

**AN ORDINANCE 2016-06-16-0474**

**AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH THE SAN ANTONIO ECONOMIC DEVELOPMENT FOUNDATION ("SAEDF") IN THE AMOUNT OF \$244,000.00 TO PROVIDE FOR THE HIRING OF A DIRECTOR OF SA WORKS; REPROGRAMMING \$244,000.00 IN FUNDS PREVIOUSLY ALLOCATED FOR THE PURPOSE OF HIRING A DIRECTOR OF SA WORKS.**

\* \* \* \* \*

**WHEREAS**, in 2015, Mayor Taylor and County Judge Wolff announced a community-wide effort to align the workforce delivery system in San Antonio; and

**WHEREAS**, such effort resulted in the establishment of San Antonio-Talent for Economic Competitiveness (SA-TEC); and

**WHEREAS**, the City of San Antonio, Bexar County and the San Antonio Chamber of Commerce, in partnership with Alamo Colleges and other partners, have worked to develop the SA-TEC initiative, which has led to a natural integration with SA Works; and

**WHEREAS**, to provide support to the SA Works Board to implement the alignment, the position of Director was established and funded through a previously approved Chapter 380 Economic Development Program Grant with Alamo Colleges in the amount of \$100,000.00; and

**WHEREAS**, in October 2015, City Council allocated an additional \$144,000.00 through an adjustment of the City's annual budget for the SA Works Director position, providing for a cumulative amount of \$244,000.00 for the position; and

**WHEREAS**, City staff is recommending reprogramming the funding into one Chapter 380 Economic Development Program Grant Agreement with the San Antonio Economic Development Foundation, which is the fiscal agent of SA Works; and

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

**WHEREAS**, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting SA Works through SAEDF in undertaking and completing the hiring of a director for SA Works and has



identified economic development funds for use in carrying out this purpose; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Council approves the terms and conditions of a Chapter 380 Economic Development Program Grant Agreement with the San Antonio Economic Development Foundation, as fiscal agent of SA Works, in the amount of \$244,000.00 for the purpose of hiring a director for SA Works to assist the SA Works Board of Directors in aligning the workforce delivery system in San Antonio.


**SECTION 2.** The City Manager or her designee is authorized to execute a Chapter 380 Economic Development Program Grant Agreement with SAEDF in accordance with the terms and conditions of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution.

**SECTION 3.** Funding in the amount of \$100,000.00 for this Ordinance is available in Fund 29059000, Cost Center 1604010001, General Ledger 5201040, as part of the Fiscal Year 2015 Budget that was carried forward into Fiscal Year 2016. In addition, funding in the amount of \$144,000.00 for this Ordinance is available in Fund 11001000, Cost Center 1601010003, General Ledger 5201040, as part of the Fiscal Year 2016 Budget.

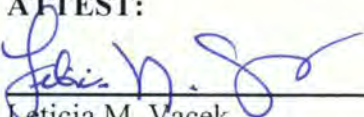
**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

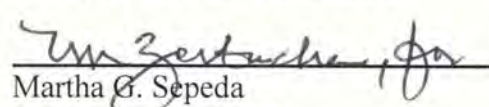
PASSED AND APPROVED this 16<sup>th</sup> day of June, 2016.

  
**M A Y O R**  
Ivy R. Taylor

**ATTEST:**

  
Leticia M. Vacek  
City Clerk

**APPROVED AS TO FORM:**

  
Martha G. Sepeda  
Acting City Attorney

<b>Agenda Item:</b>	<b>30 ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18A, 20, 21, 22, 26, 28, 30, 31, 33, 34, 35, 36, 37A, 37B, 37C, 37D, 37E )</b>						
<b>Date:</b>	06/16/2016						
<b>Time:</b>	09:35:28 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a Chapter 380 Economic Development Program Grant Agreement with the San Antonio Economic Development Foundation in the amount of \$244,000.00 to provide for the hiring of a Director of SA Works; reprogramming and consolidating \$244,000.00 in funds previously allocated for the purpose of hiring a Director of SA Works. [Carlos Contreras, Assistant City Manager; Rene Dominguez, Director, Economic Development]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

# **ATTACHMENT I**



STATE OF TEXAS           §     **CHAPTER 380 ECONOMIC DEVELOPMENT**  
                                     §     **PROGRAM GRANT AGREEMENT OF THE CITY**  
COUNTY OF BEXAR       §     **OF SAN ANTONIO**

This Chapter 380 Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager and the San Antonio Economic Development Foundation ("SAEDF"), both of which may be referred to herein collectively as the "Parties" or individually as a "Party".

