

AN ORDINANCE 2016-09-29-0748

APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH LIQUIDWEB, INC. IN THE AMOUNT OF \$225,000.00 FOR THE RELOCATION OF FIFTY-SEVEN (57) FULL-TIME JOBS AND THE CREATION OF AN ADDITIONAL FORTY-THREE (43) FULL-TIME JOBS IN THE CITY'S CENTRAL BUSINESS DISTRICT.

* * * * *

WHEREAS, LiquidWeb, Inc. ("LiquidWeb") is a Delaware corporation that provides web hosting services including business support, software development and engineering, and sales/marketing; and

WHEREAS, LiquidWeb is seeking to relocate fifty-seven (57) full-time jobs in San Antonio and to create forty-three (43) full-time jobs for a cumulative total of one hundred (100) full-time jobs to be located within the city's central business district (the "Project"); and

WHEREAS, LiquidWeb is seeking a grant from the City in the amount of \$225,000.00 to offset costs associated with undertaking the Project; 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 LiquidWeb in undertaking and completing the Project 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 terms and conditions of an Economic Development Program Grant Agreement with LiquidWeb, Inc. to provide \$225,000.00 from the Economic Development Incentive Fund for the relocation of its business activities to the City's central business district and the relocation of fifty-seven (57) full-time jobs and the creation of an additional forty-three (43) full-time jobs, are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute an Economic Development Program Grant Agreement as approved in Section 1 above. The final agreement shall be filed with this Ordinance upon execution.

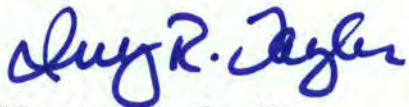
SECTION 3. Funding in the amount of \$225,000.00 for this Ordinance is available in Fund 9059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2016 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to LiquidWeb, Inc. and should be encumbered with a purchase order.

SECTION 5. 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 6. This Ordinance shall be effective on and after the tenth (10th) day after passage hereof.

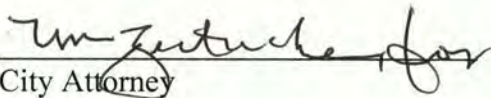
PASSED AND APPROVED this 29th day of September, 2016.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek City Clerk

APPROVED AS TO FORM:


City Attorney

| | | | | | | | |
|---------------------|---|--------------------|------------|------------|----------------|---------------|---------------|
| Agenda Item: | 32 | | | | | | |
| Date: | 09/29/2016 | | | | | | |
| Time: | 11:33:12 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance approving a Chapter 380 Economic Development Program Grant Agreement with LiquidWeb, LLC in an amount up to \$225,000.00 for the relocation of fifty-seven full-time jobs and the creation of an additional forty-three full-time jobs in the City's Central Business District. [Carlos Contreras, Assistant City Manager; Rene Dominguez, Director, Economic Development] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Ivy R. Taylor | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | x | |
| Alan Warrick | District 2 | | 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

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT
BETWEEN THE CITY OF SAN ANTONIO AND LIQUID WEB, LLC.

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 Liquid Web, LLC., a Delaware limited liability company (hereinafter referred to as "GRANTEE"). Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

WHEREAS, GRANTEE is headquartered in Lansing, Michigan and has recently acquired assets of San Antonio-based Rackspace; and

WHEREAS, GRANTEE is engaged in an economic development project that will consist of relocating and expanding its business offices into GRANTOR's Central Business District where it will relocate fifty-seven (57) full-time jobs and create an additional forty-three (43) full-time jobs for a cumulative total of one hundred (100) full-time jobs that will be located in GRANTOR's Central Business District within four years of the execution of this Agreement (the "Project"); and

WHEREAS, GRANTEE has identified office space located at 175 E. Houston St., San Antonio, TX 78205 (the "Project Site") to undertake the Project; and

WHEREAS, GRANTOR seeks to encourage GRANTEE to undertake the Project at the Project Site which is within GRANTOR's Central Business District; 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

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 has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2016-09-__ - ____, passed and approved on September __, 2016 to grant said funds; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. GRANTOR is supporting the Project through this Economic Development Program Grant to provide funds to be used to defer costs associated with undertaking and completing the Project.

SECTION 2. PROJECT REQUIREMENTS

A. Lease Agreement. GRANTEE shall enter into a Lease Agreement (the "Lease") with the owner of the Project Site prior to November 1, 2016. The Lease shall have a term of not less than sixty (60) months and upon the execution of the Lease, GRANTEE shall provide a Memorandum of Lease to GRANTOR that indicates a Term, square footage and conditions for termination executed for the Project Site and such Memorandum of Lease shall be attached to this Agreement as Exhibit A. Upon the expiration of the Lease term, GRANTEE shall use best commercial efforts to remain within GRANTOR's Central Business District ("CBD"), and in any case, shall remain within GRANTOR's city limits for the remainder of the Term of this Agreement. Before any decision to relocate outside of the GRANTOR's CBD prior to the end of the Term of this Agreement, GRANTEE must provide notification to and consult with the Director of GRANTOR's Economic Development Department (EDD) in order to identify any commercially viable, market-based equivalent real estate options within GRANTOR's CBD that satisfy the GRANTEE's needs and space constraints.

