

ORDINANCE 2019-01-31-0106

**AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE FUND (EDIF) GRANT AGREEMENT WITH LGS INNOVATIONS LLC (LGS) FOR AN ECONOMIC DEVELOPMENT INCENTIVE FUND GRANT UP TO A MAXIMUM OF \$180,000.00 BASED ON RETENTION OF 3 EXISTING AND CREATION OF 46 NEW FULL-TIME JOBS MAKING \$50,000.00 OR MORE ANNUALLY WITHIN FIVE YEARS.**

\* \* \* \* \*

**WHEREAS**, LGS provides mission-critical communications products, research & development (R&D), and supporting services to U.S. defense, intelligence, and civilian agencies, as well as local governments, critical infrastructure operators, and commercial customers around the world; and

**WHEREAS**, LGS has chosen to establish a new facility in San Antonio that will serve as the hub for a number of the company's cyber-related programs; and

**WHEREAS**, the project will create 46 new, full-time jobs over five years at Port San Antonio, with a proposed capital investment of \$2.9 million in real and personal property and will retain 3 existing positions and create 46 new full-time jobs over 5 years, with all 49 employees making an annual salary of at least \$50,000.00 exclusive of benefits, bonuses, and other non-guaranteed pay and 42 of these will make an annual salary of at least \$70,000.00; and

**WHEREAS**, the LGS incentive agreement is an EDIF Grant of up to \$180,000.00 (\$3,673.00/job) for the retention and creation of up to 49 new full-time jobs with an annual salary of at least \$50,000.00 and includes \$105,000.00 for the creation of 42 new full-time jobs with an annual salary of at least \$70,000.00 over five (5) years before benefits; 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 LGS 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 City Council approves the terms and conditions of an Economic Development Incentive Fund (EDIF) LGS Innovations LLC.

**SECTION 2.** The City Manager or her designee is authorized to execute an Economic Development Incentive Fund (EDIF) Grant Agreement with LGS Innovations LLC in accordance with this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**.

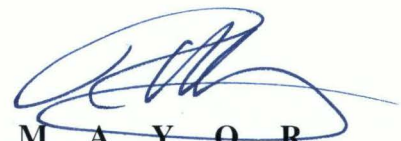
**SECTION 3.** Funding in the amount of \$180,000.00 is available in Fund 29059000, Cost Center 1604010001 and General Ledger 5201040 as part of the Fiscal Year 2019 Budget.

**SECTION 4.** Payment not to exceed the budgeted amount is authorized to LGS Innovations LLC for the purpose of the Chapter 380 Economic Development Incentive Fund (EDIF) Grant/Loan Agreement.

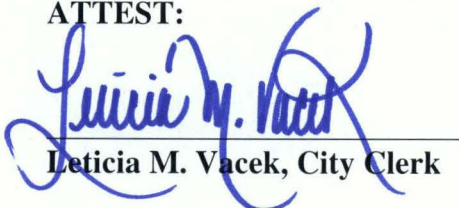
**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.


**PASSED AND APPROVED this 31<sup>st</sup> day of January, 2019.**

  
**M A Y O R**  
Ron Nirenberg

**ATTEST:**

  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>17 ( in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 )</b>						
<b>Date:</b>	01/31/2019						
<b>Time:</b>	09:57:54 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving a Chapter 380 Economic Development Incentive Fund Agreement with LGS Innovations LLC in the amount of \$180,000.00. Funding is available from the Economic Development Incentive Fund FY 2019 Adopted Budget. [Carlos Contreras, Assistant City Manager; Rene Dominguez, Director, Economic Development]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

KRH  
01/31/19  
Item No. 17

## ATTACHMENT I

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND LGS INNOVATIONS LLC**

This Economic Development Program Grant Agreement (hereinafter referred to as the "**Agreement**") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas (hereinafter referred to as "**CITY**"), acting by and through its City Manager or her designee, and LGS Innovations LLC, (hereinafter referred to as "**LGS**"), and together referred to as the "**Parties**."

