

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND VICTORY CAPITAL  
MANAGEMENT, INC.**

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

**WHEREAS**, GRANTEE and its Related Organizations (as defined below) are in the business of providing investment management and provide institutions, financial advisors and retirement platforms with a variety of asset classes and investment vehicles; and

**WHEREAS**, GRANTEE is headquartered in Brooklyn, OH, with approximately 275 employees around the United States; and

**WHEREAS**, on November 6, 2018, GRANTEE's parent company Victory Capital Holdings, Inc. announced a purchase agreement to acquire USAA Asset Management Co ("**AMCO**") and USAA Transfer Agency Company d/b/a USAA Shareholder Account Services ("**USAA Transfer Agent**") from United Services Automobile Association (the "**Transaction**"); and

**WHEREAS**, GRANTEE is considering relocating its corporate headquarters to within GRANTOR's city limits; and

**WHEREAS**, GRANTEE is considering investing at least FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) in real and personal property improvements within the boundaries of the city limits of the City of San Antonio at a site to be communicated to GRANTOR by the consummation of the Transaction and subject to the restrictions listed in Exhibit A (the "**Project Site Restrictions**") that will result in the retention of three hundred (300) full-time Retained Jobs (as defined below), the relocation of six (6) Executive Jobs (as defined below) and the creation of fifty-one (51) New Jobs (as defined below) (the "**Project**"); and

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

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

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

**WHEREAS**, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2019-01-\_\_-\_\_\_\_, passed and approved on January \_\_, 2019 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:

### **ARTICLE I. AGREEMENT PURPOSE**

The purpose of this Agreement is to provide an economic development grant to GRANTEE as an incentive for GRANTEE to undertake the Project at the Project Site. GRANTOR anticipates that if the Project is undertaken at the Project Site, the Project will promote local economic development and will stimulate business and commercial activity in the City of San Antonio. As such, GRANTOR is willing to support the Project through the economic development grants provided in this Agreement to provide funds to be used to defer costs associated with undertaking and completing the Project.

### **ARTICLE II. PROJECT REQUIREMENTS**

- A. In consideration of GRANTOR providing the economic development grant as described in Article III of this Agreement, GRANTEE and its affiliates or subsidiaries shall:
- (1) own, hold an interest in or otherwise control the Project Site for at least five (5) years from the Effective Date of this Agreement, as further defined in Article IV below;
  - (2) relocate and maintain its corporate headquarters within the city limits of the City of San Antonio, Texas for the Term of this Agreement;
  - (3) invest, or cause to be invested, approximately FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000.00) in real and personal property improvements to the Project Site within five (5) years of the Effective Date of this Agreement;
  - (4) retain or cause to be retained by its contracted service providers or service partners at the Project Site three hundred (300) Full-Time Jobs paying an annual salary at or above FIFTY THOUSAND DOLLARS (\$50,000.00) and having been previously held by AMCO and USAA Transfer Agent employees (the "**Retained Jobs**");

- (5) relocate to the Project Site at least five (5) Full-Time Jobs paying an annual salary at or above ONE HUNDRED AND SEVENTY THOUSAND DOLLARS (\$170,000.00) and at least one (1) Full-Time Job paying an annual salary at or above SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) (“**Executive Jobs**”); and
- (6) create an additional fifty-one (51) new Full-Time Jobs at the Project Site with forty-five percent (45%) of said Full-Time Jobs paying at least ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) annually, forty-five percent (45%) paying at least SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) annually, and ten-percent (10%) paying at least FIFTY THOUSAND DOLLARS (\$50,000.00) annually (“**New Jobs**”) as follows (it being understood that any shortfall in the Number Added below in each year can be moved to subsequent years and any excess in the Number Added will in each case result in the corresponding change to the Job Floor set forth below to reflect a Percentage Floor of 75%):

New Jobs	Number Added	Total	Percentage Floor	Job Floor
Total New Jobs 2019	19	19	75%	14
Total New Jobs 2020	8	27	75%	20
Total New Jobs 2021	8	35	75%	26
Total New Jobs 2022	8	43	75%	32
Total New Jobs 2023	8	51	75%	38

