

SBIR/STTR Phase II

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "Grantor" or "City"), acting by and through its City Manager or his designee, and Astroport Space Technologies, Inc., hereinafter referred to as "Grantee"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase II Grant through the Department of Defense for a project intended to develop Durable Fabric for Mitigating Rocket Plume Interactions to Enable Expeditionary Landing Area in Terrestrial Point-to-Point Rapid Rocket Cargo Logistics (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance

SBIR/STTR Phase II

with the purpose of Chapter 380 of the Texas Local Government Code (“Chapter 380”). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the Department of the Air Force, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 110 E. Houston Street, 7th Floor, San Antonio, Texas (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. Grantee shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the Project and activities typically conducted by the corporate headquarters of an Aerospace company (all of such activities hereafter collectively referred to as the “Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase II

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **SEVENTY-FIVE-THOUSAND DOLLARS AND NO CENTS (\$75,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to: 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee within thirty (30) days of the Effective Date of this Agreement.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.
- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research;

SBIR/STTR Phase II

patent search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.

2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the Project Site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
 - G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
 - H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
 - I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
 - J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
 - K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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

SBIR/STTR Phase II

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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.
- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent

SBIR/STTR Phase II

of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.

- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- I. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- J. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- K. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- L. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- M. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 - 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.

SBIR/STTR Phase II

- N. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- O. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SBIR/STTR Phase II

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental

SBIR/STTR Phase II

information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees 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

SBIR/STTR Phase II

family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

SBIR/STTR Phase II

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the partial suspension, the portion of the Agreement to be suspended.

SBIR/STTR Phase II

- 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

SBIR/STTR Phase II

- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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.

SBIR/STTR Phase II

SECTION 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$75,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

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

- F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

SBIR/STTR Phase II

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
 - Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
 - Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.
- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.
- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.
- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.
- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

- A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence**

SBIR/STTR Phase II

causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

If intended for GRANTEE, to:

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

Sam Ximenes
CEO
110 E. Houston St., 7th Floor
San Antonio, TX 78205-2991

SBIR/STTR Phase II

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget

SBIR/STTR Phase II

Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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 31. 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.

The Parties have executed this Agreement and, as of the last date all Parties have signed below (Effective Date) have agreed to the terms and conditions stated above.

CITY OF SAN ANTONIO

ASTROPORT SPACE TECHNOLOGIES, INC.

Erik Walsh
City Manager

Samuel Ximenes

Samuel Ximenes
CEO

Date

2/9/2024

Date

Approved as to Form:

Assistant City Attorney

Exhibit A - Project Description



Application for City of San Antonio SBIR/STTR Matching Grant Program

Attachments / Section C - Project Information

Project Title: Durable Fabric for Mitigating Rocket Plume Interactions to Enable Expeditionary Landing Area in Terrestrial Point-to-Point Rapid Rocket Cargo Logistics

Project Abstract:

Please see "Astroport_Enabling Materials_AF2022D2P2SBIR_Project Abstract" included as a separate document in this Section and also in Section B.

Innovation and Significance of the Project

Point-to-Point rocket transport is an emerging mode of global logistics enabling rapid deliveries for time-sensitive operations. Vertically landing a rocket on an improved, flat surface has been shown technically feasible by a number of commercial launch vehicle companies (Masten Space, SpaceX, Blue Origin). However, for terrestrial point-to-point (P2P) rocket cargo missions in the context of military or humanitarian relief operations, landing a rocket vehicle on irregular, unimproved sites may be the norm. This presents a number of challenges where the terrain that the rocket vehicle may land on is unpredictable and not known in advance. Uneven surface, dense dust cloud generated by rocket exhaust, and dislodged high-velocity debris can damage the rocket itself as well as surrounding structures, and present significant risk to the onboard cargo and crew.

Additional applications for the proposed solution exist in the future lunar surface operations (ARTEMIS missions, scientific exploration, and commercial development of the Moon), enabling access to wider range of lunar destinations, including those where permanent landing pads may not exist or may not be feasible.

Project description, including milestones. This attachment should also include a project milestone chart.

US Military deploys various types of expeditionary landing solutions to provide structural adequacy, to protect the landing craft from damage caused by flying foreign object debris (FOD), to reduce dust cloud generation for improved visibility, and to provide all-weather landing surfaces. Although these solutions were designed for aircraft applications, they may be adapted for use with terrestrial P2P rockets. Our proposed effort will leverage fabric-based ultralight matting systems already used by the U.S. military for expeditionary landing surfaces. We will apply a thermal shielding coating to the fabric using a novel layering technique to increase material's heat/flame resistance and strength. We will also assess packaging and installation options for rapid robotic deployment, as well as surface anchoring to provide stability.

For project milestones, please see "Project Schedule and Milestones" included as a separate document in this section.

SBIR/STTR Phase II

Exhibit B - Project Budget

Astroport Space technologies, Inc.
 Proposal Budget Template



Sponsor:	USAF
PI/PI:	Sam Ximenes
Title:	Fabric Landing Pad

	Period 1 (12 mon.)	Period 2 (6 mon.)	All
Start	9/1/2023	9/1/2024	9/1/2023
End	8/31/2024	2/28/2025	2/28/2025
Phase 2 Award Amount	\$ 697,116	\$ 552,796	\$ 1,249,912

COSA Matching SBIR/STTR Grant	\$	75,000
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Use of Funds

- Testing & validation of deliverables	\$	25,000	\$	25,000
- Salary supplement for Sr. Engineer (allows current part-time to full-time employment with \$75K salary)	\$	35,000	\$	15,000
			\$	50,000

SBIR/STTR Phase II

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase II

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase II

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase II

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase II

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclosure by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase II

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase I

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "Grantor" or "City"), acting by and through its City Manager or his designee, and Blocmount, Corp., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Grantee"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase I Grant through the National Science Foundation for a project intended to develop a technology solution that provides early detection of cyber-attacks that aim to take over Industrial Control Systems (ICS) (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic

SBIR/STTR Phase I

development and to stimulate business and commercial activity in the City of San Antonio in accordance with the purpose of Chapter 380 of the Texas Local Government Code ("Chapter 380"). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below ("Effective Date") and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the "Term").

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the National Science Foundation, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 25406 Mesa Crst, San Antonio, Texas ("Project Site"). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. Grantee shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the Project and activities typically conducted by the corporate headquarters of an IT Security & Infrastructure company (all of such activities hereafter collectively referred to as the "Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a

SBIR/STTR Phase I

material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **FIFTY-THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee in the manner set forth below:
 1. An amount not to exceed THIRTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$37,500.00) within thirty (30) days of the Effective Date of this Agreement.
 2. An amount not to exceed TWELVE THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$12,500.00) upon Grantee submission to the City of the following:
 - a. An accepted Final Phase I Report to awarding federal agency; and
 - b. An accepted City of San Antonio Final Phase I Report.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if Grantor determines that such action is appropriate. If estimated

SBIR/STTR Phase I

total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.
 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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

SBIR/STTR Phase I

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 Grants 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 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.** Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- E. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.

SBIR/STTR Phase I

- F. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- G. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- H. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- H. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- I. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- J. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- K. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- L. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or

SBIR/STTR Phase I

5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- M. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- N. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.

SBIR/STTR Phase I

- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final City Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final City Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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

SBIR/STTR Phase I

business, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SBIR/STTR Phase I

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under

SBIR/STTR Phase I

the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the default within the

SBIR/STTR Phase I

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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon

SBIR/STTR Phase I

notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:

1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.

G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.

H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SBIR/STTR Phase I

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$50,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

SBIR/STTR Phase I

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

F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits

SBIR/STTR Phase I

of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

SBIR/STTR Phase I

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

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

If intended for GRANTEE, to:

Blocmount, LLC
25406 Mesa Crst
San Antonio, Texas

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SBIR/STTR Phase I

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

BLOCMOUNT, CORP.

Erik Walsh
City Manager



Signature

Print Name: Mina Guirguis

Date

2/9/2024

Date

Approved as to Form:

Assistant City Attorney

Exhibit A - Project Description



Project Description

1. Project Title

Agile Framework for Data Analytics for Manufacturers

2. Project Summary and Objectives

The manufacturing sector in the US is facing two major challenges: (1) shortage in manufacturing/automation talent that is putting a lot of strain on the current workforce making many of them assume multiple roles (e.g., troubleshooting, installing, upgrading and configuring equipment/software and programming controllers); and (2) rise of cyber incident due to transitioning into Industry 4.0 and connecting the operational network to the enterprise networks for data analytics.

There is a dire need in this sector to help overworked and burned-out operators effectively monitor their equipment and production and alert them of any incidents while equipping them with critical contextual information about their control process. Furthermore, many small and medium manufacturers are overwhelmed with control-level data produced by their equipment and they lack in-house talent to analyze the data either directly or through off-the-shelf tools (e.g., Amazon CloudWatch and Azure Monitor) to optimize their processes. There is a need for simple, easy-to-use and non-disruptive tools.

Blocmount provides on-prem and off-prem software as a service (SaaS) to actively monitor the manufacturing control process. The input to this software service is control-level data (e.g., measurement readings from sensors and control values from controllers and operators). The service itself is a judicious orchestration of various anomaly/threat detection algorithms (we refer to them as blocs) to capture the context. The service alerts the operator of suspicious behaviors due to faults/failures, configuration errors, as well as predictive maintenance and cyber incidents in the control systems. Our technology, in essence, becomes extra "eyes and ears" on the floor to protect production, equipment, and human life.

Objectives: Our technical objective during this project is to work closely with a hand-full of customers in piloting our solution and iterating over it. The work includes: (1) Expanding our library of blocs to include advanced Artificial Intelligence (AI) and Machine learning (ML) ones to capture different contexts, (2) develop a methodology for a pluggable optimization engine that is agile for different customers based on their concerns, (3) develop a scalable architecture that can implement an assignment of blocs on a cloud architecture of virtual machines, and (4) developing and integrating dashboards into the customer's infrastructure to alert operators.

Exhibit B - Project Budget



Budget Justification

Direct Costs:

1. **Noah Dunstatter (Senior Software Developer):** 3 months of support are requested for Dunstatter budgeted at \$7,083 per month (below the median BLS rate in Texas for SOC code 15-1256). Dunstatter will continue developing our algorithms and analytic engine.
2. **Alireza Tahsini (Senior Software Developer):** 3 months of support are requested for Tahsini budgeted at \$8,333 per month (below the median BLS rate in Texas for SOC code 15-1256). Tahsini will continue developing the AI agent policies and integrate our technology for early adopters.

The above salaries will support Blocmount for 3 months between the end of SBIR Phase I (currently around November of 2023) and the beginning of SBIR Phase II if/when awarded (June of 2024).

Indirect Costs

3. **Taxes:** \$2,750 are requested to partially cover FICA employer taxes for 3 months.
4. **Travel:** \$1,000 are requested for travel to conferences, events (e.g., tradeshow), and meetings with clients.

SBIR/STTR Phase I

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

SBIR/STTR Phase I

3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:

1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
3. Must not have applied for or received a notice of a follow-on Phase II federal award;
4. Is a for-profit, privately owned business*;
5. Is headquartered in the City of San Antonio; and
6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).

B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.

C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.

D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:

1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
3. Is a for-profit, privately owned business*;
4. Is headquartered in the City of San Antonio; and
5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).

SBIR/STTR Phase I

- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.
- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.

SBIR/STTR Phase I

- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council consideration or not recommend award. Incomplete or non-compliant applications will not be considered.
- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.

SBIR/STTR Phase I

- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.
- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney

SBIR/STTR Phase I

General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

Phase 0

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR"), acting by and through its City Manager or his designee, and Developmate, Inc., a corporation organized and existing under the laws of the State of Texas (hereinafter referred to as "GRANTEE"). In this Agreement, GRANTOR and GRANTEE may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Phase 0 Grant Program ("Grant Program") was created to assist businesses headquartered in San Antonio to diffuse the costs of developing and submitting federal SBIR/STTR grant proposals; and

WHEREAS, Grantee intends to submit a federal Phase I proposal for the National Science Foundation's SBIR Project Pitch: Advanced Systems for Scalable Analytics or Artificial Intelligence (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic

Phase 0

development and to stimulate business and commercial activity in the City of San Antonio in accordance with the purpose of Chapter 380 of the Texas Local Government Code ("Chapter 380"). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below ("Effective Date") and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the "Term").

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the National Science Foundation, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 110 E Houston St, San Antonio, Texas ("Project Site"). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. GRANTEE shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 - 1. Construction Law. 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.
 - 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 - 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site and activities typically conducted by the corporate headquarters of a Software Publisher company (all of such activities hereafter collectively referred to as the "Project 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 25 of this Agreement).

Phase 0

1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the City, as evidenced in an amendment to this Agreement, signed by both Parties. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.
 2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 15 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. 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 Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, the Grantor will make the Grant Funds available to Grantee in an amount not to exceed \$2,000.00 upon approval of City Council and execution of the Agreement.
- C. Grantee agrees City will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the grant award and Grant Agreement will be terminated. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all Phase 0 SBIR/STTR Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if City determines that such action is appropriate. If estimated total

Phase 0

expenditures are significantly less than the grant amount, City reserves the right to reduce the amount of Grant Funding.

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to technical assistance costs; consulting services for federal Phase I SBIR/STTR application; travel to meet with federal agencies and commercialization partners; project data development; other activities directly related to Grantee's federal Phase I SBIR/STTR proposal; and costs approved by Grantor.
 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: indirect expenses; projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must provide supporting documentation of qualified expenses directly related to the creation and submission of a Phase I application proposal.
- G. Grantee must reimburse Grantor any Grant Funds expended on an ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- H. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- I. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- J. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- K. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- L. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

Phase 0

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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 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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for annual disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. Grantee shall provide EDD a copy of any resulting proposal submitted to the federal agency, along with the email submission confirmation, within thirty (30) days of submission to the federal agency.
- C. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

Phase 0

- D. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws or regulations may result in all or a portion of the Grant Funds becoming subject to recoupment by City. If all or any portion of the Grant Funds become subject to recoupment, City will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- J. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- K. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to Eligible Costs in accordance with this Agreement and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Project Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- L. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.

Phase 0

- M. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Grantee's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- N. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 - 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- O. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- P. Grantee grants permission to City to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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

Phase 0

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.

- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.

Phase 0

5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.
1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
 2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.

Phase 0

3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

Phase 0

- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.

Phase 0

- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons

Phase 0

other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).

- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee 's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

Phase 0

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a “business” and if the Grantor’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio’s Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent’s signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio’s Economic Development Department. No officer or employee, other than Grantor’s Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee

Phase 0

claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$2,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:
- City of San Antonio
Attn: Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966
- F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:
- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
 - Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
 - Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.
- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

Phase 0

- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.
- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.
- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

- A. **GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

Phase 0

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

If intended for GRANTEE, to:

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

Developmate, Inc.
Christian Garcia
110 E. Houston St.
San Antonio, TX 78205

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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.

Phase 0

SECTION 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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.

This space intentionally blank.

Phase 0

SECTION 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

DEVELOPMATE, INC.

Erik Walsh
City Manager

Christian Garcia

Christian Garcia

Date

2/15/2024

Date

Approved as to Form:

Assistant City Attorney

Phase 0

Exhibit A - Project Description

A. Technical Writing

The Consultant will work closely with Client, and any of its designated representatives or advisors, to create clear, concise, and compelling submission material that effectively communicates Client's complex technical ideas and business strategies to both technical and non-technical audiences. Key Responsibilities include:

- Prepare, review, and edit technical documents for SBIR Project Pitch, ensuring comprehensive, accurate, and compliance with applicable guidelines
- Collaborate with client and other subject matter experts to ensure that technical content is accurate, easy to understand, and meets the requirements of the SBIR Project Pitch program.
- Coordinate and prepare documentation for the presentation of SBIR proposals to different stakeholders, both internal and external, as requested by Client
- Manage multiple document development projects simultaneously to meet deadlines and maintain high-quality standards
- Create and maintain a document library for easy retrieval and reference for Client
- Incorporate revisions and be responsible for final products in formats specified by Client
- Communicate regularly with Client on progress and timetable

Phase 0

Exhibit B - Project Budget

Consultant shall submit an invoice at the end of each month, which shall be payable within 30 days.

Technical writing shall be billed on an hourly basis, recorded in quarter hour increments, as follows:

Associate Billing Rate:	\$ 70/hour
Principal Billing Rate:	\$165/hour

Monthly Retainer shall be billed at \$200/month

Client may terminate the retainer at any time, but any partial month will be billed on a fractional basis. Any renewal or extension of the retainer for administrative support may be billed at a higher rate upon mutual agreement of the parties.

