

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM
GRANT AND TAX REBATE AGREEMENT
BETWEEN
THE CITY OF SAN ANTONIO
AND
PENTAGON FEDERAL CREDIT UNION**

THIS CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AND TAX REBATE AGREEMENT (hereinafter referred to as this “**Agreement**”) is made and entered into by and among the CITY OF SAN ANTONIO (hereinafter referred to as “**GRANTOR**” or “**City**”), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and PENTAGON FEDERAL CREDIT UNION (hereinafter referred to as “**GRANTEE**” or “**Company**”), a federally chartered credit union. Together, GRANTOR and GRANTEE may be referred to herein as the “**Parties**,” or individually as a “**Party**.”

WHEREAS, GRANTEE is engaged in an economic development project consisting of establishment of a Regional Center of Excellence to conduct Business Activities on a portion of the land generally known as 19500 Bulverde Rd, San Antonio, TX 78259 and legally described in Exhibit A (“**Project Site**”); and

WHEREAS, the Project is anticipated to result in a capital investment on the Project Site of approximately \$8,973,113, and the creation of at least 571 “New Full-Time Jobs” of which 221 will have an annual salary of at least \$50,000; and

WHEREAS, GRANTEE has requested economic development incentive funds to assist GRANTEE to defer costs associated with the Project; and

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

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

WHEREAS, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. _____, passed and approved on _____ 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 in accordance with Chapter 380 of the Texas Local Government Code. As such, GRANTOR is supporting the Project through the economic development incentives provided in this Agreement to provide funds to be used to defer costs associated with undertaking and completing the Project. This economic incentive is being offered to GRANTEE to promote investment and job creation in a targeted industry of the City.

SECTION 2. PROJECT INCENTIVE CONDITIONS

In order to receive the economic development grants provided in **Section 3** of this Agreement, GRANTEE must satisfy the following conditions:

- A. Project Site. GRANTEE shall own, hold an interest in or otherwise control the Project Site for the Term of this Agreement.
- B. Investment. Within five (5) years of the Effective Date, GRANTEE shall invest in certain real property improvements and personal property improvements in the cumulative amount of at least EIGHT MILLION NINE HUNDRED SEVENTY-THREE THOUSAND ONE HUNDRED THIRTEEN DOLLARS AND NO CENTS (\$8,973,133.00) (the “**Required Capital Investment**”). The \$8,973,113.00 Required Capital Investment shall be comprised of a minimum of \$3,561,970.00 of real property improvements and \$5,411,143.00 of personal property improvements.
- C. Any construction GRANTEE performs or causes to be performed on the Project Site shall be in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.
- D. Job Creation. GRANTEE shall hire a minimum of five hundred seventy-one (571) new Full-Time Jobs at the Project Site, of which two hundred twenty-one (221) will have a minimum annual salary of \$50,000.00 in accordance with the schedule set out below:

Year 1	2019	Create at least 130 new Full-Time Jobs
Year 2	2020	Create at least 196 new Full-Time Jobs for a total of 326 Full-Time Jobs

Year 3	2021	Create at least 126 new Full-Time Jobs for a total of 452 Full-Time Jobs
Year 4	2022	Create at least 78 new Full-Time Jobs for a total of 530 Full-Time Jobs
Year 5	2023	Create at least 41 new Full-Time Jobs for a total of 571 Full-Time Jobs

By the end of the Initial Term (as defined in Section 4 of this Agreement), GRANTEE shall have created 221 Full-Time Jobs with a minimum annual salary of \$50,000 and shall maintain such 221 Full-Time Jobs with a minimum annual salary of \$50,000 for the remainder of the Term of this Agreement.

- E. A “Full-Time Job,” for the purposes of this Agreement, shall include any employee that works primarily at the Project Site receiving pay equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year and who is an employee of GRANTEE.

- F. Business Activities. GRANTEE shall own, hold an interest in or otherwise control the Project Site and conduct, at the Project Site, business activities typically conducted by a Regional Center of Excellence for a federally chartered credit union, including but not limited to the support of financial services operations through research, mortgage and loan operations, service center operations, collections, human resources, and information technology, including management positions and the main office for the company’s Chief Technology Officer (all of such activities hereinafter collectively referred to as the "**Business Activities**"), and operate same at the Project Site for the Term of this Agreement, except to the extent said Project Site may be rendered unsuitable for such use due to a Force Majeure Event (as defined in **Section 17** of this Agreement). Except as provided herein, GRANTEE covenants and agrees that the Business Activities will not be changed without the written consent of GRANTOR. However, such consent shall not be necessary if a Related Organization (“**Related Organization**” being defined as a parent, subsidiary or affiliate organization of GRANTEE or any entity which succeeds to or receives an assignment of GRANTEE’s interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any parent, subsidiary or affiliate of such entity) occupies the Project Site and continues to use the premises for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to comply with all applicable terms herein from and after the date it succeeds to GRANTEE’s interest in this Agreement, and if requested by GRANTOR, the Related Organization must enter into an amendment to this Agreement

evidencing such agreement. In the event of any such transfer to a Related Organization, GRANTEE must notify GRANTOR in writing of same no later than the thirtieth (30th) calendar day following the effective date of such transfer. Approval of the change of Business Activities shall be promptly considered by the GRANTOR and shall not be unreasonably withheld, denied, delayed or conditioned. GRANTEE acknowledges that any change in the principal use of the Project Site from that contemplated herein without prior written approval of GRANTOR, to the extent same is required under this Agreement, may result in a loss or recapture of the economic development grants and rebates to be provided to GRANTEE under this Agreement.

