

STATE OF TEXAS  
COUNTY OF BEXAR

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**ECONOMIC DEVELOPMENT  
PROGRAM GRANT AGREEMENT  
OF THE CITY OF SAN ANTONIO**

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as "GRANTOR"), acting by and through its City Manager or her designee, and the San Antonio Economic Development Corporation, a Type B corporation created pursuant to the authority of the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code (hereinafter referred to as "GRANTEE"), and together referred to as the "Parties.

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City of San Antonio City Ordinance No. 100684, GRANTOR created such a program for the purpose of making grants available for economic development projects that the GRANTOR finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, the City established GRANTEE for the purpose of undertaking certain economic development projects approved by the City's governing board; and

**WHEREAS**, the City has authorized GRANTEE to undertake an economic development project whereby SAEDC would collaborate with Covalor Medical L.L.C. ("Covalor") to undertake an economic development project consisting of the establishment of a medical device development and manufacturing company in San Antonio where Covalor will: 1) invest approximately \$500,000.00 annually in meaningful business activities in San Antonio for five (5) years following commencement of business activities; 2) create a minimum of 15 full-time jobs through it and its affiliates with an average annual salary of \$50,000.00; and 3) maintain meaningful business activities in San Antonio for at least five (5) years (the "Project"); and

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting GRANTEE in establishing the Project and has identified economic development funds for use in carrying out this purpose; **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 is seeking to promote local economic development and stimulate business and commercial activity in the City of San Antonio and is entering into this Agreement as a component part of an incentive package intended to attract and retain companies that support the GRANTOR's targeted industries.

## SECTION 2. AGREEMENT PERIOD

This Agreement shall commence on \_\_\_\_\_, 2014 and shall terminate upon the earlier of: 1) five (5) years from the commencement of Covalor's business activities in San Antonio; or 2) upon the termination of this Agreement as defined in Section 8 of this Agreement (the "Term").

## SECTION 3. GRANTEE OBLIGATIONS

A. Project Requirements. GRANTEE shall execute an agreement with Covalor in accordance with the terms and conditions of Exhibit A. Such agreement shall cause Covalor to undertake and establish the Project within the city limits of the City of San Antonio prior to June 30, 2015. Upon execution of an agreement between GRANTEE and Covalor, such agreement shall become Exhibit B to this Agreement and shall be incorporated herein.

B. Covalor Obligations. In addition to the requirements of Section 3(A) above, GRANTEE shall ensure the following terms are included in the agreement between GRANTEE and Covalor:

- i) Covalor shall locate its principal executive offices in San Antonio no later than June 30, 2015;
- ii) Covalor shall conduct meaningful business activities in San Antonio for a period of not less than five (5) years;
- iii) Covalor must secure a cumulative matching investment of \$750,000.00 over three (3) years; and
- iv) Covalor must create a minimum of 15 full-time jobs in San Antonio no later than March 31, 2017 with salaries averaging at least \$50,000.00.

C. Attachment of Agreement. Upon execution of an agreement between GRANTEE and Covalor, GRANTEE shall provide a copy to GRANTOR of such agreement and such copy shall be attached hereto and incorporated herein.

## SECTION 4. ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM GRANT

**Economic Development Chapter 380 Program Grant.** GRANTOR has agreed to provide GRANTEE with an Economic Development Program Grant in a total cumulative amount of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND O CENTS (\$1,750,000.00) (the "Grant Funds").