Phase 0

Exhibit C – Program Guidelines

SBIR/STTR PHASE 0 GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Phase 0 SBIR/STTR (Small Business Innovation Research/Small Business Technology Transfer) Grant Program (“Program”) is designed to assist San Antonio-based companies to diffuse the costs of developing and submitting federal SBIR/STTR grant proposals.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available is capped at no more than \$10,000.00 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Eligible companies may qualify for up to \$2,000 in Program funding per company, per fiscal year.
- 2.3 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.4 Total Award Funded Per Applicant. Applicants (including any other applicant that is “commonly owned” with such applicant) who have previously been awarded for a project under this Program are ineligible to receive another award for the same project. For purposes of this Section 2.5, applicants are “commonly owned” if they are at least 51% owned or controlled, directly or indirectly, by the same person or entity.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.
- 3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

Phase 0

Date Published: August 11, 2023
Edition: 3

3.2 Applicant Requirements:

- A. Applicants must meet the following criteria at the time their application to the City for Program funding is made. Applicant:
 - 1. Is a for-profit, privately owned business*;
 - 2. Employs 40 employees or less;
 - 3. Must provide documentation demonstrating participation in a capacity building and/or accelerator program on or after January 1st, 2022;
 - 4. Must meet the requirements set forth in the applicable SBIR/STTR federal agency solicitation; and
 - 5. Has received no prior (0) SBIR/STTR award(s).

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).

- B. Applicant must be headquartered in the City of San Antonio at the time the application is made and if awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase 0 City Program award.
- C. The Applicant must not have received City Program funding prior to the time of application.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the creation and submission of federal Phase I SBIR/STTR application proposal. These costs include but are not limited to:
 - A. Technical assistance costs;
 - B. Consulting services for federal Phase I SBIR/STTR application;
 - C. Travel to meet with federal agencies and commercialization partners;
 - D. Project data development; and
 - E. Other activities directly related to Applicant's federal Phase I SBIR/STTR proposal.

V. INELIGIBLE USE OF FUNDS

- 5.2 Use of City Program funds may not be used for the following:
 - A. Indirect expenses;
 - B. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - C. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;

Phase 0

Date Published: August 11, 2023

Edition: 3

- D. Recoupment of personal investment;
- E. Repayment of debt;
- F. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council consideration or not recommend award. Incomplete or non-compliant applications will not be considered.
- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee ("EWDC") and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.

Phase 0

Date Published: August 11, 2023
Edition: 3

6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR PHASE 0 GRANT PROGRAM

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients must provide EDD a copy of any resulting proposal submitted to the federal agency, along with email submission confirmation within thirty (30) days of submission to the federal agency.
- 7.3 Recipients must provide supporting documentation of qualified expenses directly related to the creation and submission of a Phase I application proposal.
- 7.4 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.5 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.
- 7.6 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent five (5) year period.
- 7.7 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

Phase 0

Date Published: August 11, 2023

Edition: 3

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclosure by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase II

STATE OF TEXAS	§	ECONOMIC DEVELOPMENT
	§	GRANT AGREEMENT OF THE
COUNTY OF BEXAR	§	CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR" or "CITY"), acting by and through its City Manager or his designee, and EmergenceMed, LLC, a Texas limited liability company (hereinafter referred to as "GRANTEE"). In this Agreement, GRANTOR and GRANTEE may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase II Grant through the Department of the Air Force for a project intended to develop a Portable airway support device for use by medical response personnel in active combat situations (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. 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 the purpose of Chapter 380 of the Texas Local Government Code ("Chapter 380"). Grantor is

SBIR/STTR Phase II

supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the Department of the Air Force, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters and Project Site. Grantee is a for-profit, privately owned business headquartered at 13423 Balanco Rd box 8017, San Antonio, TX 78216 (“Headquarters”). Grantee conducts research activities at Biosciences and Engineering Room 2.216, 1 UTSA Circ, San Antonio, TX 78257 (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. GRANTEE shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the Project and activities typically conducted by the corporate headquarters of a Bioscience company. (all of such activities hereafter collectively referred to as the “Project 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 25 of this Agreement).
1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase II

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **SEVENTY-FIVE-THOUSAND DOLLARS AND NO CENTS (\$75,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to: 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee within thirty (30) days of the Effective Date of this Agreement.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.
- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent

SBIR/STTR Phase II

search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.

2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the Project Site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
 - G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
 - H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
 - I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
 - J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
 - K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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

SBIR/STTR Phase II

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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
 - 1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 - 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.
- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.

SBIR/STTR Phase II

- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- J. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- K. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- L. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- M. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- N. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or

SBIR/STTR Phase II

5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- O. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- P. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.

SBIR/STTR Phase II

- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act

SBIR/STTR Phase II

is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds

SBIR/STTR Phase II

provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

SBIR/STTR Phase II

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the partial suspension, the portion of the Agreement to be suspended.

SBIR/STTR Phase II

- 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

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- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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.

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SECTION 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$75,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

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

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F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative,

SBIR/STTR Phase II

employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

If intended for GRANTEE, to:

City of San Antonio
Attn: Economic Development

EmergenceMed
Matt Baburek

SBIR/STTR Phase II

P.O. Box 839966
San Antonio, Texas 78283-3966
Email:

13423 Blanco Rd box 8017
San Antonio, TX 78216
matt.baburek@emergencemed.com

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. INCORPORATION OF EXHIBITS

SBIR/STTR Phase II

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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

EMERGENCEMED

Erik Walsh
City Manager

Matthew Baburek
Matt Baburek

Date

Approved as to Form:

Assistant City Attorney

SBIR/STTR Phase II

Exhibit A - Project Description

Project Title

Suction: Combat Ready Advanced Multifunctional Machine (SCRAMM)

Technical Abstract

Airway management is critically important in combat casualty care and civilian trauma patients. For deployed military service members, airway compromise is the second leading cause of potentially survivable death on the battlefield, accounting for 1 in 10 preventable combat deaths. Effective suction is a key component of airway clearance, however currently available devices are too heavy and bulky to be carried, and insufficiently powered to be useful. EmergenceMed, LLC's SCRAMM system will fill this gap, and the short-term impact will allow us to complete necessary design iterations and field testing of a lightweight, compact, powered suction. Longer term implementation will enable multi-domain and dual use deployment.

The SCRAMM system is being designed through close collaboration with Air Force end users to have the following technological differentiators relative to the existing available units: smaller, lighter, and rugged without sacrificing power; longer run time with adaptable power sources; versatile towards multiple medical indications; novel features including clog resistance and clearing; infection control - disposable and exhaust is viral-safe; orientation independent – runs when mispositioned; and designed for real world combat trauma applications. SCRAMM will support the continuum of care including prolonged field care, forward surgical units (e.g., Ground Surgical Team), and enroute care.

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Exhibit B - Project Budget

Budget Justification
Proposal Number: F2D-4650
Topic Number: AF221-DCSO1



Direct Labor Rates

Zachary Fallon – PI / Senior Project Director / Operations Manager

A rate of \$90k is a competitive industry rate for a product line director overseeing operations.

Robert De Lorenzo – Scientific / Tech / Medical Expert

A rate of \$265k is a competitive industry rate for a 30-year emergency medicine doctor.

TBD – Engineering Technician

A rate of \$53k is a competitive industry rate for an engineering apprentice with FTE.

Subcontracts – UTSA

Year 1 – \$300,000

Year 2 – \$225,000

UTSA will take on the bulk of engineering development by enrolling mechanical, electrical, biomedical, and quality assurance engineers to design, build and test a working prototype.

Consultants – Ratioflux

Year 1 – \$15,000

Year 2 – \$0

Max Green will provide commercialization expertise through Ratioflux. He helps identify key commercialization pathways, opportunities, and partnerships.

Other Direct Costs

Materials and Supplies

Year 1 - \$35,000

Year 2 – \$30,000

SBIR/STTR Phase II

Budget Justification
Proposal Number: F2D-4650
Topic Number: AF221-DCSO1



Prototypes

- **\$60,500** for prototypes
 - \$5,500 each prototype, 11 prototypes: internal testing (4), end user verification (5), and product demos (2)

Testing Materials

- **\$4,034.95** for mannikin models
 - \$760.95 3B scientific transparent larynx & lungs model for oropharyngeal product demo videos
 - \$1,479 spw industrial human body/ transparent torso for gastric suction and thoracostomy product demo videos
 - \$1,795 3B scientific A283 BONELike human complete skull model for dental product demo videos

Product studio equipment

- **\$800.99** for studio equipment to market SCRAMM
 - \$599 Canon EOS Rebel T7 DSLR Camera
 - \$201.99 Neewer Background Support Lighting System

Olifant Medical, Inc.

Year 1 - \$24,000

Year 2 – \$18,000

Olifant will collaborate with DFM design reviews to prepare SCRAMM for manufacturing. Establishing FDA worthy documentation with a quality management system (QMS) and current good manufacturing practices (cGMP). They will help locate, negotiate, and partner with a manufacturer capable of fulfilling our purchase orders.

Dawnbreaker – Market Analysis

Year 1 - \$3,000

Year 2 - \$0

Market Analysis report is used to identify who the big shareholders are in the private sector. What cities, states, and countries have the most market share and plan accordingly for commercialization strategy.

SBIR/STTR Phase II

Budget Justification
Proposal Number: F2D-4650
Topic Number: AF221-DCSO1



Travel

Year 1 - \$8,000

Year 2 – \$10,000

Travel expenses account for 3 attendees traveling to and from conferences, business meetings, and training seminars nationwide.

Business, Legal, Marketing

Year 1 - \$30,000

Year 2 – \$20,000

Business – Conferences

BioMedSA

- BioMedSA acts as a hub for the healthcare and bioscience industry, providing industry programming, convening industry leader forums to conquer challenges, communicating opportunities and resources, and facilitating key collaborations for the City of Science and Health. Our membership will help guide the company to acquire resources and partnerships in San Antonio that can assist the company towards commercialization.
- **\$2,750 March 30, 2023**
 - \$250 annual membership fee
 - \$2,500 BioFest sponsorship
- **\$2,750 March 30, 2024**
 - \$250 annual membership fee
 - \$2,500 BioFest sponsorship

MHSRS

- The MHSRS provides a collaborative setting for the exchange of information between military providers with deployment experience, research and academic scientists, international partners, and industry on research and related health care initiatives falling under the topic areas of Combat Casualty Care, Military Operational Medicine, Clinical and Rehabilitative Medicine, Medical Simulation and Information Sciences, Military Infectious Diseases, and the Radiation Health Effects. Attending the conference will be strategic for networking with military partners, collaborators, and showcasing SCRAMM as all-in-one suction machine for prolonged field care.
- **\$3,459.16** August 22-24th 2023, arrive on 21st, dates tentative based on conference committee decision
 - 3 Attendees
- **\$3,459.16** August 22-24th 2024, arrive on 21st

SBIR/STTR Phase II

Budget Justification
Proposal Number: F2D-4650
Topic Number: AF221-DCSO1



- \$1,950 conference fee - \$650 / person, 3 ppl
- \$1012.18 gaylord hotel room - \$191 +\$30/night resort fee plus taxes (14.5%), 4 nights
- \$271.98 car rental - \$68/day, 4 days
- 9 meals provided: 4 breakfasts, 4 lunches, one dinner
- \$225 dinner - \$25/person, 3 ppl, 3 dinners
- Shuttle hotel to airport free

Operational Medicine Symposium

- The Operational Medicine Symposium focuses on modernizations in military medical capabilities to enhance the quality, efficiency, and safety of operational medicine to improve warfighter survivability. Attending the conference will have a huge impact in not only understanding the key military purchasers, but also networking and showcasing SCRAMM as the latest and greatest in enroute care and prolonged field care suction capabilities.
- **\$3,930** April 12-13th 2023, arrive on 11th
 - \$3,570 conference fee - \$1,190 / person, 3 ppl
 - Local, no hotel
 - \$360 meals - \$20/person/meal, 3 ppl, 6 meals or 2 days of meals
- **\$3,930** April 12-13th 2023, arrive on 11th
 - \$3,570 conference fee - \$1,190 / person, 3 ppl
 - Local, no hotel
 - \$360 meals - \$20/person/meal, 3 ppl, 6 meals or 2 days of meals

JEMS Conference

- JEMS Con will bring together paramedics, emergency medical technicians (EMTs), medical directors and executives from all EMS providers including state and private agencies, third service and fire for education, training, peer-to-peer sharing and networking. This conference is essential for the company to be up to date with the EMS ecosystem and showcasing SCRAMM to local, state, and nationwide public health services.
- **\$705** February 21-25th conference fee
- **\$705** February 21-25th conference fee

Business – Offices

VelocityTX

- Leveraging San Antonio's unique strengths in research & development and commercialization, VelocityTX is positioned to support and promote entrepreneurial development as a key economic strategy. VelocityTX has become a valued community connection point, partnering with some of the nation's largest, most-respected research institutions, academia, military, and private sector in bioscience. EmergenceMed is small and driven. VelocityTX's offices is a

SBIR/STTR Phase II

Budget Justification
Proposal Number: F2D-4650
Topic Number: AF221-DCSO1



breeding ground for innovation by having resources on hand to provide expertise, and accelerator programs geared toward professional and technical growth which is what our company needs at this stage.

- **\$16,500** state-supported economic development entity that has a successful track record of facilitating the transition of early medtech startups into viable companies. VelocityTX is a non-profit established as a subsidiary of the Texas Research and Technology Foundation.
 - \$6000 program with experienced executives in medical device domain to provide guidance
 - \$10,500 office space, \$500/month, for 21months

Legal

Law offices of Gately and Morris PC

- Gately and Morris will aid in representing EmergenceMed owners and individuals in contract and tort litigation, non-compete agreements, and protection of trade secrets.
- Year 1 - **\$4,000** annual legal fees
- Year 2 - **\$3,000** annual legal fees

Marketing

Website SEO

- **\$1,000** Search engine optimization

Professional Pitch Deck

- **\$500** Professional marketing content for pitch deck

Marketing Videos

- **\$3,000** Marketing videos
 - \$1,500 live action video with EMS personnel demonstrating SCRAMM in use
 - \$1,000 1 minute cartoon clip demonstrating all the use cases for SCRAMM
 - \$500 short gifs for PowerPoint purposes with pitch deck

SBIR/STTR Phase II

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase II

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase II

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase II

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase II

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 - 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 - 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase II

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase II

STATE OF TEXAS	§	ECONOMIC DEVELOPMENT
	§	GRANT AGREEMENT OF THE
COUNTY OF BEXAR	§	CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR" or "CITY"), acting by and through its City Manager or his designee, and GaitIQ, Inc., a Delaware corporation (hereinafter referred to as "GRANTEE"). In this Agreement, GRANTOR and GRANTEE may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase II Grant through the Department of Health and Human Services for a project intended to establish a Digital Biomarker of Preclinical Alzheimer's Disease (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance

SBIR/STTR Phase II

with the purpose of Chapter 380 of the Texas Local Government Code (“Chapter 380”). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the Department of Health and Human Services, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters and Project Site. Grantee is a for-profit, privately owned business headquartered at 4207 Gardendale Street, Suite B107, San Antonio, TX 78229 (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. Grantee shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the Project and activities typically conducted by the corporate headquarters of a bioscience company (all of such activities hereafter collectively referred to as the “Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase II

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **SEVENTY-FIVE-THOUSAND DOLLARS AND NO CENTS (\$75,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee within thirty (30) days of the Effective Date of this Agreement.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:

<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.
- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent

SBIR/STTR Phase II

search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.

2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the Project Site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
 - G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
 - H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
 - I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
 - J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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 appropriate funds the following budget year(s) to pay funds due to Grantee. Failure of Grantor to

SBIR/STTR Phase II

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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.
- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.
- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.

SBIR/STTR Phase II

- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- J. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- K. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- L. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- M. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- N. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 - 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- O. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- P. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SBIR/STTR Phase II

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.

- B. Access to Records. 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.

- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.

- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.

- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.

SBIR/STTR Phase II

1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the

SBIR/STTR Phase II

disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SBIR/STTR Phase II

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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.

SBIR/STTR Phase II

- C. Venue. **THIS GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.

SBIR/STTR Phase II

- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee 's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:

SBIR/STTR Phase II

1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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.