- G. Living Wage. In accordance with GRANTOR's Economic Development Incentive Fund Guidelines, GRANTEE must pay 100% of all employees located at the Project Site at least the minimum "living wage" of TWELVE DOLLARS AND SEVEN CENTS (\$12.07) an hour.
- H. All Industry Wage. In addition to the "living wage" requirement, at least seventy percent (70%) of all new and existing employees must earn a wage at or exceeding SIXTEEN DOLLARS AND TWENTY-NINE CENTS (\$16.29) an hour.
- I. All wage requirements herein are exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages.
- J. GRANTEE shall offer all of the Full-Time Job employees performing Business Activities at the Project Site and their dependents with access to a benefits package, including a health insurance program, within one year from date of employment.
- K. GRANTEE shall make a good faith effort to hire Bexar County residents for the Full-Time Jobs GRANTEE is required to create pursuant to this agreement
- L. GRANTEE shall participate in an internship program in association with local colleges and universities for the first 10 year of the Term and take part in at least 2 job fairs within the San Antonio City Limits within two years of the Effective Date.
- M. GRANTEE shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.
- N. Certification. On or before January 31 of each year during the Term of this Agreement, GRANTEE shall provide GRANTOR's Director of Economic Development Department with the Annual Certification in accordance with **Section 8**.
- O. GRANTEE shall not assign or sub-lease Project Site during the Term without prior written permission of Grantor. Approval of the assignment or sub-lease shall be promptly considered by the GRANTOR and shall not be unreasonably withheld, denied, delayed or conditioned.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

In exchange for GRANTEE undertaking and completing the Project at the Project Site, GRANTOR will provide an economic development incentive grant and property tax rebate to GRANTEE as follows:

- A. **Annual Property Tax Rebate.** Subject to the terms and conditions of this Agreement, and conditioned upon GRANTEE not being in default of this Agreement, GRANTEE is entitled to a 15-year, approximately sixty percent (60%) tax rebate of ad valorem real and personal property improvement taxes on the Project Site in excess of the Base Year Value, subject to the provisions of **Section 3(A)(c)**, up to an amount not to exceed the Maximum Benefit, for each of the fifteen (15) tax years commencing with the 2019 tax year (beginning on January 1, 2019) and ending with the 2033 tax year (ending on December 31, 2033) (the “**Rebate Term**”) GRANTOR shall pay GRANTEE an “**Annual Property Tax Rebate**” up to the maximum amount of FIVE HUNDRED THOUSAND NINE HUNDRED FORTY-TWO DOLLARS AND NO CENTS (\$500,942.00) (“**Maximum Benefit**”) The Annual Property Tax Rebate shall be paid to GRANTEE by GRANTOR within forty-five (45) days following the submission of a tax statement indicating payment of taxes by GRANTEE, in an amount equal to:
- a. Sixty percent (60%) of the difference between the actual amount of real property and personal property taxes paid by GRANTEE to GRANTOR with respect to the Project Site (including both land and improvements thereon) for the subject year during the Rebate Term, less the actual amount of real property and personal property taxes paid by GRANTEE to GRANTOR with respect to the Base Year Value for the Project Site real property and personal property. The “**Base Year Value**” is the taxable property value (as determined by the Bexar County Appraisal District), as of January 1, 2018 (the “**Base Year**”).
 - b. The Annual Property Tax Rebate contemplated hereunder shall be payable by GRANTOR to GRANTEE upon satisfaction of the following: i) the submission by GRANTEE of evidence of expenditures meeting the Required Capital Investment; and ii) submission of the Annual Certification evidencing GRANTEE’s satisfaction of the job creation and retention requirement hereunder and iii) evidence indicating that all taxes owed on the Project Site have been paid in full for the tax year for which payment of the Annual Property Tax Rebate is sought.
 - c. GRANTEE acknowledges that GRANTOR is required to commit a percentage of its ad valorem taxes to pay City debt service. The current percentage is THIRTY-SEVEN PERCENT (37%). The percentage is subject to increases or decreases in the future which may impact the percentage of the Tax Rebate. Following GRANTEE's payment of real and personal property taxes for the Project Site to GRANTOR, GRANTOR shall deduct the debt service portion and pay GRANTEE the Annual Property Tax Rebate.

