RR
6/18/15
Item No. 46

AN ORDINANCE 2015-06-18-0572

AUTHORIZING AN AMENDMENT TO THE CHAPTER 380 ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH THE SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION (SAEDC) FOR THE INCUBE LABS, L.L.C. PROJECT.

* * * * * *

WHEREAS, on June 17, 2010, the City Council authorized a Chapter 380 Economic Development Grant Agreement (the "Agreement") with the San Antonio Economic Development Corporation ("SAEDC") to undertake an economic development project consisting of the attraction of Incube Labs, L.L.C. ("InCube") to establish and operate a life-science and technology business incubator within the city-limits (the "Project"); and

WHEREAS, under the terms of the Agreement, SAEDC was to cause InCube to invest $15 million in to the Project and create 50 full-time positions; and

WHEREAS, since 2010, InCube has operated a life-science and technology business incubator at 12500 Network Blvd., San Antonio, TX 78249 (the "Facility"), created eight (8) full-time jobs and has invested $10.5 million in non-public funds; and

WHEREAS, SAEDC is seeking to amend its Economic Development Agreement (the "EDA") with InCube to provide an additional five (5) years to create the required 50 full-time jobs and invest the required $15 million; and

WHEREAS, in order to amend the EDA, SAEDC must receive City Council approval and must amend the terms of the Chapter 380 Economic Development Grant Agreement with the City to provide for the additional 5 year period in which InCube must comply with the terms of the EDA; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Council authorizes the SAEDC to negotiate an amendment to the Economic Development Agreement with InCube to provide for an additional 5 years to comply with the terms of the EDA.

SECTION 2. The terms and conditions of an Amendment to the City's Chapter 380 Economic Development Grant Agreement with the SAEDC are hereby approved.

SECTION 3. The City Manager, or her designee, is authorized to execute an Amendment to the Chapter 380 Economic Development Grant Agreement with the SAEDC. A copy of the Amendment in substantially final form is attached as **Exhibit A** and made a part of this ordinance. A final copy of the Amendment shall be attached when executed.

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SECTION 4. This ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council and after the tenth (10th) day of its passage by less than 8 votes.

PASSED AND APPROVED this 18th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**46 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an amendment to the Grant Agreement with the San Antonio Economic Development Corporation for the InCube Labs, LLC. Project. [Carlos Contreras, Assistant City Manager, Rene Dominguez, Director, Economic Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

FIRST AMENDMENT TO THE ECONOMIC DEVELOPMENT GRANT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION

This First Amendment to the Economic Development Grant Agreement (this "First Amendment") is entered into by and between the City of San Antonio ("CITY"), a municipal corporation governed by the laws of the State of Texas and the San Antonio Economic Development Corporation ("SAEDC"), a Type B Corporation authorized under Chapters 501, 502 and 505 of the Texas Local Government Code. Together, CITY and SAEDC may be referred to, herein, as "the Parties."

RECITALS

A. CITY and SAEDC entered into that certain Economic Development Agreement (the "Agreement") authorized by City of San Antonio Ordinance No. 2010-06-17-0560, passed and approved on June 17, 2010.

B. Prior to this First Amendment, the Term of the Agreement was for five (5) years commencing on July 7, 2010 and terminating on July 7, 2015.

C. The Parties, now seek to amend the terms and conditions of the Agreement as stated herein and affirm that all other provisions of the Agreement remain in full force and effect.

AMENDMENT

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this First Amendment without definition herein shall have the meanings assigned to such terms in the Agreement.

2. Amendment. Section 2 of the Agreement is hereby amended by adding the following:

   B. Renewal Period. This Agreement is renewed for a period of five (5) years commencing on July 7, 2015 and terminating on July 6, 2020.

3. Effective Date. The Effective Date of this First Amendment is indicated on the signature page.

4. No Other Changes. Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement shall continue in full force and effect and with this First Amendment shall be read and construed as one instrument.

5. Choice of Law. This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

6. Counterparts. This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

WITNESS HEREOF, the Parties hereto have executed, in duplicate originals, this First Amendment on the _____ day of _____ 2015 (the "Effective Date").