SBIR/STTR Phase II

SECTION 20. INSURANCE

A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio’s Economic Development Department. The certificate must be:

- clearly labeled with the legal name of the Agreement in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent’s signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio’s Economic Development Department. No officer or employee, other than Grantor’s Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

B. Grantor’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$75,000.00

D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.

E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

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

F. Grantee’s insurance policies must contain or be endorsed to contain the following provisions:

SBIR/STTR Phase II

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
 - Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
 - Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.
- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.
- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.
- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.
- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

- A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents,**

SBIR/STTR Phase II

employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

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SBIR/STTR Phase II

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

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

If intended for GRANTEE, to:

GaitIQ
Rick Morris
PO Box 15531
San Antonio, TX 78212
rick@gaitiq.com

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in

SBIR/STTR Phase II

violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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.

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SBIR/STTR Phase II

SECTION 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

GAITIQ, INC.

Erik Walsh
City Manager

Richard Morris

Rick Morris

Date

Approved as to Form:

Assistant City Attorney

SBIR/STTR Phase II

Exhibit A - Project Description

GaitIQ's proprietary computer vision, motion capture, artificial intelligence, and biomechanical analysis software delivers an accurate 3D biomechanical analysis to assess gait and balance, help identify personalized risk factors for falls in older people, and monitor therapy outcomes – all from a video of the person walking from single iPad camera. It takes two minutes for a clinician to take a video and receive results based on a comprehensive gait and balance assessment in the iPad App. The results are comparable to those provided by a fully instrumented marker-based gait lab requiring 2-3 people for several hours in a dedicated space with 8-10 optical motion capture cameras installed.

\$69 Billion – that is the CDC 2020 reported costs of the 1.8 million falls-related emergency room visits (\$16 Billion) and 1 million related hospital admissions (\$53 Billion) for US adults aged 65 and older who suffer a fall each year despite the CDC and American Gerontology Society's 3-step clinical practice guidelines for fall prevention. The weakness in these clinical guidelines is 1) reliance on self-reporting of prior falls at the screening step, and 2) dependence on crude tools like the Timed Up and Go (TUG) test that do not identify personalized modifiable risk factors at the gait and balance assessment step. The current approach is not working, and the prevalence and cost of injury falls continue to rise. A globally accessible technology solution is needed for screening, personalized gait and balance assessment to support an evidence-based fall risk plan of care and monitoring of therapy outcomes.

GaitIQ's initial target customers are health care providers practicing in Medicare Advantage (MA) Plans and in Medicare Accountable Care Organizations (ACOs). These providers have value-based financial incentives for lowering costs of care and improving outcomes through preventive services.

1. Current HHS/NIH/National Institutes on Aging Phase II SBIR 5R44AG060855-03

Awarded 04/28/2023.

Project Period Start Date 09/15/2018 – End Date 12/31/2023.

Budget Period Start Date 06/01/2021 – End Date 12/31/2023.

Amount of SBIR 5R44AG060855-03 award is \$943,994.

Total Amount of the Federal Award is \$2,493,238.

GaitIQ has a balance remaining to draw on the current grant of \$212,000. The \$75,000 matching funds from the City of San Antonio will have a major impact by allowing us to expand our data collection during completion of Phase II, further strengthen our Phase II datasets and results, and position us even more competitively for follow-on Phase IIB competitive continuation award(s) related to the SBIR 5R44AG060855 grant. We have an approved "shovel ready" Institutional Review Board protocol and are prepared to collect additional examples of pathological gait data in a population of 40 older adults with Type 2 Diabetes, who have a very high risk for gait impairments and injury falls associated with Diabetic Peripheral Neuropathy (DPN). DPN is an important issue for residents of San Antonio, and from the NIH research perspective the City is a good location to recruit that population because of our unique diversity. The City's funding will significantly enhance our Phase II results and greatly improve our chances to win a competitive continuation award based on those results and to attract customer pilots. With an approved IRB protocol in hand, we may move forward with the Diabetic Peripheral Neuropathy project immediately upon receiving the matching funds and expect to complete the study in 5 months. The DPN Institutional Review Board (IRB) approved protocol is included in the attachments.

We will use the \$75,000 grant to cover GaitIQ staffing and rent in San Antonio.

SBIR/STTR Phase II

Exhibit B - Project Budget

ITEM	COST ESTIMATE
Facility/Lease	\$12,000.00
Systems Engineer/Data Scientist Lead	\$49,980.00
Scientific Project Lead	\$11,250.00
Grant Compliant Accounting	\$1,770.00
TOTAL:	\$75,000.00

SBIR/STTR Phase II

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase II

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase II

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase II

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase II

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase II

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase I

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR" or "CITY"), acting by and through its City Manager or his designee, and Irys Technologies, Inc. a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "GRANTEE"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase I Grant through the Air Force Research Laboratory for a project intended to assist addressing the Air Force's challenge of enhancing installations and providing quality facilities, services, and support (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic

SBIR/STTR Phase I

development and to stimulate business and commercial activity in the City of San Antonio in accordance with the purpose of Chapter 380 of the Texas Local Government Code ("Chapter 380"). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below ("Effective Date") and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the "Term").

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with any federal agency, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 2003 W. Commerce St., San Antonio, Texas ("Project Site"). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. Grantee shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the and activities typically conducted by the corporate headquarters of a bioscience company (all of such activities hereafter collectively referred to as the "Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase I

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **FIFTY-THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** (“Grant Funds”), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee’s economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee in the manner set forth below:
 1. An amount not to exceed THIRTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$37,500.00) within thirty (30) days of the Effective Date of this Agreement.
 2. An amount not to exceed TWELVE THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$12,500.00) upon Grantee submission to the City of the following:
 - a. An accepted Final Phase I Report to awarding federal agency; and
 - b. An accepted City of San Antonio Final Phase I Report.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee’s compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this

SBIR/STTR Phase I

Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 - 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.
 - 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of Grantor in the budget year in which

SBIR/STTR Phase I

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 Grants 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 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.** Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.
- Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.
- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.

SBIR/STTR Phase I

- E. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- F. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- G. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- H. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- I. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- J. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- K. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- L. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Grantee's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- M. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;

SBIR/STTR Phase I

3. pending litigation, liens and encumbrances on the assets of Grantee;
 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- N. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- O. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.

SBIR/STTR Phase I

- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.

SBIR/STTR Phase I

C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SBIR/STTR Phase I

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under

SBIR/STTR Phase I

the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the default within the

SBIR/STTR Phase I

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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon

SBIR/STTR Phase I

notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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

SBIR/STTR Phase I

between Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$50,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:
- City of San Antonio
Attn: Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

SBIR/STTR Phase I

F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents,

SBIR/STTR Phase I

employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall also apply to all liability resulting from the incorrectness or breach of any representations, warranties, covenants, or agreements of GRANTEE pertaining to the federal grant made the basis of this Agreement. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

SBIR/STTR Phase I

If intended for GRANTOR, to:
City of San Antonio
Attn: Economic Development
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for GRANTEE, to:
Irys Technologies, Inc.
Eduardo Bravo
2003 W. Commerce
San Antonio, Texas 78207
eduardo@heyirys.com

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SBIR/STTR Phase I

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

IRYS TECHNOLOGIES, INC.

Erik Walsh
City Manager

Eduardo Bravo

Eduardo Bravo

Date

2/19/2024

Date

Approved as to Form:

Assistant City Attorney

SBIR/STTR Phase I

Exhibit A - Project Description

The requested matching funds will be allocated towards sustaining the research and development efforts of ACIS as part of the SBIR contract. These funds will support comprehensive research, prototyping, testing, and the hiring of additional local team members or consultants as necessary. Additionally, the grant would enable Irys to expand their commercial sector reach locally, strengthening their market presence and better serving their clients' needs.

Irys (previously Cityflag, Inc.), a technology company committed to enhancing communication and improving the quality of life in communities, is seeking matching funds through the City of San Antonio SBIR Matching Grant Program to support the Research and Development of the Air Force Community Inclusion System (ACIS). While ACIS is currently under a Phase 1 research project, it aims to address the Air Force's challenge of enhancing installations and providing quality facilities, services, and support in a contested multi-domain operations (MDO) battle space.

SBIR/STTR Phase I

Exhibit B - Project Budget

Additional Cost Information									
Company: Cityflag, Inc. (Irys Technologies, Inc.)									
Proposal #: FX235-CS01-0463									
Total Estimated Cost (BASE)					\$74,851.85				
BASE PERIOD: 3 MONTHS									
DIRECT LABOR (DL) COSTS - FULLY BURDENED									
*Rates based on fully burdened FY22 GSA Labor Rates.									
Key Personnel Category and/or Individual	*Rate/Hour	Estimated Hours	*StdDevLow	*Average	*StdDevHigh	Prime	Amount		
1 Principal Investigator / Alberto Altamirano	\$115.00	150.00	\$88.00	\$155.00	\$222.00	Prime	\$17,250.00		
2 General and Operations Manager / Alberto Gomez	\$100.00	150.00	\$80.00	\$141.00	\$203.00	Prime	\$15,000.00		
3 General and Operations Manager / Eduardo Bravo	\$100.00	150.00	\$80.00	\$141.00	\$203.00	Prime	\$15,000.00		
5	\$0.00	0.00	\$0.00	\$0.00	\$0.00	Prime	\$0.00		
6	\$0.00	0.00	\$0.00	\$0.00	\$0.00	Prime	\$0.00		
6	\$0.00	0.00	\$0.00	\$0.00	\$0.00	Prime	\$0.00		
Non-Key Personnel Category and/or Individual									
Key Personnel Category and/or Individual	*Rate/Hour	Estimated Hours	*StdDevLow	*Average	*StdDevHigh	Prime	Amount		
7 Project Manager	\$95.00	125.00	\$102.00	\$141.00	\$180.00	Prime	\$11,875.00		
8 Product Implementation Specialist	\$95.00	114.00	\$102.00	\$141.00	\$180.00	Prime	\$10,830.00		
9	\$0.00	0.00	\$0.00	\$0.00	\$0.00	Prime	\$0.00		
10	\$0.00	0.00	\$0.00	\$0.00	\$0.00	Prime	\$0.00		
Subtotal DL							\$69,955.00		
Fringe Benefits, if not includd in Overhead Rate							0.00%	x DL	\$0.00
Labor Overhead Rate							0.00%	x (DL + Fringe)	\$0.00
Total Direct Labor (TDL)									\$69,955.00
DIRECT MATERIAL (DM) COSTS									
Item Description	Quantity	Cost							
1	0	\$0.00							
2									
3									
Subtotal DM							\$0.00		
Material Overhead Rate							0.00%	x DM	\$0.00
Total Direct Material (TDM)									\$0.00
OTHER DIRECT COSTS (ODC)									
*Lodging/M&IE based on FY22 GSA Per Diem Rates. Enterprise Car Rental									
Travel From/To	# Days	# Travelers	Airfare + Tax/Fees	Lodging	M&IE (incl. DL)	M&IE	M&IE (incl. DL)	Car Rental + Fuel	Amount
			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Subtotal ODC							\$0.00		
Direct Cost Overhead Rate							0.00%	x ODC	\$0.00
Total Other Direct Costs (TODC)									\$0.00
G&A (TDL) Rate							0.00%	x TDL	\$0.00
G&A (TDM) Rate							0.00%	x TDM	\$0.00
G&A (TODC) Rate							0.00%	x TODC	\$0.00
Total G&A									\$0.00
Sub Contractors							*Rate/Hour		
							Sub	\$0.00	
							Sub	\$0.00	
							Sub	\$0.00	
Sub Total									\$0.00
Total Cost									\$69,955.00
Fee or Profit Rate							7.00%	x Total Cost	\$4,896.85
TOTAL ESTIMATED COST									\$74,851.85

SBIR/STTR Phase II

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase II

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase II

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase II

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase II

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclosure by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase II

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase II

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "Grantor" or "City"), acting by and through its City Manager or his designee, and Leaptran, Inc. a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "Grantee"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase II Grant through the USDA National Institute Food and Agriculture for a project intended to develop a Rural and Community Solar PV Production Aggregating Forecast Solution (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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.

SBIR/STTR Phase II

SECTION 1. AGREEMENT PURPOSE

The purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. 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 the purpose of Chapter 380 of the Texas Local Government Code (“Chapter 380”). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the USDA National Institute Food and Agriculture, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 3463 Magic Drive, Suite 202, San Antonio, Texas (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. Grantee shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 - 1. Construction Law. 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.
 - 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 - 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the Project and activities typically conducted by the corporate headquarters of a utility data analytics company. (all of such activities hereafter collectively referred to as the “Project Activities”) and operate same at the Project Site for the Term of this Agreement, except to the extent said Project Site

SBIR/STTR Phase II

may be rendered unsuitable for such use due to a Force Majeure Event (as defined in Section 24 of this Agreement).

1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the City, as evidenced in an amendment to this Agreement, signed by both Parties. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.
 2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 15 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **SEVENTY-FIVE-THOUSAND DOLLARS AND NO CENTS (\$75,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to: 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee within thirty (30) days of the Effective Date of this Agreement.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this

SBIR/STTR Phase II

Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 - 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.
 - 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the Project Site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of Grantor in the budget year in which

SBIR/STTR Phase II

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 Grants 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 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.** Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

SBIR/STTR Phase II

- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- I. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- J. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- K. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- L. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- M. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:

SBIR/STTR Phase II

1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 2. items that reflect detrimentally on the credit worthiness of Grantee;
 3. pending litigation, liens and encumbrances on the assets of Grantee;
 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- N. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- O. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government

SBIR/STTR Phase II

Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.

- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent

SBIR/STTR Phase II

of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.

C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.

SBIR/STTR Phase II

6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this

SBIR/STTR Phase II

Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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.

SBIR/STTR Phase II

SECTION 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor

SBIR/STTR Phase II

shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SBIR/STTR Phase II

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$75,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall

SBIR/STTR Phase II

provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.

- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

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

- F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SBIR/STTR Phase II

SECTION 21. INDEMNITY

- A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.** The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- B.** Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel** - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation** – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or

SBIR/STTR Phase II

- by electronic mail (“email”) to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

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

If intended for GRANTEE, to:

Jeff Xu
Leaptran, Inc.
3463 Magic Drive, Suite 202
San Antonio, Texas 78229-2988

Notices of changes of address by either party must be made in writing and delivered to the other party’s last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SBIR/STTR Phase II

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor’s right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee’s reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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.

This space intentionally left blank.

SBIR/STTR Phase II

SECTION 31. 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.

The Parties have executed this Agreement and, as of the last date all Parties have signed below (Effective Date) have agreed to the terms and conditions stated above.

CITY OF SAN ANTONIO

LEAPTRAN, INC.

Erik Walsh
City Manager

Jeff Xu

Jeff Xu

Date

2/9/2024

Date

Approved as to Form:

Assistant City Attorney

SBIR/STTR Phase II

Exhibit A - Project Description

Project Summary:

The Phase II project proposes commercializing and improving the software solution developed in Phase I by providing solar energy and net load forecasting services to both rural electric co-ops and other utilities for the following goals: 1) To develop and commercialize a robust energy data forecasting system to handle big data for utility customers by focusing on smart metering data aggregation and management, 2) To scale-up software solutions, including both ASF and NLF solutions, to cover a large utility geographical territory, 3) To benchmark and improve aggregated solar energy forecasting performance by using a bottom-up approach, 4) To develop net load forecasting services utilizing multiple levels of data availability, and 5) To conduct a technical performance-based cost-benefit analysis that provides clear value propositions to potential stakeholders.

Project Milestones:

Milestone 1: Rural community energy data digitalization (Month 1 to Month 12: 9/1/23 - 8/31/24)

Milestone 2: Apply and expand solutes to a large utility customer territory (Month 1 to Month 18: 9/1/23 - 2/28/25)

Milestone 3: Bottom-up solar forecasting performance benchmark (Month 1 to Month 18: 9/1/23 - 2/28/25)

Milestone 4: Demonstration of an adaptive net load forecasting solution (Month 6 to Month 24: 3/1/24 - 8/31/25)

Milestone 5: Technical performance-based cost-benefit analysis (Month 1 to Month 24: 9/1/23 - 8/31/25)

Utilization of Matching Grant Funds:

Matching grant will be used for funding Phase II activities, specially in business development and technology development/promotion, which none of project participants have been budgeted 100% on Phase II. Matching grant will also be used to hire interns from local colleges (i.e., San Antonio College, and the University of Texas at San Antonio) to train next generation scientists and engineers. Matching grant may also be applied to IP protection and office rental if necessary.