- B. “**Full-Time Job**”, for purposes of this Agreement, shall be a job by which an individual who works at the Project Site as an employee of GRANTEE is paid for the equivalent of approximately two thousand eighty (2,080) straight-time paid hours in a fiscal year.
- C. “**New Job**”, for purposes of this Agreement, shall be a new Full-Time Job dependent upon the Project (i.e., the positions would not exist if the Project is not completed) and shall not be considered either a Retained Job or an Executive Job.
- D. It is anticipated that the cumulative number of Full-Time Jobs at the Project Site, to include Retained Jobs, Executive Jobs, and New Jobs, shall be at least THREE HUNDRED AND FIFTY SEVEN (357).
- E. Business Activities. GRANTEE shall only conduct, at the Project Site, business activities typically conducted by the corporate headquarters of an investment management firm with over 100 full-time employees and its contracted service providers or service partners

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

### ARTICLE III. ECONOMIC DEVELOPMENT PROGRAM GRANT

- A. In exchange for GRANTEE relocating its headquarters to San Antonio, and for undertaking and completing the Project at the Project Site, GRANTOR will provide an economic development incentive grant to GRANTEE as follows:
- (1) Economic Development Program Grant. GRANTOR will provide GRANTEE with a grant in the amount of up to FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$500,000.00) (the "**Grant Cap**"), subject to the actual number of Retained Jobs, Executive Jobs and New Jobs that GRANTEE retains, relocates or creates and subject to the Minimum Job requirement set forth in Article II(A) above. The grant amount is as follows:
- a. \$500 per Retained Job up to 300 Jobs (up to \$150,000); *provided, that* the Parties agree that the GRANTOR can apply new jobs towards the Retained Jobs cap to the extent that the GRANTEE needs to rehire to replace Retained Jobs referred to as ("**Replacement Retained Jobs**");
  - b. \$10,000 per Executive Job up to 6 Executive Jobs (up to \$60,000); and
  - c. \$5,000 per New Job up to 58 New Jobs (up to \$290,000).

- (2) Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement by the Parties, GRANTOR will make the grant funds available to GRANTEE within 45 days following receipt and review by GRANTOR of GRANTEE's Semi-Annual Certification (defined below). The Parties acknowledge and agree the grant payments made by GRANTEE will be determined by how many verifiable Full-Time Jobs are located at the Project Site and shall be paid out in accordance with Article III(A)(1) above.
- (3) Initial Disbursement. GRANTOR will make an initial disbursement of up to ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) to GRANTEE within 45 days of: 1) GRANTEE providing to GRANTOR verifiable proof of employment of Retained Jobs at the completion of the Transaction (which will be the number established for the Retained Jobs or Replacement Retained Jobs, if any (collectively the "**Retained Jobs Threshold**"); and 2) the earlier of GRANTEE commencing business operations at, or obtaining a certificate of occupancy for, the Project Site. Thereafter the GRANTOR can receive any remaining amounts from the semi-annual disbursements for any Replacement Retained Jobs.
- B. GRANTEE shall retain the Full-Time Jobs for which it receives grant funds during the Term as described in this Agreement, at or above the required compensation levels set forth above in Article II (A).
- C. In accordance with GRANTOR's Economic Development Incentive Fund Guidelines, GRANTEE must pay one hundred-percent (100%) of all employees located at the Project Site, without regard to the number of jobs required to be retained, relocated or created hereunder, at least the City's Living Wage. "**Living Wage**", for the purposes of this Agreement, shall be defined as the hourly wage as determined and as adjusted by the US Department of Health and Human Services based on the poverty level for a family of four. The current wage is TWELVE DOLLARS AND SEVEN CENTS (\$12.07) per hour; however this rate is subject to change.
- D. In addition to the Living Wage requirement, GRANTEE must pay at least seventy percent (70%) of all new and existing employees at the Project Site, without regard to the number of jobs required to be retained, relocated or created hereunder, at least the All-Industry Wage. "**All-Industry Wage**", for the purposes of this Agreement, shall be defined as the hourly wage as determined and as adjusted by the Bureau of Labor Statistics (also known as the "All Industries Median Hourly Wage") by conducting an Occupational Employment Survey in the San Antonio Metropolitan Statistical Area. The Texas Workforce Commission publishes this wage annually. The current wage is SIXTEEN DOLLARS AND SIXTY-FIVE CENTS (\$16.65) per hour; however, this rate is subject to change.
- E. All wage and/or salary requirements set forth in Article II and shall be exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages.

