

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND  
TEXAS RESEARCH AND TECHNOLOGY FOUNDATION**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and between the City of San Antonio (the "GRANTOR" or "City"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and Texas Research and Technology Foundation (hereinafter referred to as "GRANTEE" or "TRTF"), a Domestic Nonprofit Corporation. Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

**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**, GRANTEE has requested a grant in the amount of up to \$750,000.00 over five (5) years from GRANTOR to assist in the funding of the Velocity TX Innovation Center to provide a physical space for bio and life science and technology commercialization support for startup companies to include lab/office/meeting space, mentoring, capital resources, coaching and training, and institutional networking throughout the community and region (the "Project"); and

**WHEREAS**, the Velocity TX Innovation Center is to be located at 1304 and 1305 E Houston St, San Antonio, TX 78205, as further described in Exhibit A ("Project Site"); 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. 2019-\_\_\_\_\_, passed and approved on \_\_\_\_\_, 2019 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:

## Table of Contents

ARTICLE 1.	DEFINITIONS .....	3
ARTICLE 2.	AGREEMENT PURPOSE .....	3
ARTICLE 3.	GRANTEE CONSIDERATION .....	3
ARTICLE 4.	BUSINESS ACTIVITIES .....	4
ARTICLE 5.	ECONOMIC DEVELOPMENT PROGRAM GRANT .....	5
ARTICLE 6.	RESERVED. ....	6
ARTICLE 7.	TERM PERIOD .....	6
ARTICLE 8.	GRANTOR’S OBLIGATIONS .....	6
ARTICLE 9.	RETENTION AND ACCESSIBILITY OF RECORDS .....	7
ARTICLE 10.	MONITORING AND REPORTING .....	7
ARTICLE 11.	CONFLICT OF INTEREST .....	8
ARTICLE 12.	SECTARIAN ACTIVITY .....	8
ARTICLE 13.	LEGAL AUTHORITY .....	9
ARTICLE 14.	GOVERNING LAW AND VENUE .....	9
ARTICLE 15.	ATTORNEY’S FEES .....	9
ARTICLE 16.	CHANGES AND AMENDMENTS .....	10
ARTICLE 17.	SUSPENSION .....	10
ARTICLE 18.	DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES .....	10
ARTICLE 19.	AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure) .....	11
ARTICLE 20.	SPECIAL CONDITIONS AND TERMS .....	11
ARTICLE 21.	TIME IS OF THE ESSENCE & REASONABLENESS .....	12
ARTICLE 22.	NO WAIVER .....	12
ARTICLE 23.	NON-ASSIGNMENT .....	12
ARTICLE 24.	ENTIRE AGREEMENT .....	13
ARTICLE 25.	NOTICE .....	13
ARTICLE 26.	LEGAL AUTHORITY .....	14

## ARTICLE 1. DEFINITIONS

1. **“Annual Certification”** is defined in ARTICLE 10.
2. **“Business Activities”** are defined in ARTICLE 4.
3. **“City Council”** means the City Council of the City of San Antonio, Texas.
4. **“Full-time Job”** means a job by which an individual who works at the Project Site as an employee of GRANTEE or its subsidiary Velocity TX and is paid for a minimum of thirty-five (35) hours per week or one thousand eight hundred twenty (1,820) straight-time paid hours in a fiscal year.
5. **“Grant Cap”** is defined in ARTICLE 5.
6. **“Living Wage”** means a wage of TWELVE DOLLARS AND THIRTY-EIGHT CENTS (\$12.38) an hour exclusive of benefits, bonuses, overtime, commissions, shift differentials, and any other non-guaranteed wages.
7. **“OSHA”** means the Occupations Safety and Health Administration.
8. **“Project”** is defined in the preamble.
9. **“Project Site”** is defined in **Exhibit A**.
10. **“Records”** is defined in ARTICLE 9.
11. **“Term”** is defined in ARTICLE 7.
12. **“Velocity TX”** is a subsidiary of TRTF that operates the Project Site.

