

AN ORDINANCE 2011-06-23-0531

AUTHORIZING AND APPROVING THE EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH THE SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION (SAEDC), APPROPRIATING \$3.3 MILLION IN FUNDING OVER THREE (3) YEARS TO THE SAEDC TO ENTER INTO AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (UTHSCSA).

* * * * *

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 established the San Antonio Economic Development Corporation (the “SAEDC”), a Type B corporation created pursuant to the authority of the Development Corporation Act, Title 12, Subtitle C1, as amended, Texas Local Government Code, for the purpose of undertaking certain economic development projects approved by the City’s governing board; and

WHEREAS, the City has authorized the SAEDC to undertake an economic development project consisting of the construction and operation of a state-of-the-art research facility on the UTHSCSA campus which is expected to be a significant economic generator for the community creating over 150 new, high paying research and scientific jobs; and

WHEREAS, the facility will primarily house the Institute of Integration of Medicine and Science which will be the home for the \$26 million National Institute of Health Clinical (NIH) Translation Science Award and will also house other core research programs on cancer, diseases affecting the elderly, disorders such as stroke, diabetes in children and adults, and the engineering of new body tissues to cure diseases in partnership with the military (the “Project”); and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting the UTHSCSA in establishing a life-science and technology business incubator in San Antonio 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 a Chapter 380 Economic Development Grant Agreement with the SAEDC are hereby approved.

SECTION 2. The City Manager, or her designee, is authorized to execute a Chapter 380 Economic Development Grant Agreement with the SAEDC in an amount not to exceed \$3,300,000.00. A copy of

the Agreement in substantially final form is attached as "Attachment I" and made a part of this ordinance. A final copy of the Agreement will be attached when executed.

SECTION 3. The City Council authorizes the SAEDC to undertake the Project and to negotiate and execute an Economic Development Agreement with UTHSC SA and to amend any and all documents deemed necessary by the SAEDC Chief Financial Officer to effectuate the purpose of this Ordinance.

SECTION 4. Funding in the amount of \$1,100,000.00 for this ordinance is available in Fund 29059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2011 Budget.

SECTION 5. Payment not to exceed \$1,100,000.00 is authorized to San Antonio Economic Development Corporation and should be encumbered with a purchase order.

SECTION 6. Additional funding in the amount of \$1,100,000.00 for this ordinance is contingent upon approval of the Fiscal Year 2012 Budget for Fund 29059000, Cost Center 1604010001 and General Ledger 5201040.

SECTION 7. If approved by council, payment not to exceed \$1,100,000.00 is authorized to San Antonio Economic Development Corporation and should be encumbered with a purchase order.

SECTION 8. Additional funding in the amount of \$1,100,000.00 for this ordinance is contingent upon approval of the Fiscal Year 2013 Budget for Fund 29059000, Cost Center 1604010001 and General Ledger 5201040.

SECTION 9. If approved by council, payment not to exceed \$1,100,000.00 is authorized to San Antonio Economic Development Corporation and should be encumbered with a purchase order.

SECTION 10. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO 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.

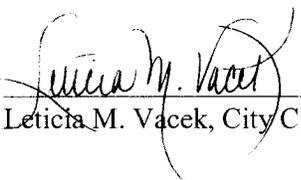
SECTION 11. This ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council.

PASSED AND APPROVED this 23rd day of JUNE 2011.



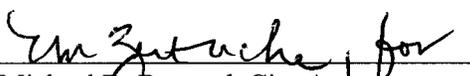
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
 ACTION

City of San Antonio



Agenda Voting Results - 4

Name:	4						
Date:	06/23/2011						
Time:	09:36:41 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a Chapter 380 Economic Development Program Grant Agreement with the San Antonio Economic Development Corporation (SAEDC), appropriating \$3.3 million in funding over three years to the SAEDC and authorizing the SAEDC to enter into an Economic Development Agreement with the University of Texas Health Science Center at San Antonio. [A.J. Rodriguez, Deputy City Manager; Rene Dominguez, Director, International and Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

STATE OF TEXAS

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**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 the City's governing board; and

WHEREAS, the City has authorized GRANTEE to undertake, in cooperation with the University of Texas Health Science Center at San Antonio ("UTHSCSA"), an economic development project consisting of the finish-out, establishment and operation of the South Texas Research Facility (the "STRF"), a state-of-the art \$200 million research building expected to be a significant economic generator for the community creating over 150 new, high paying research and scientific jobs that houses the Institute of Integration of Medicine and Science and other core research programs on cancer, diseases affecting the elderly, disorders such as stroke, diabetes in children and adults, and the engineering of new body tissues to cure diseases in partnership with the military (the "Project"); 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 _____, 2011 and shall terminate on _____, 201_ (the "Term").