- F. GRANTEE also covenants and agrees that it shall offer all of its non-temporary full-time employees employed at the Project Site an opportunity to participate in an employee benefits program to include a health plan which provides coverage for eligible dependents.
- G. GRANTEE shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.
- H. GRANTEE agrees to partner with SA Works to provide experiential learning opportunities at the Project Site during the Term of this Agreement by: (i) sponsoring at least five (5) annual student internships (paid at least \$6,400) each; and (ii) using best efforts to hire students of local universities and veterans.
- I. GRANTEE agrees, within one year after the Effective Date, to partner with GRANTOR to provide financial literacy assistance to veterans and to members of the San Antonio community.

#### **ARTICLE IV. TERM**

The Term of this Agreement shall be ten (10) years from the Effective Date of this Agreement (the “**Term**”), unless terminated as otherwise provided herein. The period when the grant disbursements will occur shall commence upon the Effective Date and continue for a period of five (5) years (“**Grant Term**”) from the Effective Date, unless terminated as otherwise provided herein. The period when no further grants are to be made hereunder and GRANTEE remains subject to the terms hereof, including termination and recapture, shall commence upon the expiration of the Grant Term and shall continue for a period of five (5) years (the “**Recapture Term**”), unless terminated as otherwise provided herein.

#### **ARTICLE V. GRANTOR’S OBLIGATIONS**

- A. Payment. GRANTEE acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of GRANTOR in the budget year in which they are to be paid as may be legally set aside for the implementation of Article III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the Grants in any budget year (as reflected in GRANTOR’s adopted budget for such year), GRANTOR shall not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, GRANTEE may, in its sole discretion, terminate this Agreement, in which event GRANTEE and GRANTOR shall have no further obligations under this Agreement including, but not limited to any obligations for the year in respect to which said unappropriated funds relate. In the event GRANTOR does not appropriate funds necessary to pay GRANTEE in a particular budget year, GRANTOR shall

appropriate funds the following budget year(s) to pay funds due to GRANTEE. Failure of GRANTOR to appropriate funds in a particular budget year in which they are due and owing to GRANTEE shall not relieve GRANTOR of obligation to pay GRANTEE these funds in the subsequent year(s).

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

#### **ARTICLE VI. 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 investment in real and personal property at the Project Site; (2) the hire and termination dates of each Retained Job (including Replacement Retained Jobs), Executive Job and New Job at the Project Site; (3) employee records sufficient to determine if employees live in San Antonio Texas; (4) the fulfillment of all obligations of GRANTEE under this Agreement; and (6) the wages and healthcare benefits of all Full-Time employees at the Project Site, irrespective of those required to retained, relocated or created pursuant to this Agreement. GRANTEE shall retain such records and any supporting documentation from and after the Effective Date through the date which falls 4 years after the expiration of the Term of this Agreement. GRANTEE acknowledges and agrees that retention of the Records by GRANTEE and GRANTOR’s right to inspect the Records as set forth below, are required in order to permit GRANTOR’s representatives to determine with certainty GRANTEE’s compliance with all of GRANTEE’S obligations under this Agreement, including, without limitation, job creation and retention requirements, wage/salary requirements, healthcare benefits requirements and residency requirements, if any.
- B. Upon at least five (5) business days’ prior notice to GRANTEE, GRANTEE shall allow designated representatives of GRANTOR access to the Records at the Project Site or such other location in San Antonio, Texas where the Records are kept during normal business hours for inspection to determine if the obligations of GRANTEE hereunder and the terms and conditions of this Agreement are being met by GRANTEE. If the Records are kept in any location outside of Bexar County, GRANTEE shall provide access to GRANTOR to inspect the Records within Bexar County. Any information that is prohibited by law to be made public shall be kept confidential by GRANTOR. Should any good faith dispute or question arise as to the validity of the data inspected, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTOR. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise GRANTOR’s right to recapture all disbursed grant funds. GRANTEE may require GRANTOR’s representatives to be accompanied by GRANTEE

representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of Business Activities at the Project Site, and (b) comply with GRANTEE's reasonable security requirements.