Exhibit B - Project Budget

Budget Justification

Budget Justification
(Jeff Xu, Leaptran, Inc.)

A. Key Personnel

Jeff Xu: PD/PI, will spend a cumulative 8 months on the project in two years.
Dr. Zhaoxuan Li: Senior data scientist and algorithm development, will spend cumulative 10 months on the project in two years.
Anup Murarka: IT & software development lead, will spend cumulative 8 months on the project in two years.
A qualified candidate will be hired around Sep. 2023: Use case development and customer experience, product integration, solar site selection, engineering and software test setup, and data communication, will spend 8 cumulative months on the project in two years.

Jeff Xu: a cumulative hour: 1,387 hours, Labor rate: ~\$53/hour. Total labor: \$88,000.
Dr. Zhaoxuan Li: a cumulative hour: 1,733 hours, Labor rate: ~\$43/hour. Total labor: \$90,000.
Candidate to be hired: a cumulative hour: 1387 hours. Labor rate: ~\$19/hour. Total labor: \$31,680.

Jeff Xu: skills, responsibility in senior position, education background, and past project experience with consideration of small technology startup support \$53/hour rate.
Dr. Zhaoxuan Li: education background and employment market demand support \$43/hour rate.
Anup Murarka: experience and knowledge support \$46/hour rate.
Candidate to be hired: educations, experience, skills with consideration of small technology startup support \$19/hour rate

B. Other Personnel (postdocs, grad students, undergrads, other)

For each include name (or indicate to be named), title on project, time to be contributed, and explain role on project.

Other personnel including new hired software development and data analyst, will spend cumulative 8 months on the project for software, database development, and engaging users and interface respectively.
The project anticipates having utility customer acquisition on board to spend cumulative 3.5 months on the project in two years.

Leaptran's fringe benefits include vacation pay, holiday, sick leave, payroll tax, and group insurance. We use 20% in this budget planning process. The rate was approved by the previous SBIR project with DOE/USDA/NIFA contract managers.

A+B = \$437,980

SBIR/STTR Phase II

Budget Justification

C. Equipment (over \$5,000 with life of more than one year) – List and justification the use on the project.

C = \$0

D. Travel

1. Identify purpose, destination, dates of travel (if known) and number of individuals per trip. If you don't know destination estimate length of trip and benefit to project.

All domestic travels:

Trip 1: Orlando, Florida to attend DistribuTech to promote business and interactions with utilities: \$5,000 (two persons, 3 nights) in 2024.

Trip 2: Visit Trico and TEP in Tucson, Arizona to discuss utility collaborations: \$2,500 (two persons, 2 nights) in 2024.

Trip 3: Attend TechAdvantage in San Antonio organized by NRECA: \$4,500 in 2024.

Trip 4: Attend DistribuTech: \$6,000 in 2025.

Trip 5: Attend Southwest Electricidal Metering Association (SWMEA) School exhibit in College Station, Texas: \$2,000 in 2023 and 2024 (one person, 3 nights)

Trip 1: 2 travelers (PD/PI: Mr. Xu & other). 2024. San Antonio to Orlando, Florida

Trip 2: 2 travelers (PD/PI and Candidate to be hired or Dr. Li). 2024. San Antonio to Tucson, AZ

Trip 3: 2 attendees (PD/PI and team members): 2024. Exhibit cost and registration fee

Trip 4: 2 travelers: 2025. TBD

Trip 5: 1 traveler (PD/PI): 2023 & 2024. San Antonio to College Station, TX

Trip 1: Total \$5,000 for 2 attendees: each person includes \$600 (air ticket), \$550 (hotels for 3 nights), \$250 (meals), \$100 (others), and \$1,000 (registration fee) (One person: \$2,500).

Trip 2: Total \$2,500 for 2 attendees: each person includes \$600 (air ticket), \$400 (hotels for 2 nights), \$110 (meals), and \$140 (others) (One person: \$1,250).

Trip 3: Total \$4,500 for 2 attendees: \$3,800 (conference exhibit booth fee), and \$700 (others).

Trip 4: Total \$6,000 for 2 attendees: TBD and estimates based on experience.

Trip 5: Total \$2,000 for 1 attendee: includes \$200 (mileage), \$500 (multiple meals and hotel charges planned), and \$200 (registration fee) in 2023 and 2024.

Trips 1, 2, and 5: Past trip similar nature with GSA Per Diem FY 2023.

Trips 3 and 4: Estimates and past trip similar nature.

D = \$20,000

E. Participant/Trainee Support Costs

1. Participant costs are the costs associated with conference, workshop, or symposium attendees who are not employees of the applicant or a subawardee.

E = \$0

F. Other Direct Costs

1. Materials and Supplies (equipment under \$5000 is included here)

SBIR/STTR Phase II

Budget Justification

- a. Indicate types of required expendable materials and supplies and their estimated costs.

Various weather sources and cloud computing, data storage space, and IT: monthly fee: ~1,000 for 24 months

Based on Phase I experience and spending estimates: \$24,000

2. Publication Costs

3. Consultant Services

- a. Provide rate of pay including a breakdown of number of days in service, travel and per diem. Need a letter from consultant to verify these costs.

Mr. John Bonnin: Consultant and Subject Matter Expert (SME)

192 hours in two years (8 hours per month)

Mr. Bonnin's rate is \$150/hour is lower than his normal charge as a former executive in utility industry.

Background: Senior executive leading high-performance energy marketing/trading team in a highly complex environment; developing strategies for hedging real time load, offering generating units into the market, balancing financial and physical positions, hedging congestion, etc. Annually bought and sold over 20 TWH energy, \$750M+ annual fuels acquisition activities, \$100+M annual net revenue brought to the bottom line.

Total consultant service fee: \$28,800

4. Subawards

- a. List all subcontracts and explain their role on the project. See subaward extraction files for budget and justifications.

5. Equipment Rental or Facility Rental Fees

6. Alternations and Renovations – Not allowed for most projects. See RFA.

7. Tuition – required if graduate student time is budgeted and allowed by the RFA

8. TABA from Larta Institute (please refer to VQS): \$50,000

9. (Other as needed)

10. (Other as needed)

F = \$102,800

H. Indirect Costs are charged at the USDA allowed rate of 30% of Total Federal Funds Awarded, including indirect within each subcontract. (Check RFP for rate requirements, some programs may differ)

Leaptran elects to use 10% De Minimis Rate as Phase I award.

H = \$51,078

I. Fees

SBIR/STTR Phase II

Budget Justification

I = \$38,142

Total = 650,000

SBIR/STTR Phase II

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase II

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase II

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase II

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee ("EWDC") and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase II

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 - 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 - 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase II

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

Phase 0

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR"), acting by and through its City Manager or his designee, and Maverick BioMetals, Inc. a Delaware Corporation (hereinafter referred to as "GRANTEE"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Phase 0 Grant Program ("Grant Program") was created to assist businesses headquartered in San Antonio to diffuse the costs of developing and submitting federal SBIR/STTR grant proposals; and

WHEREAS, Grantee intends to submit a federal Phase I proposal for Phase I of the National Science Foundation (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance

Phase 0

with the purpose of Chapter 380 of the Texas Local Government Code (“Chapter 380”). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the National Science Foundation, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 1305 E Houston St, San Antonio, Texas (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. GRANTEE shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site and activities typically conducted by the corporate headquarters of a biotechnology company (all of such activities hereafter collectively referred to as the “Project 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 25 of this Agreement).
1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the City, as evidenced in an

Phase 0

amendment to this Agreement, signed by both Parties. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 15 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. 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 Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, the Grantor will make the Grant Funds available to Grantee in an amount not to exceed \$2,000.00 upon approval of City Council and execution of the Agreement.
- C. Grantee agrees City will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the grant award and Grant Agreement will be terminated. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all Phase 0 SBIR/STTR Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if City determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, City reserves the right to reduce the amount of Grant Funding.

Phase 0

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to technical assistance costs; consulting services for federal Phase I SBIR/STTR application; travel to meet with federal agencies and commercialization partners; project data development; other activities directly related to Grantee's federal Phase I SBIR/STTR proposal; and costs approved by Grantor.
 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: indirect expenses; projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must provide supporting documentation of qualified expenses directly related to the creation and submission of a Phase I application proposal.
- G. Grantee must reimburse Grantor any Grant Funds expended on an ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- H. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- I. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- J. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- K. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- L. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

Phase 0

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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 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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for annual disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. Grantee shall provide EDD a copy of any resulting proposal submitted to the federal agency, along with the email submission confirmation, within thirty (30) days of submission to the federal agency.
- C. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.
- Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.
- D. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws or regulations may result

Phase 0

in all or a portion of the Grant Funds becoming subject to recoupment by City. If all or any portion of the Grant Funds become subject to recoupment, City will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.

- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- J. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- K. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to Eligible Costs in accordance with this Agreement and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Project Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- L. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- M. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Grantee's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require

Phase 0

the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.

- N. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 2. items that reflect detrimentally on the credit worthiness of Grantee;
 3. pending litigation, liens and encumbrances on the assets of Grantee;
 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- O. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- P. Grantee grants permission to City to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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

Phase 0

operation of Business Activities at the Project Site, and (b) comply with Grantee's reasonable security requirements.

- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.

Phase 0

- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.
1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
 2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
 3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.

Phase 0

4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

Phase 0

- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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.

Phase 0

- C. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said

Phase 0

termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly

Phase 0

employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Employee Dishonesty Liability Insurance	\$2,000.00

Phase 0

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

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

- F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:
- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
 - Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
 - Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.
- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.
- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.
- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

Phase 0

- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

- A. **GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

Phase 0

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
City of San Antonio
Attn: Economic Development
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for GRANTEE, to:
Maverick BioMetals, Inc.
Jesse Evans
1305 E. Houston St.
San Antonio, TX 78205

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld,

Phase 0

conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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.

This space intentionally blank.

Phase 0

SECTION 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

MAVERICK BIOMETALS, INC.

Erik Walsh
City Manager

Jesse Evans

Jesse Evans

Date

2/15/2024

Date

Approved as to Form:

Assistant City Attorney

Phase 0

Phase 0

Exhibit A - Project Description**Project Description for Phase I Proposal:**

The shift from fossil fuels to renewable energy sources is also a shift in the demand for metals. Critical metals, such as lithium, rare earth elements, copper, and nickel, are necessary for the next generation of batteries for electric vehicles and stationary energy storage. Traditional metallurgical extraction processes are energy intensive, ineffective for low-concentration ores, environmentally hazardous, and expensive. Most of the production and refinement of these metals are currently controlled by China, and while the US has mineable resources, there is a lack of extraction and refinement capabilities in the country.

Although the US possesses significant reserves of recoverable lithium, most of them are locked up in low-grade resources that are difficult to process using these conventional extraction methods. One such resource is hectorite, a mineral that exists as an admixture in clay deposits with no effective process to concentrate it from those deposits. Lithium is found in hectorite crystals, and its extraction requires an energy – and reagent–intensive acid-roasting process.

Maverick BioMetals is developing an alternative process to this acid roasting for lithium extraction from clays by using enzymes. Biological extraction via enzymatic digestion presents a viable alternative, as engineered and optimized forms of certain enzymes can be used to depolymerize silicate ores and liberate metal ions into aqueous solutions at near-ambient temperature and without the need for a high-energy acid separation step. Specifically, Maverick will evolve optimized semisynthetic homologs of the gamma carbonic anhydrase (γ -CA) enzyme family to demonstrate hydrolysis of the crystal structure of hectorite clays, with the end goal of replacing the expensive and energy-intensive acid roasting extraction process. The innovative and unique process has the potential to lower the environmental impacts of extracting lithium and other metals found in hectorite clays and would enable an economical and strategic domestic supply of lithium in the US and allied countries.

While Maverick has previously tested a library of enzymes to liberate lithium from hectorite, more work remains to elucidate the mechanism of action of the novel reaction, the protein motifs and their specific effects on the catalysis as well as understanding the effects of a range of operating conditions on the reaction.

At the end of this Phase I project period, Maverick BioMetals aims to have demonstrated feasibility of the enzymatic digestion process as a biological replacement for the traditional acid roasting method used for lithium extraction from clays. The technology is currently at TRL 3 with experimental evidence of enzyme-mediated silica depolymerization at the test tube scale under laboratory conditions.

The key technical barriers that Maverick plans to overcome with Phase I support include (1) Defining and understanding the depolymerization mechanism of the activity observed in the wild type enzyme, (2) Establishing a robust and scalable activity assay to measure depolymerization. (3) Establishing the optimal operational parameters for the reaction and (4) Engineering and testing enzyme variants with the goal of increasing depolymerization to commercially competitive rates.

Phase 0

A major scientific challenge of the innovation is understanding the exact mechanism of action of silica depolymerization on the basis of molecular dynamics between individual protein motifs and the substrate with the goal of improving the efficiency of the reaction on a specific mineral type. Understanding the specific mechanism and the role each motif involved plays is essential to the enzyme engineering effort and will further inform the operational conditions in which the reaction is carried out in the lab as well as in larger scales.

If successful, the learnings and results from Phase I will build toward a Phase II development, with the goal of demonstrating a fully integrated pilot project/demonstration. The R&D plan in Phase II will focus on (1) Scaling the depolymerization reaction to a pilot scale sufficient to inform the design of the full-scale plant, (2) Process optimization to increase the depolymerization reaction and (3) A product formation study and quality control process for the final lithium product produced from the reaction.

The described experimental plan will yield critical knowledge and expertise needed to advance the technology toward commercial demonstration. Following the end of the grant (Phases I and II), Maverick will continue to scale up the technology with support from industry partners and project developers. These partnerships will eventually lead to a demonstration plant in a real environment, which, if successful, will be followed by commercial deployment where a single project would lead to the production of 50 metric tons LCE/yr.

Phase 0

Exhibit B - Project Budget

The consultant, Eagle Point Funding LLC, is contracted with Maverick for a span of 9 months and is responsible for overseeing the company's entire grant process. They work to secure non-dilutive US federal funding and contracts from the DoD (including AFWERX and DARPA), NASA, DHS, DoE, NSF, and other U.S. Federal agencies. The systematic process, multi-submission strategy, and decades of experience maximizes chances to win substantial funding without sacrificing any equity in return.

By contract, Maverick BioMetals pays Eagle Point Funding (EPF) \$15,333 every 3 months for grant consultancy services. The Phase I proposal will take approximately one month to complete from start to finish, meaning a total of \$5,111 will be paid to EPF for their work to submit this Phase I application.

Phase 0

Exhibit C – Program Guidelines

SBIR/STTR PHASE 0 GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Phase 0 SBIR/STTR (Small Business Innovation Research/Small Business Technology Transfer) Grant Program (“Program”) is designed to assist San Antonio-based companies to diffuse the costs of developing and submitting federal SBIR/STTR grant proposals.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available is capped at no more than \$10,000.00 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2. Eligible companies may qualify for up to \$2,000 in Program funding per company, per fiscal year.
- 2.3 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.4 Total Award Funded Per Applicant. Applicants (including any other applicant that is “commonly owned” with such applicant) who have previously been awarded for a project under this Program are ineligible to receive another award for the same project. For purposes of this Section 2.5, applicants are “commonly owned” if they are at least 51% owned or controlled, directly or indirectly, by the same person or entity.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.
- 3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

Phase 0

Date Published: August 11, 2023
Edition: 3

3.2 Applicant Requirements:

- A. Applicants must meet the following criteria at the time their application to the City for Program funding is made. Applicant:
 - 1. Is a for-profit, privately owned business*;
 - 2. Employs 40 employees or less;
 - 3. Must provide documentation demonstrating participation in a capacity building and/or accelerator program on or after January 1st, 2022;
 - 4. Must meet the requirements set forth in the applicable SBIR/STTR federal agency solicitation; and
 - 5. Has received no prior (0) SBIR/STTR award(s).

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).

- B. Applicant must be headquartered in the City of San Antonio at the time the application is made and if awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase 0 City Program award.
- C. The Applicant must not have received City Program funding prior to the time of application.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the creation and submission of federal Phase I SBIR/STTR application proposal. These costs include but are not limited to:
 - A. Technical assistance costs;
 - B. Consulting services for federal Phase I SBIR/STTR application;
 - C. Travel to meet with federal agencies and commercialization partners;
 - D. Project data development; and
 - E. Other activities directly related to Applicant's federal Phase I SBIR/STTR proposal.