- d. Maximum Benefit Reconciliation. In no case shall rebates made to GRANTEE under this Agreement exceed the Maximum Benefit. Should such rebate meet or exceed the Maximum Benefit, no further disbursements shall be due to GRANTEE and any excess funds disbursed shall be due and payable by GRANTEE to GRANTOR within sixty (60) calendar days following written notice from GRANTOR to GRANTEE.
 - e. The Parties acknowledge and agree this Agreement does not provide for the rebate of taxes on real property improvements and personal property improvements brought on or made to the Project Site on or before the Effective Date.
 - f. GRANTEE acknowledges GRANTEE shall continue to pay all taxes owed on the Project Site as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District, Bexar Appraisal Review Board or court of competent jurisdiction. Prior to GRANTOR disbursing funds under this **Section 2**, GRANTEE must provide to GRANTOR evidence indicating that all taxes owed on the Project Site have been paid in full for the tax year for which payment of the Annual Property Tax Rebate is sought, subject to GRANTEE's right to protest taxes as permitted by law; provided, however, any reductions to the ad valorem taxes, real or personal, shall cause a proportional decrease to the taxes rebated under this Agreement, and GRANTOR shall be entitled to the payment of such decrease in rebated taxes within forty-five (45) calendar days from the date GRANTEE receives a refund of any overpayment of taxes. GRANTEE shall notify GRANTOR of the tax protest within ninety (90) days after the tax protest is initiated.
 - g. GRANTEE shall not allow its ad valorem taxes due on the land, real and personal property or inventory and supplies to become delinquent or fail to timely and properly follow the legal procedures for their protest and/or contest. A violation of this **Section 3(A)(g)** may, at GRANTOR's discretion, subject GRANTEE to the termination and recapture provisions of **Section 16** of this Agreement, subject to GRANTEE having thirty (30) calendar days from the date it receives written notice from the taxing authority of such violation to cure the violation.
 - h. Impervious Cover. Notwithstanding the foregoing, because the Project Site is located within Edwards Aquifer Recharge or Contributing Zone (**Exhibit B**), no real property improvements involving new construction resulting in any addition of impervious cover at the Project Site are eligible for a tax reimbursement regardless of the actual taxes GRANTEE pays in relation to those improvements.
- B. **Performance Grant.** Subject to the terms and conditions of this Agreement and conditioned upon GRANTEE not being in default of this Agreement, GRANTOR will provide GRANTEE with a performance based grant ("**Performance Based Grant**") in the amount of up to TWO HUNDRED TWENTY-ONE THOUSAND DOLLARS (\$221,000.00) ("**Performance Based Grant Cap**") subject to the actual number of Full-Time Jobs at the requisite wage rate that GRANTEE creates and subject to the project requirements set out in **Section 2(D)** and minimum job requirement set forth in **Sections 16(B)(c) and 16(B)(d)** The Performance Based Grant amount is as follows:

\$1,000 per Full-time Job making a minimum of \$50,000 annually (exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages) up to 221 jobs.

- a. Performance Based Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement, GRANTOR will make the Performance Based Grant funds available to GRANTEE within forty-five (45) days after the receipt and review by GRANTOR of the Annual Certification (defined below) due from GRANTEE for the December 31st year-end report. The Parties acknowledge and agree the Performance Based Grant payments made by GRANTOR will be determined by how many actual new Full-Time Jobs GRANTEE creates in accordance with **Section 2(D)** Project Requirements each year during the Initial Term. The total amount of Performance Based Grant funds shall not exceed the Performance Based Grant Cap.

SECTION 4. TERM

The Term of this Agreement shall be twenty-one (21) years from the Effective Date of this Agreement (“**Term**”), unless terminated as otherwise provided herein. The period when the Performance Based Grant disbursements will occur shall commence upon the Effective Date and continue for a period of five (5) years (“**Initial Term**”) from the Effective Date, unless terminated as otherwise provided herein. The period for which GRANTEE is eligible for the Annual Property Tax Rebate shall commence with the 2019 tax year (beginning on January 1, 2019) and end with the 2033 tax year ending on December 31, 2033 (the “**Rebate Term**”), unless terminated as otherwise provided herein. The period following the Rebate Term and GRANTEE remains subject to the terms hereof, including termination and recapture, shall commence upon the expiration of the Rebate Term and shall continue for a period of six (6) years (“**Recapture Term**”), unless terminated as otherwise provided herein.

SECTION 5. CONTINUING OBLIGATIONS.

- A. Notwithstanding receipt of the Maximum Benefit prior to the expiration of the Term of this Agreement, GRANTEE’s obligations hereunder (including, without limitation, GRANTEE’s job creation, job retention, and Required Capital Investment completion obligations) shall continue in full force and effect through the Term of this Agreement.
- B. GRANTEE acknowledges that the payment of funds for the Annual Property Tax Rebate and the Performance Based Grant hereunder shall be subject to, and made solely from, annual appropriations of GRANTOR in the budget year in which they are to be paid as may be legally set aside for the implementation of ARTICLE III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the rebates herein provided in any budget year (as reflected in GRANTOR’s adopted budget for such year), GRANTOR shall

not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made, provided however that, in such event, GRANTEE may, in its sole discretion, terminate this Agreement, in which event GRANTEE and GRANTOR shall have no further obligations under this Agreement including, but not limited to, any obligations for the year in respect to which said unappropriated funds relate. In the event GRANTOR does not appropriate funds necessary to pay GRANTEE in a particular budget year, GRANTOR shall use reasonable efforts to appropriate funds the following budget year(s) to pay funds due to GRANTEE. Failure of GRANTOR to appropriate funds in a particular budget year in which they are due and owing to GRANTEE shall not relieve GRANTOR of the obligation to pay GRANTEE such funds in the subsequent year(s) when funds are appropriated.