CITY OF SAN ANTONIO
a municipal corporation

_____
Carlos J. Contreras, III
Assistant City Manager

ATTEST:

_____
Leticia Vacek
City Clerk

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney

SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION
a Type B Texas corporation

_____
Name:
Title:

ATTEST (if necessary):

_____
Name:
Title:

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

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as "GRANTOR"), acting by and through its City Manager or her designee, and the San Antonio Economic Development Corporation, a Type B corporation created pursuant to the authority of the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code (hereinafter referred to as "GRANTEE"), and together 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 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

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, GRANTOR created such a program for the purpose of making grants available for economic development projects that the GRANTOR finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City established GRANTEE for the purpose of undertaking certain economic development projects approved by the City's governing board; and

WHEREAS, the City has authorized GRANTEE to undertake an economic development project consisting of the attraction of InCube Labs, LLC and causing InCube to establish and operate a life-science and technology business incubator within the city limits of the City of San Antonio (the "Project"); and

WHEREAS, InCube Labs, LLC. ("InCube") is a multi-disciplinary research laboratory that is a highly productive source of individual life-science, technology and other companies that commercializes technological breakthroughs grounded in market need and actively develops young companies by assisting them in the mitigation of technical, clinical and reimbursement risks; and

WHEREAS, GRANTEE will enter into an Economic Development Agreement (the "EDA") with InCube that will require InCube to operate the Project for a term of not less than five (5) years, invest at least $15 million and agree to provide a potential return on investment to the GRANTEE; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting GRANTEE in establishing the Project and has identified economic development funds for use in carrying out this purpose; **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

GRANTOR is seeking to promote local economic development and stimulate business and commercial activity in the City of San Antonio and is entering into this Agreement as a component part of an

incentive package intended to attract and retain high-impact companies that support the GRANTOR's targeted industries.

SECTION 2. AGREEMENT PERIOD

This Agreement shall commence on the Effective Date hereof and shall terminate on December 31, 2015 (the "Term").

SECTION 3. PROJECT REQUIREMENTS

The performance of all material obligations and covenants under this Agreement shall be subject to the terms and conditions of the EDA between GRANTEE and InCube. For purposes of this Agreement, all obligations of GRANTEE to "cause" or "ensure" the occurrence or non-occurrence of certain events or circumstances shall be deemed to mean that GRANTEE shall exercise diligent and commercially reasonable efforts, including enforcement of all rights and remedies available, to cause InCube to perform under the terms of the EDA.

A. GRANTEE shall cause the Project to be located at 12500 Network Blvd., San Antonio, Texas 78249 (the "Facility") and shall cause InCube through the EDA to create, establish and/or relocate to the Facility business entities that conduct research and development oriented toward the commercialization of technological breakthroughs in the life-science and technology industry (the "Business Activities").

B. GRANTEE shall ensure a leasehold interest in the Facility is secured for a term of not less than five (5) years commencing on the effective date of the Facility Lease (the "Lease Term").

C. GRANTEE shall cause InCube to conduct Business Activities at the Facility for a period not less than the Lease Term in the Facility. GRANTEE covenants and agrees that under the terms and conditions of the EDA, the Facility shall only be used to conduct Business Activities and GRANTEE shall cause the Business Activities not to change without the prior written consent of GRANTOR. Such consent shall not be unreasonably withheld, conditioned, or delayed.

D. Prior to the end of the Term, GRANTEE shall ensure through the EDA that InCube has caused to have been expended not less than FIFTEEN MILLION AND NO/100 DOLLARS ($15,000,000.00) of "non-public funds" (the "Raised Capital") directly on the Business Activities of the Project. Upon the expiration of the Term, GRANTEE shall provide certifications to GRANTOR that the Raised Capital has been expended directly on the Business Activities of the Project. For purposes hereof, "non-public funds" shall mean cash invested by non-governmental entities, agencies or government-owned entities, whether local, state or federal (including, but not limited to, the State of Texas (the "State"), the City of San Antonio (the "GRANTOR"), Bexar County (the "County"), the San Antonio Economic Development Corporation (the "GRANTEE"), University of Texas Healthscience Center – San Antonio (the "UTHSCSA") and the University of Texas in San Antonio ("UTSA").