**WHEREAS**, LGS provides mission-critical communications products, research and development, and supporting services to U.S. defense, intelligence, and civilian agencies, as well as local governments, critical infrastructure operators, and commercial customers around the world which increasingly requires expertise in C4ISR and cybersecurity; and

**WHEREAS**, LGS is of expanding its local presence to a facility at Port San Antonio which will serve as a hub for multiple cyber-related programs, including material acquisition services; network operations, software development, training, and program management; and

**WHEREAS**, LGS is engaged in an economic development project that will be located within the city limits of the City of San Antonio at Port San Antonio and will consist of an investment of \$2,900,000 in a facility at Port San Antonio, as more specifically depicted on **Exhibit A ("Project Site")** attached hereto and incorporated herein, the retention of 3 full-time jobs, and the creation of 46 new Full-Time Jobs (as defined below) over a period of 5 years all paying a minimum of \$50,000 annually and 42 paying at least \$70,000 annually ( "**Project**"); and

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

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, CITY 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 CITY adopted an economic development program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, City has identified economic development funds available for LGS to use to help carry out the Project; and

**WHEREAS**, the City Council has authorized the City Manager to enter into this Agreement with LGS in accordance with City Ordinance No. 2019-\_\_-\_\_, passed and approved on \_\_\_\_\_, 2019;

**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, CITY 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 LGS to promote investment and job creation in a targeted industry of the City.

## SECTION 2. BUSINESS ACTIVITIES

- A. LGS shall conduct, at the Project Site, business activities typically conducted by a government contractor and technology company, including but not limited to data and network analysis, software and hardware development and engineering, training, cybersecurity research and consulting services, and similar activities (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 24** of this Agreement).
- B. Except as provided herein, LGS covenants and agrees that the Business Activities will not be materially changed without the written consent of CITY, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization ("**Related Organization**" being defined as a parent, subsidiary or affiliate organization of LGS or any entity which succeeds to or receives an assignment of LGS' interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of LGS, 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 LGS' interest in this Agreement, and if requested by CITY, 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, LGS must notify CITY in writing of same no later than the thirtieth (30<sup>th</sup>) calendar day following the effective date of such transfer. LGS acknowledges that any material change in the principal use of the Project Site from that contemplated herein without prior written approval of CITY, to the extent same is required under this Agreement, may result in a loss or recapture of the economic development grants to be provided to LGS under this Agreement, except as provided herein.

## SECTION 3. PERFORMANCE BASED ECONOMIC DEVELOPMENT PROGRAM GRANT

In exchange for LGS undertaking and completing the Project at the Project Site, City will provide a performance based economic development incentive grant to LGS as follows:

- A. Performance Based Grant. CITY will provide LGS with a grant ("**Performance Based Grant**") from the Economic Development Fund ("EDIF") in the amount of up to ONE HUNDRED FIVE THOUSAND DOLLARS AND 00 CENTS (\$105,000.00) ("**Performance Based Grant Cap**") subject to the actual number of Full-time Jobs that LGS creates and subject to the project requirements set out in **Section 3.B** and Minimum Job requirement set forth in **Section 5.C**. The grant amount is as follows:

\$2,500 per Full-time Job making a minimum of \$70,000 annually (exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages) up to 42 jobs

B. Project Requirements. In consideration of CITY providing LGS with the Performance Based Grant, LGS shall:

- a. own, hold an interest in or otherwise control the Project Site for the Term of this Agreement;
- b. retain three (3) Full-Time Jobs ("**Full-time Job**" is a job by which an individual who works at the Project Site as an employee of LGS is paid for the equivalent of approximately two thousand eighty (2,080) straight-time paid hours in a fiscal year) existing as of the Effective Date, at the Project Site throughout the Term of the Agreement; and
- c. create at least forty-six (46) new Full-time Jobs at the Project Site over a period of 5 years and retain such newly created positions throughout the Term of the Agreement; and
- d. of the forty-nine (49) retained and new Full-time Jobs, all shall have an annual salary of at least fifty thousand (\$50,000.00), exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages; and
- e. of the forty-nine (49) retained and new Full-time Jobs, forty-two (42) shall have an annual salary of at least seventy thousand (\$70,000.00), exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages; and
- f. and LGS shall retain a cumulative number of 49 Full-time Jobs at the requisite salary levels for the Term of the Agreement; and
- g. pay 100% of all employees located at the Project Site, without regard to the number of jobs required to be created or maintained hereunder, at least the minimum Living Wage ("**Living Wage**" means a wage of ELEVEN DOLLARS AND EIGHTY-THREE CENTS (\$11.83) an hour exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages).