B. Business Activities. GRANTEE shall conduct the business activities of a web services hosting company to include a business support center, software development and engineering departments, and a sales/marketing function (the "Business Activities") at the Project Site for the Term of this Agreement (as defined in Section 4). Except as provided herein, GRANTEE covenants and agrees that it shall not materially change the Business Activities without the consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization which shall be defined as a parent, subsidiary or affiliate organization of GRANTEE or a new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE occupies the Project Site and continues the stated Business Activities. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing through an amendment of this Agreement to comply with all applicable terms herein. Except as authorized above, GRANTEE covenants and agrees not to change the principal use of the Project Site without prior written approval of GRANTOR, which approval will not be unreasonably withheld, conditioned, or delayed.

C. Full-Time Jobs. GRANTEE shall relocate and create a cumulative total of one hundred (100) Full-Time Jobs to the Project Site as follows:

Prior to December 31, 2016, GRANTEE shall relocate fifty-seven (57) Full-Time Jobs to the Project Site;

Prior to December 31, 2017, GRANTEE shall create an additional thirteen (13) Full-Time Jobs at the Project Site for a minimum cumulative total of seventy (70) Full-Time Jobs at the Project Site;

Prior to December 31, 2018, GRANTEE shall create an additional fifteen (15) Full-Time Jobs at the Project Site for a minimum cumulative total of eighty-five (85) Full-Time Jobs at the Project Site; and

Prior to December 31, 2019, GRANTEE shall create an additional fifteen (15) Full-Time Jobs at the Project Site for a minimum cumulative total of one hundred (100) Full-Time Jobs at the Project Site.

1. For the purposes of this Agreement, a Full-Time Job shall be equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year,

2. The Full-Time Job positions shall comply with GRANTOR's current wage standard policy which is stated in the GRANTOR's Tax Abatement Guidelines. The minimum wage for all positions counted as Full-Time Jobs for purposes of this Agreement shall be ELEVEN DOLLARS AND SIXTY-EIGHT CENTS (\$11.68) per hour. After one full year of full operations at the Project Site the hourly earnings for seventy percent (70%) of the positions counted as Full-Time Jobs at the Project Site shall be not less than FIFTEEN DOLLARS AND SIXTY-EIGHT CENTS (\$15.68) per hour. The GRANTEE shall submit the Annual Wage Compliance Reports certifying their compliance with these wage requirements.

3. Additionally, all employees of GRANTEE (or its Related Organizations) who fill Full-Time Job positions at the Project Site shall be offered an opportunity to participate in GRANTEE's employee benefits program which shall be substantially similar to employee benefits offered to similarly situated employees of GRANTEE in other locations. GRANTEE further covenants and agrees that all employees of GRANTEE (or its Related Organizations) who fill Full-Time Job positions at the Project Site shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of GRANTEE's non-temporary full-time employees at other locations.

4. The minimum annual base salary of the Full-Time Jobs required to be retained/created in each year described in Section 2(C) above shall be no less than FORTY-SIX THOUSAND DOLLARS AND 0 CENTS (\$46,000.00). The Parties acknowledge that a variance of either three-percent (3%) in the number of Full-Time jobs or a total of three (3) Full-Time jobs failing to meet this minimum annual salary is acceptable and GRANTEE shall be deemed to be in compliance so long as the variance is no more than three-percent (3%) of the total number of Full-Time jobs relocated, created, and retained at the time of review or a total of three (3) Full-Time jobs, whichever is greater.

D. Certification. GRANTEE covenants and agrees that it shall provide the Director of GRANTOR's Economic Development Department with an annual certification from an officer of GRANTEE attesting to the number of Full-Time Jobs relocated, created and maintained, as well as wages paid and the annual average salary for all employees at the Project Site.

E. Parking Agreement. GRANTEE shall enter into a Parking Agreement (the "Parking Agreement") with GRANTOR for the use of at least fifty (50) parking spaces at the GRANTOR-owned St. Mary's Street Parking Garage (the "Garage") located at 400 S. St. Mary's St., San Antonio, TX 78205 by the time of its lease commencement at the 175 Houston St. location, expected to be prior to December 31, 2016. Upon its execution the Parking Agreement shall be attached to and become a part of this Agreement as "Exhibit B." The GRANTOR will work with the GRANTEE to make parking spots available for up to one hundred (100) total spaces in GRANTOR owned parking facilities through the term of this Agreement.