### **RECITALS**

**WHEREAS**, SAEDF is engaged in economic development activities; and

**WHEREAS**, SAEDF is the acting fiscal agent of SA WORKS as defined below and is seeking economic grant support from the CITY to undertake and complete economic development activities as more specifically described in **Exhibit A** and attached hereto; and

**WHEREAS**, the CITY has identified funds to be made available to SAEDF in the form of a Chapter 380 Economic Development Program Grant for use in undertaking and completing economic development activities in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code the CITY is authorized to establish a program to grant funds 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, CITY created such a program for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; **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. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings ascribed below:

"Alamo Colleges" is defined in the preamble of this Agreement and includes its successors and assigns.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.



“Director” shall mean the individual engaged by SAEDF as the Director of SA WORKS, who may be employed by SAEDF, and to provide the services set forth on **Exhibit A and B** attached hereto.

“SAEDF” is defined in the preamble of this Agreement and includes its successors.

“SA WORKS” shall mean the industry led coalition staffed by SAEDF assembled to develop a comprehensive human capital strategy to fill the city’s most pressing talent needs as described in Exhibit A.

## **ARTICLE II. TERM**

2.1 This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect through September 30, 2016 (“Term”), unless otherwise terminated on an earlier date or extended in accordance with the terms of this Agreement.

2.2 City may, in its sole discretion, exercise a one-year renewal option, beginning October 1, 2016 and without the necessity of City Council approval, and subject to budgetary appropriation.

## **ARTICLE III. SCOPE OF WORK**

3.1 SAEDF agrees to provide the services described below as the beneficiary of this grant described in Article IV of this Agreement.

3.1.1 SAEDF agrees to provide a job position titled Director of SA WORKS. The Director will be evaluated by the SA WORKS board as more particularly described in **Exhibit A** of this Agreement.

3.1.2 All Grant funds provided under this Agreement shall be used to fund the Director position, ancillary costs associated with the position and any other expenses deemed appropriate and agreed to by the SAEDF and the City to include but not be limited to additional staffing resources, consulting resources and training for staff retained under this agreement. In any event, all ancillary, administrative costs, in kind contributions of SAEDF, and other expenses of SAEDF associated with the Director position in total shall not exceed five percent (5%) the total Grant funds. All ancillary, administrative, and other associated expenses of SAEDF associated with the Director position shall be in kind contributions.

3.1.3 City shall have the right to participate in the interview and selection of the individual retained for the position prior to the engagement of individual.

3.2 SAEDF agrees that the Director shall work exclusively on SA WORKS related issues. City shall have the right to terminate this Agreement in whole or in part in accordance



with Article VI, should SAEDF's work related to the position of Director and the agreed upon work program outlined in **Exhibits A and B** to be unsatisfactory to City.

#### **ARTICLE IV. GRANT TO SAEDF**

4.1 In consideration of the Director's performance in a satisfactory and efficient manner, City agrees to provide SAEDF a grant for work and activities as set forth in this Agreement, an amount up to but not to exceed Two Hundred Forty-four Thousand Dollars and Zero cents (\$244,000.00) ("Grant funds") and subject to budget appropriations or budget amendments by City Council. City has approved in the City FY 2016 budget an initial payment of One-Hundred Thousand Dollars and Zero Cents (\$100,000.00), to be paid to SAEDF in full within thirty (30) business days of the receipt of an invoice from SAEDF in a format satisfactory to City in its sole discretion. SAEDF shall submit such invoice following final execution of this Agreement. The remaining Grant funds of up to but not to exceed One-Hundred and Forty-four Thousand Dollars and Zero Cents (\$144,000.00), to include any previous payments made for the same purpose, shall be paid in the same manner as the initial payment at the end of each calendar quarter, beginning October 1, 2016 and subject to City Council approved budget appropriations or budget amendments.