## ARTICLE VII. MONITORING

- A. On or before February 1<sup>st</sup> and July 1<sup>st</sup> 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, Retained Jobs (including Replacement Retained Jobs), Executive Jobs and New Jobs maintained as of such date, (ii) the hire dates of each Retained Job (including Replacement Retained Job), Executive Job and New Job, (iii) the healthcare benefits offered to all Full-Time Employees and their respective eligible dependents, (iv) the total wages paid in connection with Full-Time Jobs, Retained Jobs, Executive Jobs and New Jobs during the six months preceding such date, and (v) the aggregate investments made prior to such date that qualify toward the required investment hereunder. The information provided shall be on the form set forth in, or substantially similar to the form labeled "**Incentive Monitoring Form**" attached and incorporated herein as **Exhibit B**, as the same may be revised by GRANTOR from time to time. Failure by GRANTEE to take action specified in the monitoring report, and failure to cure any deficiency in the applicable Cure Period in accordance with Article XIV(A) herein, may be cause for suspension or termination of this Agreement, in accordance with Articles XIV and XV herein.
- B. GRANTEE acknowledges that GRANTOR is subject to the Public Information Act, which applies to information of every "governmental body" as set forth in Section 552.003(1)(A) of the Texas Government Code. Public Information means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), GRANTEE will endeavor to only report certified information to GRANTOR required for GRANTOR to verify GRANTEE is meeting the requirements and obligations of GRANTEE under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at

the Project Site. In its efforts to comply with requests for public information under the Public Information Act, GRANTEE shall remain immune from liability under both the State of Texas and federal doctrines of sovereign immunity.

### **ARTICLE VIII. CONFLICT OF INTEREST**

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

### **ARTICLE IX. 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.

### **ARTICLE X. LEGAL AUTHORITY**

- A. Legal Authority. Each party assures and guarantees to the other that it possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. Each party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such party has been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

### **ARTICLE XI. GOVERNING LAW AND VENUE**

- A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any (i) OSHA complaint filed by an employee of GRANTEE concerning the Project Site, or (ii) notice of any bankruptcy of GRANTEE, or (iii) any notice given by GRANTEE to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at such premises. GRANTEE shall submit a copy of each

such notice required hereunder to GRANTOR within thirty (30) calendar days after receipt or issuance, as applicable.

- B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.
- C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas, regardless of choice of law rules.

#### **ARTICLE XII. ATTORNEY'S FEES**

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

#### **ARTICLE XIII. CHANGES AND AMENDMENTS**

- A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.
- B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

#### **ARTICLE XIV. SUSPENSION**

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

such suspension; and (3) in the case of partial suspension, the portion of this Agreement to be suspended.

- B. Lifting of Suspension. A suspension under this Article shall be lifted upon a showing by GRANTEE that the event of default has been cured or by a signed written waiver of GRANTOR of the term(s) in question.
- C. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors or parties with whom GRANTEE contracts for costs incurred during any term of suspension of this Agreement.