C. All wage requirements set forth in this Section shall be exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages,

D. Performance Based Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement, CITY will make the Performance Based Grant funds available to LGS within 45 days after the receipt and review by CITY of the Annual Certification (defined below) due from LGS. The Parties acknowledge and agree the grant payments made by LGS will be determined by how many actual new Full-time jobs LGS creates in accordance with **Section 3.B** 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. TRAINING INCENTIVE ECONOMIC DEVELOPMENT PROGRAM GRANT**

In exchange for LGS providing workforce training which will provide an enhanced skillset allowing for enhanced career paths can economic enhancement and collaborations with local universities, CITY will provide a training incentive grant from the EDIF to LGS as follows:

- A. **Training Incentive Grant.** CITY will provide LGS with a grant to support LGS' employee training in primarily cyber-related operations through a local entity such as Alamo College ("**Training Grant**") in the amount of up to SEVENTY-FIVE THOUSAND DOLLARS AND 00 CENTS (\$75,000.00) (the "**Training Grant Cap**"). City shall reimburse LGS based on the actual cost expended for qualified training completed by LGS employees as evidenced by a certificate of course completion or such other evidence of completion as the Parties may agree to. Within thirty (30) days of the Effective Date, the Parties shall mutually agree in writing as to the types of certifications that will qualify for reimbursement. For those certifications that are deemed eligible for reimbursement, LGS shall submit a certificate of completion and associated receipts evidencing payment with the Annual Certification. The City shall issue LGS reimbursements for qualified certificates of completion whenever LGS' receipts, based on the Annual Certification submissions, total \$25,000 increments up to the Training Grant Cap. CITY'S payment of Training Grant funds, up to the Training Grant Cap, is dependent upon LGS being in good compliance with this Agreement and not in default of any terms or obligations hereunder.
- B. **Training Grant Disbursement.** Following approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement, CITY will make the Training Grant funds available to LGS within 45 days after the receipt and review by CITY of the Annual Certification (defined below) due from LGS. The Parties acknowledge and agree the grant payments made by LGS will be determined by how many actual eligible coursed LGS employees completed for each year during the Initial Term. The total amount of Training Grant funds shall not exceed the Training Grant Cap.
- C. **Collaboration.** LGS shall make good faith efforts to formalize a partnership with the University of Texas at San Antonio on the National Security Collaboration Center (NSCC) and agree to initiate discussions with Texas A&M University San Antonio on potential collaborations with the university's Center for Information Technology and Cyber Security.

## **SECTION 5. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES**

- A. **Relocation Defined.** For purposes of this Agreement, "**Relocation**", "**Relocated**" or "**Relocate**" shall mean LGS or a Related Organization, or any other permitted transferee of LGS's rights under this Agreement, which has taken the place of LGS, transferring its Business Activities from the Project Site to a location outside of the city limits of the City of San Antonio for reasons other than the inability to conduct the Business Activities at the Project Site due to force majeure as defined in this Agreement.
- B. **Default of LGS.** LGS shall be in default under this Agreement:
- a. **Relocation.** If during the Term of this Agreement, LGS Relocates (as defined in this **Section 5.A** above) during the Term of this Agreement, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is commenced. Unless LGS presents credible evidence to clearly indicate a date of Relocation, CITY's determination of a date of Relocation shall be final and conclusive. Upon termination, CITY shall have the right to recapture from LGS all Performance Based Grant funds previously disbursed to LGS under this Agreement and not previously recaptured by CITY in accordance with **Section 5.C** below and CITY shall be entitled to the payment of the amounts to which it is entitled within sixty (60)

calendar days from the date it notifies LGS in writing of termination and its election to recapture such amounts.

- b. Cessation of Business Activities. If, after the Effective Date of this Agreement, LGS ceases conducting Business Activities at the Project Site for a continuous period of two (2) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the cessation occurred. Unless LGS presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive. Upon termination, CITY shall have the right to recapture from LGS all Performance Based Grant funds previously disbursed to LGS and/or for the benefit of LGS, under this Agreement and not previously recaptured by CITY in accordance with the recapture schedule set forth in **Section 5.C** below and CITY shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies LGS in writing of termination and its election to recapture such amounts.
- c. Number of Jobs. If LGS, its affiliates, subsidiaries, or Related Organization, for any reason other than a Force Majeure Event, fails to create and maintain at least 35 new Full-time Jobs at the requisite compensation rate of \$70,000 annually ("**Minimum Jobs**") in accordance with Section 3.B by the end of the Initial Term and for every year of the Recapture Term of this Agreement, based on the Annual Certification, CITY may terminate this Agreement. Upon such termination, CITY may recapture all funds previously disbursed to LGS pursuant to the Performance Based Grant and not previously recaptured by CITY in accordance with **Section 5.C** below. CITY shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies LGS in writing of termination and its election to recapture such amounts.
- C. Recapture. If LGS, its affiliates, subsidiaries, or Related Organization, for any reason other than a Force Majeure Event, creates and maintains at least 35 Full-time Jobs at the requisite compensation rate of \$70,000 annually, but less than 42 of the new positions at the rate of \$70,000 annually, in accordance with **Section 3** by the end of the Initial Term and for every year of the Recapture Term, CITY may recapture funds previously disbursed by CITY based on the per job amount Performance Based Grant paid by CITY (\$2,500/new job paying at least \$70,000) multiplied by the shortfall in the required jobs. (Example: if LGS at the end of the Initial Term has created 40 new jobs paying a minimum of \$70,000, rather than the required 42, LGS would pay City  $2 \times \$2,500 = \$5,000$ ). CITY shall be entitled to the payment of such recaptured funds within sixty (60) calendar days from the date it notifies LGS in writing.
- 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 LGS may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this **Section 5** are not applicable to situations involving minor changes to the description of the Project Site, or CITY-approved changes in ownership or in management thereof, so long as LGS, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.
- E. Limitation on Remedies. The foregoing termination and recapture rights shall be CITY's sole and exclusive remedies in the event LGS shall default under this Agreement. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL

EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

## **SECTION 6. TERM**

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

## **SECTION 7. CITY'S OBLIGATIONS**

- A. Payment. LGS acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of CITY in the budget year in which they are to be paid as may be legally set aside for the implementation of **Sections 3** and **Section 4** of this Agreement, 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 CITY under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that CITY does not appropriate funds necessary to pay the Grants in any budget year (as reflected in CITY's adopted budget for such year), CITY shall not be liable to LGS for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, LGS may, in its sole discretion, terminate this Agreement, in which event LGS and CITY 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 CITY does not appropriate funds necessary to pay LGS in a particular budget year, CITY shall appropriate funds the following budget year(s) to pay funds due to LGS. Failure of CITY to appropriate funds in a particular budget year in which they are due and owing to LGS shall not relieve CITY of obligation to pay LGS these funds in the subsequent year(s).
- B. No Liability for Costs. Except as set forth in this Agreement, CITY will not be liable to LGS or other entity for any costs incurred by LGS in connection with this Agreement, including, without limitation, contracts CITY may have with third parties.

## **SECTION 8. RETENTION AND ACCESSIBILITY OF RECORDS**

- A. LGS shall maintain written and/or digital records and supporting documentation ("**Records**") relating to and sufficient to reasonably determine (1) the hire and termination dates of each new and retained full-time employee at the Project Site; (2) copies of the certificate of completion and associated receipts for payment for courses taken and completed for which LGS receives Training Grant funds pursuant to **Section 4**, (2) the fulfillment of all obligations of LGS under this Agreement; and (3) the wages of all full-time employees at the Project Site, irrespective of

those required to created, maintained or retained under this Agreement. LGS shall retain such records and any supporting documentation from and after the Effective Date through the date which falls 4 years after the expiration of the Term of this Agreement. LGS acknowledges and agrees that retention of the Records by LGS and CITY's right to inspect the Records as set forth below, are required in order to permit CITY's representatives to determine with certainty LGS's compliance with all of LGS'S obligations under this Agreement.

- B. Not more than once per calendar year, and upon at least five (5) business days' prior notice to LGS, LGS shall allow designated representatives of CITY 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 LGS hereunder and the terms and conditions of this Agreement are being met by LGS. If the Records are kept in any location outside of Bexar County, LGS shall provide access to CITY to inspect the Records within Bexar County. Any information that is prohibited by law to be made public shall be kept confidential by CITY. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized CITY representatives shall give CITY the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default, and to exercise CITY's right to recapture all disbursed grant funds. LGS may require CITY's representatives to be accompanied by LGS 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 LGS's reasonable security requirements.