E. Prior to January 31, 2011, GRANTOR shall cause InCube, through the EDA, to create and/or relocate within the Facility and/or the San Antonio Area not less than three (3) companies engaged in the Business Activities. No later than (i) the date that is thirty-six (36) months after the Facility has been secured through the execution of a Master Sublease Agreement or (ii) July 1, 2013, GRANTOR shall cause InCube through the EDA to create a minimum of two (2) additional companies for the purpose of conducting and engaging in the Business Activities as part of the Project. For purposes of this Agreement, the creation of a company shall mean and include that the company has been legally formed; appointed all necessary officers; established a physical address at the Facility or elsewhere in the San Antonio Area; and commenced in good faith to conduct Business Activities.

F. GRANTEE shall cause InCube through the terms of the EDA and as a direct result of the Project to create not less than fifty (50) Full-Time Employee Positions, which must simultaneously exist

and be filled by different individuals, at the Facility and/or elsewhere within the San Antonio Area no later than at the end of the Term of this Agreement. In order to satisfy this requirement, at least forty-five (45) of the fifty (50) Full-Time Employee Positions must pay a salary of between FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) and TWO HUNDRED THOUSAND AND NO/100 DOLLARS ($200,000.00) or more.

G. GRANTEE shall cause InCube, through the EDA, to collaborate with the San Antonio research community including UTSA, UTHSCSA and the Texas Research and Technology Foundation (the "TRTF") and their subsidiaries to identify commercially viable ideas and opportunities and to assist in their commercialization.

H. GRANTEE shall ensure through the EDA that InCube's Chairman and CEO, Mir Imran, is a "key man" to the Project and his meaningful, personal involvement, guidance and availability to the Project and the Business Activities at the Facility are provided as set forth in the EDA.

I. GRANTEE shall ensure that funding provided for under this Agreement shall only be used for the purpose of supporting the Business Activities at the Facility and/or within the San Antonio Area.

J. GRANTEE shall provide any and all available reports provided by InCube to GRANTOR and shall provide periodic progress reports on the Project at the request of GRANTOR.

K. GRANTEE shall ensure that it and InCube comply with all applicable Federal, State and local laws and regulations.

SECTION 4. ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM GRANT

A. **Economic Development Chapter 380 Program Grant.** GRANTOR has agreed to provide GRANTEE with an Economic Development Program Grant in a total cumulative amount of up to TEN MILLION DOLLARS ($10,000,000.00) (the "Grant Funds"). The Grant Funds shall be disbursed in five (5) annual installments and are subject to the annual appropriation of funds of the City Council of the City of San Antonio.

1. **Grant Disbursement**. Following the execution of this Agreement, the GRANTOR will make available to GRANTEE the Grant Funds as follows:

a. **First Disbursement.** Following the execution of this Agreement, Grant Funds in the total amount of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000.00) shall be made available to GRANTEE.

b. **Second Disbursement.** On June 1, 2011, Grant Funds in the amount of TWO MILLION DOLLARS ($2,000,000.00) shall be made available to GRANTEE.

c. **Third Disbursement.** On June 1, 2012, Grant Funds in the amount of TWO MILLION DOLLARS ($2,000,000.00) shall be made available to GRANTEE.

d. **Fourth Disbursement.** On June 1, 2013, Grant Funds in the amount of TWO MILLION DOLLARS ($2,000,000.00) shall be made available to GRANTEE.

e. **Fifth Disbursement.** On June 1, 2014, Grant Funds in the amount of ONE FIVE HUNDRED THOUSAND DOLLARS ($1,500,000.00) shall be made available to GRANTEE.