SECTION 3. PROJECT REQUIREMENTS

A. GRANTEE shall execute an Economic Development Agreement (the "EDA") with UTHSCSA to establish the Project which will be located at _____, San Antonio, Texas 782__ (the "Facility"). The EDA shall set forth terms and conditions that provide for the following:

- (i) the substantial completion of construction of the STRF by December 31, 2011; and
- (ii) a good-faith effort on the part of UTHSCSA to create and maintain 150 full-time jobs at the STRF during the term of the EDA; and
- (iii) a good-faith effort on the part of UTHSCSA to conduct or cause to be conducted meaningful business activities in the STRF throughout the term of the EDA; and
- (iv) collaboration on the part of UTHSCSA with the San Antonio research community including Brooke Army Medical Center, The University of Texas at San Antonio, and the Texas Biomedical Research Institute and their affiliates to identify commercially viable ideas and opportunities in the field of life science and biomedicine and to assist in their commercialization.

B. Upon execution of the EDA, GRANTEE shall provide a copy to GRANTOR and such copy shall be attached hereto as Attachment I.

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 THREE MILLION THREE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$3,300,000.00) (the "Grant Funds"). The Grant Funds shall be disbursed in THREE (3) 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 ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$1,100,000.00) shall be made available to GRANTEE.
 - b. **Second Disbursement.** On _____, 2012, Grant Funds in the amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$1,100,000.00) shall be made available to GRANTEE.
 - c. **Third Disbursement.** On _____, 2013, Grant Funds in the amount of ONE MILLION ONE HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$1,100,000.00) shall be made available to GRANTEE.

2. **Grant Use.** GRANTEE shall provide the Grant Funds to UTHSCSA and shall ensure that Grant Funds are used only for the purpose of paying a portion of the costs of constructing, equipping, and completing finish-out of the STRF. GRANTEE shall ensure that UTHSCA complies with all applicable Federal, State and local laws and regulations.

B. **Reimbursement and Payment of Funds.** GRANTOR's governing board has authorized GRANTEE to take an equity position in the Project. The EDA shall provide for GRANTEE to obtain an equity interest in companies or entities participating in the Project and meeting a certain criteria as specified in the EDA. Should GRANTEE's equity interest in the Project result in a monetary payment to GRANTEE, GRANTEE shall reserve the monetary payment in a separate account for GRANTOR'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 EDA. From time-to-time, GRANTOR shall direct GRANTEE as to the use of such funds in writing and approved by GRANTOR's governing board.

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 are defined as direct costs incurred in the Project. 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. Termination and Repayment of Funds for Relocation of Business Activities. If GRANTEE causes the Facility to be used and occupied for Business Activities and subsequently allows the Facility to be "Abandoned" during the term of this Agreement, except if such Abandonment is caused by a Force Majeure, as defined in SECTION __, GRANTOR shall have the right to terminate this Agreement without notice to GRANTEE. Said termination shall be effective for the time upon which the Facility was no longer used for Business Activity. Upon said termination, all disbursed funds by GRANTOR shall be due to GRANTOR and shall be paid to GRANTOR by GRANTEE within sixty (60) calendar days from the date of termination.

For purposes of this section and any other sections referring to this section, "Abandon" or "Abandoned" or "Abandonment" shall mean InCube locating all or a substantial portion of its Business Activities to a location outside of the Facility and the City of San Antonio.

D. Termination and Repayment of Funds for Cessation of Business Activities. If GRANTOR causes the Facility to be occupied for the Business Activities and subsequently the Business Activities cease for a continuous period of four (4) months for any reason, other than a Force Majeure as defined in this Agreement (hereinafter referred to as "Ceasing" operations), then the GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the time upon which GRANTEE has "ceased" operations. Upon said termination, all disbursed funds by GRANTOR under this Agreement shall be due to GRANTOR and shall be paid by GRANTEE to the CITY within sixty (60) calendar days from the date of said termination becomes effective.