A. Grant Disbursement. Following the execution of this Agreement, GRANTOR will make available to GRANTEE the Grant Funds in three (3) annual disbursements as follows:

- i) Initial Disbursement. GRANTOR will make available \$750,000.00 no sooner than October 1, 2014 and shall disburse such funds to GRANTEE following GRANTEE providing evidence to GRANTOR that Covalor has executed a minimum of a two-year lease for property within the city limits of the City of San Antonio with the option to extend such lease up to five years and has located its headquarters and principal executive offices and commenced meaningful business activities at such location.

ii) Second Disbursement. GRANTOR will make available \$500,000.00 no sooner than October 15, 2015 and shall disburse such funds to GRANTEE following GRANTEE providing evidence to GRANTOR that Covalor is in full compliance of the executed agreement as provided in Exhibit B.

iii) Third Disbursement. GRANTOR will make available \$500,000.00 no sooner than October 15, 2016 and shall disburse such funds to GRANTEE following GRANTEE providing evidence to GRANTOR that Covalor is in full compliance of the executed agreement as provided in Exhibit B.

B. Grant Use. GRANTEE shall provide the Grant Funds to Covalor and shall ensure that Grant Funds are used only for the purpose of meaningful business activities in connection with the Project.

C. Reimbursement and Repayment of Funds. GRANTOR has authorized GRANTEE to execute an agreement with Covalor and take an equity interest in the Project to potentially receive a repayment of grant funds and realize a return on its investment. Should GRANTEE's execution of the agreement with Covalor and equity interest in the Project result in a monetary payment to GRANTEE, such payments shall be for GRANTEE's benefit and use. Such amount shall not be restricted to the amount of Grant Funds received from the GRANTOR, but shall continue in any amounts GRANTEE is entitled to receive through the agreement. The GRANTEE's use of such funds shall be as approved by GRANTEE's governing board, and shall be subject to GRANTOR's approval.

#### **SECTION 5. WITHHOLDING, FORFEITING AND REFUNDING GRANT FUNDS.**

A. It is expressly understood and agreed by the parties hereto that if GRANTEE fails to submit to GRANTOR in a timely and satisfactory manner any information or report required under this Agreement, GRANTOR may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by GRANTEE hereunder. If GRANTOR withholds such payments, it will notify GRANTEE in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by the GRANTOR until such time as the delinquent obligations for which funds are withheld are fulfilled by GRANTEE.

B. GRANTEE shall refund to GRANTOR any sum of money paid to GRANTEE by GRANTOR, which the GRANTOR determines is an overpayment to GRANTEE, or in the event GRANTOR determines funds disbursed on behalf of GRANTEE were not made in response to an allowable cost of this Agreement. "Allowable costs" will be determined in accordance with this Agreement and are defined as direct costs incurred in the Project. Such refund shall be made by GRANTEE to GRANTOR within ninety (90) calendar days after such refund is requested in writing by the GRANTOR, or within thirty (30) calendar days of a notice from GRANTOR indicating the request is the result of a final determination that the refund is owed.

#### **SECTION 6. DEFAULT AND GRANTOR's REMEDIES**

A. Default Events. Any one of the following which occurs and continues shall constitute a Default Event:

1. The dissolution or liquidation of GRANTEE or the filing by GRANTEE of a voluntary petition in bankruptcy, or failure by GRANTEE to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair GRANTEE's ability to carry on its obligations under this Agreement; and/or

2. The commission by GRANTEE of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or

3. The admittance of GRANTEE, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of GRANTEE shall be appointed in any proceeding brought against GRANTEE and shall not be discharged within ninety (90) days after such appointment.

B. **Non-Waiver of Default.** It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any contract between GRANTEE and GRANTOR or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## **SECTION 7. SUSPENSION**

A. 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. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may at its sole discretion and upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. 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 the Agreement to be suspended.

B. In the case of non-compliance for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 7 may be lifted only at the sole discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

## **SECTION 8. TERMINATION**

A. GRANTOR shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of termination of this Agreement should GRANTOR determine that GRANTEE has failed to comply with any material term of this Agreement. GRANTOR will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance under this Agreement. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to GRANTEE.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C.. Other Remedies Available. GRANTOR shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement. However, such termination and repayment shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

## **SECTION 9. RETENTION AND ACCESSIBILITY OF RECORDS**

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the greater of: (1) Four [4] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by GRANTEE pertaining to the Economic Development Loan (the "Records"). The GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify advances made by the GRANTOR and re-payments made by GRANTEE and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. 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 the 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 provided, the 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 as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give the GRANTOR the right to suspend or terminate this Agreement as provided for in Section 15 and 16 below, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. GRANTEE agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the GRANTOR as set forth above. All of the above notwithstanding, the GRANTOR and the citizens shall have no right to access any confidential or proprietary records of GRANTEE, including but not limited to the ownership and capital structure of GRANTEE.