- C. Except as set forth in this Agreement, GRANTOR shall not be liable to GRANTEE or any other entity or third party for any costs incurred by GRANTEE in connection with this Agreement.

SECTION 6. RESERVED

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. GRANTEE shall maintain written and/or digital records and supporting documentation (the “**Records**”) relating to and sufficient to reasonably determine: (1) the amount of Required Capital Investment in real and personal property at the Project Site; (2) the hire and termination dates of each Full-Time Job in GRANTEE’s offices at the Project Site; (3) employee records sufficient to determine if they live within Bexar County when hired; (4) the creation, maintenance and retention of Full-Time Jobs in GRANTEE’s offices at the Project Site; (5) the fulfillment of all obligations of GRANTEE under this Agreement; and (6) the wages and healthcare benefits offered to all Full-Time Job employees at the Project Site. GRANTEE shall retain records pertaining to the amount of the Required Capital Improvements and any supporting documentation from and after the Effective Date through the date which falls four (4) years after the expiration of the Term of this Agreement. GRANTEE shall provide copies of the applicable Records to GRANTOR when it delivers the Annual Certification to GRANTOR. Within ninety (90) days following receipt of the Records applicable to the first Annual Certification delivered hereunder to GRANTOR, GRANTOR shall notify GRANTEE of any additional information required to reasonably satisfy GRANTEE’s obligation to provide Records in connection with such Annual Certification and for all subsequent Annual Certifications hereunder. GRANTEE acknowledges and agrees that retention of the Records by GRANTEE and GRANTOR’s right to inspect the Records as set forth below, are required in order to permit GRANTOR’s representatives to determine with certainty GRANTEE’s compliance with all of GRANTEE’S obligations under this Agreement, including, without limitation, job creation and retention requirements, wage requirements, healthcare benefits requirements and residency requirements.
- B. Upon at least five (5) business days’ prior notice to GRANTEE, GRANTEE shall allow designated representatives of GRANTOR access to the Records at the Project Site or such other location in Bexar County where the Records are kept during normal business hours for

inspection to determine if the obligations of GRANTEE hereunder and the terms and conditions of this Agreement are being met by GRANTEE. If the Records are kept in any location outside of Bexar County, GRANTEE shall provide access to GRANTOR to inspect the Records within Bexar County. Any information that is 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 inspected, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise GRANTOR's right to recapture all rebated taxes. GRANTEE may require GRANTOR's representatives to be accompanied by GRANTEE representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of Business Activities at the Project Site, and (b) comply with GRANTEE's reasonable security requirements.

SECTION 8. MONITORING

On or before January 31st of each year during the Term of this Agreement (including the Recapture Period), GRANTEE shall provide City's Director of Economic Development Department with a certification (the "**Annual Certification**") from an officer of GRANTEE attesting to the following information as of the preceding December 31st respectively: (i) the number of Full-Time Jobs maintained as of such date, (ii) the hire dates of each Full-Time Job employee, (iii) the healthcare benefits offered to all Full-Time Job employees and their respective eligible dependents, (iv) the total wages paid in connection with the Full-Time Jobs during the six months preceding such date, and (v) the aggregate amount of the Required Capital Investment hereunder. The information provided shall be on the Incentive Reporting Form, as the same may be revised by GRANTOR from time to time.

SECTION 9. CONFLICT OF INTEREST

- A. GRANTEE 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 Section 2-52 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 of the City has a "prohibited financial interest" in a contract with City or in the sale to 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.

- B. Pursuant to **Section 9(A)** above, GRANTEE 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. GRANTEE further warrants and certifies that it has tendered to the City a Contracts Disclosure Form in compliance with the City's Ethics Code.

SECTION 10. SECTARIAN ACTIVITY

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.

SECTION 11. LEGAL AUTHORITY

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

SECTION 12. GOVERNING LAW AND VENUE

- A. Notice to GRANTOR. GRANTEE shall give GRANTOR immediate notice in writing of: (i) any OSHA investigation of GRANTEE concerning the Business Activities at the Project Site; (ii) bankruptcy of GRANTEE; and (iii) any notice given by GRANTEE to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at the Project Site. GRANTEE shall submit a copy of each such notice required hereunder to GRANTOR within thirty (30) calendar days after receipt or issuance, as applicable.
- B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.
- C. Venue. This Agreement is performable in Bexar County, Texas and shall be interpreted according to the Constitution and the laws of the State of Texas. Venue and jurisdiction of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event GRANTEE or GRANTOR should default under any of the provisions of this Agreement and the other 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 the defaulting Party herein contained, the defaulting Party agrees to pay to the other Party its reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting Party so ordered by a court having jurisdiction over the Parties.

SECTION 14. 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. Economic Development 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.

