

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 Modern Day Concrete Corporation, 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 Second Stage Company Grant Program ("Grant Program") was created to incentivize local business expansion and support established, export-oriented small businesses in San Antonio; and

WHEREAS, to be eligible businesses must be privately owned, export-oriented, with between 10-99 employees, generate between \$1,000,000.00 to \$50,000,000.00 in annual revenue, and headquartered within the San Antonio city limits; and

WHEREAS, the economic development project will consist of Grantee utilizing the funds for equipment and vehicle acquisition, workforce enhancements and marketing and sales expansion in support of the proposed Business Growth Plan (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 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 (the "Effective Date") and shall continue in full force and effect for a period of one (1) year (the "Term") unless terminated pursuant to the provisions herein.

SECTION 3. PROJECT REQUIREMENTS

- A. Headquarters. Grantee is a for-profit, privately owned business headquartered at 6202 Krempen Ave., San Antonio, Texas 78233 ("Project Site"). Grantee agrees to remain headquartered in the San Antonio city limits for at least one year from the Effective Date. 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 activities related to the completion of the Project and activities typically conducted by a flooring contractor 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.

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 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 Second Stage Company 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: hiring employee(s); training programs and other initiatives to develop and sustain a skilled workforce; business development; marketing and/or product development; real and personal property acquisition

and site development; facility construction and/or real property improvements; 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

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

In addition to the obligations and duties that may be imposed on Grantee by other agreements it may have entered into with the State of Texas, Bexar County, and/or 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. By the Effective Date of this Agreement and continuing thereafter until the end of the term of this Agreement, Grantee covenants and agrees to pay one hundred percent (100%) of Grantee's full-time employees at least the Entry Wage of \$17.50 per hours ("Entry Wage") annually, excluding benefits, commissions, shift differentials, and bonuses.
- B. During the Term, Grantee covenants and agrees that it shall offer workers' compensation coverage, as well as a Health Benefits Package to all full-time employees. _____
- 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. 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.
- E. 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.

- F. Grantee accepts administrative and fiscal responsibility for the use of Grant Funds and the provision of all necessary Program documentation and reporting.
- G. 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.
- H. 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.
- I. Grantee will operate and maintain the 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.
- J. Grantee shall not use Grant Funds as matching funds for any other federal, state, or local grant without the prior written approval from Grantor.
- K. 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.
- L. **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.
- M. 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.
- N. 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.
- O. 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.
- P. Grantee will comply with all Grant Program requirements found in the **Program Guidelines, Exhibit C**, Grantee's application, and this Agreement.
- Q. 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.

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 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.
 - 2. No later than ninety (90) days of exhaustion of the Grant Funds, Grantee shall complete and submit to Grantor a Final City of San Antonio Grant Report describing specific results of the work funded, documenting expenditures made with the City Program funds, forecasting next steps, and conclusions.
 - 3. 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 and use of Grant Funds.
- 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.
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 Grant 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.
- 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.
- 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 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 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:

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

- 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, 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:

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

If intended for GRANTEE, to:

Modern Day Concrete Corporation
Felipe Carstens
6202 Krempen Ave.
San Antonio, TX 78233

If by personal or overnight delivery:

Economic Development
Attn: Director
100 W. Houston St., 18th Floor

San Antonio, Texas 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, 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.

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 as of the dates indicated below.

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

Erik Walsh
City Manager

Date

MODERN DAY CONCRETE CORPORATION


Felipe Carstens

Approved as to Form:

Assistant City Attorney

Exhibit A - Project Description

Grant Funds will be allocated towards equipment and vehicle upgrades; workforce expansion, to include recruitment expenses; training enhancements; and marketing initiatives.

Exhibit B - Project Budget

Project Budget: Modern Day Concrete Corporation

Grant Funds Requested: \$50,000

- Equipment and Vehicle Upgrade: \$130,000
 - Includes acquisition of new machinery and two (2) new vehicles, along with maintenance and repairs to existing vehicles.
- Workforce Development: \$10,000
 - Includes recruitment expenses for concrete craftsmen, crew leaders and project managers along with additional training program enhancement.
- Marketing and Sales Expansion: \$10,000
 - Includes digital marketing, local advertising, and the development and marketing of a customer referral program.