F. 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.

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:

(Whether personally delivered or mailed):

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

TO GRANTEE:

- If mailed:

San Antonio Economic Dev. Corpo
Attn: Director

- If by personal or overnight delivery:

Economic Development Department
Attn: Director
City Hall, 4th Floor
Military Plaza
San Antonio, Texas 78205

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.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2011:

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2011-06-23-____, dated June 23, 2011, and the San Antonio Economic Development Corporation pursuant to the authority of its Board of Directors.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

**SAN ANTONIO ECONOMIC
DEVELOPMENT CORPORATION**
a Type B Texas Corporation

Sheryl L. Sculley
CITY MANAGER

A.J. Rodriguez
Executive Director

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

Name:
Title:

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY

**ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO
AND
THE SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of this _____ day of June, 2011 (the “**Effective Date**”), by and between THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (hereinafter referred to as “**UT HSC**”), an institution of higher education established under the Constitution and laws of the State of Texas, and the SAN ANTONIO ECONOMIC DEVELOPMENT CORPORATION, an economic development corporation created under the laws of the State of Texas, (hereinafter referred to as the “**SAEDC**”). This Agreement is intended to benefit both SAEDC and UT HSC, and, is further intended to provide direct benefit to the City of San Antonio.

RECITALS

WHEREAS, SAEDC is a Type B corporation created pursuant to the authority of the EDC Act (as hereinafter defined); and

WHEREAS, it has been determined that the EDC Act authorizes SAEDC to use funds in connection with land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that the board of directors of SAEDC believes would promote new or expanded business development in the City of San Antonio; and

WHEREAS, UT HSC intends to construct a new state-of-the-art research building and related improvements within the UT HSC campus in San Antonio to be known as the South Texas Research Facility (“**STRF**”), which will comprise approximately 188,000 square feet and cost approximately \$150,000,000.00; and

WHEREAS, the STRF will house among other offices, the offices for the Institute for the Integration of Medicine and Science and the South Texas Technology Management, and in connection therewith UT HSC will install up to \$20,000,000.00 in equipment, personal property and supplies, create at least 150 full-time jobs, and will conduct research in programs such as cancer, diseases affecting the elderly, disorders such as stroke, diabetes in children and adults, and the engineering of new body tissues to cure diseases in partnership with military medicine; and

WHEREAS, UT HSC promotes the establishment of Start-Up entities (as hereinafter defined) through investment, research and support and from time-to-time receives Equity Interests (as hereinafter defined) in the Start-Up entities; and

WHEREAS, UT HSC has requested SAEDC to assist in paying the cost of constructing the STRF, and SAEDC desires to provide financial assistance to UT HSC through a grant, in exchange for which UT HSC has agreed to assign to SAEDC a portion of the Net Equity Proceeds (as hereinafter defined) from Equity Interests (as hereinafter defined) received by UT HSC or its Affiliates in Start-Up entities for a period of ten (10) years following the Effective Date.

NOW, THEREFORE, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, UT HSC and SAEDC agree as follows:

ARTICLE I DEFINITIONS

1.1 “**Affiliate**” means any Person directly or indirectly controlled by or under direct or indirect common control of another Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

1.2 “**Business Activities**” means research and development oriented toward the commercialization of technological breakthroughs in the life-science and bio-medical industries.

1.3 “**EDC Act**” means the Development Corporation Act, Title 12, Subtitle C1, of the Texas Local Government Code (Chapter 505), as amended from time-to-time.

1.4 “**Equity Interests**” means the shares of stock, membership interests, partnership interests or other equity ownership interests issued during the 10-year Term of this Agreement to UT HSC and/or its Affiliates in a Start-Up in consideration of funds or other resources invested by UT HSC or its Affiliates in such Start-Up with the expectation of earnings and/or capital appreciation; it being expressly understood that Equity Interests do not include any shares of stock, membership interests, partnership interests or other equity ownership interests issued to UT HSC and/or its Affiliates after the expiration of the 10-year Term.

1.5 “**Event of Default**” shall have the meaning ascribed to such term in Section 6.1 and Section 6.2 below.