SECTION 15. DEFAULT AND CURE SUSPENSION

- A. Notice and Cure Period. If GRANTEE fails to comply with any of the terms of this Agreement, then such non-compliance shall be deemed an “event of default.” Upon the occurrence of an event of default, GRANTOR shall provide GRANTEE with written notification as to the nature of the default, whereupon GRANTEE shall have sixty (60) calendar days following the date of GRANTEE’s receipt of GRANTOR’s written notification (the “**Cure Period**”) to cure such event of default. If GRANTEE fails to cure an event of default within the Cure Period, GRANTOR may, upon written notification (the “**Notice of Suspension**”), suspend this Agreement in whole or in part and withhold further payments to GRANTEE. 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 default for causes beyond GRANTEE’s reasonable control, which cannot with due diligence be cured within the Cure Period, GRANTOR may, in its sole discretion, extend the Cure Period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Default 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. Lifting of Suspension. A suspension under this Section shall be lifted upon a showing by GRANTEE that the event of default has been cured or by a written waiver of 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 16. TERMINATION AND RECAPTURE, OTHER REMEDIES

- A. Relocation Defined. For purposes of this section, “**Relocation,**” “**Relocated,**” or “**Relocate**” shall mean GRANTEE or a Related Organization, or any other permitted transferee of GRANTEE’s rights under this Agreement which has taken the place of GRANTEE, transferring all Business Activities from the Project Site to a location outside of City limits for reasons other than the inability to conduct the Business Activities at the Project Site due to a Force Majeure Event (as defined in **Section 17** below).
- B. Default/Termination/Recapture.
- a. Relocation. If during the Term of this Agreement, GRANTEE occupies and uses the Project Site for its Business Activities and subsequently Relocates (as defined in **Section 16(A)**) during the Term of this Agreement, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the tax year during which the Relocation is completed. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR’s determination shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE all funds previously disbursed to GRANTEE, and/or for the benefit of GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth in **Section 16(C)** below, and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
- b. Cessation of Business Activities. If GRANTEE occupies and uses the Project Site for its Business Activities in accordance with the terms of this Agreement and subsequently ceases conducting Business Activities at the Project 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 Event (as defined in **Section 17** below), then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the tax year during which the cessation occurred. 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, GRANTOR shall have the right to recapture from GRANTEE all funds previously disbursed to GRANTEE under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth in **Section 16(C)** below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.
- c. Full-Time Jobs Shortfall.

- i. If GRANTEE, a Related Organization or GRANTOR-approved assignee for any reason other than a Force Majeure Event (as defined in **Section 17** below), fails to hire and retain the minimum number of permanent Full-Time Jobs as and when required in the table set out in **Section 2(D)** for any given year during the Initial Term, or fails to maintain the requisite Full-Time Jobs set forth in **Section 2(D)** in any given year of the Term after the Initial Term, then the Annual Tax Rebate shall be reduced that tax year by the same percentage as the percentage deficiency in the total number of Full-Time Jobs required to be created and/or maintained in such given year. For example, if GRANTEE employs only ninety percent (90%) of the Full-Time Jobs required in a given year under **Section 2(D)**, then GRANTEE shall be entitled to ninety percent (90%) of the Annual Tax Rebate for the Project Site for that tax year. Such Annual Tax Rebate reduction percentage shall be independent from and in addition to any such Annual Tax Rebate reduction percentage applicable in any instance under **Section 16(C)** below.
 - ii. If for any year of the Term following the Initial Term, for any reason other than a Force Majeure Event (as defined in **Section 17** below), the number of total Full-Time Jobs paying a minimum of \$50,000 annually reported by GRANTEE through its Certification is fewer than the cumulative number of such positions reported by GRANTEE for which GRANTEE has received Performance Based Grant funds, GRANTOR may recapture funds previously disbursed by GRANTOR pursuant to the Performance Based Grant based on per job amount paid by GRANTOR (\$1,000/Full-Time Job paying at least \$50,000 annually). GRANTOR shall recapture the per job amount paid multiplied by the reduction in the required jobs for that year. (Example: if GRANTEE at the end of the Initial Term has created 221 Full-Time Jobs paying a minimum of \$50,000, and in a subsequent year reports a total number of 200 Full-Time Job, GRANTEE would pay GRANTOR $21 \times \$1,000 = \$21,000$). Such recapture amounts shall be subject to previously recaptured Performance Based Grant funds and the percentage reductions applicable during the Recapture Period in accordance with **Section 16(C)** below. Notwithstanding the foregoing, in no event shall GRANTEE be required to make Recapture Payments under this Section 16(B)(c)(ii) that in the aggregate exceed the aggregate amount of Performance Based Grants funds received by GRANTEE from GRANTOR.
- d. Minimum Full-Time Jobs. Should GRANTEE i) fail to create and maintain at least eighty percent (80%) of the minimum number of Full-Time Jobs required to be created and maintained during each year of the Initial Term per **Section 2(D)**, or ii) fail to maintain at least eighty percent (80%) of the 571 Full-Time Jobs that must be maintained during the Rebate Term and the Recapture Term of the Agreement per **Section 2(D)**, or iii) fail to create at least eighty percent (80%) of the minimum number of 221 Full-Time Jobs earning at least \$50,000 annually by the end of the Initial Term and maintain such number through the remainder of

the Term per **Section 2(D)**, then, at the option of GRANTOR, this failure may be grounds for termination of this Agreement by GRANTOR. Said termination shall be effective for the calendar year during which the number of Full-Time Jobs falls below eighty percent (80%) of the minimum number of Full-Time Jobs required to be create and/or maintained in a given year under **Section 2(D)**. Upon termination, any and all taxes rebated for that tax year and all previously-rebated taxes under this Agreement shall be recaptured by GRANTOR and GRANTOR shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies GRANTEE in writing of the termination. Notwithstanding the foregoing, in no event shall GRANTEE be required to make Recapture Payments under this Section 16(B)(d) that in the aggregate exceed the aggregate amount of taxes rebated received by GRANTEE from GRANTOR.