## ARTICLE 2. AGREEMENT PURPOSE

The purpose of this Agreement is to provide an economic development grant to GRANTEE as an incentive for GRANTEE to undertake the Project at the Project Site. The GRANTOR anticipates that if the Project is undertaken at the Project Site, the Project will promote local economic development and stimulate business and commercial activity in the City of San Antonio. As such, GRANTOR is willing to support the Project through the economic development grants provided in this Agreement to provide funds to be used to defer costs associated with undertaking and completing the Project.

## ARTICLE 3. GRANTEE CONSIDERATION

A. In consideration of GRANTOR providing the economic development grants provided in ARTICLE 5 of this Agreement, GRANTEE shall:

- a. Conduct the Business Activities for the Term of this Agreement; and

- b. Retain or create seven (7) Full-Time Jobs in support of the Velocity TX Innovation Center at the Project Site, at or above the compensation rate in effect as of the Effective Date, throughout the Term of the Agreement; and
- c. 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; and
- d. 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; and
- e. Conduct two (2) Workforce Development Summits or similar events for Eastside businesses and entrepreneurs in collaboration with workforce development agencies, area schools, and community organizations to help develop curriculum and prepare youth for life science careers, the format and agenda of which shall be subject to approval by the City's Economic Development Department Director; and
- f. Collaborate with local public and private universities and colleges to assist in the formation and ecosystem support for startup companies formed and based on university intellectual property; and
- g. Continue to operate for the Term of the Agreement the ongoing international Global Accelerator Program, or other similar program that provides companies associated with the development of bio and life sciences that have innovative, scalable, and validated businesses, with the processes and resources to accelerate the launch of their companies in the San Antonio area, which program must serve at least 6 companies per year; and
- h. Partner with the City and the San Antonio Economic Development Corporation (SAEDC) on implementing the San Antonio Military Life Science Commercialization Action Plan to include providing meeting and office space as requested by the City and SAEDC; and
- i. Partner with the City and SAEDC to offer and provide incubator space for life science startup companies at a discounted lease rate to be negotiated on a case-by-case basis to help recruit viable tenants for the Project; and
- j. Provide to the Economic Development Department Director annually a copy of the most current VelocityTX Annual Report to include a report on Full-Time Jobs and wages.

#### **ARTICLE 4. BUSINESS ACTIVITIES**

A. GRANTEE shall establish the Velocity TX Innovation Center at the Project Site to provide a physical space for life science and technology commercialization support for startup companies. Such startup support would include lab/office/meeting space, mentoring, capital resources, coaching and training, and institutional networking throughout the community and region (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 ARTICLE 19 of this Agreement).

B. Except as provided herein, GRANTEE covenants and agrees that the Business Activities will not be changed without the written consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. 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 to be provided to GRANTEE under this Agreement.

## ARTICLE 5. 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 to the GRANTEE as follows:

A. GRANTOR agrees to fund an amount not to exceed SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00) (the “Grant Cap”) for costs associated with establishing the Project in San Antonio. The Grant Funds from this Agreement shall only be used to support the Project, and shall be disbursed by GRANTOR as follows so long as GRANTEE is in full compliance with the terms and obligations of this Agreement:

- a. Initial disbursement of \$150,000 upon GRANTEE providing evidence of all the following, all which shall be completed by December 31, 2019:
  - i. Sale by GRANTEE of the property known as 22.040 acres of the Texas Research and Technology Foundation Park and further described in **Exhibit B**;
  - ii. Sufficient funding to cover the cost of construction, infrastructure, and facility improvements related to Phase 1 of the Project, which is estimated to be approximately \$14.2 million, and which shall be comprised of the rehabilitation and finish out of Buildings 3 and 4 (identified in Exhibit A) into office, community, and industrial space;
  - iii. An executed construction loan in the minimum amount of FIVE MILLION DOLLARS (\$5,000,000) for Phase 1 of the Project;
  - iv. A minimum 5-year lease for the occupancy of Building 4 by a private and/or public entity to conduct life science and technology business activities.
  - v. A City-issued Certificate of Occupancy for the conduct of Business Activities in Buildings 3 and 4.
  - vi. A TRTF Board Resolution committing to the sale of land, as needed, at the Texas Research Park to adequately fund the Project and the associated Business Activities, for at least five (5) years from the Effective Date.
  - vii. The commencement of Business Activities and the creation and/or retention of a minimum of seven (7) Full-time Jobs.
  - viii. Performance of requirements outlined in Article 3.