1.6 “**Force Majeure**” means labor disputes, casualty to the STRF, an act of God or natural disaster (which is outside of the norm for the San Antonio Area or which could not be reasonably anticipated or avoided), riots, acts of war or terrorism, insurrection, sabotage, and civil disobedience, specifically excluding any event or delay which is directly or indirectly caused by or the result of the gross negligence, willful or intentional act or misconduct on the part of UT HSC or its Affiliates, or their officers, owners, agents, employees, or contractors, or any event or delay which is directly or indirectly caused or the result of an Event of Default by UT HSC under this Agreement.

1.7 “**Grant Funds**” means grant payments by SAEDC to UT HSC of THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,300,000.00) in the aggregate, pursuant to this Agreement.

1.8 “**Interest Rate**” means the lesser of six percent (6%) per annum or the maximum rate permitted by applicable law, compounded monthly.

1.9 “**Net Equity Proceeds**” means all receipts by UT HSC or its Affiliates attributable to the Equity Interests, after distributions by UT HSC pursuant to published policies binding on UT HSC and in effect prior to the receipt of the Net Equity Proceeds for (1) incentive based Equity Interest distributions for the purposes of retaining or recruiting faculty, (2) current or future U.T. System Administration Board of Regents policy, (3) distributions covered by inter-institutional

proceeds sharing arrangements, and less any ordinary and necessary business expenses including reasonable direct out-of-pocket costs incurred by UT HSC in connection with the obtaining of such Equity Interests. Such expenses would include all required UT HSC internal costs and expenses.

1.10 “**Patent Rights**” means rights of UT HSC or its Affiliates in and to information, discoveries, properties or products covered in patent applications, whether domestic or foreign, and all divisionals, continuations, continuations-in-part, resissues, reexaminations or extensions thereof, and any letters patent that issue thereon.

1.11 “**Person**” means an individual, a partnership, an association, corporation, a joint venture, an unincorporated organization, a trust, governmental agency, an administrative tribunal or any other form of business or legal entity.

1.12 “**Plans and Specifications**” means the final plans and specifications for the STRF prepared by _____, dated _____, and any amendments or modifications thereto; provided that no material changes to the Plans and Specifications shall be made without the approval of SAEDC.

1.13 “**STRF**” means the South Texas Research Facility, as more particularly described in the Recitals to this Agreement.

1.14 “**Start-Up**” means a legal entity, including but not limited to a corporation, limited liability company, partnership or joint venture established for the purpose of commercializing Patent Rights and/or Technology Rights.

1.15 “**Technology Rights**” means the rights of UT HSC or its Affiliates in technical information, know-how, processes, procedures, compositions, devices, methods, formulas, protocols, techniques, software, designs, drawings, or data which are not covered by Patent Rights but which are necessary for practicing the Patent Rights.

1.16 “**Term**” means the period of time from the Effective Date of this Agreement until the expiration of ten (10) years following the Effective Date.

1.17 “**UT HSC**” means the University of Texas Health Science Center at San Antonio.

ARTICLE II PURPOSE

The purpose of this Agreement is for SAEDC to assist UT HSC through certain economic development grants to help construct, equip and finish out the STRF at its campus in the City of San Antonio. The STRF is anticipated to promote local economic development and stimulate business, commercial, and research activity in the City of San Antonio including, but not limited to, the creation or retention of primary jobs, and this Agreement and the payment of the Grant Funds to UT HSC pursuant hereto has been determined by the board of directors of SAEDC to be required for the development, retention or expansion in San Antonio of research and development facilities such as those operated by UT HSC and/or its Affiliates.

ARTICLE III OBLIGATIONS OF UT HSC

3.1 UT HSC covenants and agrees that:

(a) UT HSC will use reasonable good faith efforts to substantially complete construction of the STRF by December 31, 2011.

(b) Within 36 months following completion of construction of the STRF, UT HSC shall use reasonable good faith efforts to create and maintain at the STRF throughout the remainder of the Term at least 150 full-time jobs. UT HSC will have sole and final discretion with respect to the maintenance of the number of full-time jobs at the STRF.

(c) Promptly following completion of construction of the STRF, UT HSC shall use reasonable good faith efforts to conduct or cause to be conducted throughout the Term meaningful Business Activities in the STRF.