Exhibit C – Program Guidelines

Date Published: August 11, 2023

Edition: 2

SECOND STAGE COMPANY GRANT PROGRAM GUIDELINES

I. PURPOSE

- 1.1 The City of San Antonio (“City”) Second Stage Company Grant Program (“Program”) is designed to help second-stage companies mitigate challenges such as managing a growing staff or entering new markets. Awarded funds should be used to engage in deliberate investments to grow locally and regionally, as identified via a written and reviewed growth strategy.

II. FUNDING AVAILABILITY

- 2.1 The total Program award funding available 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 Eligible companies may qualify for up to \$50,000 in Program funding.
- 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 Funding 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 CRITERIA AND 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 requirements listed under this Section III at the time of their application to the City for Program funding.

- 3.3 Applicant Requirements: Applicants must meet the following requirements at the time their application to the City for Program funding is made and for one (1) year after any award is made under such program.
- A. Applicant must meet the definition of a Second-Stage Company located in the City of San Antonio;
 - B. Applicant must be an export-oriented business;
 - C. Applicant must be a for-profit, privately owned business;
 - D. Applicant must be headquartered in the City of San Antonio;
 - E. Applicant must employ between 10-99 employees; full-time positions must pay at least \$17.50 per hour;
 - F. Applicant must demonstrate company growth in employment and/or revenue during two (2) of the past five (5) years; and
 - G. Applicant must participate in workers' compensation and provide a healthcare benefits package to all full-time employees.
- 3.4 If awarded City Program funds, Recipient agrees to remain headquartered in the City of San Antonio for one year from the date of City Program award.
- 3.5 Applicant must submit an acceptable written three-year business growth plan strategy to include the following:
- 1) A description of expansion opportunities;
 - 2) Company financial goals broken down by quarter and year;
 - 3) A marketing plan of how company will achieve growth;
 - 4) A financial plan consisting of current assets and what capital is accessible during growth;
 - 5) A breakdown of company's staffing needs and responsibilities; and
 - 6) For business growth plan guidance, an additional template will be provided for reference on the EDD Website which can be found at the following link: *insert link*. Applicants are not required to use the template but will be required to submit applicable growth plan details.
- 3.6 The following types of businesses are not eligible to apply:
- 1) Franchisors (local or non-local);
 - 2) Gambling/Gaming Businesses;
 - 3) Sexually Oriented Businesses;
 - 4) Payday & Auto Loan Providers;
 - 5) Liquor Stores;
 - 6) Tobacco, CBD, and Vape Stores;
 - 7) Government owned and/or occupied buildings;
 - 8) Any business in which a City employee or officer has a financial interest, as defined in Sec. 2-53 of the City's Ethics Code.
 - 9) Businesses statutorily prohibited under Chapter 380.

IV. ELIGIBLE USE OF FUNDS

- 4.1 Use of City Program funds is restricted to costs that are directly related to the three-year business growth plan. These costs include but are not limited to:
- A. Hiring employee(s);
 - B. Training programs and other initiatives to develop and sustain a skilled workforce;
 - C. Business development;
 - D. Marketing and/or product development;
 - E. Real and personal property acquisition and site development;
 - F. Facility construction and/or real property improvements.

V. INELIGIBLE USE OF FUNDS

- 5.2 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 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 SECOND STAGE COMPANY 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 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 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.

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.

X. DEFINITIONS

1. Second-Stage Company – A second stage company is defined as a business that meets the following requirements as outlined by the Edward Lowe Foundation:
 - a) Must be a for-profit and privately owned business; and
 - b) Must have \$1 Million - \$50 Million in revenue; and
 - c) Must have between 10-99 employees; and
 - d) Must intend to make deliberate investments to grow locally and regionally.
2. Export-Oriented Business – A business which provides products or services beyond the local area to regional, national, or global markets.