RR
6/11/15
Item No. 17

AN ORDINANCE 2015-06-11-0520

AUTHORIZING AN ECONOMIC DEVELOPMENT 380 GRANT AGREEMENT WITH CYTOCENTRICS, INC. IN THE AMOUNT OF $1,000,000.00.

* * * * *

WHEREAS, Cytocentrics, Inc. ("Cytocentrics") manufactures and sells medical equipment to conduct automated cell analysis ("patch clamping") which is an emerging technology that replaces current manual drug testing methods; and

WHEREAS, Cytocentrics has selected San Antonio to locate its domestic corporate headquarters and has identified a temporary location at 18618 Tuscany Stone in City Council District 9 for both research and manufacturing; and

WHEREAS, upon establishing a permanent location for a Facility, Cytocentrics will create at least 300 full-time jobs paying an annual salary of no less than $44,408.00 and invest at least $15,000,000.00 over 5 years (the "Project"); and

WHEREAS, Cytocentrics is seeking a Chapter 380 Economic Development Grant in the amount of $1,000,000.00 to defer costs associated with undertaking and completing the Project; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the "City") is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting Cytocentrics undertake and complete the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

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

SECTION 1. The terms and conditions of an Economic Development 380 Grant Agreement with Cytocentrics, Inc.

SECTION 2. The City Manager or her designee is authorized to execute the Economic Development 380 Grant Agreement with Cytocentrics, Inc. in accordance with the terms and

conditions of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Exhibit I.** The final agreement shall be filed with this Ordinance upon execution.

SECTION 3. Funding in the amount of $1,000,000.00 for this ordinance is available for Fund 29059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2015 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to Cytocentrics, Inc. and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 11th 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:	**17**
Date:	06/11/2015
Time:	10:28:10 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving an Economic Development Agreement with Cytocentrics, Inc. in the amount of $1,000,000 for the creation of 300 high-wage jobs over 5 years and an investment of at least $15 million over 5 years. [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				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				x

Exhibit I

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 "this Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas (hereinafter referred to as "GRANTOR"), acting by and through its City Manager or her designee, and Cytocentrics, Inc, a Delaware corporation (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 grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, GRANTOR created an economic development program for the purpose of making such grants available; and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within the city limits of the City of San Antonio and will consist of establishing a corporate headquarters and manufacturing operation, investing not less than $15 million in real and personal property improvements and creating not less than 300 new full-time jobs by December 31, 2019 (the "Project"); and

WHEREAS, once completed, the Project is expected to result in the promotion of local economic development and to stimulate business and commercial activity in the City of San Antonio; and

WHEREAS, GRANTEE is seeking an economic development grant from GRANTOR for the purpose of defraying costs associated with undertaking and completing the Project, and

WHEREAS, GRANTOR, to induce GRANTEE to undertake and complete the Project, has identified funds available to provide a grant to GRANTEE to be solely used for the Project; and

WHEREAS, the City Council of GRANTOR has authorized the GRANTOR's City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2015-__-__-_____, passed and approved on _____ __, 2015, to grant funds to support the Project.

NOW THEREFORE:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance with Chapter 380 of the Texas Local Government Code. GRANTOR is supporting the Project through this Economic Development Program Grant to provide funds to be used to defray costs of the Project. This economic incentive is being offered to GRANTEE to promote investment and job creation in a targeted industry of GRANTOR.

SECTION 2. PROJECT REQUIREMENTS

A. GRANTEE shall establish its corporate headquarters at 18618 Tuscany Stone, San Antonio, TX 78258 (the "Project Site") and conduct its business activities (excluding manufacturing activities) within the city limits of the City of San Antonio for a period of not less than eight (8) years commencing on or before December 31, 2015. GRANTEE shall commence manufacturing activities in the city limits of the City of San Antonio no later than December 31, 2017 and throughout the term of the agreement.

B. GRANTEE shall invest not less than a cumulative FIFTEEN MILLION DOLLARS AND 0 CENTS ($15,000,000.00) in real and personal property improvements and inventory/supplies at the Project Sites prior to December 31, 2019.

C. GRANTEE shall move its operations from Rostock, Germany to the Project Sites and incident thereto will move Full-Time jobs from Germany to the Project Site so that, by December 31, 2015, there will be not less than fifteen (15) Full-Time jobs at the Project Site(s).