V. INELIGIBLE USE OF FUNDS

- 5.2 Use of City Program funds may not be used for the following:
 - A. Indirect expenses;
 - B. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - C. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;

Phase 0

Date Published: August 11, 2023

Edition: 3

- D. Recoupment of personal investment;
- E. Repayment of debt;
- F. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council consideration or not recommend award. Incomplete or non-compliant applications will not be considered.
- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee ("EWDC") and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.

Phase 0

Date Published: August 11, 2023
Edition: 3

6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR PHASE 0 GRANT PROGRAM

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients must provide EDD a copy of any resulting proposal submitted to the federal agency, along with email submission confirmation within thirty (30) days of submission to the federal agency.
- 7.3 Recipients must provide supporting documentation of qualified expenses directly related to the creation and submission of a Phase I application proposal.
- 7.4 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.5 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.
- 7.6 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent five (5) year period.
- 7.7 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

Phase 0

Date Published: August 11, 2023

Edition: 3

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclosure by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase II

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR" or "CITY"), acting by and through its City Manager or his designee, and MedCognition, Inc. a corporation organized and existing under the laws of the State of Texas (hereinafter referred to as "GRANTEE"). In this Agreement, GRANTOR and GRANTEE may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase II Grant through the National Institute of Environmental Health Sciences for a project intended to develop Realistic HAZMAT Training Simulations with the PerSim® Augmented Reality Patient Simulator (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic

SBIR/STTR Phase II

development and to stimulate business and commercial activity in the City of San Antonio in accordance with the purpose of Chapter 380 of the Texas Local Government Code ("Chapter 380"). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below ("Effective Date") and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the "Term").

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the Department of Health and Human Services, National Institute of Environmental Health Sciences, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 1305 E. Houston St., San Antonio, Texas ("Project Site"). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. GRANTEE shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the and activities typically conducted by the corporate headquarters of a bioscience company (all of such activities hereafter collectively referred to as the "Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase II

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **SEVENTY-FIVE-THOUSAND DOLLARS AND NO CENTS (\$75,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to: 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee within thirty (30) days of the Effective Date of this Agreement.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.
- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent

SBIR/STTR Phase II

search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.

2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the Project Site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
 - G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
 - H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
 - I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
 - J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
 - K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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

SBIR/STTR Phase II

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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- B. Grantee agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- C. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.

SBIR/STTR Phase II

- D. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- E. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- F. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- G. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- I. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- J. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- K. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- L. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- M. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;

SBIR/STTR Phase II

4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- N. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- O. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.

SBIR/STTR Phase II

- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.

SBIR/STTR Phase II

C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.

SBIR/STTR Phase II

6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this

SBIR/STTR Phase II

Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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.

SBIR/STTR Phase II

SECTION 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor

SBIR/STTR Phase II

shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SBIR/STTR Phase II

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$75,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall

SBIR/STTR Phase II

provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.

- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

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

- F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SBIR/STTR Phase II

SECTION 21. INDEMNITY

A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;

SBIR/STTR Phase II

- 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; or
- by electronic mail (“email”) to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

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

If intended for GRANTEE, to:

MedCognition
John Quarles
1305 East Houston Street, Ste 401
San Antonio, TX 78205
john.quarles@medcognition.com

Notices of changes of address by either party must be made in writing and delivered to the other party’s last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld,

SBIR/STTR Phase II

conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor’s right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee’s reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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.

This space intentionally blank.

SBIR/STTR Phase II

SECTION 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

MEDCOGNITION, INC.

John Quarles

Erik Walsh
City Manager

John Quarles

Date

Approved as to Form:

Assistant City Attorney

Exhibit A - Project Description

PROJECT TITLE: EXPANDED TREATMENTS FOR THE PERSIM AUGMENTED REALITY-BASED PATIENT SIMULATOR

Project Summary/Abstract and Key Objectives

The current HAZMAT training simulations are sufficient when it comes to effectively preparing trainees to recognize symptoms and provide treatment for the population they serve. The usual simulation methods involve using mechanical mannequins and having people act as patients, which have shown to be better than traditional reading and lectures in terms of learning. But they lack the realism needed to trigger an emotional response in trainees, which is important for better learning and performance. Based on existing research, all the 30+ people we interviewed during our customer discovery activities and the 100+ institutions that purchased PerSim® agree that the current simulation approaches have major deficiencies in terms of realism, portability, and affordability. The current training methods don't fully prepare HAZMAT teams for real-world situations, which is what our Phase II SBIR project, supported by the National Institute of Environmental Health Sciences, aims to tackle.

MedCognition's long term goal is to enable affordable, portable, and realistic patient simulation with PerSim®, which superimposes realistic simulated patient visuals and sounds into the trainee's surrounding environment (e.g., the back of an ambulance) via augmented reality. The overall objective of this Phase II matching grant application is to further refine and increase the realism of the treatments in PerSim - our novel augmented reality-based approach to patient simulation. As a result of the current SBIR Phase II project, MedCognition's commercialized patient simulator, PerSim®, can present numerous common HAZMAT-specific scenarios. Based on requests from our current customers, there is still a significant need for a more complete set of patient treatments, such as an oropharyngeal airway, traction splints, and an automated compression device. Choosing the right treatment is a critical decision-making skill both for HAZMAT personnel, and emergency medical personnel in general. However, these options were not in the original scope of work for our awarded Phase II.

Specific Aim 1: Create art to enable a more complete set of patient treatments for PerSim® - This work will involve generating 3D art to realistically represent treatments. This involves working with a 3D medical artist to generate the digital art files.

Specific Aim 2: Integrate Art into Persim to Enable More Patient Treatments - The digital art files for the treatments must be integrated into PerSim software so that trainees and instructors can use them. This involves software development and user-centered interface design activities to ensure an easy to use and performant user experience.

Specific Aim 3: Acquire new customers and subscription renewals from existing customers leveraging the proposed new patient treatments - We propose to hire an additional salesperson to help expand our customer base, utilizing the new content to help acquire new customers and increase value for current customers.

Expected Outcomes: The team expects to have a commercially ready set of realistic patient treatments that are delivered through our innovative AR-based approach. We expect that all trainees who use PerSim® will be better prepared to recognize symptoms, provide treatment in real world operations, and more effectively save lives.

SBIR/STTR Phase II

Exhibit B - Project Budget**Budget**

total								\$75,000
	rate	hours	mont hs	12 mo salary	Effort %	Direct Labor	fringe rate	fringe
Direct Labor							TOTAL:	\$53,170
Sohail Baig	\$75.03	321.14 6	1.92	\$150,000	16%	\$24,096	36.00%	\$8,674
new salesperson	\$30.01	499.8	3	\$60,000	25%	\$15,000	36.00%	\$5,400
Other Direct Costs								
art services								\$21,830

Budget Justification**A. Senior/Key Personnel**

Salary and fringe support are requested for M. Sohail Baig at 1.92 person months for the duration of the grant. PI Baig is employed by MedCognition, Inc. as a full-time employee. He will be responsible software development needed to integrate the proposed treatments into PerSim.

Salary and fringe support are requested to hire a new salesperson (Senior Account Executive) for 3 person months for the duration of the grant. The new salesperson will help to obtain new customers and current customer renewals, focusing on the newly created features developed as part of MedCognition's phase II SBIR from HHS and the additional treatments proposed as part of the matching grant. We plan to prioritize hiring San Antonio residents.

F. Other Direct Costs

Fee for service – \$21,830 We plan to contract Mr. Sam Newman, 3D medical artist, to create the following art for integration into PerSim:

Bag-valve-mask/Mask - Split Model - \$100
 endotracheal tube tamer - All Patients - \$1,380
 endotracheal tube with ventilator - 1 size - \$460
 Stoma/trachea intubation - All Patients - \$1,840
 oropharyngeal airway (multiple sizes) - All Patients - \$460
 nasopharyngeal airway (multiple sizes) - All Patients - \$340
 Football helmet - Adult Male - \$690
 Football shoulder pads - Adult Male - \$690
 Motorcycle helmet - Adult Male/Female - \$575
 Stoma/tracheal mask/BVM - All Patients - \$1,840
 Long spine board - Adult and Pediatric - \$1,840
 Evisceration management - Adults - \$575

SBIR/STTR Phase II

Sager traction splints - Adult and Child - \$1,840
Hare traction splint - Adult and Pediatric - \$1,840
Kendrick traction device - Adult and Pediatric - \$1,610
12 lead electrodes on body - Adult and Pediatric - \$460
Seated spine immobilization - Adult and Child - \$1,610
Car seat - Baby/Neonate posed - \$1,380
Automated compression device w/animations - Adult and Child - \$2,300

H. Indirect Costs

Indirect costs are not being charged for the matching grant

Total Project Budget: \$75,000

SBIR/STTR Phase II

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase II

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase II

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase II

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase II

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 - 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 - 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase II

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

Phase 0

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR"), acting by and through its City Manager or his designee, and Pirate Wind Turbines, a Sole Proprietorship (hereinafter referred to as "GRANTEE"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Phase 0 Grant Program ("Grant Program") was created to assist businesses headquartered in San Antonio to diffuse the costs of developing and submitting federal SBIR/STTR grant proposals; and

WHEREAS, Grantee intends to submit a federal Phase I proposal for Phase I of a Department of the Air Force (DAF) (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance

Phase 0

with the purpose of Chapter 380 of the Texas Local Government Code (“Chapter 380”). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the Department of the Air Force, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 717 E. Guenther St., San Antonio, Texas (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. GRANTEE shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site and activities typically conducted by the corporate headquarters of a Software Publisher company (all of such activities hereafter collectively referred to as the “Project 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 25 of this Agreement).
1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the City, as evidenced in an

Phase 0

amendment to this Agreement, signed by both Parties. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 15 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. 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 Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, the Grantor will make the Grant Funds available to Grantee in an amount not to exceed \$2,000.00 upon approval of City Council and execution of the Agreement.
- C. Grantee agrees City will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the grant award and Grant Agreement will be terminated. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all Phase 0 SBIR/STTR Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if City determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, City reserves the right to reduce the amount of Grant Funding.

Phase 0

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to technical assistance costs; consulting services for federal Phase I SBIR/STTR application; travel to meet with federal agencies and commercialization partners; project data development; other activities directly related to Grantee's federal Phase I SBIR/STTR proposal; and costs approved by Grantor.
 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: indirect expenses; projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must provide supporting documentation of qualified expenses directly related to the creation and submission of a Phase I application proposal.
- G. Grantee must reimburse Grantor any Grant Funds expended on an ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- H. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- I. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- J. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- K. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- L. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

Phase 0

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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 Grants 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 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. Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for annual disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. Grantee shall provide EDD a copy of any resulting proposal submitted to the federal agency, along with the email submission confirmation, within thirty (30) days of submission to the federal agency.
- C. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

Phase 0

- D. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws or regulations may result in all or a portion of the Grant Funds becoming subject to recoupment by City. If all or any portion of the Grant Funds become subject to recoupment, City will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- E. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- F. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- G. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- H. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- I. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- J. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- K. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to Eligible Costs in accordance with this Agreement and consistent with budgeted line items in the applicable Budget. Approved Budget Revisions (*total Project Budget remains the same*) and Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- L. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.

Phase 0

- M. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Grantee's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- N. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 - 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- O. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- P. Grantee grants permission to City to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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

Phase 0

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.

- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.

Phase 0

5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.
1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
 2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.

Phase 0

3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

Phase 0

- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.

Phase 0

- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the 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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons

Phase 0

other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).

- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee 's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

Phase 0

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a “business” and if the Grantor’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio’s Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent’s signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio’s Economic Development Department. No officer or employee, other than Grantor’s Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee’s sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee

Phase 0

claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$2,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:
- City of San Antonio
Attn: Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966
- F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:
- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
 - Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
 - Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
 - Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.
- I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

Phase 0

- J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.
- K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.
- L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

- A. **GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

Phase 0

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:

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

If intended for GRANTEE, to:

Pirate Wind Turbines
Dan March
717 E. Guenther St.
San Antonio, TX 78210

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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.

Phase 0

SECTION 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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.

This space intentionally blank.

Phase 0

SECTION 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

PIRATE WIND TURBINES

Erik Walsh
City Manager



Dan Marsh

Date



Date

Approved as to Form:

Assistant City Attorney

Phase 0

Exhibit A - Project Description

Company Description:

We at Pirate Wind Turbines are developing new, small wind turbine generator technology, which should change the industry worldwide, forever. The technology we are developing will address and solve many problems plagued with the small wind turbine industry of today. Problems with existing small wind turbines include but are not limited to, have to slow down so it doesn't make too much power, noisy vibrations in high wind, they don't work in high winds or must be shut down, can easily make too much power in high winds, need expensive electronic braking systems, cannot tie into solar power systems very easily.

Our small wind turbine technology will allow several to be tied together in parallel, allowing for multiple to run together creating a better, more reliable "Integrated Redundancy Power System" for micro-grid applications.

Our technology will also create an easier installation process with existing solar power systems due to the 'Plug and Play' feature. Our technology is being designed to take advantage of existing solar charge controllers without the need for 'wind' algorithms, or electronic braking systems in high winds.

We tested a 'Proof of Concept' at Southwest Research Institute' SwRI and had success.

To sum things up, we are developing the next generation small wind turbine for home owners, commercial buildings, commercial solar farms, rural homes, farmers, ranchers and outdoor enthusiast and we need financial assistance. Our wind turbines should out-perform all other brands, will be high wind/speed capable and should have less vibration than other brands.

Phase 0

Exhibit B - Project Budget

To have a Phase 1 proposal written, takes about \$6,000. The \$2,000 grant will help offset costs by 30%. To build a portable wind tunnel and to build a fully functional prototype is around \$75,000. Testing and documentation from a university or company like SwRI could be another estimated \$75,000.

Phase 0

Exhibit C – Program Guidelines

SBIR/STTR PHASE 0 GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Phase 0 SBIR/STTR (Small Business Innovation Research/Small Business Technology Transfer) Grant Program (“Program”) is designed to assist San Antonio-based companies to diffuse the costs of developing and submitting federal SBIR/STTR grant proposals.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available is capped at no more than \$10,000.00 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2. Eligible companies may qualify for up to \$2,000 in Program funding per company, per fiscal year.
- 2.3 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.4 Total Award Funded Per Applicant. Applicants (including any other applicant that is “commonly owned” with such applicant) who have previously been awarded for a project under this Program are ineligible to receive another award for the same project. For purposes of this Section 2.5, applicants are “commonly owned” if they are at least 51% owned or controlled, directly or indirectly, by the same person or entity.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.
- 3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

Phase 0

Date Published: August 11, 2023
Edition: 3

3.2 Applicant Requirements:

- A. Applicants must meet the following criteria at the time their application to the City for Program funding is made. Applicant:
 - 1. Is a for-profit, privately owned business*;
 - 2. Employs 40 employees or less;
 - 3. Must provide documentation demonstrating participation in a capacity building and/or accelerator program on or after January 1st, 2022;
 - 4. Must meet the requirements set forth in the applicable SBIR/STTR federal agency solicitation; and
 - 5. Has received no prior (0) SBIR/STTR award(s).

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).

- B. Applicant must be headquartered in the City of San Antonio at the time the application is made and if awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase 0 City Program award.
- C. The Applicant must not have received City Program funding prior to the time of application.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the creation and submission of federal Phase I SBIR/STTR application proposal. These costs include but are not limited to:
 - A. Technical assistance costs;
 - B. Consulting services for federal Phase I SBIR/STTR application;
 - C. Travel to meet with federal agencies and commercialization partners;
 - D. Project data development; and
 - E. Other activities directly related to Applicant's federal Phase I SBIR/STTR proposal.

V. INELIGIBLE USE OF FUNDS

- 5.2 Use of City Program funds may not be used for the following:
 - A. Indirect expenses;
 - B. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - C. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;

Phase 0

Date Published: August 11, 2023

Edition: 3

- D. Recoupment of personal investment;
- E. Repayment of debt;
- F. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council consideration or not recommend award. Incomplete or non-compliant applications will not be considered.
- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee ("EWDC") and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.