(d) UT HSC shall collaborate with the San Antonio research community including Brooke Army Medical Center, The University of Texas at San Antonio, and the Texas Biomedical Research Institute and their Affiliates to identify commercially viable ideas and opportunities in the field of life science and biomedicine and to assist in their commercialization.

(e) UT HSC shall provide to SAEDC annual compliance reports, in form reasonably acceptable to SAEDC and UT HSC, necessary to establish UT HSC's compliance or non-compliance with the terms, provisions and conditions of this Agreement, together with non-confidential versions of annual investor reports received by UT HSC on any Start-Ups in which SAEDC has or is entitled to have an Equity Interest pursuant to this Agreement. The annual compliance reports shall include a detailed summary of all Equity Interests owned by UT HSC as of the date of the report and a detailed statement of all Net Equity Proceeds received by UT HSC since the date of the last compliance report provided to SAEDC (including a detailed accounting of the gross receipts from such Equity Interests and the distribution amounts and expenses deducted therefrom to derive the Net Equity Proceeds), all of which shall be certified and attested as being true and accurate by an officer of UT HSC. The compliance reports will provide sufficient information such that SAEDC may reasonably determine whether UT HSC has complied with the terms, conditions, and provisions hereof, including its obligations under this Article III and Article V below.

(f) UT HSC shall only use the Grant Funds for the purpose of paying a portion of the costs of constructing, equipping, and completing finish-out of the STRF. UT HSC shall provide in its initial annual compliance report (which shall be in a form reasonably acceptable to SAEDC) documentation demonstrating that the Grant Funds have been used only for the purpose of paying such construction, equipment and finish-out improvement costs.

(g) In accordance with Texas Government Code, Chapter 2264, during the Term of this Agreement, UT HSC agrees not to knowingly employ any undocumented workers in the construction of the STRF, and if finally convicted of a violation under 8 U.S.C. Section 1324a (f), UT HSC shall repay the amount of the Grant Funds received by UT HSC as of the date of such violation within 120 business days after the date UT HSC is notified by SAEDC of such violation, plus interest at the Interest Rate from the date of such notice until paid.

ARTICLE IV OBLIGATIONS OF SAEDC

4.1 **Grant Funds.** SAEDC shall provide to UT HSC an economic development grant in the amount of THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,300,000.00), subject to the terms, conditions, and provisions hereof and subject to UT HSC

satisfying all of the material obligations of UT HSC under this Agreement. Provided that at the time of and as a condition precedent to each such disbursement, UT HSC is in compliance with all of the material terms, conditions, provisions, and obligations of this Agreement, the Grant Funds shall be disbursed in three annual installments of ONE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000.00) each, with the initial disbursement being made on or before October 31, 2011, and with each subsequent disbursement being made on or before October 31 of each of the following two (2) years.

4.2 **City Appropriation Condition.** SAEDC's obligation to make the initial disbursement of Grant Funds and each subsequent disbursement of Grant Funds is expressly conditioned on the City of San Antonio appropriating and allocating the Grant Funds to SAEDC for disbursement to or for the benefit of UT HSC as provided in Section 4.1. If SAEDC fails to disburse the Grant Funds as required in Section 4.1 above and such failure is attributable to the City of San Antonio's failure to appropriate and allocate the Grant Funds to SAEDC for disbursement to UT HSC prior to the date required for such disbursement, SAEDC and UT HSC agree that the failure to disburse the Grant Funds shall not be a default by SAEDC; provided however, that in such event, UT HSC may terminate this Agreement by providing thirty (30) days prior written notice to SAEDC (the "**Termination Notice**"). If the City of San Antonio appropriates and allocates the necessary Grant Funds and SAEDC distributes the Grant Funds during such thirty (30) day period, the Termination Notice shall be null and void and of no further force or effect and this Agreement shall remain in full force and effect; otherwise, upon the expiration of such thirty (30) day period, (1) this Agreement shall terminate; (2) SAEDC shall relinquish all rights and interests in and to the Net Equity Proceeds to which SAEDC or its designee shall be entitled, and shall immediately return to UT HSC all Net Equity Proceeds that it or its designees may have received pursuant to Article V; (3) UT HSC may retain all of the Grant Funds previously paid to it; and (4) neither party will have any further obligations under this Agreement.