D. GRANTEE shall create an additional two hundred and eighty-five (285) Full-Time jobs prior to December 31, 2019 for a cumulative total of three hundred (300) Full-Time jobs in accordance with the following:

1. By December 31, 2016, GRANTEE shall create thirty (30) Full-Time Jobs at the Project Site(s).

2. By December 31, 2017, GRANTEE shall retain thirty (30) Full-Time Jobs at the Project Site(s) and create an additional forty-five (45) Full-Time Jobs for a cumulative total of seventy-five (75) Full-Time Jobs at the Project Site(s).

3. By December 31, 2018, GRANTEE shall retain seventy-five (75) Full-Time Jobs at the Project Site(s) and create an additional seventy-five (75) Full-Time Jobs for a cumulative total of ONE HUNDRED AND FIFTY (150) Full-Time Jobs at the Project Site(s).

4. By December 31, 2019, GRANTEE shall retain ONE HUNDRED AND FIFTY (150) Full-Time Jobs at the Project Site(s) and create an additional one hundred and fifty (150) Full-Time Jobs at the Project Site(s) for a cumulative total of three hundred (300) Full-Time Jobs at the Project Site(s).

A Full-Time Job, for the purposes of this Agreement, shall be equivalent to two thousand fifteen (2,015) straight-time paid hours in a fiscal year.

E. In accordance with the GRANTOR's Economic Development Incentive Fund Guidelines, GRANTEE must pay 100% of all employees located at the Project Site at least the minimum "living" wage of ELEVEN DOLLARS AND SIXTY-SIX CENTS ($11.66) an hour.

F. In addition to the "Living Wage" requirement, after one year of initiating full operations at the project location, but not more than two years after execution of this Agreement , at least seventy percent (70%) of all new and existing employees must earn a cash wage at or exceeding FOURTEEN DOLLARS AND SIXTY SIX-CENTS ($14.66) an hour.

G. GRANTEE shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

H. GRANTEE also covenants and agrees that it shall offer all of its non-temporary full-time employees employed at the site of the Project access to a healthcare and benefits plan.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT AND RECAPTURE OF FUNDS.

A. **Economic Development Program Grant.** GRANTOR is providing GRANTEE with an Economic Development Program Grant in the amount of ONE MILLION DOLLARS AND 0 CENTS ($1,000,000.00) ("Grant Funds"). The Grant Funds shall be used for the purpose of defraying costs associated with the relocation and creation of Full-Time jobs in accordance with Section 2(A), (C) and (D) above.

B. **Grant Disbursement.** Following approval of this Agreement by a duly authorized City Ordinance, execution of the Agreement, and GRANTEE providing sufficient collateral to GRANTOR in an amount equal to the payments as described below, if applicable, in a form acceptable to GRANTOR, the GRANTOR will make the Grant Funds available to GRANTEE in the manner set forth herein with the initial payment being made available to GRANTEE upon the submission by GRANTEE of documentation evidencing that it has relocated its corporate headquarters and manufacturing operations in accordance with Section 2A above.

Upon confirmation by GRANTOR that GRANTEE has complied with Section 2 of this Agreement, then GRANTOR shall make the Grant Funds available as follows:

1. Initial Payment. An initial payment of FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS ($500,000.00) will be disbursed by GRANTOR to GRANTEE upon the following conditions: a) GRANTEE providng proof that it has complied with Section 2(C) above; b) GRANTEE providing proof to GRANTOR of having obtained a license to operate in the State of Texas and establishing its corporate headquarters within the city limits of the City of San Antonio prior to December 31, 2015; c) GRANTOR receiving confirmation that GRANTEE has donated two (2) CytoPatch 2 machines to public or non-profit organizations approved by the City which may include the Alamo Colleges, the University of Texas at San Antonio, or University of Texas Health Science Center at San Antonio for training and research purposes; d) GRANTEE providing proof to GRANTOR that GRANTEE's CEO has established residency in the City of San Antonio; and d) GRANTEE providing proof to GRANTOR of GRANTEE having secured local matching investment in an amount of not less than $1,000,000.00.

