

**TECHSTARS TALENT RETENTION PILOT PROGRAM AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND TECH BLOC**

This Techstars Talent Retention Pilot Program Agreement (this “Agreement”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as “City”) acting by and through its City Manager and Tech Bloc (hereinafter referred to as “PROGRAM MANAGER”) acting by and through its Executive Director. The City and PROGRAM MANAGER may be referred to collectively as the “Parties”.

RECITALS

WHEREAS, in order to support the local entrepreneurial ecosystem and impact the number of startup and high-growth companies choosing to remain in or relocate to San Antonio, the City’s Economic Development Department (EDD) has worked closely with San Antonio’s IT Industry to develop a program with the goal of keeping talented individuals and their companies in the city; and

WHEREAS, as a result of such work, the Techstars Talent Retention Pilot Program (the “Program”) was created as a partnership with local non-profit technology industry organization Tech Bloc that will offer increased support to retain successful graduates of the Techstars Cloud Program, an industry-recognized start-up accelerator program, that may be considering growing their companies outside of San Antonio; and

WHEREAS, Tech Bloc will serve as the Program Manager and facilitate the Program’s prospect identification and selection process in order to retain and grow successful Techstars Cloud graduates; and

WHEREAS, the City will provide funding up to \$800,000.00 payable over a four (4) year period for Techstars Cloud graduates to commit to operating within San Antonio in accordance with the Program guidelines; 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 such 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 establishment and implementation of the Tech Stars Talent Retention Pilot Program will meet the goals of Chapter 380 and will promote local economic development and stimulate business and commercial activity in the municipality; **NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the City and PROGRAM MANAGER agree as follows:

I. TERM

1.1 Term. The term of this Agreement shall be six (6) years commencing on _____, 201_ and remaining in full force and effect through _____, 201_ (“*Term*”) unless sooner terminated, as provided for in this Agreement.

1.2 Renewal. As a Pilot program, this Agreement shall not be renewed without the express authority of a duly authorized City Ordinance. Should a renewal be authorized by City Council, it may be under the same terms and conditions of this Agreement or the Parties may agree to negotiate new terms and conditions.

1.3 Appropriations. If funding for the entire Term is not appropriated at the time that this Agreement is entered into, then City may terminate this Agreement at the expiration of any City budget period for which full funding has been appropriated, and any given year during the Term is subject to and contingent upon the City appropriating funds for that year. Should City fail to appropriate such funding, this Agreement shall terminate without any further action by either party.

II. SCOPE OF SERVICES

2.1 Services for Compensation. PROGRAM MANAGER agrees to provide the services described below in exchange for the compensation described in Article III, “Compensation to PROGRAM MANAGER”. City acknowledges that PROGRAM MANAGER contracts with other entities and organizations unaffiliated with City, and that under those agreements PROGRAM MANAGER may perform services and activities outside of those described herein. However, PROGRAM MANAGER acknowledges that funds provided by City through this Agreement will be used only for those activities described below.

2.2 Scope of Services. PROGRAM MANAGER shall work to implement the Program Guidelines established in Exhibit A. PROGRAM MANAGER shall, subject to being supplied the appropriate funding pursuant to Section 3.2, implement the Program Guidelines in accordance with the terms and conditions of this Agreement.

2.3 Program Guidelines.

a. Development. Within thirty (30) days of the execution of this Agreement, and thereafter before July 1st of each year, City and PROGRAM MANAGER shall prepare draft Program Guidelines outlining the milestones to be achieved and procedures to be utilized to deliver the Services within the fiscal year that is the subject of the Program Guidelines. The Program Guidelines shall describe the methodology and steps then expected to be followed by PROGRAM MANAGER to deliver the Services within the specified fiscal year, and shall include a budget that indicates in appropriate detail how the funding provided by the City for that fiscal year will be expended. The City and PROGRAM MANAGER shall work jointly to finalize the Program Guidelines, and each shall submit the fiscal year’s Program Guidelines to its governing board for approval. After approval by each respective board, the Program Guidelines shall become incorporated into this Agreement as Exhibit “A.” The parties understand that circumstances during any period of time may differ from those contemplated

when the Program Guidelines were established; however, any material changes to the approved Program Guidelines must be approved in writing by City.