ARTICLE V SAEDC RIGHTS AND OWNERSHIP

5.1 **Net Equity Proceeds.** UT HSC hereby assigns to SAEDC fifteen percent (15%) of the Net Equity Proceeds, such assignment to be effective immediately upon the Effective Date and to continue in full force and effect until the earlier of (i) the date that SAEDC shall have received cash payments from the Net Equity Proceeds totaling Four Million and No/100 Dollars (\$4,000,000.00), or (ii) the expiration of twenty (20) years following the Effective Date.

5.2 **Intellectual Property Review Committee.** The parties understand that UT HSC has established the Intellectual Property Review Committee (the "**IPRC**") to review invention disclosures for potential commercialization and investment opportunities for UT HSC to participate in Equity Interests in Start-Ups. Throughout the Term of this Agreement, UT HSC shall permit SAEDC to have one (1) representative on the IPRC to serve in a non-voting, advisory capacity, provided that such representative (i) shall not be an elected official of the City of San Antonio or any other governmental entity, and (ii) shall be reasonably acceptable to the Chairman of the IPRC.

**ARTICLE VI
DEFAULT AND REMEDIES**

6.1 **UT HSC Events of Default.** Any one of the following events which occurs and is continuing shall constitute an “**Event of Default**” by UT HSC under this Agreement:

(a) If UT HSC fails to perform, observe and/or comply with or to cause its Affiliates to perform, observe and/or comply with any of the material terms, conditions, provisions, obligations, or covenants set forth hereunder, including, without limitation, those obligations and covenants set forth in Article III and Article V hereunder, and such failure continues for more than thirty (30) days following written notice to UT HSC of such failure by SAEDC or any of its designees. Notwithstanding anything herein to the contrary, SAEDC shall extend such thirty (30) day cure period for a reasonable period, not to exceed ninety (90) days, if UT HSC commences to cure the Event of Default within the 30-day cure period and thereafter continues to diligently pursuing such cure to completion; and/or

6.2 **SAEDC Events of Default.** It shall constitute an “**Event of Default**” by SAEDC under this Agreement if SAEDC fails to perform, observe and/or comply with any of the terms, conditions, provisions, obligations or covenants hereunder, including, without limitation, those obligations and covenants set forth in Article IV and Article V hereunder, and as to a monetary default, such failure continues for more than ten (10) days following written notice by UT HSC to SAEDC of such failure, and as to a non-monetary default, such failure continues for more than thirty (30) days following written notice by UT HSC to SAEDC of such failure. Notwithstanding anything herein to the contrary, UT HSC shall extend such thirty (30) day cure period for a non-monetary default for a reasonable period, not to exceed ninety (90) days, if SAEDC commences to cure the Event of Default within the 30-day cure period and thereafter continues to diligently pursuing such cure to completion.

6.3 **Remedies**

(a) Upon the occurrence of an Event of Default by UT HSC during the Term, SAEDC shall have the right to terminate this Agreement by written notice to UT HSC and seek repayment of all Grant Funds paid to or on behalf of UT HSC and upon written demand for such repayment by SAEDC to UT HSC, such Grant Funds shall become immediately due and payable to SAEDC and shall be paid by UT HSC to SAEDC within ten (10) days of such written demand and/or may seek any other right or remedy to which it may be entitled at law or in equity. An Event of Default under this section must either be acknowledged and conceded in writing by UT HSC or finally adjudicated in a court of law prior to the exercise by SAEDC of its remedies under this Section 6.3(a).

Any sums due and payable by UT HSC to SAEDC hereunder shall bear interest at the Interest Rate from the date due until paid. SAEDC may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of UT HSC under this Agreement.

(b) Upon the occurrence of an Event of Default by SAEDC, UT HSC may terminate this Agreement and in such event UT HSC may (i) retain any Grant Funds which have been previously paid to it; (ii) SAEDC and its designee(s) shall relinquish all rights and interests it has in and to the Net Equity Proceeds to which they are entitled pursuant to Article V hereof; and

(iii) UT HSC may exercise any and all rights and remedies available at law or in equity. An Event of Default under this section must either be acknowledged and conceded in writing by SAEDC or finally adjudicated in a court of law prior to the exercise by UT HSC of its remedies under this Section 6.3(b).