2. Second Payment. No sooner than January 1, 2018, GRANTEE may seek a second payment of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND 0 CENTS ($125,000.00) upon: a) GRANTEE providing proof to GRANTOR that, in addition to complying with Section 2(C) above, it created an additional fifteen (15) Full-Time Jobs prior to December 31, 2016 for a cumulative total of thirty (30) Full-Time Jobs at the Project Site; b) GRANTEE providing proof to GRANTOR that it has created an additional forty-five (45) Full-Time Jobs for a cumulative total of seventy-five (75) Full-Time Jobs at the Project Site prior to December 31, 2017; c) GRANTEE having received a Certificate of Occupancy for GRANTEE's laboratory, research and manufacturing facility and having commenced business activities and operations within the GRANTOR's city limits; and d) GRANTEE providing proof to GRANTOR that it has partnered

with Alamo Colleges on workforce development and the establishment of a customized training program; and e) GRANTEE providing GRANTOR with collateral in the form of a performance bond or irrevocable letter of credit in the amount of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS AND 0 CENTS ($125,000.00).

3. Third Payment. No sooner than January 1, 2019, GRANTEE may seek a third payment of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND 0 CENTS ($125,000.00) upon a) GRANTEE providing proof to GRANTOR that it has created an additional seventy-five (75) Full-Time Jobs at the Project Site in accordance with Section 2(D) above for a cumulative total of one hundred and fifty (150) Full-Time Jobs at the Project Site prior to December 31, 2018;and b) GRANTEE providing GRANTOR with collateral in the form of a performance bond or irrevocable letter of credit in the amount of ONE HUNDRED TWENTY- FIVE THOUSAND DOLLARS AND 0 CENTS ($125,000.00).

4. Fourth Payment. No sooner than January 1, 2020, GRANTEE may seek a fourth payment of TWOHUNDRED FIFTY THOUSAND DOLLARS AND 0 CENTS ($250,000.00) upon a) GRANTEE providing proof to GRANTOR that it has created an additional one hundred and fifty (150) Full-Time Jobs in accordance with Section 2(D) above for a cumulative total of three hundred (300) Full-Time Jobs at the Project Site prior to December 31, 2019 and b) GRANTEE providing GRANTOR with collateral in the form of a performance bond or irrevocable letter of credit in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND 0 CENTS ($250,000.00).

C. **Recapture of Program Grant Funds in Years 1-8.** Should GRANTEE:

1. Fail to undertake and complete the Project on or before December 31, 2019; or

2. Sell all or a substantial portion of its assets without GRANTOR's consent, but only if such sale results in a failure to comply with the terms of this Agreement; or

3. Relocate its corporate headquarters and manufacturing outside of the City of San Antonio during the term of this Agreement; or

4. Fail to keep adequate records necessary for the GRANTOR to determine if GRANTEE is in compliance with this Agreement; then

GRANTOR shall have the right to terminate this Agreement and recapture one hundred-percent (100%) of Grant Funds advanced to Grantee after written request is delivered to GRANTEE, which written request will afford GRANTEE a 60-day opportunity to either correct the failure resulting in the recapture right or make payment to Grantor.

D. **Annual "Per-Job" Repayment.** If the required number of Full-Time Jobs are not created in accordance with the schedule in Section 2(D) above and maintained for the Term of the Agreement, then Grantee agrees to repay Grantor the Grant Funds with interest at five percent (5%), compounded annually as follows:

Year	Amount Recaptured per Job not created and Maintained
Years 1 through 6	$3,333.00 per job

Year 7	$2,666.00 per job
Year 8	$2,000.00 per job

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon ITS EXECUTION and terminate on December 31, 2023 unless extended by a mutual agreement in writing (the "Term").

SECTION 5. GRANTOR OBLIGATIONS

A. GRANTOR will make an Economic Development Program Grant of ONE MILLION DOLLARS AND 0 CENTS ($1,000,000.00) available to GRANTEE under the terms and conditions of this Agreement.

B. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE other than those which GRANTOR is obligated to reimburse pursuant to the terms of this Agreement.