## **SECTION 9. MONITORING AND REPORTING**

- A. On or before February 1 of each year during the Term, LGS shall provide CITY's Director of Economic Development Department with a certification (the "Annual Certification") from an officer of LGS attesting to the following information as of the preceding December 31st: (i) the number of Full-Time Jobs, (ii) the hire and termination dates of each Full-Time Employee and New Full-Time Employee, (iii) the total wages paid in connection with the Full-Time Jobs during the six months preceding such date, and (iv) copies of the certificate of completion and associated receipts for payment for courses taken and completed by LGS employees during the six months preceding such date. The information provided shall be on the form set forth in, or substantially similar to the form labeled "Incentive Monitoring Form" attached and incorporated herein as Exhibit B, as the same may be revised by CITY from time to time. Failure by LGS to take action specified in the monitoring report, and failure to cure any material deficiency in the applicable Cure Period, may be cause for suspension or termination of this Agreement, in accordance with Sections 16 and 17 herein.
- B. LGS acknowledges CITY is subject to the Public Information Act, which applies to information of every "governmental body" as set forth in section 552.003(1)(A) of the Texas Government Code. Public Information means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. The Public Information Act requires a governmental body to promptly produce public information for inspection, duplication, or both upon receipt of a written request for information from the public. While the Public Information Act enumerates numerous exceptions to disclosure, LGS acknowledges and agrees to the release of all information submitted by LGS to CITY pursuant to a request for information. To that end, LGS will endeavor to submit only such limited information as is required per the agreement with CITY to allow CITY to verify LGS is meeting its requirements and obligations under this Agreement and the Tax Rebate Agreement.

- C. CITY maintains a public website containing a summary report of all current and active economic incentive agreements and reports submitted in accordance with those agreements. LGS acknowledges and agrees that CITY will include and post this Agreement and any reports submitted to CITY pursuant to this Agreement on the aforementioned website.

## **SECTION 10. NOTICE**

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

If intended for CITY, to:

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

If intended for LGS, to both:

LGS Innovations LLC  
Attn: Legal Department  
13461 Sunrise Valley Drive, 3rd Floor  
Herndon, VA 20171

Chris Miranda, VP  
[cmiranda@lgsinnovations.com](mailto:cmiranda@lgsinnovations.com)  
[+1 \(630\) 874-1370](tel:+16308741370)

## **SECTION 11. CONFLICT OF INTEREST**

LGS shall use reasonable business efforts to ensure that no employee, officer, or individual agent of LGS 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. LGS shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

## **SECTION 12. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

- A. LGS shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.
- B. None of the performances rendered by LGS under this Agreement shall involve, and no portion of the funds received by LGS 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. LGS shall cause the substance of this **Section 12** to be included in all agreements associated with the funds made available through this Agreement.

### **SECTION 13. LEGAL AUTHORITY**

- A. 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 the party's obligations hereunder.
- B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

### **SECTION 14. GOVERNING LAW AND VENUE**

- A. Notice to City. LGS shall give CITY prompt notice in writing of any (i) OSHA complaint filed by an employee of GRANTEE concerning the Project Site, or (ii) notice of any bankruptcy of GRANTEE, or (iii) any notice given by GRANTEE to its employees at the Project Site required under any applicable laws pertaining to contemplated job reductions at such premises. GRANTEE shall submit a copy of each such notice required hereunder to GRANTOR within thirty (30) calendar days after receipt or issuance, as applicable.
- B. Texas Tort Claims Act. CITY and LGS acknowledge that CITY 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, without giving effect to conflict of law rules. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties resulting from this Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of Texas and agree that such litigation shall be conducted only in the courts of Bexar County, Texas, or the federal courts for the United States for the Western District of Texas, and no other courts, regardless of choice of law rules.

## **SECTION 15. CHANGES AND AMENDMENTS**

- A. Except as provided in **Section 15.C** below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of LGS.
- B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.
- C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## **SECTION 16. SUSPENSION**

- A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event LGS fails to comply with the material terms of any agreement with the CITY, CITY shall provide LGS with written notification as to the nature of the non-compliance. CITY shall grant LGS a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance. Should LGS fail to cure or cause to be cured any default within this period of time, CITY may, upon written Notice of Suspension to LGS, suspend this Agreement in whole or in part and withhold further payments to LGS until the default is cured. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.
- B. In the case of default for causes beyond LGS' reasonable control, which cannot with due diligence be cured within such sixty (60) day period, CITY may, in its sole discretion, extend the cure period provided that LGS shall: (1) immediately upon receipt of Notice of Suspension advise CITY of LGS' intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.
- C. A suspension under this Section 15 may be lifted only at the sole reasonable discretion of CITY upon a showing of compliance with or written waiver by City of the term(s) in question.
- D. CITY shall not be liable to LGS or to LGS' creditors for costs incurred during any term of suspension of this Agreement.

## **SECTION 18. SPECIAL CONDITIONS AND TERMS**

LGS, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If LGS is convicted of a violation under 8 U.S.C. Section 1324a (f), then LGS shall repay CITY the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date LGS is notified by CITY of such violation. CITY, in its sole

discretion, may extend the period for repayment herein. Additionally, LGS shall pay interest on the amounts due to CITY under this Article at the rate of five percent (5%) per annum from the date of such violation notice until paid. LGS shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom LGS contracts.