- e. Required Capital Investment. If GRANTEE fails to make the Required Capital Investment required in **Section 2(B)** by the deadline set forth in **Section 2(B)**, then the Annual Tax Rebate shall be reduced in the following tax year and any succeeding tax year in which the Required Capital Investment has not been fully satisfied by the same percentage as the percentage deficiency in the Required Capital Investment identified in such given year. For example, if GRANTEE has completed ninety-five percent (95%) of the Required Capital Investment required in a given year, GRANTEE shall be entitled to ninety-five percent (95%) of the Annual Tax Rebate for the Project Site for that following year. Such Annual Tax Rebate reduction percentage shall be independent from and in addition to any such Annual Tax Rebate reduction percentage applicable under **Section 16(C)**. Should GRANTEE fail to make at least eighty percent (80%) of the Required Capital Investment as required under **Section 2(B)**, then, at the option of GRANTOR, this failure may be grounds for termination of this Agreement by GRANTOR. Said termination shall be effective for the calendar year during which the Required Capital Investment falls below eighty percent (80%) of the minimum Required Capital Investment in a given year under **Section 2(B)**. Upon termination, any and all taxes otherwise rebated for that tax year under this Agreement and all previously-rebated taxes under this Agreement shall be recaptured by GRANTOR and GRANTOR shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies GRANTEE in writing of the termination. For purposes hereof, compliance with the requirements for the minimum Required Capital Investment shall be determined by Annual Certification, subject to GRANTOR's right to inspect the Records of GRANTEE as set forth herein. Notwithstanding the foregoing, in no event shall GRANTEE be required to make Recapture Payments under this Section 16(B)(e) that in the aggregate exceed the aggregate amount of taxes rebated received by GRANTEE from GRANTOR.

- f. Bankruptcy. If GRANTEE, any Related Organization, and/or other GRANTOR-approved assignee permitted under this Agreement files any petition for bankruptcy, then this Agreement shall automatically be deemed to have terminated one (1) day prior to the filing of the petition for bankruptcy and, upon such termination, all funds previously

disbursed to GRANTEE, and/or for the benefit of GRANTEE, under this Agreement which have not been previously recaptured by GRANTOR may be recaptured by GRANTOR according to the schedule set forth in **Section 16(C)** below.

- C. In any circumstance that GRANTOR is entitled to and elects to recapture funds disbursed hereunder, the portion subject to recapture shall be as follows:

<u>REBATE TERM AND RECAPTURE YEAR IN WHICH RECAPTURE OCCURS:</u>	<u>TOTAL PERCENTAGE PERIOD FUNDS TO BE RECAPTURED:</u>
2019 – 2033	100%
2034	80%
2035	60%
2036	40%
2037	20%
2038	10%

That period of time during the Rebate Term set forth above as years 2034 through 2038 is referred to herein as the “**Recapture Period.**” GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing. If the Rebate Term ends prior to December 31, 2033, as set forth herein, then the Recapture Period shall be deemed to be automatically adjusted to provide for a five (5) year Recapture Period commencing the year following the end of the Rebate Term. Notwithstanding the foregoing, in no event shall GRANTEE be required to make Recapture Payments under this Section 16(C) that in the aggregate exceed the aggregate amount of taxes rebated received by GRANTEE from GRANTOR.

- D. Limitation on Recapture. Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds and/or tax rebates provided in this **Section 16** are not applicable to situations involving minor changes to the description of the Project Site, or GRANTOR-approved changes in ownership or in management thereof, so long as GRANTEE, or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove and assumes in writing joint and severable liability for all of GRANTEE’s obligations hereunder and, in such event, GRANTEE shall remain liable for GRANTEE’s obligations hereunder.
- E. GRANTOR Default. If the GRANTOR fails to make payment of any of the Annual Property Tax Rebates when due and fails to cure such failure within thirty (30) days following receipt of written notice thereof from GRANTEE, then the GRANTOR shall be deemed in default under this Agreement and (i) GRANTEE shall be excused from performance of any of the conditions or requirements hereunder (including the job and investment requirements) until such time as such default has been cured, provided, however, GRANTOR shall only be liable to GRANTEE for the Annual Property Tax Rebates, which shall be GRANTEE’s sole and

exclusive remedy, and shall not be liable for any other damages including alleged consequential damages.