F. Laws. GRANTEE shall comply with all applicable Federal, State and local laws and regulations.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

A. Economic Development Program Grant. GRANTOR is providing GRANTEE with an Economic Development Program Grant in a cumulative amount of up to TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND 0 CENTS (\$225,000.00).

B. Grant Disbursement. Following the execution of this Agreement by the Parties, submission by GRANTEE to GRANTOR of a Memorandum of Lease and subject to the terms and conditions herein, GRANTOR will direct disbursement of grant funds to GRANTEE as follows:

Following January 1, 2017, GRANTOR shall make available ONE HUNDRED TWENTY-EIGHT THOUSAND TWO HUNDRED AND FIFTY DOLLARS AND 0 CENTS (\$128,250.00) to provide to GRANTEE provided GRANTEE has relocated at least fifty-seven (57) Full-Time Jobs to the Project Site;

Following January 1, 2018, GRANTOR shall make available an additional TWENTY-NINE THOUSAND TWO HUNDRED AND FIFTY DOLLARS AND 0 CENTS (\$29,250.00) to provide to GRANTEE provided GRANTEE has created an additional thirteen (13) Full-Time Jobs for a cumulative total of seventy (70) Full-Time Jobs at the Project Site;

Following January 1, 2019, GRANTOR shall make available an additional THIRTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS AND 0 CENTS (\$33,750.00) to provide to GRANTEE provided GRANTEE has created an additional fifteen (15) Full-Time Jobs for a cumulative total of eighty-five (85) Full-Time Jobs at the Project Site; and

Following January 1, 2020, GRANTOR shall make available an additional THIRTY-THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS AND 0 CENTS (\$33,750.00) to provide to GRANTEE provided GRANTEE has created an additional fifteen (15) Full-Time Jobs for a cumulative total of one hundred (100) Full-Time Jobs at the Project Site.

Once GRANTEE has received grant funds for Full-Time Jobs relocated and created to/at the Project Site, GRANTEE shall maintain such number of Full-Time Jobs for the duration of the Term of this Agreement. In the event GRANTEE accelerates its number of Full-Time jobs beyond those contemplated above, GRANTOR will make available funds scheduled for future periods at the earlier anniversary date. Once funds are provided for Full-Time Jobs created in advance of the schedule above, GRANTEE shall maintain such Full-Time Jobs for the remaining Term of this Agreement.

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and terminate on December 31, 2024, unless earlier terminated:

1. By GRANTOR under Section 15 effective on the dates set out therein; or
2. By GRANTOR at request of GRANTEE under Section 16 effective as of the date such request is approved.

SECTION 5. GRANTOR'S OBLIGATIONS

A. Payment. In consideration of full and satisfactory performance of activities required by Section 2 and/or Section 3 of this Agreement, as applicable, and subject to the annual appropriation of funds by GRANTOR's City Council, GRANTOR will pay GRANTEE in accordance with Section 3 above.

B. No Liability for Costs. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Retention. 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. Access. GRANTEE shall, following reasonable advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the cost of Project (the "Records"). GRANTOR's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, 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 City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

SECTION 7. MONITORING

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report 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 monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

SECTION 8. CONFLICT OF INTEREST

GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR 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 GRANTOR's Code of Ethics.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Nondiscrimination. GRANTEE shall use reasonable commercial efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation,

veteran status 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 that is the subject of this Agreement.

B. 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.

C. Inclusion. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Legal Authority. 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. Signatories. 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. Lack of Authority. GRANTOR shall have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein 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 for reasons enumerated in this Section.

SECTION 11. LITIGATION AND CLAIMS

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any activities hereunder. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify GRANTOR immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify GRANTOR of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

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.

SECTION 12. ATTORNEY'S FEES

In the event GRANTEE should default under any of the provisions of this Agreement and GRANTOR should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by GRANTOR.

SECTION 13. 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.

C. Change of Law. Any alterations, additions, or deletions to the terms of this Agreement (other than those terms in Section 2 or Section 3 herein) 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 14. SUSPENSION

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code 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 the 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, the GRANTOR may, 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. Extensions. 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, GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE: (1) immediately upon receipt of Notice of Suspension advises GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institutes and thereafter pursues to completion with reasonable dispatch all steps necessary to cure same.

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

D. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION AND RECAPTURE

A. Relocation Defined. For purposes of this section, "Relocation" or "Relocate" shall mean GRANTEE or a Related Organization which has taken the place of GRANTEE, transferring Business Activities to a location not on the Project Site.