4.2 SAEDF shall return any Grant funds that are not spent as set forth in Subsection 3.1.2 within thirty (30) calendar days of written notice from City provided in accordance with Section 7.1. Additionally, if any or all SAEDF's services are unsatisfactory to City, as required by the terms of this Agreement, SAEDF shall return any Grant funds associated with such unsatisfactory work within thirty (30) calendar days of written notice from City provided in accordance with Section 7.1. The purposes of this Agreement, "unsatisfactory work" shall mean that any item in the attached **Exhibits A and B** was not accomplished by the date specified.

4.3 No additional fees or expenses of SAEDF shall be charged by SAEDF nor be payable by City. The parties hereby agree that all compensable expenses of SAEDF have been provided for in the total payment to SAEDF as specified in section 4.1 above. Total payments to SAEDF cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced by the passage of an Ordinance by the City Council.

4.4 City shall not be obligated or liable under this Agreement to any party, other than SAEDF, for the payment of any monies or the provision of any goods or services. The SAEDF agrees to provide the City with Quarterly Progress Reports that outline how the Economic Development Grant funds provided under this Agreement were utilized to accomplish the public purpose for which this Agreement was entered into and summarizing completed and scheduled performance evaluations planned by the SAEDF as specified in **Exhibit A**.

4.5 The Quarterly Progress Reports shall be submitted no later than the last calendar day of the month following the end of each full calendar quarter during the Term of this Agreement, in a mutually-acceptable format that details the SAEDF's efforts through the SA WORKS efforts to achieve the activities as described in **Exhibit A**.



4.6 In addition, at the option of and on request of the City, representatives of the SAEDF must provide a briefing to the San Antonio City Council during a scheduled public meeting, to include discussion of the SAEDF's efforts in expanding the community's employment opportunities.

4.7 The payment of the subsequent one-hundred forty four thousand dollars and zero cents (\$144,000) to SAEDF pursuant to this Agreement is subject to SAEDF securing matching of at least one-hundred thousand dollars and zero cents (\$100,000) from Bexar County for the purpose of funding the Director position and any other related activities as described in this agreement based on all expenditures contributed by Bexar County for the same purpose as agreed in writing by the City. In the event such matching funds are not received by SAEDF or assignee by January 31, 2017, City may, in its sole discretion, terminate this Agreement and any Grant funds paid to SAEDF pursuant to this Agreement shall be immediately returned to City. If the City elects to rescind and terminate this agreement, the City shall provide at minimum 30 days notice to SAEDF.

## **ARTICLE V. RECORDS RETENTION**

5.1 SAEDF shall properly, accurately and completely maintain all documents, papers, records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at the offices of SAEDF and with at least 48 hours' notice as the City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

5.2 SAEDF shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") 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, SAEDF shall retain the records until the resolution of such litigation or other such questions. SAEDF acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require SAEDF to provide in electronic form of said documents to City prior to or at the conclusion of said retention.

5.3 SAEDF shall notify City, immediately, in the event SAEDF receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SAEDF understands and agrees that City will process and handle all such requests with an understanding that the SAEDF reserves the right to challenge any specific Open Records Request under the Texas Public Information Act made to SAEDF or the City.

## **ARTICLE VI. TERMINATION**



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

6.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article VII. Notice.

6.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VII. 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, each of which shall constitute an Event for Cause under this Agreement:

- (1) The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article IX. Assignment and Subcontracting.
- (2) The unsatisfactory performance of the Director in accordance with this Agreement.
- (3) Bankruptcy or selling substantially all of company's assets.
- (4) Failing to perform or failing to comply with any covenant herein required.
- (5) Performing unsatisfactorily in accordance with this Agreement.

6.4 Defaults With Opportunity for Cure. Should SAEDF default in the performance of this Agreement in a manner stated in this Section 6.3 above, such default shall be deemed to be an event of default hereunder. City shall deliver written notice of said default specifying such matter(s) in default and the means of cure. SAEDF shall have sixty (60) calendar days after receipt of the written notice, in accordance with Section 7.1, to cure such default. If SAEDF fails to cure the default within such sixty-day (60) cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate. In the event the City terminates this Agreement in whole or in part, then the CITY shall have the right to recapture any Grant funds disbursed in accordance with this Agreement.