b. Performance Targets. As part of the development of each year's Program Guidelines, the City and PROGRAM MANAGER shall establish "Performance Targets" against which PROGRAM MANAGER's execution of the Program Guidelines is evaluated. If there are changing market conditions, funding availability issues, unforeseen expenses, or other circumstances beyond PROGRAM MANAGER's reasonable control, then the Parties may consider amending the Performance Targets.

c. Reporting. PROGRAM MANAGER will maintain reasonable levels of communication with the City staff throughout the term of this Agreement. PROGRAM MANAGER shall provide, upon reasonable request, reports to the City discussing in appropriate detail (in all cases, taking into account the need to maintain a high level of confidentiality with respect to proprietary and competitive matters) its progress in implementing the Program Guidelines and meeting Performance Targets, as specified in this Agreement, as well as reporting on any activity that may be of interest to the City. PROGRAM MANAGER agrees to report to City as follows:

- (i) semi-annual written status reports and general accountings, and
- (ii) on reasonable request of the City, periodic updates to presentations that address the Services provided pursuant to this Agreement.

2.4 City's Satisfaction. All work performed by PROGRAM MANAGER hereunder shall be performed to the reasonable satisfaction of the City. City shall have the right to terminate this Agreement, in accordance with Article VII entitled "Termination," in whole or in part, if PROGRAM MANAGER's work is not satisfactory to City, as determined by the City in its discretion.

III. COMPENSATION TO PROGRAM MANAGER

3.1 Compensation. As compensation for the Services, the City shall pay to PROGRAM MANAGER, annually, the sum of ZERO DOLLARS (\$0.00), payable in equal installments of \$0.00 upon PROGRAM MANAGER's submission to the City of an invoice and Program Guidelines for the fiscal year in which funds are being requested.

No additional fees or expenses of PROGRAM MANAGER shall be charged by PROGRAM MANAGER nor be payable by the City for the Services provided under this Agreement. The parties hereby agree that all expenses of PROGRAM MANAGER that are compensable by the City have been provided for in the total payment to PROGRAM MANAGER. Those total payments cannot exceed the amount set forth above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council's passage of an ordinance.

3.2 Use of Funds. The funding provided by the City under this Agreement shall be used solely in connection with PROGRAM MANAGER providing the Services described in Article II. PROGRAM MANAGER shall segregate all funds provided under this Agreement

into a separate account and shall not commingle any funds supplied by the City with the PROGRAM MANAGER's general funds or other funds received by other entities.

3.3 Additional Services. Should any additional services outside the scope of this Agreement be requested and authorized by the City, and accepted by PROGRAM MANAGER, PROGRAM MANAGER shall be separately compensated for those services over and above the compensation discussed in this Article III, at an amount agreed to by the City and PROGRAM MANAGER.

3.4 Invoices. PROGRAM MANAGER shall submit City invoices to:

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

IV. AUDIT

4.1 PROGRAM MANAGER's Audit. PROGRAM MANAGER shall obtain an audit conducted by an independent auditing firm upon reasonable request from the City during the Term of this Agreement. The audit shall include an audit of the separate account maintained to receive and disburse funds provided by the City to PROGRAM MANAGER pursuant to this Agreement. A copy of the Audit Report and Management Letter prepared as a result of the audit shall be provided to City.

4.2 City's Audit. The City or its authorized representative shall at all reasonable times, on five business days' prior written notice, have the right to examine, inspect, and audit all books, papers, and bank records of PROGRAM MANAGER directly related to the funds provided to PROGRAM MANAGER under this Agreement, to determine the accuracy of reports made under this Agreement. The cost and expenses incurred by the City incident thereto shall be the sole responsibility of and borne by the City. Those records shall be maintained by PROGRAM MANAGER for a period of four (4) years after the termination of the Initial Term of this Agreement and any applicable Renewal Term, and shall be made available for inspection and/or audit by the City or its agents at PROGRAM MANAGER's facility. Nothing in this Agreement shall be deemed to give the City authority to direct, question, review, audit, or otherwise influence the expenditure of any funds that are not directly paid to PROGRAM MANAGER by the City.

4.3 Dispute Findings. Either PROGRAM MANAGER or the City may dispute the findings of audits performed under this Agreement, by giving written notice to the other party within thirty (30) days of receiving the results of an audit. The Party electing to dispute audit results shall, within thirty (30) days following receipt of the auditor's report, submit such additional information as it believes is required to correct the auditor's report.