2. **Automatic Grant Reduction.** The Grant Funds are subject to automatic reduction upon GRANTEE securing additional funding for the Project from other public entities. Funding shall be considered "secured" for the purposes of this Agreement upon GRANTEE's receipt of such funds from such other public entities. Specifically, it is anticipated that GRANTEE shall receive the following amounts from the specified entities:

Entity:	Amount:
Bexar County	$2,000,000.00
The Texas Research & Technology Fund	$1,000,000.00
The University of Texas Health Science Center - SA	$500,000.00
The University of Texas at San Antonio	$500,000.00

Upon the GRANTEE securing any funding in any amount from these public entities, the Grant Funds committed by GRANTOR in this Agreement shall be automatically reduced by the same amount. GRANTEE shall provide copies of any and all executed agreements for funding for this Project to GRANTOR within thirty (30) days of executing such agreements. Provided that each of the other public entities provides the funds anticipated to be contributed by them as outlined above, the Grant Funds from GRANTOR shall be reduced by FOUR MILLION DOLLARS ($4,000,000.00).

B. **Reimbursement and Payment of Funds.** It is the understanding of the parties that GRANTEE is entering into an Economic Development Agreement with InCube that will provide GRANTEE with five-percent (5%) Founders Shares in not less than five (5) companies or entities participating in the Project and meeting a certain criteria as specified in that certain agreement. Should GRANTEE's right to said Founder's Share result in a monetary payment to GRANTEE, GRANTEE shall reserve a percentage of the monetary payment equating to GRANTOR'S overall percentage of funding in the Project in a separate account for GRANTEE's benefit and use. Such amount shall not be restricted to a reimbursement of Grant Funds, but shall continue in any amounts GRANTEE is entitled to receive through the Economic Development Agreement with InCube. GRANTEE's use of such funds shall be as approved by GRANTEE's governing board, and shall be subject to GRANTOR's approval.

SECTION 5. WITHHOLDING, FORFEITING AND REFUNDING GRANT FUNDS.

A. It is expressly understood and agreed by the parties hereto that if GRANTEE fails to submit to GRANTOR in a timely and satisfactory manner any information or report required under this Agreement, GRANTOR may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by GRANTEE hereunder. If GRANTOR withholds such payments, it will notify GRANTEE in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by the GRANTOR until such time as the delinquent obligations for which funds are withheld are fulfilled by GRANTEE.

B. GRANTEE shall refund to GRANTOR any sum of money paid to GRANTEE by GRANTOR, which the GRANTOR determines is an overpayment to GRANTEE, or in the event GRANTOR determines funds disbursed on behalf of GRANTEE were not made in response to an allowable cost of this Agreement. "Allowable costs" will be determined in accordance with this Agreement and the EDA and are defined as all amounts payable by GRANTEE pursuant or with respect to the EDA. Such refund shall be made by GRANTEE to GRANTOR within ninety (90) calendar days after such refund is requested in writing by the GRANTOR, or within thirty (30) calendar days of a notice from GRANTOR indicating the request is the result of a final determination that the refund is owed.

SECTION 6. DEFAULT AND GRANTOR's REMEDIES

A. **Default Events.** Any one of the following which occurs and continues shall constitute a Default Event:

1. The dissolution or liquidation of GRANTEE or the filing by GRANTEE of a voluntary petition in bankruptcy, or failure by GRANTEE to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair GRANTEE's ability to carry on its obligations under this Agreement; and/or

2. The commission by GRANTEE of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or

3. The admittance of GRANTEE, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of GRANTEE shall be appointed in any proceeding brought against GRANTEE and shall not be discharged within ninety (90) days after such appointment.