Phase 0

Date Published: August 11, 2023
Edition: 3

6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR PHASE 0 GRANT PROGRAM

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients must provide EDD a copy of any resulting proposal submitted to the federal agency, along with email submission confirmation within thirty (30) days of submission to the federal agency.
- 7.3 Recipients must provide supporting documentation of qualified expenses directly related to the creation and submission of a Phase I application proposal.
- 7.4 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.5 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.
- 7.6 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent five (5) year period.
- 7.7 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

Phase 0

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Edition: 3

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclosure by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase I

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "GRANTOR" or "CITY"), acting by and through its City Manager or his designee, and Stembiosys, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as "GRANTEE"). In this Agreement, GRANTOR and GRANTEE may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City of San Antonio's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase I Grant through the Department of Health and Human Services for a project intended to develop a robust native extracellular matrix to improve islet function with attenuated immunogenicity for transplantation (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic

SBIR/STTR Phase I

development and to stimulate business and commercial activity in the City of San Antonio in accordance with the purpose of Chapter 380 of the Texas Local Government Code ("Chapter 380"). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below ("Effective Date") and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the "Term").

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the National Science Foundation, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 3463 Magic Dr., Ste 110, San Antonio, Texas ("Project Site"). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. GRANTEE shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the and activities typically conducted by the corporate headquarters of a bioscience company (all of such activities hereafter collectively referred to as the "Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase I

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **FIFTY-THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** (“Grant Funds”), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee’s economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee in the manner set forth below:
 1. An amount not to exceed THIRTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$37,500.00) within thirty (30) days of the Effective Date of this Agreement.
 2. An amount not to exceed TWELVE THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$12,500.00) upon Grantee submission to the City of the following:
 - a. An accepted Final Phase I Report to awarding federal agency; and
 - b. An accepted City of San Antonio Final Phase I Report.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee’s compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this

SBIR/STTR Phase I

Agreement and further funding, if Grantor determines that such action is appropriate. If estimated total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
 - 1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.
 - 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.
- K. Any Grant Funds not expended before the end of this Agreement shall be returned to Grantor within fourteen (14) calendar days of said time.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds hereunder shall be subject to, and made solely from, annual appropriations of Grantor in the budget year in which

SBIR/STTR Phase I

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 Grants 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 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.** Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.
- Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.
- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.

SBIR/STTR Phase I

- E. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.
- F. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- G. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- H. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- I. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- J. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- K. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- L. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Grantee's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- M. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;

SBIR/STTR Phase I

3. pending litigation, liens and encumbrances on the assets of Grantee;
 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or
 5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- N. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- O. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.

SBIR/STTR Phase I

- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.
- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.

SBIR/STTR Phase I

C. Grantee acknowledges that 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, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SBIR/STTR Phase I

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under

SBIR/STTR Phase I

the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the default within the

SBIR/STTR Phase I

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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon

SBIR/STTR Phase I

notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

- F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:
1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
 2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
 3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.
- G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.
- H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SECTION 19. 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

SBIR/STTR Phase I

between Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$50,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:
- City of San Antonio
Attn: Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

SBIR/STTR Phase I

F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents,

SBIR/STTR Phase I

employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

If intended for GRANTOR, to:
City of San Antonio
Attn: Economic Development
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for GRANTEE, to:
StemBioSys
Bob Hutchens
3463 Magic Dr., Ste 110
San Antonio, Texas 78229
bob.hutchens@stembiosys.com

SBIR/STTR Phase I

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SECTION 27. 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:

SBIR/STTR Phase I

- Exhibit A - Project Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

STEMBIOSYS, INC.

Erik Walsh
 City Manager

Bob Hutchens

Bob Hutchens

Date

2/14/2024

Date

Approved as to Form:

Assistant City Attorney

SBIR/STTR Phase I

Exhibit A - Project Description

Project Title

Developing a robust native extracellular matrix to improve islet function with attenuated immunogenicity for transplantation

Project Summary/Abstract

Compared to multiple daily insulin injections, pancreatic islet transplantation for type 1 or the latter stages of type 2 diabetes is able to normalize blood glucose via maintenance of physiological insulin levels which is vital for minimizing severe hypoglycemia and diabetic complications. However, a shortage of donors, loss of allograft function over time, and the need for lifelong immunosuppression must be resolved before this approach can be considered a reliable treatment. **The overall goal of this proposal is to improve islet transplantation by developing an extracellular matrix-based culture system, which is a surrogate for the pancreatic microenvironment, to obtain large quantities of high-quality allogenic islets with attenuated immunogenicity.**

Recently, we reported that culture of rat pancreatic islets on a native ECM generated by tissue-specific stromal cells significantly promoted the growth of islet vascular endothelial cells (VECs), decontaminated freshly isolated islets of “passenger” cells, increased production of islet-basement membrane (bm) associated proteins (e.g. FN & collagen VI), and improved β -cell function. Further, islet immunogenicity was attenuated after decontamination of “passenger” cells and restoration of type VI collagen in the islet-bm. To pursue clinical applications, we propose to prepare a robust native ECM, employing Good Manufacturing Practice (GMP), using human amniotic fluid-derived cells that exhibit pluripotent stem cell-like properties and mainly produce collagen IV and basement membrane components that are similar to those in pancreatic ECM, and extend our previous study in rats to human subjects. We hypothesize that maintenance of islets on ECM generated by amniotic fluid-derived cells (AF-ECM) will facilitate the recovery of large numbers of high-quality islets with decreased immunogenicity in humans. To test this hypothesis and demonstrate the feasibility of our approach, we will work with a contract manufacturing partner to produce our newest product, CELLvo™ Matrix Plus, in a GMP format for use in manufacturing clinical-grade islets. Additionally, we will do testing to confirm equivalency between the GMP version and the current research use only version. If the proposed work is successful, it will provide the necessary preliminary data and rationale to move toward a small-scale clinical trial and to commercialize a new, GMP-grade version of our matrix product for use in the manufacture of cell products for clinical applications.

SBIR/STTR Phase I

Exhibit B - Project Budget**Budget Justification****Overview**

StemBioSys Budget	\$200,000
UTHSA Budget	\$100,000
Total Budget	\$300,000

Senior Personnel	\$40,365
	\$5,000
	\$35,000
	\$14,635
Other Technical Support Personnel	\$10,000
Fringe on Salaried Employees	\$27,000
Travel	\$4,000
Other/Direct Costs	\$84,000
Other/Facility Rental Fees	\$43,500
Indirect Costs	\$50,600
Small Business Fee	\$25,900
Total Budget	\$340,000

Use of Matching Funds

If received, matching funds would be used to defray the cost of studying our approach to treat diabetes in an animal model of diabetes. It is well established that treatment with streptozitocin induces a T1 Diabetes state in small and large animal models. Using the \$50,000 we will take the logical next step of proving that we can correct T1 diabetes in the short and medium term in a small animal (rat) model. This work would substantially improve our ability to successfully apply for a \$2M Phase II NIH SBIR Grant.

SBIR/STTR Phase I

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase I

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase I

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase I

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee (“EWDC”) and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase I

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 - 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 - 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase I

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.

SBIR/STTR Phase I

STATE OF TEXAS

§

ECONOMIC DEVELOPMENT

§

GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§

CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as this "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 "Grantor" or "City" acting by and through its City Manager or his designee, and SygnaMap, Inc., a corporation organized and existing under the laws of the State of Texas (hereinafter referred to as "Grantee"). In this Agreement, Grantor and Grantee may together be referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, Grantor is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality, and to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth; and

WHEREAS, in accordance with City Ordinance No. 100684, Grantor created an economic development program to make such grants available; and

WHEREAS, the City's Small Business Innovation Research and Small Business Technology Transfer ("SBIR/STTR") Matching Grant Program ("Grant Program") was created to further bolster the efforts of businesses headquartered in San Antonio who have received a federal SBIR/STTR award and to support San Antonio small businesses that have a high potential for growth due to their ability to create innovative solutions that demonstrate commercial applicability; and

WHEREAS, Grantee has been awarded a Small Business Innovation Research (SBIR) Program Phase I Grant through the National Science Foundation for a project intended to develop a computational platform to infer causative pathways of pathology using spatial omics data (the "Project"); and

WHEREAS, once completed, the Project will achieve the intent and purpose of Chapter 380 by promoting local economic development and stimulating business and commercial activity in the City of San Antonio; and

WHEREAS, as an incentive to undertake and complete the Project, Grantee is seeking an economic development grant from Grantor to defray the costs associated with the Project; and

WHEREAS, Grantor, to induce Grantee to undertake and complete the Project, has identified lawfully available funds to provide a financial grant to Grantee for use in undertaking and successfully completing the Project in accordance with the terms and conditions of this Agreement; **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 purpose of this Agreement is for the Grantor to assist the Grantee through an economic development grant to undertake the Project at the Project Site. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance

SBIR/STTR Phase I

with the purpose of Chapter 380 of the Texas Local Government Code (“Chapter 380”). Grantor is supporting the Project through lawfully available funds which shall be used by Grantee to defray costs associated with the Project. The economic incentive being offered by Grantor to Grantee is in furtherance of promoting investment and commercial activity in the City of San Antonio.

SECTION 2. TERM

The term of this Agreement shall commence on the last date all Parties have signed, as indicated by the dates in the signature blocks below (“Effective Date”) and shall continue in full force and effect for a period of three (3) years unless terminated pursuant to the provisions herein (the “Term”).

SECTION 3. PROJECT REQUIREMENTS

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the National Science Foundation, State of Texas, Bexar County, and the City of San Antonio as they may relate to the Project, in order to be in compliance with the terms of this Agreement and to receive the economic development incentive provided for hereunder, Grantee must satisfy the following requirements:

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 3463 Magic Dr, Ste T5, San Antonio, Texas (“Project Site”). Grantee agrees to remain headquartered at the Project Site through the Term of this Agreement. Grantee shall own, hold an interest in (fee simple or leasehold) or otherwise control the Project located at the Project Site.
 1. Construction Law. 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.
 2. Good Repair. Grantee covenants and agree that they shall maintain the Project Site and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the gross negligence, intentional act or misconduct of Grantees excepted.
 3. Employment Law. Grantee covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees, with respect to its employees at the Project Site.
- B. Project Activities. Grantee shall own, hold an interest in or otherwise control the Project Site, and conduct at the Project Site research and development activities related to the completion of the Project and activities typically conducted by the corporate headquarters of a Bioscience company (all of such activities hereafter collectively referred to as the “Project 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 25 of this Agreement).
 1. Changes of Use. Except as authorized above, Grantee covenants and agrees not to change the overall Project Activities of the Project Site without prior approval by the Grantor, as evidenced in an amendment to this Agreement, pursuant to Section 14. Any change shall be deemed a material default of this Agreement and may result in a loss or recapture of the Grant Funds to be provided to Grantee under this Agreement.

SBIR/STTR Phase I

2. Relocation/Cessation of Project Activities. Grantee covenants and agrees to notify Grantor in writing at least thirty (30) days prior to any plan to relocate (as defined in Section 16 herein) or cease its performance at the Project Site during the term of this Agreement and the subsequent three (3) year survey period. Failure to provide the required notification shall render Grantee in material default of this Agreement and subject Grantee to the termination of this Agreement and recapture of all disbursed funds.
- C. Compliance. Grantee shall comply with all other terms of this Agreement applicable to Grantee. Additionally, Grantee shall comply with all other federal, state, and local agreements applicable to the Project.

SECTION 4. ECONOMIC DEVELOPMENT PROGRAM GRANT

Following approval of this Agreement by a duly authorized City Ordinance and execution of this Agreement by the Parties, and in exchange for Grantee undertaking and completing the Project at the Project Site, Grantor will provide an economic development incentive grant to Grantee as follows:

- A. Economic Development Program Grant. Grantor is providing Grantee with an Economic Development Program Grant in the cumulative maximum amount of **FIFTY-THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** ("Grant Funds"), subject to Grantee meeting the terms and conditions of this Agreement. The purposes of the Grant Funds are to 1) attract and retain Grantee to the Project Site; 2) enhance Grantee's economic feasibility of locating the Project at the Project Site; and 3) incentivize Grantee to conduct its Project Activities at the Project for the Term of this Agreement.
- B. Grant Disbursement. Grantor will make the Grant Funds available to Grantee in the manner set forth below:
 1. An amount not to exceed THIRTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$37,500.00) within thirty (30) days of the Effective Date of this Agreement.
 2. An amount not to exceed TWELVE THOUSAND FIVE-HUNDRED DOLLARS AND NO CENTS (\$12,500.00) upon Grantee submission to the City of the following:
 - a. An accepted Final Phase I Report to awarding federal agency; and
 - b. An accepted City of San Antonio Final Phase I Report.
- C. Grantee agrees Grantor will transfer Grant Funds via ACH to the bank account indicated on the attached ACH Authorization Form. Grants funds must be transferred and maintained in a bank insured with the Federal Deposit Insurance Corporation (FDIC). If unable to deliver to the designated account after fourteen (14) days from the initial delivery attempt, the Grant Agreement will be terminated, and all Grant Funds allocated to Grantee shall revert to the Grantor. Grantee agrees to register as a vendor with the City of San Antonio within thirty (30) days from the Effective Date of this Agreement using the following link:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-vendor>.
- D. Grant funding is contingent upon Grantee's compliance with all SBIR/STTR Matching Grant Program Guidelines, Chapter 380, the City of San Antonio Economic Development Chapter 380 Policy, City of San Antonio EDIF Guidelines, submission and acceptance of all reports described in this Agreement, and all other terms and conditions set forth in this Agreement. On the basis of its review of these reports and/or other pertinent information, Grantor reserves the right to suspend or terminate this Agreement and further funding, if Grantor determines that such action is appropriate. If estimated

SBIR/STTR Phase I

total expenditures are significantly less than the grant amount, Grantor reserves the right to reduce the amount of Grant Funding.

- E. The use of the Grant Funds is solely for costs incurred that are used to carry out the Project Activities set forth in the Project Description (**Exhibit A**) and in accordance with the Project Budget (**Exhibit B**).
1. Eligible Use of Funds. The use of Grant Funds is for eligible costs that are incurred during the term of this Agreement. Eligible costs include but are not limited to: direct costs for additional technical work; product testing and validation; intellectual property protection; market research; patent search; business development plan; hiring of new high paying technical and business employees; small equipment; and costs approved by Grantor.
 2. Ineligible Use of Funds. Use of City Grant Funds may not be used for the following: projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site; Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program; recoupment of personal investment; repayment of debt; deposits into pension funds or other reserves; debt service; replenishing financial reserves; use in satisfaction of settlements or judgments; either directly or indirectly, to pay costs or attorney fees in any adversarial proceeding against City or any other public entity; or those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.
- F. Grantee must reimburse Grantor any Grant Funds expended on any ineligible use within ten (10) business days of Grantor's written notification to Grantee, or Grantee becoming aware of its existence.
- G. If Grantee receives a refund or credit for any cost for which it received a payment of Grant Funds, Grantee shall notify Grantor and return the Grant Funds in the amount equal to the refund or credit to Grantor in a manner designated by Grantor, no later than thirty (30) days following receipt of such refund or credit.
- H. Grantee will determine prior to engaging in the Project and expending Grant Funds that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the Project.
- I. Recapture of Program Grant. Should Grantee default on any of the terms of this Agreement, Grantor shall have the right to terminate this Agreement in accordance with the provisions provided for in this Agreement and recapture all Grant Funds disbursed by Grantor to Grantee.
- J. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) under this Agreement.

SECTION 5. GRANTOR'S OBLIGATIONS

- A. Grant Payment. Grantor will make an Economic Development Program Grant available to Grantee in accordance with Section 4 above. Grantee acknowledges that the payment of funds 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

SBIR/STTR Phase I

that Grantor does not appropriate funds necessary to pay the Grants 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 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.** Except to the extent otherwise specifically provided for herein, Grantor will not be liable to Grantee or other entity for any costs incurred by Grantee. Grantor's sole obligation is to make Grant Funds available to Grantee for disbursement under the terms and conditions of this Agreement. It is agreed and understood any employee positions of Grantee supported by Grant Funds are not employees of the Grantor. There is no expectation of employment by Grantor. Grantee is responsible for payment, evaluation, and compliance with required laws for Grantee's employees.

SECTION 6. GRANTEE'S OBLIGATIONS

- A. Grantee agrees to complete reports, narratives, and/or surveys provided by Grantor, on the status of the Grantee Business, use of Grant Funds, and impact of Grant Funds, as further described in Section 8 herein.
- B. To align with the objectives of the grant and promote economic development within San Antonio, Grantee agrees to:
1. make a good faith effort to hire local employees whose compensation is sourced from Grant Funds. "Local" is defined, for purposes of this Agreement, as an individual whose principal residence is located within the City limits of the City of San Antonio or within the county limits of Bexar County; and
 2. make a good faith effort to contract with and to purchase from local small businesses throughout the Term of this Agreement.