Any sums due and payable by SAEDC to UT HSC hereunder shall bear interest at the Interest Rate from the date due until paid. UT HSC may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of SAEDC under this Agreement.

(c) The remedies herein conferred upon or reserved to the parties are intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

ARTICLE VII MISCELLANEOUS

7.1 Audit Rights.

(a) SAEDC, at its expense, reserves the right to confirm UT HSC's compliance with the terms, conditions, provisions and obligations of this Agreement through a financial audit of UT HSC, as reasonably required to determine such compliance, and, in connection therewith, SAEDC shall have access to and may inspect, examine and make copies of the relevant and applicable books and records of UT HSC related to the STRF and the Equity Interests. SAEDC's access to such information shall be limited to the information needed to verify compliance with the financial terms, provisions, conditions, and obligations hereof. SAEDC may exercise the audit rights hereunder no more than one (1) time per calendar year.

(b) UT HSC shall maintain the fiscal and financial records and supporting documentation for the expenditures of the Grant Funds and related to the performance of the obligations required hereunder for the greater of (i) three (3) years after the expiration of the period for which SAEDC is entitled to receive its share of Net Equity Proceeds, or (ii) the period required by applicable law and regulations.

7.2 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.

7.3 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

7.4 **Governing Law.** THE GOVERNING LAW OF THIS AGREEMENT SHALL BE THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ANY CHOICE-OF-LAW STANDARDS THAT MAY REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

7.5 **Venue.** Venue for any litigation under this Agreement shall be in the County of Bexar, State of Texas.

7.6 **Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the parties hereto shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

7.7 **Assignment.** Neither Party hereto may assign this Agreement without the express written consent of the other Party, which may be withheld in such Party's sole discretion. Any such assignment or attempted assignment without the consent of the other Party shall be null and void and not be effective.

7.8 **Representations and Warranties.** The representations, warranties and covenants made by each of the parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

7.9 **Binding Effect.** This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the parties and their successors and assigns and all other state agencies and any other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to each of the parties or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of each of the parties which are parties hereto.

7.10 **Non-Waiver.** Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

7.11 **Entire Agreement.** This Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Agreement nor any of the terms, provisions or conditions hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

7.12 **Confidential Information.** The parties agree to coordinate all requests for information regarding this Agreement and, to the extent allowable by the Texas Public Information Act, agree that all information forwarded to one by the other for the purposes of this Agreement (1) is to be received in strict confidence, (2) is to be used only for the purposes of this Agreement, and (3) is not to be disclosed by the recipient party, its agents or employees without the prior written consent of the other party.

Signatures appear on next page.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this ____ day of _____, 2011.

**SAN ANTONIO ECONOMIC
DEVELOPMENT CORPORATION**

**THE UNIVERSITY OF TEXAS HEALTH
SCIENCE CENTER AT SAN ANTONIO**

A. J. Rodriguez
Executive Director

By: _____
Name: _____
Its: _____

ATTEST:

Name:
Secretary

CITY COUNCIL ITEM #4

**Economic Development Grant
Agreement for the
UT Health Science Center**

**INTERNATIONAL AND ECONOMIC
DEVELOPMENT DEPARTMENT**

June 23, 2011

Recommendation

- Staff recommends Council:
 - Approve an Economic Grant Agreement with the San Antonio Economic Development Corporation (SAEDC) providing \$3.3 million over 3 years for the UT Health Science Center South Texas Research Facility; and
 - Authorize the SAEDC to enter into an Economic Development Agreement with the UT Health Science Center for \$3.3 million.