SECTION 6. 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 period required for record retention or by any 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 during normal business hours 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 Grant in San Antonio (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 Grant 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 accuracy 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 unless the independent firm confirms that the information as provided by GRANTEE is accurate, in which case the GRANTOR will bear the cost of the independent firm. 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 14 and 15 below, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of five (5) 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 if required by

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 7. MONITORING

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement by monitoring, subject to the requirements of SECTION 6 above. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report 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 monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. GRANTEE shall provide to GRANTOR a semi-annual certification within 1 month of June 30 and December 31 with reasonable supporting information evidencing the creation of and filling of the number of jobs at the Project Sites, compliance with the minimum wage requirements as specified in this Agreement and the required investments made at the Project sites.

SECTION 8. 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 GRANTOR's Code of Ethics.

SECTION 9. 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 9 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 10. LEGAL AUTHORITY

A. 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. 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 in accordance with Sections 14 and 15 herein 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 11. LITIGATION AND CLAIMS

A. 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 any subcontract hereunder. 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 30 calendar days after receipt. 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. The above notwithstanding GRANTEE is not required to notify GRANTOR of claim or litigation which arises out of GRANTEE's operations on the Project, including without limitation, landlord/tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. GRANTOR and GRANTEE acknowledge 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. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. 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 13. CHANGES AND AMENDMENTS

A. 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 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 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE commits a Default Event, GRANTOR shall provide GRANTEE with written notification as to the nature of the Default Event. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any Default Event. Should GRANTEE fail to cure any Default Event within this period of time, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part by withholding 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 a Default Event that occurs 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 reasonable 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 14 may be lifted at the reasonable 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 unless GRANTOR improperly exercised its right of suspension.

SECTION 15. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement in the event GRANTEE commits a Default Event that remains uncured past any applicable cure period at any time before the date of completion specified in Section 5 of this Agreement. GRANTOR will provide GRANTEE with written notification as to the nature of the Default Event and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any Default Event. Should GRANTEE fail to cure any Default Event within this period of time, the GRANTOR may, upon issuance to GRANTEE of a

written Notice of Termination, either suspend this Agreement pursuant to the provisions of SECTION 14 above, or terminate this Agreement in whole or in part, in which case the GRANTOR may: (1) withhold further payments to GRANTEE; and/or (2) accelerate the repayment of the grant. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of a Default Event that occurs 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 reasonable 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. In the absence of a Default Event, this Agreement may be terminated in whole or in part only as follows:

1. By the GRANTOR (with the written consent of the GRANTEE), in which case the two parties shall agree upon the termination conditions, including the repayment of funds, 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 funds granted, the effective date, and, in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, 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 under SECTION 15.

SECTION 16. 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 .5% per month until the time of such repayment from the date of final conviction.

SECTION 17. NOTICE

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

If intended for Grantor, to: City of San Antonio
Economic Development Department

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

If intended for Grantee, to:

Cytocentric Bioscience Inc.
Attn: James Garvin, CEO
Cytocentrics, Inc.
18618 Tuscany Stone Suite 120
San Antonio, Texas 78258

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 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 20. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of GRANTOR and the passage of a GRANTOR Ordinance approving such assignment. Any other 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. GRANTEE shall be held responsible for all funds received under this Agreement. Notwithstanding the foregoing, GRANTEE may assign the Agreement, upon consent of GRANTOR, which shall not be unreasonably withheld or delayed, in conjunction with a sale or merger of the company so long as the entity that will succeed to GRANTEE's rights under this Agreement assumes in writing all of GRANTEE's obligations hereunder.

SECTION 21. 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 22. 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, 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. Should GRANTOR grant temporary relief

to GRANTEE, it shall in no case relieve GRANTEE from any repayment obligations as specified in this Agreement.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of ___June_____11th, 2015:

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to City Ordinance Number 2015-__-__-____, dated _____ __, 2015, and GRANTEE pursuant to the authority of its _____.

GRANTOR:
CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl L. Sculley
CITY MANAGER

GRANTEE:
CYTOCENTRICS, Inc.
a Delaware Corporation

By:_____
Name: James Garvin
Title: Chief Executive Officer

ATTEST:

_____
Leticia Vacek

CITY CLERK

APPROVED AS TO FORM:

_____
Martha G. Sepeda
ACTING CITY ATTORNEY

ECONOMIC DEVELOPMENT

Cytocentrics, Inc.
Chapter 380 Grant Agreement

June 11, 2015

City Council Item 17

Rene Dominguez, Director, Economic Development Department

SUMMARY

Staff recommends approval of a Chapter 380 Grant Agreement not to exceed $1M based on:

- The creation of a new corporate headquarters and 300 new high wage jobs paying no less than $50,000 annually, and a capital investment of at least $15M.