Such good faith effort shall be deemed to be satisfied by the Grantor if Grantee actively solicits proposals, staff, or equipment from such local area and makes its selection by exercising its reasonable discretion based on economic, commercial, practical, and similar considerations.

- C. It is the sole responsibility of Grantee to ensure compliance with all relevant local, state, and federal laws, regulations, and guidelines. Grantee's failure to comply with such laws, regulations, or guidelines may result in all or a portion of the Grant Funds becoming subject to recoupment by Grantor. If all or any portion of the Grant Funds become subject to recoupment, Grantor will notify Grantee in writing and Grantee shall respond to the recoupment request within thirty (30) days of receiving such notice by returning the identified portion of Grant Funds to Grantor.
- D. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- E. Grantee shall exercise full control over the management and expenditure of the Grant Funds. To determine compliance with Program guidelines and terms and conditions of the Agreement, Grantee may be subject to financial review.

SBIR/STTR Phase I

- F. Grantee shall establish and use generally accepted accounting principles and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and the abuse of Grant Funds. Should Grantee, any employee, or agent of Grantee violate this provision or engage in any such precluded activity, City may terminate this Agreement and require the return of any awarded funds within ten (10) days written notice to Grantee.
- G. Grantee will operate and maintain the Grantee Project Site in accordance with the minimum standards, as may be required or prescribed by any applicable federal, state, and local agencies for the maintenance and operations of such facilities.
- H. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- H. Grantee must also adhere to compliance requirements that are applicable to the specific funding source(s) which are the basis of the Grant Funds and this Agreement.
- I. **Eligible Costs** means *those costs which are necessary, reasonable and allowable under applicable federal, state, and local law for the proper administration and performance of Grant Funds under this Agreement.* Grantor's payment obligation under this Agreement is limited to costs under Eligible Use of Funds, in accordance with this Agreement and consistent with budgeted line items in the applicable Project Budget. Any approved Project Budget Revisions (*total Project Budget remains the same*) and Project Budget Amendments (*an increase or decrease to the total Project Budget*) supersede prior budget documents and all references to the Budget mean the last revised, approved budget.
- J. If Grantee's total deposits in the bank, including all Grantor's funds deposited with the bank, exceed the FDIC insurance limit, then the Grantee must arrange to automatically have the excess collaterally secured. Grantee must provide Grantor a copy of the collateral agreement with the Grantee's banking institution. Advanced funds that cause the Grantee's account balance to exceed the FDIC limit must be deposited in compliance with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code). Grantee shall maintain the FDIC insured bank account in which Grantor funds are deposited and its recordkeeping in a manner that will allow Grantor to track, in detail, expenditures made pursuant to this and all other Grantor contracts.
- K. The City's Director of Finance, the City Auditor, or a person designated by the Director of the Managing City Department may review and approve all Contractor's systems of internal accounting and administrative controls before the release of funds. The Grantor may, in its sole discretion, require the Grantee to use any and all of the Grantor's accounting or administrative procedures used in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement.
- L. Grantee shall maintain financial stability and operate in a fiscally responsible and prudent manner. Grantor may immediately terminate this Agreement if Grantor finds, in its sole discretion, that Grantee's financial condition may impact performance under this Agreement. The Grantor may consider:
 - 1. evidence such as the apparent inability of Grantee to meet its financial obligations;
 - 2. items that reflect detrimentally on the credit worthiness of Grantee;
 - 3. pending litigation, liens and encumbrances on the assets of Grantee;
 - 4. the appointment of a trustee, receiver or liquidator for all or a substantial part of Grantee's property; or

SBIR/STTR Phase I

5. institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against Grantee. Grantee shall provide any records requested by Grantor that Grantor deems necessary to make such a determination.
- M. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- N. Grantee grants permission to Grantor to use photographs of and information about the Project and Project Activities related to Grant Funding in promotional materials and social media.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- A. Retention. Grantee shall maintain all written and/or digital records and supporting documentation (the "Records") necessary to verify that Grantee is meeting or has met all obligations of this Agreement, financial and otherwise. Grantee shall retain such records and any supporting documentation throughout the Term of this Agreement and for five (5) years after the expiration of the Term of this Agreement. Grantee acknowledges and agrees that retention of the Records by Grantee and Grantor's right to inspect the Records for purposes of audit, inspection, examination, making excerpts or copies of same, and for reasons 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.
- B. Access to Records. 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.
- C. In accordance with Texas law, Grantee acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Grantee represents that no local government records produced by or on the behalf of Grantee pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Grantee.
- D. Grantee shall comply with official records retention schedules in accordance with the Local Government Records Act of 1989 and any amendments thereto.

SBIR/STTR Phase I

- E. Beneficiary shall notify City, immediately, in the event Beneficiary receives any requests for Program information from a third party, which pertain to the records. Beneficiary understands and agrees that City will process and handle all such requests.

SECTION 8. REPORTING AND MONITORING

- A. Reporting. The Economic Development Department is responsible for monitoring, fiscal control, and evaluation of the Project funded under this Agreement.
 - 1. Grantee agrees to submit to Grantor compliance reports as to the disposition of funds every ninety (90) days from the Effective Date of this Agreement until submission of the Final COSA Matching Grant Report, as defined further herein, to ensure funds are used in accordance with the Terms of this Agreement.
 - 2. Grantee agrees to complete surveys issued by the Economic Development Department. The surveys are designed to measure the economic impact of the Program and to assist development of the Program. Surveys will be issued to Grantee at six (6) months, eighteen (18) months, and thirty-six (36) months following the Effective Date of this Agreement.
 - 3. Grantee agrees to provide Grantor a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency. If Grantee chooses not to disclose confidential information contained in the Final Report or Technical Report, Grantee may submit to Grantor evidence of submission, such as a copy of the letter transmitting the Final Report or Technical Report, and approval/acceptance by the awarding federal agency.
 - 4. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final COSA Matching Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions. This report must be different than the Final Report or Technical Report submitted to the underlying awarding federal agency.
 - 5. At such times and in such forms as may be required by Grantor, Grantee shall prepare and submit to the Economic Development Department any additional reports, records, data, statements, policies, procedures and information, pertaining to the performance of this Agreement.
- B. Access to Project Site. Grantor reserves the right to confirm Grantee's compliance with the terms and conditions of this Agreement by periodic monitoring, including Project Site visits. Upon five (5) business days prior written notice to Grantee, by Grantor, Grantee covenants and agrees that it shall allow designated representatives of Grantor access to the Project Site during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. Grantor's representatives may be accompanied by Grantee and such inspections shall be conducted in such a manner as to (i) not unreasonably interfere with the operation of the Project Activities; and (ii) comply with Grantee's reasonable safety and security requirements. Any disclosed information that is not required by law to be made public shall be kept confidential by Grantor. This inspection is independent of Grantor's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances.
- C. Grantee acknowledges that 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,

SBIR/STTR Phase I

assembled, or maintained under a law or ordinance or in connection with the transaction of official business, including but not limited to data, image, and/or surveys. The Texas Public Information Act is a series of legislative acts that have been incorporated into the Texas General Code in Title 5, Subchapter A Subtitle 552. The Act is intended to guarantee public access to governmental information in the interest of providing transparency in government. The Public Information Act requires an officer for public information of a governmental body to promptly produce public information for inspection, duplication, or both on application by any person to the officer. While the Public Information Act provides numerous exceptions to disclosure (e.g., information considered to be confidential under other law such as medical conditions and mental health; certain confidential information in personnel files; third party trade secrets, and commercial or financial information, the disclosure of which, would cause substantial harm to the third party; employee's home addresses; home telephone numbers, social security numbers; and other private information), Grantee will endeavor to only report certified information to Grantor required for Grantor to verify Grantee is meeting the requirements and obligations of Grantee under this Agreement by submitting, for example, information using distinct employee identification numbers for jobs retained, relocated and created, respective wages, dates of hire and termination, and the capital investment at the Project Site. 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. Audit.

1. Grantor may conduct, have an audit conducted, or conduct a review of the use of funds and documentation associated with this Agreement. Grantor is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other personnel as designated by the Grantor, may perform such audit(s) or reviews. Grantee must make available to Grantor all accounting and Project Records.
2. Grantee agrees to reimburse Grantor or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from any audit. Reimbursement shall be made within 30 calendar days of written notification regarding the need for reimbursement.
3. If an audit or examination determines that the Grantee has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then Grantee shall be notified and provided an opportunity to address the issues.
4. Grantor shall provide Grantee written notification if reimbursed expenses or charges are disallowed by the Grantor because of review or audit findings. Grantor may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require Grantee to fully refund the disallowed amounts by cashier's check or money order within ten (10) days after receipt of written notification.
5. Any expenses for the collection of delinquent debts owed by Grantee are the sole responsibility of the Grantee and shall not be paid from any Project funds.
6. If the Grantor determines, in its sole discretion, that Grantee is in violation of the above requirements, the Grantor shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the Grantee pay for such audit from non-Grantor resources.

SBIR/STTR Phase I

SECTION 9. CONFLICT OF INTEREST

Grantee shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Grantees shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Grantee shall comply with Chapter 171, Texas Local Government Code as well as the Grantor's Code of Ethics.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. Non-Discrimination. Grantee, its successors and assigns, 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. Religious Activity. None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the funds received by Grantee under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- C. Inclusion. Grantee shall include the substance of this Section 10 in all agreements associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 11. LEGAL AUTHORITY

- A. Authority. Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.
- B. Signatories. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.
- C. No Authority. Grantor shall have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority of either Grantee, or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

SECTION 12. LITIGATION AND CLAIMS

- A. Notice of Claims. Grantee shall give Grantor immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Grantee arising out the performance of this Agreement or any agreement related to the Project. Except as otherwise directed by Grantor, Grantee shall furnish immediately to Grantor copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the Grantor immediately of any legal action filed against the Grantee or any subcontractor of which Grantee is actually aware, or of any proceeding filed under

SBIR/STTR Phase I

the federal bankruptcy code. Grantee shall submit a copy of such notice to Grantor within thirty (30) calendar days after receipt or issuance, as applicable.

No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations.

- 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 GRANT AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Grant Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

SECTION 13. ATTORNEY'S FEES

In the event either party defaults under any of the provisions of this Agreement, and should the non-defaulting party 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 non-defaulting party reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 14. CHANGES AND AMENDMENTS

- A. Amendments. 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 both parties to this Agreement. The Director of the Economic Development Department, or any successor City department, shall have the ability, without further City Council approval, to execute amendments for minor changes to this Agreement and to implement the remedies made available to City hereunder. Any substantial changes to this Agreement shall require City Council approval.
- B. Chapter 380. 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. Changes in Law. 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 15. DEFAULT

- A. Notice and Cure Period. During the Term of this Agreement, Grantor may declare a default if Grantee fails to comply with any of the terms of this Agreement. Upon occurrence of an event of default, Grantor will provide Grantee with written notification as to the nature of 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 default. If Grantee fails to cure the default within the

SBIR/STTR Phase I

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 or terminate the Agreement in accordance with Section 16. 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 the 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 carry out to completion with reasonable dispatch all steps necessary to cure the same. The duration of this extension shall be determined by Grantor.
- 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.

SECTION 16. TERMINATION, RECAPTURE, AND OTHER REMEDIES

- A. This Agreement may be terminated should Grantee have a pending lawsuit against Grantor or file a lawsuit against Grantor during the term of this Agreement.
- B. Termination for Cause. Grantor shall have the right to terminate this Agreement should Grantee commit a default of any material term and such default remains uncured past any applicable cure period. Grantor shall issue Grantee a written Notice of Termination in which case the Grantor may: (1) withhold further payments to Grantee; and (2) recapture any and all Grant Funds disbursed to Grantee by Grantor. Such notification shall include: (1) the reasons for such termination; and (2) the effective date of such termination. Upon the issuance of a Notice of Termination, Grantee shall have ninety (90) days to repay Grantor the amount of disbursed Grant Funds Grantee has received from the commencement of this Agreement to the date of the Notice of Termination.
- C. Relocation Defined. For purposes of this section, "Relocation," "Relocated," or "Relocate" shall mean Grantee transferring all Project Activities from the Project Site either to a location other than the Project Site identified under this Agreement, or outside of the San Antonio City limits, for reasons other than the inability to conduct the Project Activities at the Project Site due to a Force Majeure Event (as defined in Section 25 below).
- D. Relocation. If during the Term of this Agreement, Grantee occupies and uses the Project Site for its Business Activities and subsequently Relocates during the Term of the Agreement and the subsequent three (3) year survey period, then Grantor shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation is begun. Unless Grantee presents credible evidence to clearly indicate a date of Relocation, the Grantor's determination of Grantee's Relocation shall be final and conclusive. Upon termination, the 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 the Grantor, Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.
- E. Cessation of Project Activities. If, after the conditions set forth in this Agreement are met, Grantee occupies and uses the Project Site for its Project Activities and subsequently ceases conducting Project 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, then the Grantor shall have the right to terminate this Agreement. Said termination shall be effective upon

SBIR/STTR Phase I

notice to Grantee. Unless Grantee presents credible evidence to clearly indicate a date of cessation, the Grantor's determination of a date of cessation shall be final and conclusive. Upon termination, the 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 the Grantor and Grantor shall be entitled to the payment of such amounts within ninety (90) calendar days from the date it notifies Grantee in writing of termination and its election to recapture such amounts.

F. Additional Termination Options. In addition to a default of a material term of this Agreement, this Agreement may be terminated in whole or in part for any of the following:

1. By the Grantor, who shall notify Grantee of the amount of Grant Funds, if any, to be repaid to Grantor, the effective date, and, in the case of partial termination, the portion to be terminated; or
2. By Grantee upon written notification to the Grantor, setting forth the reasons of such termination, a proposed pay-back plan of any or all funds granted, the effective date, and, in the case of partial termination, the portion to be terminated.
3. In the case of partial termination, if the Grantor determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantor may terminate the award in its entirety and seek repayment of all Grant Funds.

G. 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 Section 16 are not applicable to situations involving minor changes to the description of the Project Site, so long as Grantee continues conducting Project Activities or other authorized activities thereon as provided hereinabove.

H. No Third-Party Liability. Grantor shall not be liable to Grantee, to Grantee's creditors, or any party (including any subcontractors or third-party beneficiaries of Grantee) with whom Grantee contracts for costs incurred during any term of suspension or termination of this Agreement.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Grantee understands and agrees that if Grantee is a "business" and if the Grantor's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then Grantee is required to refund money, pursuant to 80(R) HB 1196, Grantee has received from Grantor through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

SECTION 18. DEBARMENT

By signing this Agreement, Grantee certifies that it will not knowingly pay any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the Grantor.

SBIR/STTR Phase I

SECTION 19. 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 Grantee and the Grantor 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 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 20. INSURANCE

- A. No later than 30 days before the scheduled funding disbursement, Grantee must provide a completed Certificate(s) of Insurance to City of San Antonio's Economic Development Department. The certificate must be:
- clearly labeled with the legal name of the Agreement in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (Grantor will not accept Memorandum of Insurance or Binders as proof of insurance);
 - properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. Grantor shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City of San Antonio's Economic Development Department. No officer or employee, other than Grantor's Risk Manager, shall have authority to waive this requirement. If Grantor does not receive copies of insurance endorsement, then by executing this Agreement, Grantee certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

- B. Grantor's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- C. Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below. If the Grantee claims to be self-insured, they must provide a copy of their declaration page so the Grantor can review their deductibles:

INSURANCE TYPE	LIMITS
1. Employee Dishonesty Liability Insurance	\$50,000.00

- D. Grantee must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Grantee and provide a certificate of insurance and endorsement that names Grantee and Grantor as additional insureds. Grantee shall provide Grantor with subcontractor certificates and endorsements before the subcontractor starts work.
- E. If a loss results in litigation, then the Grantor is entitled, upon request and without expense to the Grantor, to receive copies of the policies, declaration page and all endorsements. Grantee must comply with such requests within 10 days by submitting the requested insurance documents to the Grantor at the following address:

SBIR/STTR Phase I

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

F. Grantee's insurance policies must contain or be endorsed to contain the following provisions:

- Name Grantor and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with Grantor. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to Grantor where Grantor is an additional insured shown on the policy. Grantor's insurance is not applicable in the event of a claim.
- Grantee shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of Grantor; and
- Provide 30 days advance written notice directly to Grantor of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to Grantor. Grantor shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies Grantor may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, Grantor may order Grantee to stop work and/or withhold any payment(s) which become due to Grantee under this Agreement until Grantee demonstrates compliance with requirements.