SECTION 17. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

In addition to relief expressly granted in this Agreement, GRANTEE may be granted relief from performance of this Agreement to the extent GRANTEE is prevented and/or impaired from compliance and performance by any Force Majeure Event. For purposes of this Agreement, a “**Force Majeure Event**” shall include an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster casualty, acts of nature or the public enemy, riot, civil commotion, insurrection, state or federal government or de facto governmental action (unless caused by acts or omissions of Grantee), fires, explosions, floods, epidemics, quarantine restrictions, unusually severe weather, condemnation or other event beyond the reasonable control of GRANTEE. The burden of proof for such relief shall rest upon GRANTEE. To obtain relief based upon this **Section 17**, GRANTEE must file a written notice with GRANTOR’s Economic Development Department for approval, specifying the Force Majeure Event and the performance under this Agreement that such event is impairing. Approval of Force Majeure shall be promptly considered by the GRANTOR and shall not be unreasonably withheld, denied, delayed or conditioned.

SECTION 18. RESERVED

SECTION 19. REASONABLENESS

The Parties agree to act reasonably and in good faith when acting under the terms of this Agreement.

SECTION 20. NO WAIVER

Failure by either Party to exercise any right or remedy hereunder available to it shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future, absent a written agreement to the contrary.

SECTION 21. NON-ASSIGNMENT AND DEBARMENT

- A. This Agreement is not assignable by any Party without thirty (30) calendar days’ prior written consent of the non-assigning Party. GRANTOR will not unreasonably withhold, condition, or delay its consent to any such assignment by GRANTEE. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a Related Organization without the written consent of GRANTOR. If GRANTEE so assigns this Agreement to a Related Organization, it shall provide notice of such assignment to GRANTOR on or before the thirtieth (30th) calendar day prior to the date of assignment. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement, subject to **Section 16** of this Agreement. Any assignment of this Agreement by GRANTEE, with the exception of an assignment to a Related Organization, shall relieve GRANTEE of all obligations and liabilities under this Agreement.

- B. By signing this Agreement, GRANTEE agrees that it will not knowingly award or pay funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by GRANTOR.

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 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 four (4) 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
P.O. Box 839966
San Antonio, Texas 78283-3966

If by personal or overnight delivery:

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

TO GRANTEE:

Pentagon Federal Credit Union
Attn: Roderick Mitchell, Executive
Vice President, Global Fixed Assets
7940 Jones Branch Drive
McLean, Virginia 22102

Copies to:

Pentagon Federal Credit Union
Attn: William Heyer,
Vice President and
Associate General Counsel
7940 Jones Branch Drive
Tysons, Virginia 22102

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 - Project Site Description
- Exhibit B - Edwards Aquifer Recharge and Contributing Zones
- Exhibit C - Incentive Reporting Form

SECTION 25. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

SECTION 26. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

SECTION 27. CAPTIONS

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

SECTION 28. ENTIRE AGREEMENT

This Agreement (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both parties.

[Signatures appear on next page.]

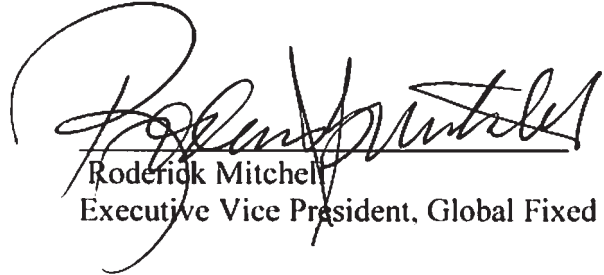
WITNESS OUR HANDS, effective as of _____, 2019 (the “**Effective Date**”):

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

CITY OF SAN ANTONIO,
a Texas municipal corporation

**PENTAGON FEDERAL
CREDIT UNION**
a federally-chartered credit union

Sheryl L. Sculley
CITY MANAGER



Roderick Mitchell
Executive Vice President, Global Fixed Assets

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

PROJECT SITE DESCRIPTION

Lot 3, Block 1 consisting of 29.347 acres in the Circle K Replat, as recorded in Vol __, Pg __, in the Bexar County Deeds and Plat Records