B. Relocation. Should GRANTEE occupy and use the Project Site for its Business Activities and subsequently Relocate (as defined in this Article 7, Paragraph A) during the Term, unless such Relocation is caused by a Force Majeure, as defined in Article 16, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR's determination shall be final and conclusive. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Article 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

C. Ceasing. If GRANTEE occupies and uses the Project Site for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 16, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Project Site was no longer used for the required purposes stated herein. Unless GRANTEE presents credible evidence to clearly indicate a date of cessation, GRANTOR's determination of a date of cessation shall be final and conclusive. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Article 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

D. Number of Jobs. If GRANTEE, a Related Organization or City-approved assignee fails to relocate, create, and retain the minimum number of permanent Full-Time Jobs as required in Article 2, Paragraph C above then, at the option of GRANTOR, this failure may be grounds for termination of this Agreement. Said termination shall be effective at the end of the first calendar year during which GRANTEE is determined to be non-compliant. Upon termination, any and all funds disbursed to GRANTEE and for the benefit of the GRANTEE under this Agreement shall be recaptured by GRANTOR according to the schedule in Article 15, Paragraph G below and GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination.

E. Notice of Default. During the Term, GRANTOR may declare a default if GRANTEE fails to comply with any of the terms of this Agreement. Should GRANTOR determine GRANTEE is in default under any of the terms of this Agreement, GRANTOR will notify GRANTEE in writing at the address below in Article 23. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then GRANTOR shall have the right to terminate this Agreement. GRANTOR may, in its sole discretion, extend the Cure Period if GRANTEE commences the cure within the Cure Period and GRANTEE is diligently pursuing such cure. If the Agreement is terminated as a result of default, all grant funds disbursed shall be due for the calendar year during which the termination

occurred; in addition, GRANTOR shall have the right to recapture from GRANTEE previously disbursed grant funds under this Agreement according to the schedule in Article 15, Paragraph G below and said grant funds shall be paid by GRANTEE to GRANTOR within sixty (60) calendar days of receiving GRANTOR's written notification of recapture.

F. 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/or recapture, if GRANTEE defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled. The termination and/or recapture of grant funds provided in this Article 15 are not applicable to situations involving minor changes to the description of the Project Site, or changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or its GRANTOR-approved successor or assignee continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

G. Calculation of Grant Funds Subject to Recapture. If GRANTEE fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to this Article 15 then GRANTOR shall have the right to recapture from GRANTEE a percentage of the disbursed grant funds based on the following table:

| <u>TERM YEAR</u> | <u>TOTAL PERCENTAGE OF GRANT FUNDS TO BE RECAPTURED:</u> |
|------------------|--|
| 1-4 | 100% |
| 5 | 100% |
| 6 | 75% |
| 7 | 50% |
| 8 | 25% |

SECTION 16. AUTHORIZED RELIEF FROM PERFORMANCE

In addition to relief expressly granted in this Agreement, GRANTOR may grant relief from performance of this Agreement if GRANTEE is prevented from compliance and performance by an event of Force Majeure. For purposes of this section, "Force Majeure" is defined as an act of God or natural disaster. It also includes 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 release based upon this Article 16, GRANTEE must file a written request with the GRANTOR's International and Economic Development Department for review and approval, which request shall not be unreasonably denied.

SECTION 17. SPECIAL CONDITIONS AND TERMS

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement. 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 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 at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank,

N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid.

SECTION 18. RESERVED

SECTION 19. DEBARMENT

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

SECTION 20. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and GRANTOR 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 21. NON-ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of GRANTEE, or to any entity owned or controlled, or under common control, directly or indirectly by GRANTEE, without the written consent of the non-assigning Parties. The GRANTEE may also have the right to assign this Agreement to any party that acquires the Project, subject to GRANTOR's prior written consent which shall be evidenced by a duly authorized ordinance. In either of such cases, GRANTEE shall give GRANTOR no less than SIXTY (60) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of GRANTOR shall release GRANTOR from performing any of the terms, covenants and conditions herein and may subject GRANTEE to the Termination and Recapture of grant funds in accordance with Section 15 of this Agreement. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement.

SECTION 22. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 22. RESERVED

SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the

United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

(Whether personally delivered or mailed):

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

TO GRANTEE:

- If mailed:

Chief Financial Officer
Liquid Web, LLC
2703 Ena Dr.
Lansing, MI 48917

- If by personal or overnight delivery:

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

COPIES TO:

City Attorney
3rd Floor – City Hall
100 Military Plaza
San Antonio, TX 78205

SECTION 24. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – MEMORANDUM OF LEASE

Exhibit B – PARKING AGREEMENT

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2016 (the "EFFECTIVE DATE"):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2016-09-__ - _____ and GRANTEE pursuant to its authority.

GRANTOR:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Sheryl L. Sculley
CITY MANAGER

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

GRANTEE:

LIQUID WEB, LLC
a Delaware corporation

Name:
Title: Chief Financial Officer

ATTEST:

Name:
Title:

EXHIBIT A: MEMORANDUM OF LEASE

EXHIBIT B: PARKING AGREEMENT