- b. For an additional four years (2020-2023) following the year in which the initial payment is made by GRANTOR, additional grant payments of \$150,000 each year are to be made within sixty (60) days of GRANTEE's submission of its Annual Certification.

B. It is expressly understood by GRANTEE that, except as provided herein, this Agreement in no way obligates GRANTOR'S General Fund or any monies or credits of the GRANTOR and creates no debt of, nor any liability to, GRANTOR.

C. Subject to appropriation, GRANTOR shall provide GRANTEE with the Grant Funds that shall be used by GRANTEE towards costs associated with undertaking and completing the Project. GRANTOR'S payment of the grant funds, up to the Grant Cap, is dependent upon GRANTEE meeting and performing the GRANTEE requirements set out in Article 3.

## **ARTICLE 6. PUBLIC ACKNOWLEDGEMENT AND POLITICAL ACTIVITIES**

Public acknowledgement of GRANTOR's contribution must be made when funds of GRANTOR are utilized and in all cases when GRANTEE chooses to acknowledge other entities for contributions. Such acknowledgement may include GRANTOR's recognized seal or other appropriate language. No reference to any individual shall be used.

## **ARTICLE 7. TERM PERIOD**

The Term referenced in this Agreement shall commence upon the Effective Date and shall continue in effect for a period of five years (5) years (the "Term") unless terminated as otherwise provided herein.

## **ARTICLE 8. GRANTOR'S OBLIGATIONS**

A. Payment. GRANTEE acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of the 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 the 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 Grants in any budget year (as reflected in the 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 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 obligation to pay GRANTEE these funds in the subsequent year(s).

B. No Liability for Costs. Except as set forth in this Agreement, GRANTOR will not be liable to GRANTEE or other entity for any costs, including but not limited to, direct ,indirect or consequential

damages, or lost opportunities costs, incurred by GRANTEE in connection with or reliance on this Agreement.

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

A. Retention. GRANTEE shall maintain written and/or digital records and supporting documentation (the “Records”) relating to and sufficient for City to reasonable determine: 1) the hire and termination dates of each Full-Time Job at the Project Site; and 2) the wages paid to all Full-Time Jobs; and 3) the fulfillment of all obligations of GRANTEE under Article 3 at the Project Site. GRANTEE shall retain such records and any supporting documentation through the end of the Term. Additionally, GRANTEE shall retain records pertaining to the Project and any supporting documentation from and after the commencement of the term of this Agreement and the date which falls four (4) years after the expiration of the Term of this Agreement

B. Access. 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 prohibited by law to be made public shall be kept confidential by GRANTOR to the extent permitted by the Public Information Act. 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 disbursed grant funds. 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.

## **ARTICLE 10. MONITORING AND REPORTING**

A. On or before January 31 of each year during the Term, GRANTEE shall provide GRANTOR’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 31<sup>st</sup>: (i) the number of Full-Time Jobs maintained at the Project Site as of such date, (ii) the hire and termination dates of each Full-Time Employee at the Project Site, (iii) the total wages paid to all employees of GRANTEE working at the Project Site, (iv) GRANTEE’s annual report, to include financial statements, during the twelve months preceding such date, and (v) a written certification of compliance with the terms and conditions of the Agreement signed by an officer of GRANTEE including all required documentation demonstrating such compliance. 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 C**, as the same may be revised by GRANTOR from time to time. GRANTEE shall produce and provide to GRANTOR such documents and backup as requested by GRANTOR to verify compliance with the Agreement Failure by

GRANTEE to take action specified in the monitoring report, and failure to cure any deficiency in the applicable Cure Period in accordance with ARTICLE 17 herein, may be cause for suspension or termination of this Agreement, in accordance with ARTICLE 17 and ARTICLE 18 herein.