EXHIBIT B

EDWARDS AQUIFER RECHARGE AND CONTRIBUTING ZONES

Edwards Aquifer Recharge and Contributing Zones

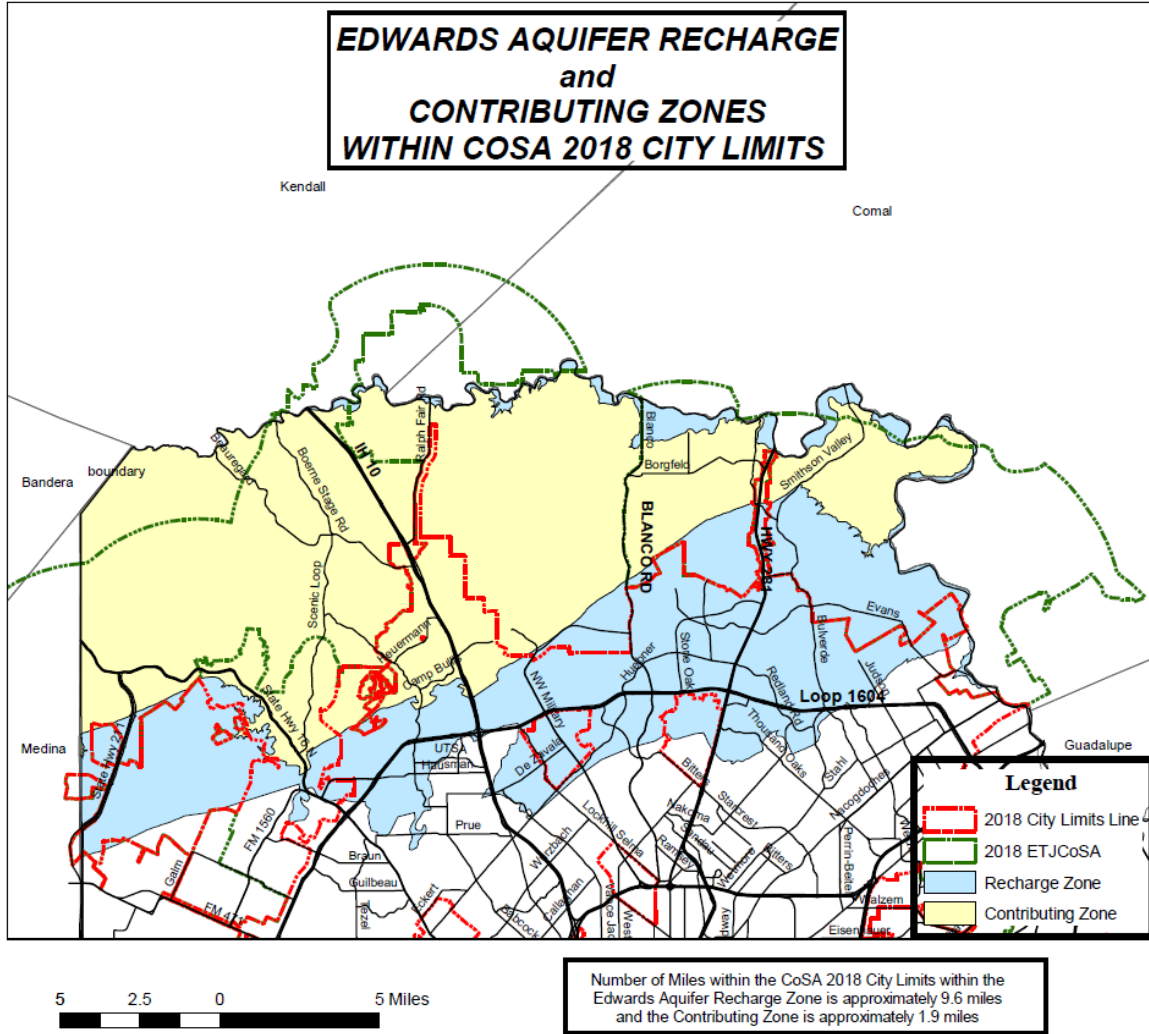


EXHIBIT C

INCENTIVE REPORTING FORM



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

Company Name: _____

Reporting Period: _____

Contact Information: _____

Real Property: expenditures associated with real property improvements during reporting period (Verification may include AIA forms, receipts, invoices, request for payment from contractor, etc.)	
1. Real Property improvements reported last reporting period	\$
2. Real Property improvements made since last reporting period	\$
3. Total cumulative Real Property improvements made (<i>Attach supporting documents.</i>)	\$
Personal Property: expenditures associated with personal property improvements during reporting period (Verification may include receipts, invoices, requests for payment, etc.)	
4. Personal Property improvements reported last reporting period	\$
5. Personal Property improvements made since last reporting period	\$
6. Total cumulative Personal Property improvements made (<i>Attach supporting documents.</i>)	\$
Inventory/Supplies: (Verification may include receipts, invoices, requests for payment, etc.)	
7. Inventory and Supplies improvements reported last reporting period	\$
8. Inventory and Supplies improvements made since last reporting period	\$
9. Total cumulative investment on Inventory and Supplies made (<i>Attach supporting documents.</i>)	\$
Jobs: full-time (2,080 straight-time paid hours) jobs created during reporting period (Verification: payroll registers with total number of employees, dates of hire, hourly wages, etc.)	
10. Total number of jobs reported at the facility last reporting period.	
11. Jobs created during reporting period (<i>For supporting documents, see above.</i>)	
12. Jobs retained during reporting period.	
13. Total number of jobs reported at the facility this reporting period (<i>For supporting documents, see above.</i>)	
14. What is the minimum hourly wage paid at the facility? (<i>For supporting documents, see above.</i>)	
15. What percentage of the total company workforce at the facility earns at least the All-Industry Wage? (<i>Minimum of 70%</i>)	
Additional Contractual Obligations (As applicable per your Agreement)	
16. Percent of workforce that is local.	%
17. Percent of workforce that is economically disadvantaged (<i>attach information regarding company's good-faith efforts.</i>)	%
18. Are employee benefits offered to all full-time employees and eligible dependents? (<i>Please attach separate sheet demonstrating compliance with your agreement.</i>)	
Certification:	
<i>I certify, under penalty of perjury, that the information provided in this report and the attached documents is correct, and that the company has complied with all terms and conditions of its agreement with the City of San Antonio.</i>	

Signature: _____

Date: _____

Printed Name: _____

Title: _____

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