6.5 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.

6.6 Irrespective of how this Agreement is terminated, SAEDF shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, electronic copies of all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by SAEDF, or provided to **SAEDF**, hereunder, regardless of storage medium,



if so requested by City, or shall otherwise be retained by SAEDF in accordance with Article V, Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at City's sole cost and expense. Payment of compensation due or to become due to SAEDF is conditioned upon delivery of all such documents, if requested.

6.7 Upon the effective date of expiration or termination of this Agreement, SAEDF shall cease all operations of work being performed by SAEDF or any of its subcontractors pursuant to this Agreement. Provided however, such work may be continued to be performed by SAEDF under any other agreement to which SAEDF may be a party to.

6.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue SAEDF for any default hereunder or other action.

## ARTICLE VII. NOTICE

7.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Attn: Director  
Economic Development Department  
100 W. Houston, Floor 19  
San Antonio, Texas 78205

If intended for SAEDF, to:

San Antonio Economic Development  
Foundation (SAEDF)  
Attn: Executive Director  
602 E. Commerce Street  
San Antonio, Texas 78205

## ARTICLE VIII. INDEMNITY

8.1 SAEDF and City acknowledge that the City is a political subdivision of the State of Texas and that the City is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 et



*seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Agreement will be interpreted according to the Constitution and laws of the State of Texas.

**8.2 SAEDF covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), individually or 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 injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to SAEDF'S activities under this AGREEMENT, including any acts or omissions, or willful misconduct, of SAEDF, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of SAEDF, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law. The CITY, and/or shall have the right, at their option and at their own expense, to participate in such defense without relieving SAEDF of any of its obligations.**

**SAEDF further agrees to reimburse the City for any costs or expenses, including court costs and reasonable attorney's fees, which City may incur in investigating, handling or litigating any such claims. IN THE EVENT SAEDF 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**8.3 SAEDF SHALL ADVISE THE CITY, IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF THE SAEDF'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE SAEDF'S COST TO THE EXTENT REQUIRED UNDER THIS AGREEMENT.**

**8.4 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.**

**8.5 Nothing in this Agreement waives any governmental immunity available to the City under the laws of the State of Texas.**

**SAEDF shall advise CITY in writing within 24 hours of any claim or demand against CITY or SAEDF known to SAEDF related to or arising out of SAEDF's activities under this Agreement.**



## **ARTICLE IX. ASSIGNMENT AND SUBCONTRACTING**

9.1 SAEDF shall work with SA Works board of directors to employ the Director position in order to complete the work to be performed under this Agreement, and if this shall be considered in any way to be an assignment or subcontract, then such is approved by CITY in advance by execution of this agreement.

9.2 It is City's understanding and this Agreement is made in reliance thereon, that except where allowed in this Agreement SAEDF does not intend to use subcontractors in the performance of this Agreement.

9.3 Any work or services approved for subcontracting hereunder shall be subcontracted only 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 SAEDF. City shall in no event be obligated to any third party, including any subcontractor of SAEDF, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

9.4 Except as otherwise stated herein, SAEDF may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the written consent of the Director of the Economic Development Department of the City of San Antonio. As a condition of such consent, if such consent is granted, SAEDF shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor SAEDF, assignee, transferee or subcontractor.

9.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should SAEDF assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of SAEDF shall thereupon cease and terminate, in accordance with Article VI, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by SAEDF shall in no event release SAEDF from any obligation under the terms of this Agreement, nor shall it relieve or release SAEDF from the payment of any damages to City, which City sustains as a result of such violation.

## **ARTICLE X. INDEPENDENT CONTRACTOR**

10.1 SAEDF covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that SAEDF shall have exclusive control of and exclusive right to control 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 SAEDFs; that the doctrine of respondent superior shall not apply as between City and SAEDF, its officers, agents, employees, contractors, subcontractors and SAEDFs, and nothing herein shall be construed as creating the relationship of employer-



employee, principal-agent, partners or joint venturers between City and SAEDF. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party, including, without limitation, by Director, occurring in connection with the services to be performed by the SAEDF under this Agreement and that the SAEDF has no authority to bind the City.