B. GRANTEE acknowledges GRANTOR 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, GRANTEE acknowledges and agrees to the release of all information submitted by GRANTEE to GRANTOR pursuant to a request for information. To that end, GRANTEE will endeavor to submit only such limited information as is required per the agreement with GRANTOR to allow GRANTOR to verify GRANTEE is meeting its requirements and obligations under this Agreement.

C. In its efforts to comply with requests for public information under the Public Information Act, GRANTEE shall remain immune from liability under both the State of Texas and federal doctrines of sovereign immunity.

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

#### **ARTICLE 11. CONFLICT OF INTEREST**

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate on behalf of GRANTEE in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest 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. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR’s ethics policy, as same exists from time to time, GRANTEE shall take reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR’s ethics ordinance in dealings between GRANTOR and GRANTEE.

#### **ARTICLE 12. 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.



### **ARTICLE 13.      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 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.

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

A.     Notice to City. GRANTEE shall give GRANTOR immediate 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 Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C.     Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas, 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 where this Agreement is made and/or to be performed.

### **ARTICLE 15.      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 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.

## **ARTICLE 16. CHANGES AND AMENDMENTS**

- A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.
- B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

## **ARTICLE 17. SUSPENSION**

- A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, if applicable, or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of the GRANTEE's receipt of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, or such longer period of time as may be reasonably necessary for GRANTEE to cure the default in question if same cannot reasonably be cured within such sixty (60) day period, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE 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. Lifting of Suspension. A suspension under this Section shall be lifted upon a showing by GRANTEE that the event of default has been cured, as determined solely by the Economic Development Department Director, or by a written waiver of GRANTOR of the term(s) in question.
- C. 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.

## **ARTICLE 18. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES**

- A. Default of GRANTEE. GRANTEE shall be in default under this Agreement:
- a. Cessation of Business Activities. If GRANTEE occupies and uses the Project Site for its Business Activities and subsequently ceases conducting Business Activities at the Project Site for a continuous period of five (5) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar 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 disbursed to the GRANTEE within the previous twelve (12) month period and not previously recaptured by GRANTOR 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. GRANTEE Consideration. If GRANTEE for any reason other than a Force Majeure Event, fails to comply with or preform any GRANTEE requirements in accordance with **ARTICLE 3** throughout the Term of this Agreement, GRANTOR may terminate this Agreement. Upon such termination, GRANTOR may recapture from GRANTEE all funds disbursed to the GRANTEE within the previous twelve (12) month period and not previously recaptured by GRANTOR 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. 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 provided in this Article are not applicable to situations involving minor changes to the description of the Project Site, or GRANTOR-approved changes in ownership, 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.
- C. Bankruptcy. If GRANTEE or 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, GRANTOR shall have the right to recapture from GRANTEE all funds disbursed to the GRANTEE within the previous twelve (12) month period and not previously recaptured by GRANTOR.
- D. Limitation on Remedies. The foregoing termination and recapture rights shall be GRANTOR's sole and exclusive remedies in the event GRANTEE shall default under this Agreement.

#### **ARTICLE 19. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

In addition to relief expressly granted in this Agreement, GRANTEE shall 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. In addition to the events mentioned in **ARTICLE 18** above, a "Force Majeure Event" shall also include, but not be limited to, an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply shortage, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. It also includes an explosion or other casualty or accident, which is not the result of negligence, intentional act or misconduct on the part of GRANTEE. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain relief based upon this Article, GRANTEE must file a written notice with the GRANTOR's Economic Development Department specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

#### **ARTICLE 20. SPECIAL CONDITIONS AND TERMS**

GRANTEE, 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 GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within one-hundred twenty (120) business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR under this Article at the rate of five percent (5%) per annum from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

#### **ARTICLE 21. 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.

#### **ARTICLE 22. 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.

#### **ARTICLE 23. NON-ASSIGNMENT**

A. GRANTEE shall not transfer or assign this Agreement, or any part thereof, without having first obtained GRANTOR's prior written consent, which may be given by GRANTOR'S Director of Economic Development Department Director.