I. Nothing contained in this Agreement shall be construed as limiting the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

J. Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by Grantor for liability arising out of operations under this Agreement.

K. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of Grantor shall be limited to insurance coverage provided.

L. Grantee and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

SECTION 21. INDEMNITY

A. GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, GRANTOR and the elected officials, employees, officers, directors, volunteers and representatives of GRANTOR, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits

SBIR/STTR Phase I

of any kind and nature, including but not limited to, personal or bodily injury, death, and property damage made upon GRANTOR directly or indirectly arising out of, resulting from or related to GRANTEE'S application for Program funds, activities under this AGREEMENT and the expenditure of such funds, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for shall not apply to any liability resulting from the negligence of GRANTOR, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE GRANTOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

- B. Grantee shall advise Grantor in writing within 24 hours of any claim or demand against Grantor or Grantee known to Grantee related to or arising out of Grantee's application for Program funds, activities under this Agreement and expenditure of such funds.
- C. Defense Counsel - Grantor shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation to defend and indemnify Grantor, unless such right is expressly waived by Grantor in writing. Grantee shall retain Grantor-approved defense counsel within seven business days of Grantor's written notice that Grantor is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, Grantor shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by Grantor. Grantor shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- D. Employee Litigation – In any and all claims against any party indemnified under this Agreement by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.

SECTION 22. 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 to the addresses set forth below the communication is:

- delivered personally (with receipt acknowledged);
- three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
- upon receipt if sending the same by certified mail, return receipt requested;
- 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; or
- by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

SBIR/STTR Phase I

If intended for GRANTOR, to:
(Whether personally delivered or mailed):

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

If intended for GRANTEE, to:

Shoba Sharma
Sygnamap, Inc.
3463 Magic Dr, Ste T5
San Antonio, TX 78229-3457

Notices of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) business days of the change. Notices shall be effective on the date of delivery.

SECTION 23. NON-ASSIGNMENT AND SUBCONTRACTING

- A. This Agreement is not assignable. Notwithstanding any attempt to assign this Agreement, Grantee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and conditions herein. Grantee shall be held responsible for all funds received under this Agreement.
- B. Grantee shall ensure that all subcontractors are made aware of the terms and conditions of this Agreement.
- C. Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Grantee's subcontractor(s).
- D. 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.

SECTION 24. 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 25. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

Grantor may grant temporary relief from performance of this Agreement if Grantee is prevented from compliance and performance by an act of war, order of legal authority, act of God, pandemic, or other unavoidable cause not attributed to the fault or negligence of the Grantee. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based upon force majeure, Grantee must file a written request with the Grantor no later than sixty (60) days following the occurrence of the force majeure. Should Grantor grant temporary relief (such approval not to be unreasonably withheld, conditioned or delayed) to Grantee, it shall in no case relieve Grantee from any repayment obligations as specified in this Agreement.

SECTION 26. SURVIVAL OF TERMS

Termination or expiration of this Agreement shall not extinguish or prejudice Grantor's right to recoup or otherwise recover Grant Funds if Grantor finds Grant Funds were provided to or expended by Grantee in violation of any of the terms of this Agreement. Additionally, termination or expiration of this Agreement shall not extinguish Grantee's reporting obligations under the Agreement.

SBIR/STTR Phase I

SECTION 27. 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 Description
- Exhibit B - Project Budget
- Exhibit C – Program Guidelines

SECTION 28. 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 29. 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 30. 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 31. 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.

EXECUTED and AGREED to in TRIPLICATE ORIGINALS as of the dates indicated below.

CITY OF SAN ANTONIO

SYGNAMAP, INC.

Erik Walsh
City Manager

Shoba Sharma

Shoba Sharma
Co-Founder

Date

Approved as to Form:

Assistant City Attorney

Exhibit A - Project Description

NSF SBIR Phase I Project Title: Computational platform to infer causative pathways of pathology using spatial omics data

PROJECT SUMMARY

Precision Medicine espouses a patient-centric vision with therapeutic choices driven by specific predictive biomarkers to enable highly effective therapies. This presents unique challenges in metabolically driven diseases, where complex biochemical disturbances drive the progression from normal to a diseased tissue architecture leading to inflammation, fibrosis and ultimately organ failure.¹ Even with the recent advent of single cell transcriptomic technologies, it has been intractable to predict the pathways driving specific histopathology features.² SygnaMap proposes to build **MSI-DeepPath**, a novel computational engine for therapeutic (Rx) target and companion diagnostic (CoDx) discovery, by incorporating technical breakthroughs in **spatial metabolomics** with Artificial Intelligence (AI)-driven computational pathology.

Customer & Business Model: Our beachhead **customers are pharmaceutical and biotech** companies that evaluate troves of data in metabolically driven diseases trying to create new disease modifying therapies. These customers are seeking a platform to couple novel Rx with CoDx to increase the likelihood for precision benefits of the Rx. *We will be part of the spatial omics market that is expected to double in size worldwide by 2028.* Spatial metabolomics has the unique potential to map biochemical signatures with anatomic features of health and disease to identify pathway-centric Rx targets and CoDx. However, spatial metabolomics has not been coupled with computational approaches to rigorously register molecules with pathologic features to identify causal disease-promoting pathways. Thus, there is an **unmet need** for a *computational platform to unravel the basis for pathologic heterogeneity to identify pathway-centric Rx and CoDx.*

Value Propositions: MSI-DeepPath's value proposition is in efficiently and quantitatively identifying causative metabolic pathways responsible for pathologic features. MSI-DeepPath's **benefit to our customers** will be to *increase the likelihood of success in their early and late phase clinical trials* by: 1) focusing their efforts on an Rx linked with high confidence to the pathologic basis of disease and 2) identifying a CoDx to tailor therapy to the right patients. The primary **differentiation** of MSI-DeepPath from other target discovery platforms is the ability to *identify Rx targets and CoDx based on biochemical branchpoints critical to diseased versus healthy tissue architecture.* These branchpoints will provide customers with a robust pathway-centric Rx-CoDx approach to avoid the "valley of death" in drug development, reduce the cost of clinical trials, increase reimbursement by Payors and increase net profit. This innovative platform will enhance **societal value** by providing *precision Rx at lower costs* for difficult to treat diseases.

Innovation: Prediction of disease-related pathologic features is undergoing a revolution with new AI/machine learning (ML) tools and the emergence of spatial omics (spatial transcriptomics and spatial metabolomics). Dr. Kumar Sharma's team at the Center for Precision Medicine (CPM) at University of Texas Health San Antonio recently expanded the impact of spatial metabolomics with a 10-fold increase in metabolites combined with improved spatial resolution using matrix-assisted laser desorption/ionization mass spectrometry imaging (MALDI-MSI) for kidney sections. SygnaMap will harness this comprehensive suite of spatial omics data by using cutting-edge AI/ML techniques to build MSI-DeepPath, a **transformative** computational Rx target and CoDx discovery engine. The integration of AI/ML with high resolution optical imaging and a focus on metabolites that drive disease pathways is **revolutionary** compared to other bulk omics and spatial omics approaches. Predictive signatures of pathology features will be a **disruptive** advance as it will enable pharma and biotech to accelerate their drug development programs by focusing on the most likely pathways driving the onset and progression of metabolic diseases.

SBIR/STTR Phase I

Exhibit B - Project Budget**NSF AWARD Number 2136649**

02/15/2022 to 01/31/2024 (including No Cost Extension period)

Budget as per Notice of Award

A. Senior Personnel	\$ 77,000
B. Other Personnel	\$ 10,000
C. Fringe	\$ 17,000
D. Travel	\$ 4,000
G. Other Direct Costs	\$ 80,495
I. Indirect Costs	\$ 50,352
K. Fees	\$ 16,747
Total NSF Ph I Grant Award	\$255,994

SBIR MATCH requested from City of San Antonio

a) Business Development consultation	\$ 15,000
b) Intellectual Property strategy development	\$ 15,000
c) Technical expertise for product development	\$ 20,000
Total SBIR-Match requested	\$ 50,000

SBIR/STTR Phase I

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SBIR/STTR MATCHING GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Small Business Innovation Research and Small Business Technology Transfer (“SBIR/STTR”) Matching Grant Program (“Program”) is designed to award funds for research-focused, for-profit, privately owned small businesses headquartered in the City of San Antonio that have received a federal SBIR/STTR Phase I or Phase II award. It is intended to support startup companies that have a high potential for commercial viability to establish new markets and spur export-oriented growth.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available (Phase I and Phase II) is capped at no more than \$500,000 per fiscal year. Applications for Program funds will be accepted and considered for award in the order in which the City receives a complete and fully executed application with required attachments.
- 2.2 Phase I Awards
 - A. Phase I eligible companies may qualify for up to \$50,000 in Program funding per fiscal year.
- 2.3 Phase II Awards
 - A. Phase II eligible companies may qualify for up to \$75,000 in Program funding per fiscal year.
- 2.4 Application acceptance, review, and grant disbursements are subject to close at City’s discretion once Program funds are exhausted. The City has the discretion to issue awards for less than the maximum dollar amount.
- 2.5 Funding for the Program originates from the Economic Development Incentive Fund (EDIF) and any awarded Program funds are subject to those restrictions and compliance reporting outlined in the City of San Antonio’s Economic Development Chapter 380 Policy in accordance with Chapter 380 of the State of Texas Local Government Code.

III. GRANT ELIGIBILITY REQUIREMENTS

- 3.1 The authorized representative submitting an application on behalf of the business must be the majority business owner of said business.

SBIR/STTR Phase I

3.2 The applicant must meet the following requirements listed under this Section III at the time of their application to the City for Program funding.

3.2 Phase I Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase I award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase I award funding must be active at the time of applying for the City Program;
 - 3. Must not have applied for or received a notice of a follow-on Phase II federal award;
 - 4. Is a for-profit, privately owned business*;
 - 5. Is headquartered in the City of San Antonio; and
 - 6. Employs 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase I City Program award.
- C. If the federal sponsoring agency has interest in the Phase II proposal for a Phase I recipient, then Recipient must submit a Phase II proposal to the federal granting agency and furnish the City with appropriate documentation of such submission.
- D. The Applicant must not have received City Program funding for Phase I prior to the time of application.

3.3 Phase II Eligibility Requirements:

- A. Applicants must meet the following requirements at the time their application to the City for Program funding is made. Applicant:
 - 1. Has received a federal SBIR/STTR Phase II award from a participating federal agency prior to application;
 - 2. Federal SBIR/STTR Phase II award funding must be active at time of applying for the City Program;
 - 3. Is a for-profit, privately owned business*;
 - 4. Is headquartered in the City of San Antonio; and
 - 5. employees 40 employees or less.

*Non-profit entities are not eligible (except as research institutions under the federal STTR program).
- B. If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for the length of the Phase II City Program award.

SBIR/STTR Phase I

- C. The Applicant must not have received City Program funding prior to the time of application, with an exception for funding received for the City Program SBIR/STTR Phase I award that is the underlying project for the Phase II City Program grant application.
- D. If awarded City Program funds, Recipient agrees to conduct fifty-one percent (51%) of the research described in the Phase II award in the City of San Antonio and to remain a City of San Antonio business for the duration of the Phase II project.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the project funded by the federal SBIR/STTR award. These costs include but are not limited to:
 - A. Direct costs for additional technical work;
 - B. Product testing and validation;
 - C. Intellectual property protection;
 - D. Market research;
 - E. Patent search;
 - F. Business development plan;
 - G. Hiring of new high paying technical and business employees; and
 - H. Small equipment.

V. INELIGIBLE USE OF FUNDS

- 5.1 Use of City Program funds may not be used for the following:
 - A. Projects involving new construction over the Edwards Aquifer Recharge or Contributing Zone that will result in additional impervious cover at the project site;
 - B. Projects encroaching on military operations as defined in the SA Tomorrow Comprehensive Plan, Department of Defense Joint Land Use Studies, or the City's Annexation program;
 - C. Recoupment of personal investment;
 - D. Repayment of debt;
 - E. Those projects statutorily prohibited under Chapter 380, the City EDIF Guidelines, or City of San Antonio's Economic Development Chapter 380 Policy.

VI. APPLICATION, EVALUATION & APPROVAL PROCESS

- 6.1 Businesses seeking to apply for Program funds must complete and submit a fully executed and complete Program application, with the required attachments. An application and instructions can be obtained from the Economic Development Department's ("EDD") website.
- 6.2 The City will review applications to confirm compliance with the requirements stated in these guidelines and has the discretion to request supplemental materials from applicants as part of its review. EDD will notify applicants of its decision to recommend award for City Council

SBIR/STTR Phase I

consideration or not recommend award. Incomplete or non-compliant applications will not be considered.

- 6.3 Applications may be submitted to the City following Program launch. Applications will not be accepted when Program funds are exhausted. At any time during the City Program, the City has the discretion and authority to determine applications will no longer be accepted or to cease award recommendations.
- 6.4 EDD has full discretion to recommend or not recommend any application for award. Award recommendations are subject to the availability of funding. Award recommendation decisions may take into account whether applicants have previously received matching funds.
- 6.5 Upon being selected for award recommendation, all applicants will receive a notification of award recommendation from the City and will be required to confirm their commitment to proceed with the program within 30 days of receipt of notification. Failure to confirm within this timeframe will result in the forfeiture of the award. Your timely response is crucial in ensuring the continuation of the award process.
- 6.6 If recommended for award, EDD will present the recommendation to the City Council Economic and Workforce Development Committee ("EWDC") and to City Council for final consideration of award approval.
- 6.7 The recommended award amount and all terms and conditions of the Program award must be memorialized in a Program Grant Agreement between the City and the Recipient prior to final consideration by City Council.
- 6.8 City Council retains sole authority to approve or deny any agreement and is under no obligation to approve any award or agreement. City Council approval is required for each award and agreement.
- 6.9 EDD Staff will provide updates regarding the application period on the EDD website.

VII. COMPLIANCE FOR SBIR/STTR MATCHING GRANT

- 7.1 Recipients will be required to submit to City a status report as to the disposition of the funds every ninety (90) days following the date awarded until submission of Final Report to ensure eligible use of funds.
- 7.2 Recipients of City Program funds must complete surveys issued by EDD designed to measure the economic impact and the Program and to assist development of the Program. Recipients shall complete the surveys at six (6)-months, eighteen (18)-months, and thirty-six (36)-months following date of award approval.
- 7.3 Recipients must also agree to maintain records and accounts that properly document and account for the expenditure of City Program funds for a period of five (5) years and agree to

SBIR/STTR Phase I

comply with any audit requests made by City. If an audit results in the determination that the Recipient has expended contract funds on an ineligible use, Recipient shall reimburse City in full for all such costs.

- 7.4 Companies must inform City in writing at least thirty (30) days prior to relocating business headquarters during the City Program award period and the subsequent three (3) year survey period.
- 7.5 Recipients must provide City a copy of any Final Report or Technical Report provided to the underlying awarding federal agency within thirty (30) days of submission to the federal agency.
- 7.6 Applicant must, within ninety (90) days of exhaustion of the City Program award, complete and submit to the City a final report describing specific results of work funded, documenting expenditures made with the City Program funds, and forecasting next steps and conclusions.

VIII. AWARD DISBURSEMENT

- 8.1 Awarded applicants must fully register as a Vendor with the City of San Antonio in order to receive fund disbursement. All vendors must register in the San Antonio Electronic Procurement System (SAePS).

Vendor Registration information can be found at the following website:
<https://www.sa.gov/Directory/Departments/Finance/About/Divisions/Procurement/Become-a-Vendor>

- 8.2 The City will determine means by which Program awards will be disbursed and may require reporting and proof of expenditures before making an award. The City may impose conditions on the payment of awards at any time before such a payment is made. Award funds cannot be released prior to City Council approval.
- 8.3 For Phase I awards, twenty-five (25%) of the total award will be withheld until the Recipient has:
 - 1. Submitted an accepted Final Phase I Report to awarding federal agency; and
 - 2. Submitted an accepted City of San Antonio Final Phase I Report.

IX. CONFIDENTIALITY

- 9.1 All applications, proposals, and any other information submitted to City related to this Program are public records and become the property of the City upon receipt and will not be returned. Public records are governed by Texas Government Code Chapter 552 and are subject to the Public Information Act, unless excluded from disclose by the Texas Attorney General. The Applicant should not disclose to the City of San Antonio any information that would negatively affect its ownership of intellectual property or information that would be

SBIR/STTR Phase I

beneficial to its competitors. Any information deemed to be confidential by Applicant should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Applicant may not be considered confidential under Texas law, or pursuant to a Court order.