#### **ARTICLE XI. NO REPRESENTATIONS**

11.1 Neither SAEDF nor its agents or brokers have made any representations or promises with respect to their services except as may be expressly set forth in this Agreement, and any reliance by City on any representations or promises of SAEDF, its agents or brokers shall be solely on the representations or promises, if any, expressly contained in this Agreement. City is not acquiring any rights, under this Agreement by implication or otherwise except as expressly set forth in this Agreement.

#### **ARTICLE XII. CONFLICT OF INTEREST**

12.1 SAEDF 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.

12.2 Pursuant to the subsection above, SAEDF warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. SAEDF further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **ARTICLE XIII. AMENDMENTS**

13.1 No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties hereto.

#### **ARTICLE XIV. SEVERABILITY**



14.1 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.

#### **ARTICLE XV. LICENSES/CERTIFICATIONS**

15.1 SAEDF warrants and certifies that SAEDF 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.

#### **ARTICLE XVI. COMPLIANCE**

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

#### **ARTICLE XVII. NONWAIVER OF PERFORMANCE**

17.1 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. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **ARTICLE XVIII. LAW APPLICABLE**

**18.1 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.**



18.2 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.

#### **ARTICLE XIX. LEGAL AUTHORITY**

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

#### **ARTICLE XX. PARTIES BOUND**

20.1 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.

#### **ARTICLE XXI. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

21.1 SAEDF understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

21.2 None of the performances rendered by SAEDF under this Agreement shall involve, and no portion of the Incentives received by SAEDF 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.

21.3 SAEDF shall, to the best of its knowledge and belief, include the substance of this Article in all agreements entered into by SAEDF associated with the Grant funds made available through this Agreement.

#### **ARTICLE XXII. PARTIES' REPRESENTATIONS**

22.1 This Agreement has been jointly negotiated by the City and SAEDF and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

#### **ARTICLE XXIII. RELATIONSHIP OF PARTIES**

23.1 SAEDF is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint ventures or any other similar such relationship between the Parties. As between the CITY, and SAEDF, the SAEDF is solely responsible for compensation payable to any employee, contractor, or subcontractor of SAEDF,



and none of the SAEDF's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City as a result of this Agreement. To the extent permitted by Texas law, no director, officer, employee or agent of the CITY shall be personally responsible for any liability arising under or growing out of this Agreement.

#### **ARTICLE XXIV. CAPTIONS**

24.1 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.

#### **ARTICLE XXV. ENTIRE AGREEMENT**

25.1 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 the same is in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIII.

**IN WITNESS THEREOF**, the Parties hereto have made and executed this Agreement, to be effective on the date of the last signature below ("Effective Date").

**CITY OF SAN ANTONIO**

**SAN ANTONIO ECONOMIC  
DEVELOPMENT FOUNDATION**

\_\_\_\_\_  
Sheryl Sculley  
City Manager or designee

\_\_\_\_\_  
Tom Long  
Executive Vice President

**ATTEST/SEAL:**

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

**Approved as to Form:**

\_\_\_\_\_  
Martha G. Sepeda, Acting City Attorney



## **EXHIBIT A: SCOPE OF SERVICES**

SAEDF in conjunction with the SA Works Board shall hire a Director of SA WORKS by September 30, 2016 or 90 days after receiving initial payment as outlined in Section 4.1.

SAEDF shall ensure the SA WORKS Director supports the deliverables of the SA WORKS Board and fulfills the Job Description in Exhibit B through an annual performance evaluation reported to the City and ratified with a majority vote of confidence of the SA WORKS Board of Directors by June 30, 2017 if the City of San Antonio elects to renew this agreement.

- A. Bi-Annual reports shall include a narrative and supporting material outlining the San Antonio's Goals, Objectives and Progress for a minimum of the following domains:
- 1) Targeted Industry Talent Gaps: quantifying and addressing industry-verified talent gaps constraining growth and competitiveness.
  - 2) K-16+ Alignment: defining and enacting or supporting efforts to align career pathways and interventions in the K-16+ system.
  - 3) Connecting the Underserved: connecting citizens who are unemployed, the formerly incarcerated, or reside in chronically depressed areas of San Antonio.

B. SA WORKS deliverables include:

- Prioritizing the work of the SA WORKS board to focus on targeted industries as identified by previous data reports and studies and continuously updating and utilizing new data to determine priority industries and occupations;
- Providing an evidence-based strategic plan that brings best practices and innovative education and workforce development solutions to scale including employer/demand and supply-based approaches;
- Establishing goals and provide direction for the establishment of policies and practices that provide a qualified workforce capable of meeting the current and future workforce needs of the community's business and industry.
- Determining the responsibilities of each of our community assets and organizations for the support, education and employment of our residents, matching talents with employer needs;
- Aligning the full extent of the community's resources to achieve optimum employment for the businesses, industries and residents of San Antonio and Bexar County
- Utilizing the P-16 STRIVE data collection and reporting system in addition to any other data reporting system as deemed necessary in order to monitor the Collective Impact of the SA WORKS Board and continuously improve achievement of the project's purposes and goals.



**EXHIBIT B: PROPOSED JOB DESCRIPTION**  
**SA WORKS Director**

Job Title/Position: SA WORKS Director

Job Summary: Receiving direction and reporting directly to the SA WORKS Board, the Director will lead the efforts to align education, workforce and economic development systems in the area to meet talent needs as identified. The Director will lead in the development of a strategic plan that will promote implementation of employer driven projects that maximizes results and workforce and skills training amongst all educational institutions and support the elimination of workforce skills gaps.

Essential Job Functions:

- Lead collaboration with all stakeholders in achieving program, project and initiative goals to include the alignment of area education, workforce and economic development systems
- Track, ensure, and maintain all required data, metrics and pertinent information to report on progress and success of the work of SA WORKS and align with all local, state and federal regulatory agencies
- Monitors community investment in local workforce programs and provides reports and assessment to the SA WORKS Board, City and County officials.
- Develop employer centered measures for each project of work and report back to the Board on status of each project of work
- Work with city and county officials in aligning incentives for employers and workforce training programs with employer centered performance measures
- Market SA WORKS to students, parents, education leaders and business community
- Promote the concept of public-private data sharing technology and standardization
- Work in partnership with the Alamo Colleges and the San Antonio Chamber of Commerce to assist in developing community talent solutions for employer partners based on critical skills demands as projected by employers
- Manage employer, education, and community based organization partnerships
- Stay abreast of national and statewide education/workforce trends and issues to better lead local efforts
- Work with state and federal legislators and staff for the promotion and development of key legislation affecting education and workforce issues
- Assist in identifying grant opportunities for the benefit and promotion of the work of the SA WORKS Board and Collaborative
- Supervises, selects, trains and monitors a team of others to include maintaining and processing time sheets and leave forms.
- Performs other duties as assigned



#### Minimum Education and Experience:

- Master's Education and Experience of relevant experience, education and training that equates to a Master's Degree)
- Degree in Business, Management, Education, Communications, Marketing, or related degree
- Minimum of 5 years of successful work experience in the area of education or workforce/talent development
- Project Management Professional Certificate is highly desirable
- Working knowledge of educational institutions and nonprofit organizations who conduct workforce training or skills development
- Working knowledge of various business organizations and business organizational models
- Effective stakeholder management experience, e.g. participating schools and employers, etc.

#### Knowledge, Skills and Abilities:

- Strong understanding of key workforce developed areas as related to current and emerging jobs and programs
- Skills in stakeholder management
- Strong experience in project management including identifying milestones and tracking success based on data driven metrics
- Ability to speak publicly and conduct presentations
- High motivation, organization and attention to detail
- Fundamental knowledge of Texas Education Agency (TEA), Texas Higher Education Coordinating Board (THECB) and Texas Workforce Commission (TWC)
- Ability to think and plan strategically / outside the box
- Experience working with diverse group of partners, donors and volunteers
- Experience using Microsoft Office and ability to research on the Internet
- Bilingual skills are a plus

#### Supervision Exercised:

- Possibility of managing 2 employees

#### Physical Requirements:

- Must have reliable transportation
- Must have flexibility for attending or responding to early morning and late night meetings and inquiries
- Occasional standing and lifting of at least 5 pounds
- Occasional travel required