B. **Non-Waiver of 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 contract between GRANTEE and 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 to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 7. SUSPENSION

A. In the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may at its sole discretion and upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of non-compliance for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 7 may be lifted only at the sole discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 8. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of termination of this Agreement should GRANTOR determine that GRANTEE has failed to comply with any material term of this Agreement. GRANTOR will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any issue of non-compliance under this Agreement. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to GRANTEE.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Other Remedies Available. GRANTOR shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement. However, such termination and repayment shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

SECTION 9. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the greater of: (1) Four [4] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by GRANTEE pertaining to the Economic Development Loan (the "Records"). The GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify advances made by the GRANTOR and re-payments made by GRANTEE and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to the GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the 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 as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give the GRANTOR the right to suspend or terminate this Agreement as provided for in Section 15 and 16 below, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. GRANTEE agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with

the Texas Public Information Act on the same terms as the Records are made available to the GRANTOR as set forth above. All of the above notwithstanding, the GRANTOR and the citizens shall have no right to access any confidential or proprietary records of GRANTEE, including but not limited to the ownership and capital structure of GRANTEE.

SECTION 10. AUDIT

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement through a performance or financial audit. Should such audit be performed, GRANTOR shall provide GRANTEE with a copy of any reports or findings that may be presented. If the audit notes deficiencies in GRANTEE's performances under the terms of this Agreement, the audit shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the audit may be cause for suspension or termination of this Agreement.

B. It is expressly understood by the GRANTOR that GRANTEE is the designated entity dealing with InCube and GRANTOR shall not endeavor to seek any information regarding this Agreement from InCube directly without first seeking the written permission of GRANTOR.

SECTION 11. NOTICE

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

TO GRANTOR:	TO GRANTEE:
(Whether personally delivered or mailed):	- If mailed:
International and Economic Development Department Attn: Director P.O. Box 839966 San Antonio, Texas 78283-3966	San Antonio Economic Dev. Corporation Attn: Executive Director Office of the City Clerk, City of San Antonio 100 Military Plaza San Antonio, Texas 78205
(If by personal or overnight delivery):	
International and Economic Development Department Attn: Director 100 West Houston Frost Bank Tower, Suite 1900 San Antonio, Texas 78283-3966	Same as above

SECTION 12. RESERVED.

SECTION 13. AUTHORIZED RELIEF FROM PERFORMANCE *(Force Majeure)*

GRANTOR may grant temporary relief from performance of this Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain release based upon *force majeure*, the GRANTEE must file a written request with the GRANTOR. Should GRANTOR grant temporary relief to GRANTEE, it shall in no case relieve GRANTEE from any repayment obligations as specified in Section 3(B) and 3(C) of this Agreement.

SECTION 14. CONFLICT OF INTEREST

A. GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE 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 City of San Antonio's Code of Ethics.

SECTION 15. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by 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. GRANTEE shall include the substance of this Section 12 in all agreements associated with the funds made available through this Agreement.

SECTION 16. CHANGES AND AMENDMENTS

A. Except as provided in herein, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 17. SPECIAL CONDITIONS AND TERMS

A. 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 .5% per month until the time of such repayment from the date of final conviction.

SECTION 18. SUBCONTRACTS

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, GRANTOR is in no way liable to GRANTEE's subcontractor(s).

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to comply with the GRANTOR's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

SECTION 19. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of GRANTOR and the passage of a City Ordinance by GRANTOR's governing body approving such assignment unless to a parent, subsidiary, an affiliate entity of GRANTEE or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of GRANTEE. However, GRANTEE shall give GRANTOR prior written notice of any assignments or other transfers that may not require City Council consent. Any and all future assignees shall be bound by all terms and/or provisions and representations of this Agreement. Any attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. Additionally, upon any attempt to assign this Agreement without GRANTOR's consent shall enable GRANTOR to terminate this Agreement and seek recapture of all disbursed funds as fully described in Section 17. GRANTEE shall be responsible for all funds received under this Agreement.

SECTION 20. 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 21. LEGAL AUTHORITY

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

B. 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. GRANTOR will 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. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement.

WITNESS OUR HANDS, EFFECTIVE as of August 4**, 2010** ("Effective Date"):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2010-06-170560 dated June 17, 2010, and the San Antonio Economic Development Corporation pursuant to the authority of its Board of Directors.

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

Sheryl L. Sculley
CITY MANAGER

SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION
A Type B Texas Corporation

A.J. Rodriguez
Executive Director

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY