
- (2) Street Improvements - Broadway Complete Streets
- (3) Street Improvements - Newell & I-35 to Broadway only
- (4) Street Improvements - Pavers at Broadway & Pearl Parkway
- (5) Street Improvements - Traffic Signal(s) – Josephine
- (6) Street Improvements - Traffic Signal(s) - Broadway Mods
- (7) Bike Station
- (8) Street Improvements – Repairs
- (9) Parking/Traffic Revisions Pearl Parkway & Ave B (Pull-In Parking)

**Utility Infrastructure**

- (1) Electric Utility Infrastructure - CPS Fees
- (2) Gas Utility Infrastructure - CPS Fees/Meter
- (3) Telecom Utility Infrastructure - ATT/TW/Grande/L3 Fees

**Other Construction**

- (1) Bus Station
- (2) Construction in the Right of Way
  - a. Storm Sewer - Broadway ROW
  - b. Clean Streets
  - c. Traffic Control/Sidewalk Control
  - d. Lane Closures
  - e. Curb/Gutter
  - f. Sidewalks
  - g. Pavers
  - h. Board Formed Concrete Walls
  - i. New Trees/Landscape
  - j. Tree Replacement
  - k. Underground Utility Ductbank
  - l. Bike Racks
  - m. Mill & Overlay
  - n. OH&P

**Public/Green/Patio Spaces**

# EXHIBIT C Incentive Reporting Form



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

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

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

Name/Phone/Email of Person Preparing Report: \_\_\_\_\_

**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 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.*

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 the Economic Development Department, at 210/207-0150 or e-mail: [monitoringandops@sanantonio.gov](mailto:monitoringandops@sanantonio.gov).