4.4 Scope. The City recognizes that PROGRAM MANAGER provides services to various entities and organizations unaffiliated with City and City's interest in PROGRAM MANAGER's activities is solely based upon the Services provided pursuant to this Agreement. Therefore, any audits, reports or information requested by City are understood to be limited in scope to the funding provided to PROGRAM MANAGER by City under the terms and conditions of this Agreement; provided, however, that no audit pursuant to this Article IV will identify any potential prospect or company by name or in enough detail for the identity to be discovered, nor shall any audit reveal or disclose any of PROGRAM MANAGER's proprietary information or trade secrets.

V. DOCUMENTS

5.1 Documents. **The parties recognize that, to be successful, PROGRAM MANAGER depends on its ability to keep confidential the identity of its prospects and other proprietary information, and that PROGRAM MANAGER would not be able to achieve the same level of results from providing the Services, or any other services to its other clients and constituents, without being able to maintain that confidentiality. Accordingly, the parties acknowledge that certain writings, documents or information produced by or submitted to PROGRAM MANAGER in the course of its execution of the Services will be the sole property of PROGRAM MANAGER, are proprietary, and may be privileged under State law. Without waiving any available claim or privilege, PROGRAM MANAGER will in good faith share information derived from those writings or documents with City and, if any writings, documents or information are deemed non-proprietary or privileged, provide copies of those writings or documents to City. PROGRAM MANAGER understands and acknowledges that the City has the right to use those non-proprietary writings, documents and information as City desires, without restriction. If any "open records" or equivalent request is made of the City relating to this Agreement or the Services, the City shall promptly advise PROGRAM MANAGER, and the parties shall work cooperatively and in good faith to preserve PROGRAM MANAGER's trade secrets, proprietary documents, and confidential information. In all events, the City shall not provide any information or documents that PROGRAM MANAGER considers proprietary to any third party without PROGRAM MANAGER's written consent, unless the City is legally obligated to do so and so advises PROGRAM MANAGER in writing. In addition, any third-party requests to PROGRAM MANAGER for records relating to this Agreement under the State's Public Information Act shall be coordinated with City. City shall provide PROGRAM MANAGER, in accordance with the Public Information Act, the opportunity to submit third-party briefs to the Attorney General.**

5.2 Documents to City. Upon expiration or termination of this Agreement, PROGRAM MANAGER shall transfer to City true and correct copies of any non-proprietary writings, documents or information in the possession of PROGRAM MANAGER and produced pursuant to the terms and conditions of this Agreement.

VI. RECORDS RETENTION

6.1 **Records.** PROGRAM MANAGER and its subcontractors, if any, shall take commercially reasonable care in their maintenance of all documents, papers, and records, and other evidence pertaining to the Services and funding provided for in this Agreement, and shall make such documents available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period for purposes of the audit described in Article IV.

6.2 **Retention.** PROGRAM MANAGER shall retain any and all documents produced as a result of services or funding provided hereunder for a period of four (4) years from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, PROGRAM MANAGER shall retain the records until the resolution of such litigation or other such questions.

VII. SUSPENSION/TERMINATION

7.1 **Suspension.** The City may summarily suspend this Agreement if it reasonably believes that PROGRAM MANAGER has breached this Agreement in any material way, including by violating any City, State or Federal laws. The City shall promptly apprise PROGRAM MANAGER of the basis of the City's reasonable belief. Any such suspension shall remain in effect until the City determines that appropriate measures have been taken to ensure PROGRAM MANAGER's future compliance. Grounds for such suspension include, but are not limited to the following:

7.1.1 Failure to abide by any terms or conditions of this Agreement;

7.1.2 Failure to keep and maintain adequate proof of insurance as required by this Agreement;

7.1.3 The commission or alleged commission of any crime by PROGRAM MANAGER, or any owner, part owner, partner, business associate, principal party, officer, or director.