#### **SECTION. 19. DEBARMENT**

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

#### **SECTION 20. RIGHTS UPON DEFAULT**

It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between LGS and CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

#### **SECTION 21. CITY'S OBLIGATIONS**

- A. **Payment.** LGS acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of the CITY in the budget year in which they are to be paid as may be legally set aside for the implementation of **Section 3 and 4**, 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 the CITY under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that CITY does not appropriate funds necessary to pay the Grants in any budget year (as reflected in the CITY's adopted budget for such year), CITY shall not be liable to LGS for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, LGS may, in its sole discretion, terminate this Agreement, in which event LGS and CITY 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 CITY does not appropriate funds necessary to pay LGS in a particular budget year, CITY shall appropriate funds the following budget year(s) to pay funds due to LGS. Failure of CITY to appropriate funds in a particular budget year in which they are due and owing to LGS shall not relieve CITY of obligation to pay LGS these funds in the subsequent year(s).
- B. **No Liability for Costs.** Except as set forth in this Agreement, CITY will not be liable to LGS or other entity for any costs, including but not limited to, direct, indirect or consequential damages, or lost opportunities costs, incurred by LGS in connection with or reliance on this Agreement.

#### **SECTION 22. NON-ASSIGNMENT**

This Agreement is not assignable without the written consent of CITY and the passage of a City Ordinance approving such assignment, except to a Related Organization as detailed in **Section 2B** of this

Agreement. Any other attempt to assign the Agreement shall not relieve LGS from liability under this Agreement and shall not release LGS from performing any of the terms, covenants and conditions herein. LGS shall be held responsible for all funds received under this Agreement.

#### **SECTION 23. 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 24. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

City shall grant temporary relief from performance of this Agreement if LGS is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of LGS. The burden of proof for the need for such relief shall rest upon LGS. To obtain release based upon *force majeure*, LGS must file a written request with the City specifying the Force Majeure Event and the performance under this Agreement that such event is impairing, within sixty (60) days of LGS' knowledge of the Force Majeure event that will prevent or impair LGS' compliance with this Agreement.

#### **SECTION 25. TIME IS OF THE ESSENCE & REASONABLENESS**

The Parties acknowledge that time is of the essence with respect to their obligations under this Agreement. The Parties further agree to act reasonably and in good faith when acting under the terms of this Agreement.

#### **SECTION 26. 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.

**WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 2019 ("Effective Date"):**

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2017-12-14 \_\_\_\_\_, dated \_\_\_\_\_, 2019, and LGS pursuant to the authority of its \_\_\_\_\_.

**LGS INNOVATIONS, LLC**

By: \_\_\_\_\_

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

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

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

## EXHIBIT A: PROPERTY SITE

8,237 square feet of rentable area, being Suite No. 101, located at 3203 General Hudnell Drive, San Antonio, TX 78226.

**EXHIBIT B: MONITORING FORM**  
**City of San Antonio**  
**Economic Development Department**  
**Incentive Reporting Form**

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

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

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

<b>Real Property: expenditures associated with real property improvements during reporting period</b> (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 (Attach supporting documents.)	\$
<b>Personal Property: expenditures associated with personal property improvements during reporting period</b> (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 (Attach supporting documents.)	\$
<b>Inventory/Supplies: (Verification may include receipts, invoices, requests for payment, etc.)</b>	
7. Inventory and Supplies improvements reported last reporting period	\$
8. Inventory and Supplies improvements made since last reporting period	\$
9. Total cumulative investment on Inventory and Supplies made (Attach supporting documents.)	\$
<b>Jobs: full-time (2,080 straight-time paid hours) jobs created during reporting period</b> (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 (For supporting documents, see above.)	
12. Jobs retained during reporting period.	
13. Total number of jobs reported at the facility this reporting period (For supporting documents, see above.)	
14. What is the minimum hourly wage paid at the facility? (For supporting documents, see above.)	
15. What percentage of the total company workforce at the facility earns at least the All-Industry Wage? (Minimum of 70%)	
<b>Additional Contractual Obligations (As applicable per your Agreement)</b>	
16. Percent of workforce that is local.	%
17. Percent of workforce that is economically disadvantaged (attach information regarding company's good-faith efforts).	%
18. Are employee benefits offered to all full-time employees and eligible dependents? (Please attach separate sheet demonstrating compliance with your agreement.)	
<b>Certification:</b>	
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.	

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

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

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

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

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

Rev. 1/2/2019