#### **ARTICLE XV. DEFAULT, TERMINATION, RECAPTURE, AND OTHER REMEDIES**

- A. Relocation Defined. For purposes of this Agreement, “**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 its Business Activities from the Project Site to a location outside of the city limits of the City of San Antonio for reasons other than the inability to conduct the Business Activities at the Project Site due to force majeure as defined in this Agreement.
- B. Default of GRANTEE. GRANTEE shall be in default under this Agreement:
  - i. Relocation of Corporate Headquarters and Cessation of Business. If during the Term of this Agreement, GRANTEE occupies and uses the Project Site for its corporate headquarters and Business Activities for a period of time and subsequently Relocates (as defined in this Article XV(A) above) its corporate headquarters or ceases conducting Business Activities at the Project Site for a continuous period of two (2) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is commenced. 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, including the Initial Payment, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth in Article XV(B)(ii) below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
  - ii. Number of Jobs. If GRANTEE, its Related Organization or contracted service providers and partners, for any reason other than a Force Majeure Event, fails to retain at least 75% of the Threshold Retained Jobs; fails to retain 100% of Executive Jobs in Years 2 through 5 of this Agreement and 80% of Executive Jobs in Years 6 through 10, or fails to retain at least 75% of New Jobs at the Job Floor specified and adjusted as set forth in Article II clause (6), as evidenced by the Semi-Annual

Certification, GRANTOR shall have the right to terminate this Agreement in its sole discretion.

During the Term of this Agreement, GRANTOR may recapture funds previously disbursed by GRANTOR to GRANTEE, on a per job basis, should GRANTEE fall below the percentage of Retained Jobs (including Replacement Retained Jobs), Executive Jobs and New Jobs requirements set forth in this provision that it has reported to GRANTOR. GRANTOR shall be entitled to the payment of such recaptured funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of the termination and/or recapture. For the avoidance of doubt, the parties agree that for the purposes of this clause, the GRANTEE can include in its calculations of employees any position that was previously filled but is subsequently vacant due to termination or resignation provided that the GRANTEE is actively trying to replace such position.

- C. Limitation on Recapture. Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Article XV are not applicable to situations involving minor changes to the description of the Project Site, or to GRANTOR-approved changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.
- D. Limitation on Remedies. The foregoing termination and recapture rights shall be GRANTOR's sole and exclusive remedies in the event GRANTEE shall default under this Agreement.
- E. No Business Limitations. Nothing in this Agreement shall limit the GRANTEE from expanding its Business Activities in other jurisdictions.

#### **ARTICLE XVI. AUTHORIZED RELIEF FROM PERFORMANCE (FORCE MAJEURE)**

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

impairing, within sixty (60) days of GRANTEE's knowledge of the Force Majeure event that will prevent or impair GRANTEE's compliance with this Agreement.

## **ARTICLE XVII. SPECIAL CONDITIONS AND TERMS**

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("**Undocumented Workers**"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR under this Article XVII at the rate of five percent (5%) per annum from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

## **ARTICLE XVIII. 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.

## **ARTICLE XIX. NON-ASSIGNMENT**

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

## ARTICLE XX. 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.

## ARTICLE XXI. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

### TO GRANTOR:

(Whether personally delivered or mailed):

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

### TO GRANTEE:

Victory Capital Holdings Inc.  
Attention: Chief Operating Officer  
4900 Tiedeman Road  
4<sup>th</sup> Floor  
Brooklyn, Ohio 44144

- If by personal or overnight delivery:

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

## **ARTICLE XXII. 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 Restrictions**  
**Exhibit B - Incentive Monitoring Form**

*Signatures appear on next page.*

WITNESS OUR HANDS, EFFECTIVE as of January 9, 2019 (the “**Effective Date**”).

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2019-01-17-\_\_\_\_\_ and GRANTEE pursuant to its authority.