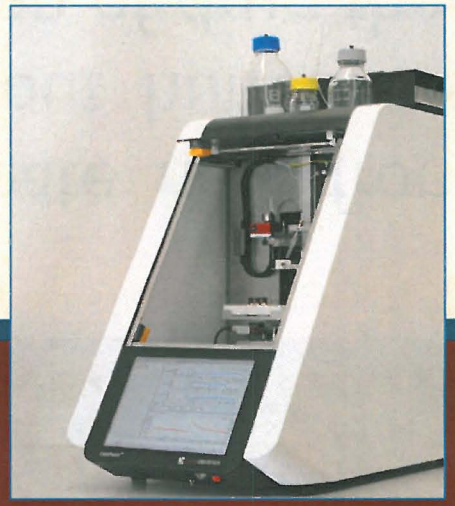
- A partnership with The Center for Innovative Drug Discovery (a joint venture between the UTSA Health Science Center and UTSA), which will result in enhanced research capabilities.

- A partnership with the Alamo Colleges to develop a specialized workforce program to train lab technicians and research assistants to help create a pipeline of future biomedical workforce.

BACKGROUND

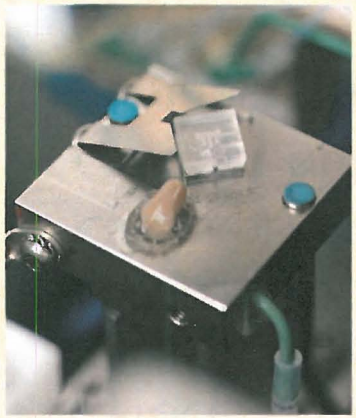
- Cytocentrics Bioscience is a German biotechnology company formed in 2001 and located in Rostock, Germany.
- Cytocentrics manufactures, operates and sells medical equipment to conduct automated human cell analysis to explore and understand the manner in which cells react to environmental and pharmaceutical stimuli.
- Much of the operations involve drug testing to meet FDA testing requirements and can replace the current manual testing methods.

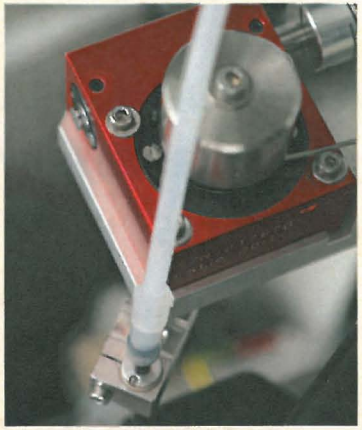
cytocentrics



BACKGROUND (CONT)

- This technology is meant to create new frontiers of discovery and understanding about human cells and test the effectiveness and utilization of drug therapy for diseases like diabetes and cancer.





PROPOSED INCENTIVE

To secure relocation of the Cytocentrics headquarters, the research and workforce partnerships, 300 new high-wage jobs, and a $15M investment, staff recommends:

- A $1M grant from the Economic Development Investment Fund paid over 5 years.

cytocentrics

UTSA The University of Texas at San Antonio™

Targeted Technology

Center for Innovative Drug Discovery

WE MAKE LIVES BETTER
UT HEALTH SCIENCE CENTER®
SAN ANTONIO

ALAMO COLLEGES

PROJECT BENEFITS

Partnership with The Centers for Innovative Drug Discoveries

WE MAKE LIVES BETTER
UT HEALTH SCIENCE CENTER®
SAN ANTONIO

Center for Innovative Drug Discovery

UTSA® The University of Texas at San Antonio™

- Cytocentrics will partner with CIDD, a joint venture between the UT Health Science Center and UTSA, to support biomedical research related to drug discovery.
- Cytocentrics will donate a CytoPatch machine to CIDD for research purposes. The new instrument will strengthen CIDD's ability to screen for various biological processes and activities for which they were previously unable to test.
- The value of the partnership and the opportunity to have access to a CytoPatch machine has significant potential impact for drug discovery research across multiple therapeutic areas.
- As the only U.S. site with this technology, the public-private collaboration will enhance San Antonio's profile as a nationwide leader in the biotechnology industry.