7.2 **Termination Defined.** For purposes of this Agreement, "termination" shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.3 **Termination Without Cause.** This Agreement may be terminated by either party upon sixty (60) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.4 **Termination For Cause.** Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events:

7.4.1 The sale, transfer, pledge, conveyance or assignment of this Agreement

without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4.2 Ceasing operations for a period of time exceeding twenty (20) days;

7.4.3 The expenditure of City funds on gratuities in the form of entertainment, gifts, or otherwise offered or given by PROGRAM MANAGER, or any agent or representative of PROGRAM MANAGER, to any officer or employee of the City, County, State or business prospect with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract.

7.5 Defaults With Opportunity for Cure. Should PROGRAM MANAGER default in the performance of this Agreement in a manner stated in this section, same shall be considered an Event of Default. City shall deliver written notice of the default, specifying in detail the matter(s) in default. PROGRAM MANAGER shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If PROGRAM MANAGER fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice or adoption of a City ordinance, to terminate this Agreement in whole or in part as City deems appropriate. The following actions are defaults that may be cured by PROGRAM MANAGER:

7.5.1 Performing unsatisfactorily, in the sole discretion of City.

7.5.2 Failing to perform or failing to comply with any covenant herein required as determined by the City.

7.5.3 Bankruptcy or selling substantially all of company's assets

7.6 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.7 Ceasing City Activity. Upon the effective date of expiration or termination of this Agreement, PROGRAM MANAGER shall cease all work being performed by PROGRAM MANAGER or any of its subcontractors on behalf of the City.

7.8 Transition Period. Regardless of the method by which this Agreement is terminated, PROGRAM MANAGER agrees to provide a transition period of termination for a period not to exceed two (2) months upon City's request. During such transition period, PROGRAM MANAGER may continue to provide services as provided for, and for which it will be compensated, under this Agreement.

VIII. NOTICE

8.1 Written Notice. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to City:

Rene Dominguez
EDD Director
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966
Phone: 207-8080
Fax: 207-8151

If to PROGRAM MANAGER:

Phone:
Fax:

8.2 Time. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

IX. INSURANCE

9.1 Certificate of Insurance. Prior to the commencement of any work under this Agreement, PROGRAM MANAGER shall furnish an original completed Certificate(s) of Insurance to the City’s Economic Development Department and City Clerk’s Office, and which shall be clearly labeled “_____” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City’s Economic Development Department and the Clerk’s Office, and no officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

9.2 Right to Review. The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

9.3 Financial Integrity. PROGRAM MANAGER’s financial integrity is of interest to the City; therefore, subject to PROGRAM MANAGER’s right to maintain reasonable deductibles in such amounts as are approved by the City, PROGRAM MANAGER shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at PROGRAM MANAGER’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or

better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

9.4 Copies. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). So long as this Agreement is in effect, PROGRAM MANAGER shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. PROGRAM MANAGER shall pay any costs incurred resulting from said changes.

9.5 Required Provisions. PROGRAM MANAGER agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

9.6 Cancellation/Non-Renewal. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, PROGRAM MANAGER shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if PROGRAM MANAGER knows of said change in advance, or ten (10) days after the change, if the PROGRAM MANAGER did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

9.7 Failure to Maintain. In addition to any other remedies the City may have upon PROGRAM MANAGER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order PROGRAM MANAGER to stop work hereunder, and/or withhold any payment(s) which become due to PROGRAM MANAGER hereunder until PROGRAM MANAGER demonstrates compliance with the requirements hereof.

9.8 Responsibility of PROGRAM MANAGER. Nothing herein contained shall be construed as limiting in any way the extent to which PROGRAM MANAGER may be held responsible for payments of damages to persons or property resulting from PROGRAM MANAGER's or its subcontractors' performance of the work covered under this Agreement.

9.9 Primary Insurance. It is agreed that PROGRAM MANAGER's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

X. INDEMNIFICATION

10.1 PROGRAM MANAGER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY arising out of or resulting from PROGRAM MANAGER activities under this AGREEMENT, including any acts or omissions of PROGRAM MANAGER, any agent, officer, director, representative, employee, PROGRAM MANAGER or subcontractor of PROGRAM MANAGER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT PROGRAM MANAGER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF

COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. PROGRAM MANAGER shall advise the CITY in writing within three business days of any claim or demand against the CITY or PROGRAM MANAGER known to PROGRAM MANAGER related to or arising out of PROGRAM MANAGER's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at PROGRAM MANAGER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving PROGRAM MANAGER of any of its obligations under this paragraph.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Qualified Personnel. PROGRAM MANAGER shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of PROGRAM MANAGER.

11.2 Subcontractors. It is City's understanding, and this Agreement is made in reliance on that understanding, that PROGRAM MANAGER shall identify in its annually-submitted budget to City any subcontractors that PROGRAM MANAGER then intends to use to provide Services under this Agreement. On the approval of the annual budget, the subcontractors identified in it are deemed approved by City. Any subcontracts that arise during the year that have an annual subcontracted value in excess of \$20,000.00 and that are not included in the budget, must be approved by City.

11.3 Written Agreement. Any work or services subcontracted by PROGRAM MANAGER hereunder with an annual value in excess of \$100,000.00 shall be by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of PROGRAM MANAGER. City shall in no event be obligated to any third party, including any subcontractor of PROGRAM MANAGER, for performance of services or payment of fees.

XII. INDEPENDENT CONTRACTOR

PROGRAM MANAGER and the City covenant and agree that PROGRAM MANAGER is an independent contractor and not an officer, agent, servant or employee of City; that PROGRAM MANAGER shall have control of and right to control, in its sole discretion, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and PROGRAM MANAGER; that the doctrine of respondeat superior shall not apply as between City and PROGRAM MANAGER, its officers, agents, employees, contractors, subcontractors and PROGRAM MANAGER, and nothing herein shall be construed as creating

the relationship of employer-employee, principal-agent, partners or joint venturers between City and PROGRAM MANAGER. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the Services to be performed by the PROGRAM MANAGER under this Agreement and that the PROGRAM MANAGER has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 City's Ethics Code. PROGRAM MANAGER 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 Part B, Section 10 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 has a "prohibited financial interest" in a contract with the City or in the sale to the 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.

13.2 The Executive Committee of the PROGRAM MANAGER shall comply with the Conflicts of Interest Policy set out in Exhibit "C."

XIV. LEGAL/LITIGATION EXPENSES

14.1 Litigation Against City. Under no circumstances will the funds received under this Agreement or any other funds received from City be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other governmental or public entity.

14.2 Termination. During the term of this Agreement, if PROGRAM MANAGER files and/or pursues an adversarial proceeding against the City then, at the City's option, this Agreement and all access to the funding provided for hereunder may terminate if it is found that PROGRAM MANAGER has violated this Article.

XV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and PROGRAM MANAGER, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVI. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the

intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII. LICENSES/CERTIFICATIONS

PROGRAM MANAGER warrants and certifies that, to its knowledge, PROGRAM MANAGER and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE WITH LAWS

PROGRAM MANAGER shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XIX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

XX. LAW APPLICABLE

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXI. LEGAL AUTHORITY

The signer of this Agreement for PROGRAM MANAGER represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of PROGRAM MANAGER and to bind PROGRAM MANAGER to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. INCORPORATION OF EXHIBITS

Each of the Exhibits 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: PROGRAM GUIDELINES

EXHIBIT B: Community Revitalization Action Group (CRAG) Map

XXV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XV. Amendments.

SIGNATURES APPEAR ON NEXT PAGE.

SIGNATURE PAGE TO SERVICES AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this ____ day of _____, 2016.

CITY OF SAN ANTONIO, TEXAS,
A Municipal Corporation

Sheryl L. Sculley
City Manager

Name:
Title:

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM

City Attorney

EXHIBIT A: PROGRAM GUIDELINES

I. Purpose

- a. Support and retain startup technology companies who graduate from the Techstars Cloud program and are interested in growing their startups in San Antonio, by providing targeted grants that secure the graduates' continued corporate presence and business activities in San Antonio, that help each company establish roots and grow in the San Antonio business community, and that continue to build and support the local entrepreneurial ecosystem.