## **SECTION 10. AUDIT**

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement through a performance or financial audit. Should such audit be performed, GRANTOR shall provide GRANTEE with a copy of any reports or findings that may be presented. If the audit notes

deficiencies in GRANTEE's performances under the terms of this Agreement, the audit shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the audit may be cause for suspension or termination of this Agreement.

**SECTION 11. 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 upon its deposit into the custody of the United States Postal Service or 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:

TO GRANTEE:

(Whether personally delivered or mailed):

- If mailed:

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

San Antonio Economic Dev. Corp  
Attn: Executive Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department  
Attn: Director  
100 W. Houston, St., Suite 1900  
San Antonio, Texas 78205

San Antonio Economic Development Corp.  
Attn: Executive Director  
100 W. Houston, St., Suite 1900  
San Antonio, Texas 78205

**SECTION 12. RESERVED.**

**SECTION 13. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

GRANTOR may grant temporary relief from performance of this Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain release based upon *force majeure*, the GRANTEE must file a written request with the GRANTOR. Should GRANTOR grant temporary relief to GRANTEE, it shall in no case relieve GRANTEE from any repayment obligations as specified in Section 3(B) and 3(C) of this Agreement.

## **SECTION 14. CONFLICT OF INTEREST**

A. GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, 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. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City of San Antonio's Code of Ethics.

## **SECTION 15. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. 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.

C. GRANTEE shall include the substance of this Section 12 in all agreements associated with the funds made available through this Agreement.

## **SECTION 16. CHANGES AND AMENDMENTS**

A. Except as provided in herein, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

B. 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.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## **SECTION 17. SPECIAL CONDITIONS AND TERMS**

A. GRANTEE understands and agrees that if GRANTEE is a "business" and if the GRANTOR's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then GRANTEE is required to refund money, pursuant to 80(R) HB 1196, GRANTEE has received from GRANTOR through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required

within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

#### **SECTION 18. SUBCONTRACTS**

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, GRANTOR is in no way liable to GRANTEE's subcontractor(s).

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to comply with the GRANTOR's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

#### **SECTION 19. NON-ASSIGNMENT**

This Agreement is not assignable without the written consent of GRANTOR and the passage of a City Ordinance by GRANTOR's governing body approving such assignment. Any and all future assignees shall be bound by all terms and/or provisions and representations of this Agreement. Any attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. Additionally, upon any attempt to assign this Agreement without GRANTOR's consent shall enable GRANTOR to terminate this Agreement and seek recapture of all disbursed funds as fully described in Section 17. GRANTEE shall be responsible for all funds received under this Agreement.

#### **SECTION 20. 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 21. LEGAL AUTHORITY**

A. Each party assures and guarantees to the other that they 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. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have 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.

C. GRANTOR will have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement,

any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement.

**WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 2014:**

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2014-11-13-\_\_\_\_, dated November 13, 2014, and the San Antonio Economic Development Corporation pursuant to the authority of its Board of Directors.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**SAN ANTONIO ECONOMIC  
DEVELOPMENT CORPORATION**  
a Type B Texas Corporation

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

\_\_\_\_\_  
Ed Davis  
Executive Director

ATTEST:

ATTEST:

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert F. Greenblum  
CITY ATTORNEY

**EXHIBIT A: TERM SHEET**

DRAFT

**EXHIBIT B: EXECUTED AGREEMENT BETWEEN SAEDC AND  
COVALOR MEDICAL, L.L.C.**

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