B. Each transfer or assignment to which there has been consent shall be by instrument in writing, in form satisfactory to GRANTOR and shall be executed by the transferee or assignee who shall agree in writing for the benefit of GRANTOR to be bound by and to perform the terms, covenants, and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the Director. Failure to first obtain in writing GRANTOR's consent or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective and shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement, subject to ARTICLE 17 of this Agreement.

C. Notwithstanding the foregoing, GRANTEE and/or any successor to GRANTEE's interest in the this Agreement may collaterally assign and/or grant a security interest in the payments to be received by GRANTEE hereunder without GRANTOR's consent if required by any lender providing financing to any such entity or any parent, subsidiary, or affiliated company of such entity.

## **ARTICLE 24. ENTIRE AGREEMENT**

A. 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. This Agreement, together with its authorizing ordinance and its exhibits, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon.

B. This Agreement is made solely for the benefit of the Parties, and no other person shall have any right, benefit or interest under or because of this Agreement, except as otherwise specifically provided herein.

## **ARTICLE 25. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

### **TO GRANTOR:**

### **TO GRANTEE:**

(Whether personally delivered or mailed):

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

J. Randolph Harig  
President and CEO  
Texas Research and Technology Foundation  
1422 E. Grayson, Suite 300  
San Antonio, TX 78208

- If by personal or overnight delivery:

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

Same as above

## **ARTICLE 26.      LEGAL AUTHORITY**

The signer of this Agreement for GRANTEE represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of GRANTEE and to bind GRANTEE to all of the terms, conditions, provisions and obligations herein contained.

## **ARTICLE 27. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is incorporated herein by reference for all purposes as an essential part of the Agreement, which governs the rights and duties of the Parties.

Exhibit A: Project Site

Exhibit B: Texas Research and Technology Foundation Park Legal Description

Exhibit C: Incentive Monitoring Form

*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 the attached Ordinance Number 2019-\_\_\_\_\_ and GRANTEE pursuant to its authority.

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

**Texas Research and Technology Foundation**  
a Domestic Nonprofit Corporation

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
J. Randolph Harig  
President and CEO

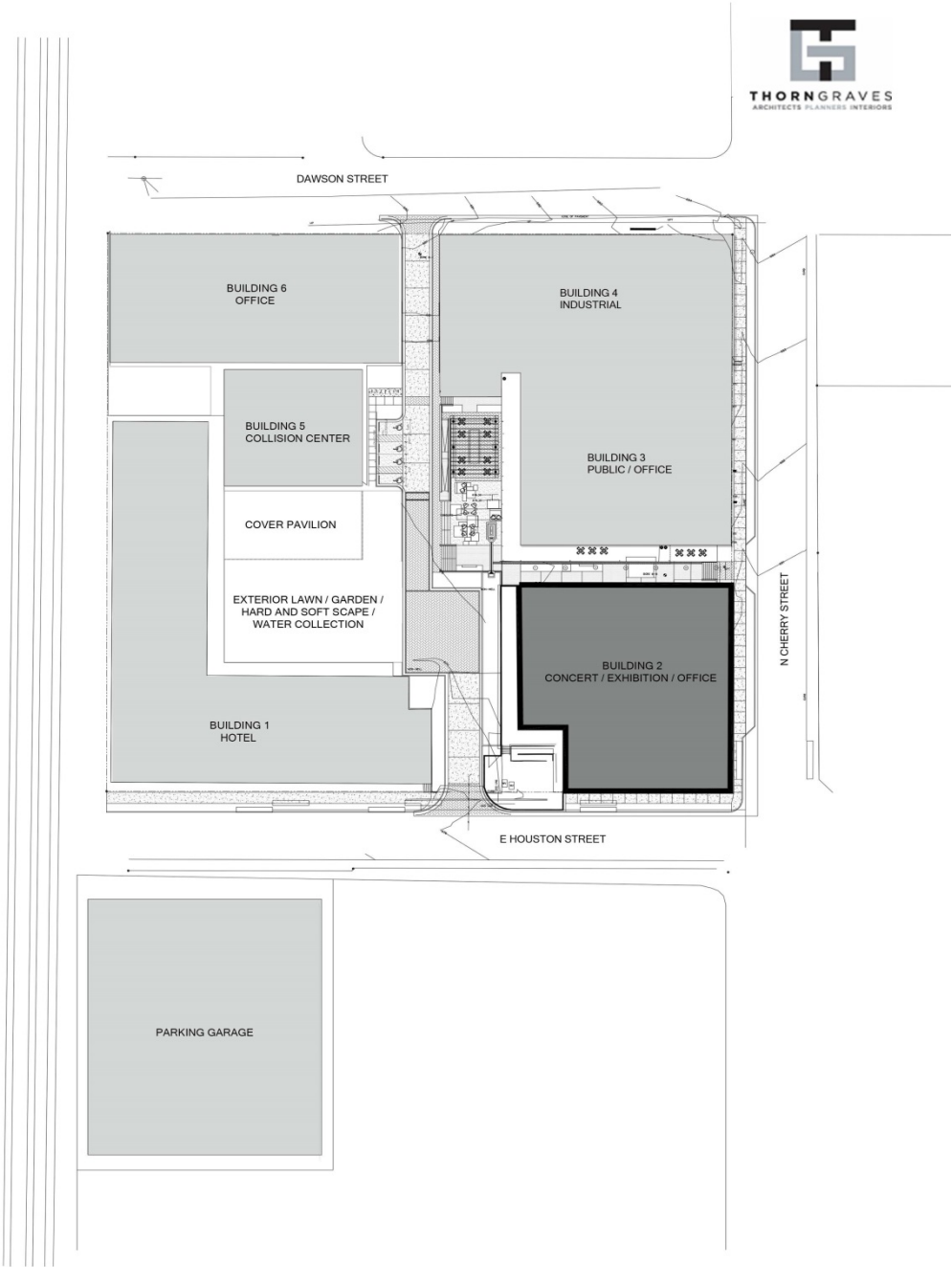
ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew Segovia  
CITY ATTORNEY