PROJECT BENEFITS (CONT)

Partnership with Alamo Colleges

cytocentrics

ALAMO COLLEGES

- Cytocentrics will also partner with Alamo Colleges on developing a specialized workforce training program focusing on the instruction of the patch clamp method for lab technicians, research assistants, and biotechnology manufacturing.
- As part of this collaboration, Cytocentrics will donate a CytoPatch machine to Alamo Colleges and facilitate a robust curriculum to develop a pipeline for future biomedical workforce.

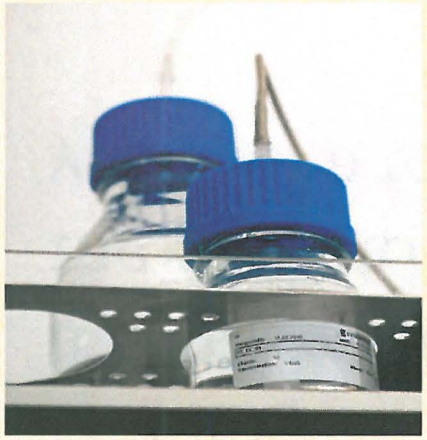
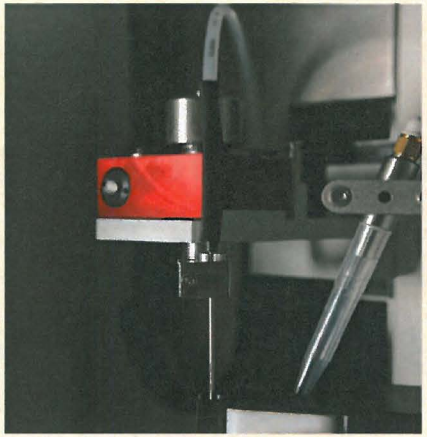
PROJECT BENEFITS (CONT)

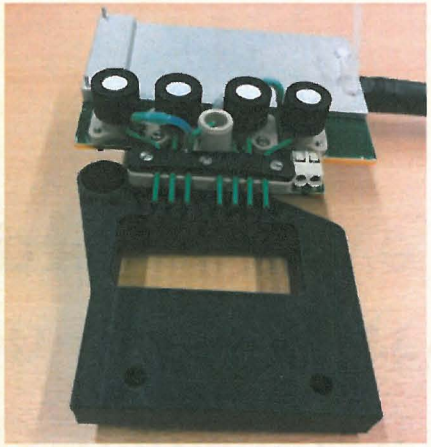
In addition to the valuable partnerships being established as a result of the Grant Agreement, Cytocentrics agrees to:

- Establish and maintain its corporate headquarters and operations in San Antonio.
- Create at least 300 new full-time, high-wage jobs paying no less than $50,000 each, with an average wage of more than $70,000.
- Make a capital investment of at least $15M.

ISSUES

Pursuant to the City's EDIF Guidelines, the Cytocentrics project qualifies for an EDIF grant based on the creation of 300 new high-wage jobs and capital investment of at least $15M at a new corporate headquarters facility.



FISCAL IMPACT

Funding is available in the Economic Development Incentive Fund from the FY 2015 allocation to support the grant to Cytocentrics. The grant will be paid over five years for a total amount not to exceed $1M.

cytocentrics

RECOMMENDATION

Staff recommends approval of:

- An Ordinance authorizing the City to enter into a Chapter 380 Economic Development Agreement with Cytocentrics, Inc., which will provide a grant not to exceed $1 million, provided that:
    - Cytocentrics donate the two CytoPatch machines, create and retain a minimum of 300 high-wage jobs paying no less than $50,000 each, and enter into public-private partnerships with CIDD, a joint venture between UTHSCSA and UTSA, and the development of workforce training programs by Alamo Colleges.

ECONOMIC DEVELOPMENT

Cytocentrics, Inc.
Chapter 380 Grant Agreement

June 11, 2015

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Rene Dominguez, Director, Economic Development Department