II. Program

- a. The "Program Manager" will manage and facilitate the program's prospect identification, due diligence, and selection process in order to retain and grow successful graduates of the Techstars Cloud program.
- b. Through this Agreement, the City is establishing a 4-year Pilot Program with a financial commitment of \$800,000.00. The disbursement of such funds shall be as follows:
 - i. \$200,000.00 shall be allocated annually to support that year's Techstars Cloud program cohort for a total of four (4) cohorts;
 - ii. Program Manager will conduct an annual selection process to identify up to four (4) Techstars graduates to be eligible for grant assistance;
 - iii. Each selected company will be eligible for up to \$50,000.00 in grant assistance, dispersed in three installments:
 1. \$10,000 upon signing an agreement with the Program Manager;
 2. \$20,000 at the end of year #1; and
 3. \$20,000 at the end of year #2.
 - iv. Grant funds not dispersed during a given year may roll over into the next year to support another Techstars cohort.
- c. In order to market the program to incoming members of a given year's Techstars Cloud program, Program Manager will collaborate with the City to establish a presentation of both the program and San Antonio as a whole to new program participants during Techstars orientation.
- d. To identify and select companies for grant recommendation, Program Manager will establish a panel of five members from the local tech industry and business ecosystem to assess the qualities and merits of companies in a given Techstars Cloud cohort, and recommend a maximum of four graduates from a given cohort for grant award, unless excess funding from a previous year has carried over (see below). A City representative will also be offered a place of observation during

panel discussions, and the final selection of companies to receive financial assistance is subject to approval by the City's Director of Economic Development.

- i. City will retain the right to review due diligence of each company and reconsider recommended awards.
- e. Program Manager will conduct a background check and include due diligence on each selected company, all of which must be included within a company file submitted to the City of San Antonio's Economic Development Department for its records.
- f. As part of the Agreement, Program Manager must establish a written commitment (i.e., binding Letter of Agreement) with each grantee, stating that the company receiving the grant must:
 - i. Have successfully completed the Techstars Cloud program;
 - ii. Maintain, establish, or move a company presence and base of operation to San Antonio;
 - iii. Create a minimum of one (1) net new job in San Antonio per year for first two years of the agreement;
 - iv. Provide Program Manager with access to monthly and annual revenue figures;
 - v. Commit to retain business activities and corporate headquarters in San Antonio for a minimum of three (3) years, and if possible, establish or maintain company operations in the City's downtown core;
 - vi. Have principal(s) live within the boundaries established by the City's Community Revitalization Action Group (CRAG) policy (EXHIBIT B), if requesting rent and utility assistance related to housing.
 - vii. Contribute a minimum of 2 seminars/classes per year to Geekdom members, participate in tech education based programs within the San Antonio community, or demonstrate contributions to local ecosystem related initiatives and events through entities such as, but not limited to, Tech Bloc.
- g. Upon the company's written acceptance of the grant terms with the Program Manager, the initial grant will be disbursed to Program Manager for transmission to the company.
- h. For the final two disbursements of the agreement, grants will be provided for approved, budgeted costs submitted by the company to the Program Manager.

- i. Company must provide end-of-year receipts for items budgeted for and covered by grant disbursements, a file of which Program Manager will maintain for each company and then provide to the City for final approval.
- j. In order to enhance efficiency of the process, the City and Program Manager will collaboratively formulate a simple checklist-overview for companies to complete upon submission of receipts.
- k. Eligible grant expenses include:
 - i. Rent and utilities for company principal(s) related to housing within the approved boundaries of the CRAG (EXHIBIT B).
 - ii. Business related activities and expenses, including:
 - 1. Rent for office space within the City's Central Business District (CBD);
 - 2. Hiring & operational expenses, including:
 - a. Wages and salaries for employees (excluding principals);
 - b. Healthcare benefits;
 - c. Equipment and supplies;
 - d. Utility costs;
 - 3. Relocation expenses.
- l. Program Manager and the City may reduce or withhold grant disbursements if the company does not meet the required job targets and/or fails to comply with the provisions of the agreement.
- m. Agreement will be terminated and remainder of the grant withheld entirely should the company cease business operations or be acquired.
- n. If a company is acquired or has a similar exit event and chooses to leave San Antonio, the Program Manager will also make a good faith effort to recapture expended grant funds.
- o. If fewer than four successful graduates from a given cohort decide to stay in San Antonio, grant funds budgeted for a given year but not disbursed will roll over to support efforts in the following year.
- p. If funds are reduced or withheld from a company that fails to meet its obligations, the Program Manager may elect to add those funds to future support of other successful graduates in a different cohort.

EXHIBIT B: COMMUNITY REVITALIZATION ACTION GROUP (CRAG) MAP