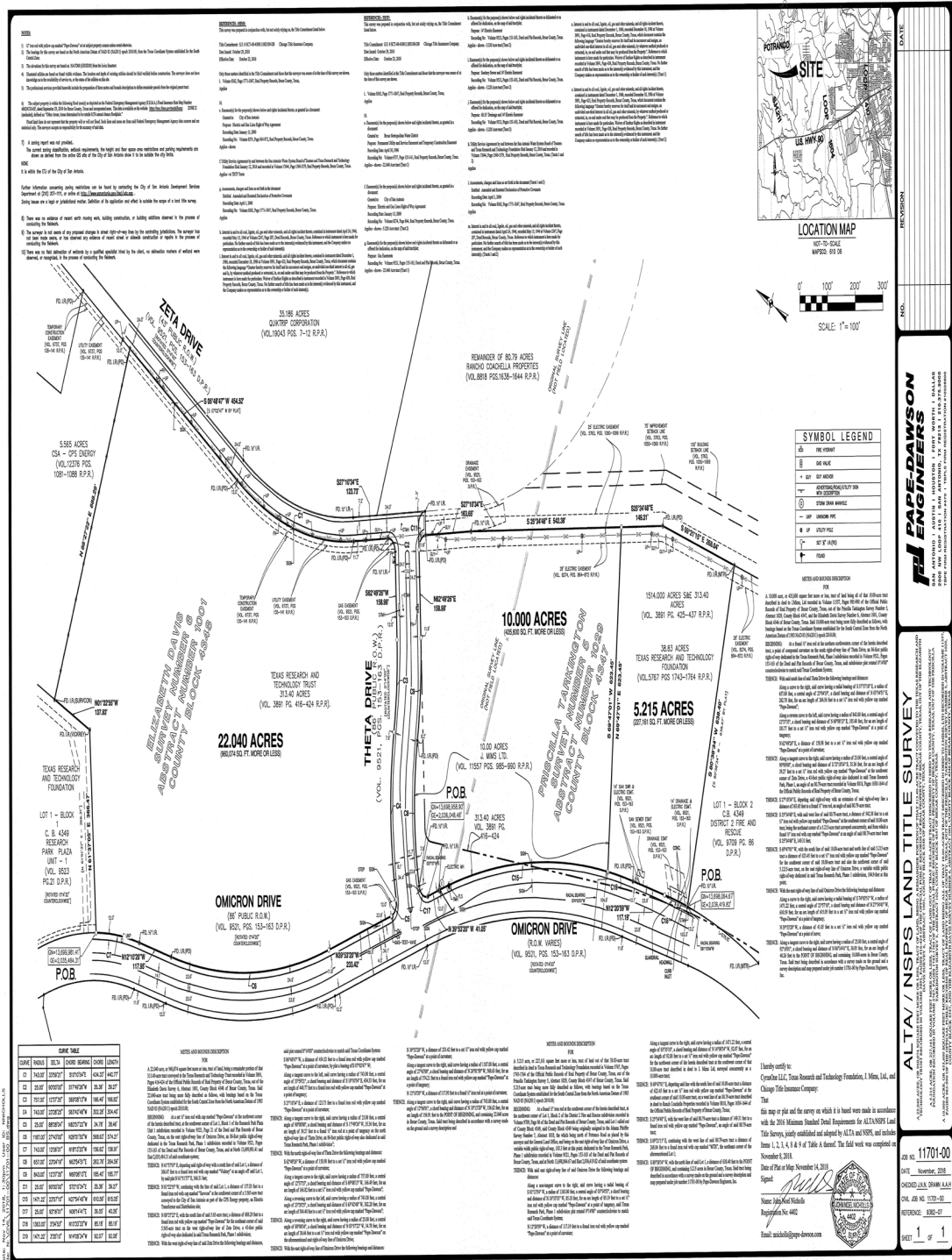
# EXHIBIT A PROJECT SITE



PHASE 4 PROPOSED PHASING DEVELOPMENT			ESTIMATED CONSTRUCTION TIME - TWO YEARS	
LEGEND	APPROXIMATE SF	DESCRIPTION	ESTIMATED COST/SF	ESTIMATED TOTAL COST
	120,000 SF	CONCERT / EXHIBITION / OFFICE SPACE	\$ 250	\$ 30,000,000



## TEXAS RESEARCH AND TECHNOLOGY FOUNDATION PARK LEGAL DESCRIPTION



# EXHIBIT C INCENTIVE MONITORING FORM



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

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

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

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

**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.)

1. Total number of jobs reported at the facility last reporting period.	
2. Jobs created during reporting period <i>(For supporting documents, see above.)</i>	
3. Jobs retained during reporting period.	
4. Total number of jobs reported at the facility this reporting period <i>(For supporting documents, see above.)</i>	
5. What is the minimum hourly wage paid at the facility? <i>(For supporting documents, see above.)</i>	

### Initial Disbursement Requirements

6. Sale of the Texas Research and Technology Foundation Park	
7. Demonstration of sufficient funding to cover the construction, infrastructure, and facility improvements related to Phase 1 of the Project.	
8. An executed construction loan in the minimum amount of \$5 million for Phase 1 of the Project.	
9. A minimum 5-year lease for the occupancy of Building 4 by a private and/or public entity to conduct life science and technology business activities.	
10. A City-issued Certificate of Occupancy for the conduct of Business Activities in Buildings 3 and 4.	
11. A TRTF Board Resolution committing to the sale of land, as needed, at the Texas Research Park to adequately fund the Project and the associated Business Activities, for at least five years.	

### Additional Contractual Obligations

12. Conduct two Workforce Development Summits for Eastside businesses and entrepreneurs in collaboration with workforce development agencies, area schools, and community organizations (format and agenda approved by the EDD Director).	
13. Collaborate with local universities to assist in the formation and ecosystem support for startup companies formed and based on university intellectual property (attach information regarding company's good-faith efforts).	
14. Operate the ongoing international Global Accelerator Program or similar program serving at least 6 companies per year.	
15. Partner with the City and the San Antonio Economic Development Corporation on implementing the San Antonio Military Life Science Commercialization Action Plan to include providing meeting and office space as requested by the City.	
16. Provide the Economic Development Department Director with the VelocityTX Annual Report.	

### Certification:

*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).