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

**VICTORY CAPITAL MANAGEMENT  
INC. (GRANTEE),**  
a New York corporation

\_\_\_\_\_  
Sheryl Sculley,  
CITY MANAGER

  
\_\_\_\_\_  
Nina Gupta  
Chief Legal Officer

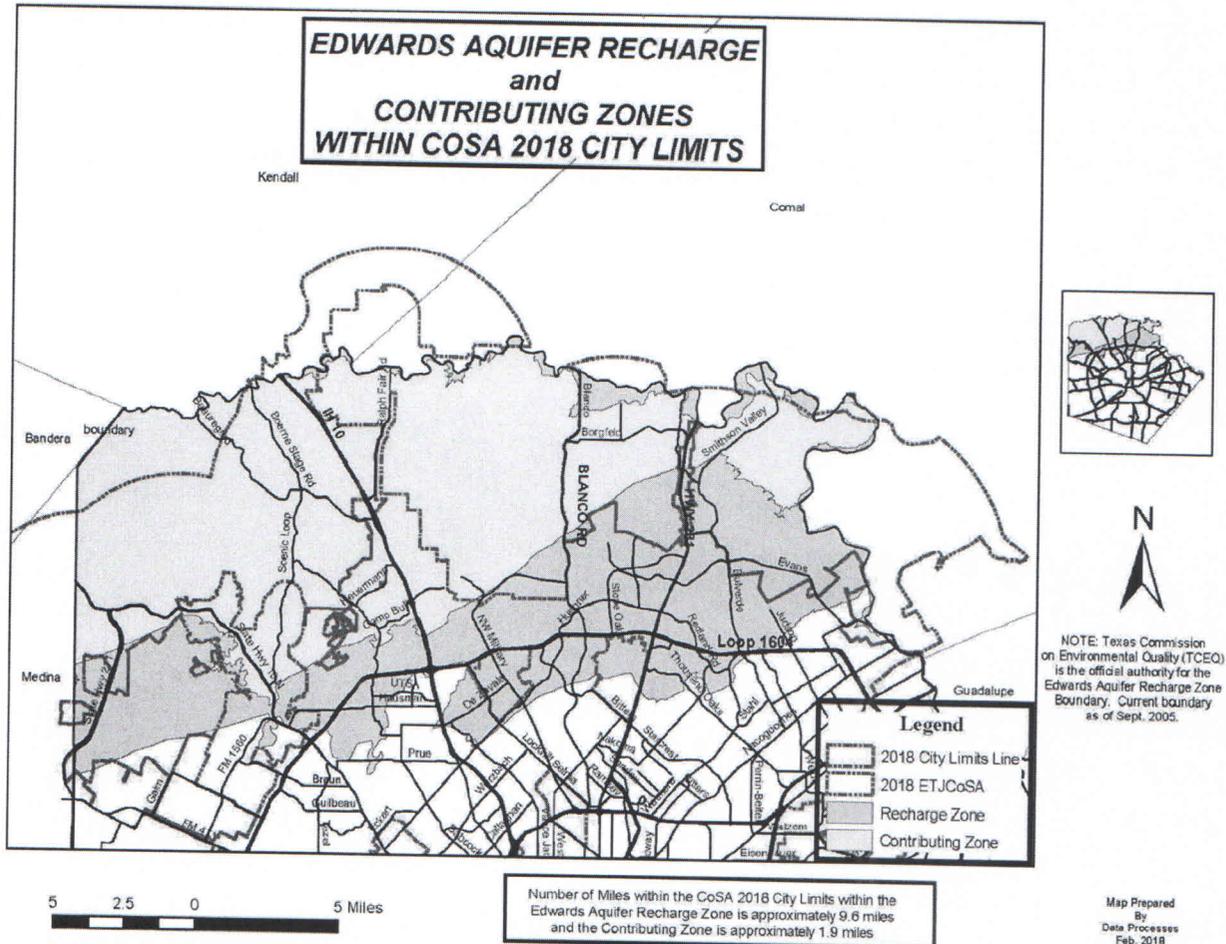
ATTEST:

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

APPROVED AS TO FORM:

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

## Exhibit A- Project Site Restrictions



**Project Site Restrictions** include any projects involving new construction over the Edwards Recharge Zone or the Contributing Zone. For the purposes of this Agreement the Edwards Aquifer Recharge Zone is that area where the stratigraphic units constituting the Aquifer crop out, including the outcrops of other geologic formations in proximity to the Aquifer, where caves, sinkholes, faults, fractures or other permeable features would create a potential for recharge of surface waters into the Aquifer. The Contributing Zone is the drainage area or the catchment area. Here the land surface "catches" water from rainfall that averages about 30" per year, and water runs off into streams or infiltrates into the water table aquifer of the Edwards Plateau.

# Exhibit B - Incentive Monitoring Form



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

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

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

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

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

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