Background

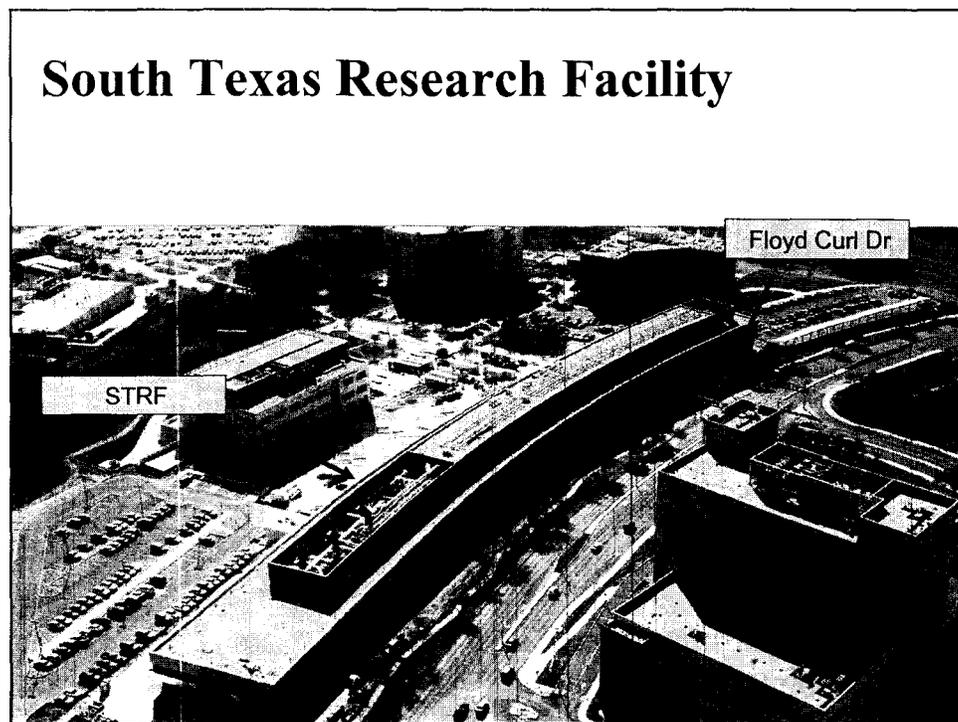
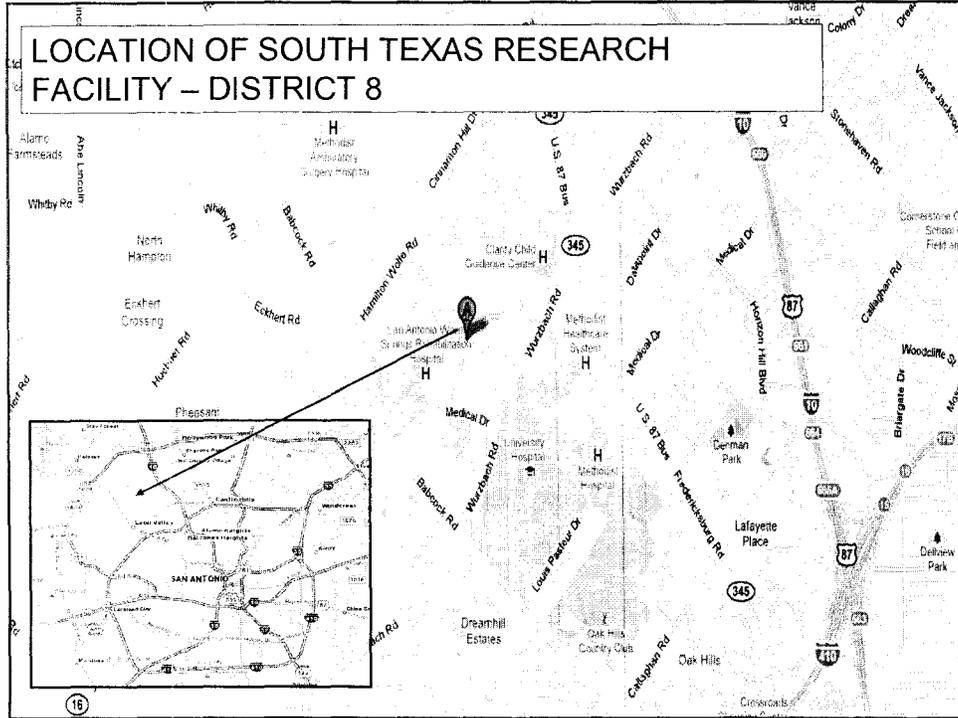
- UT Health Science Center has requested \$3.3 million in grant funding from the City to assist in helping finance the construction, equipping and finish out of the South Texas Research Facility (STRF).
- The STRF is still facing an \$8 million gap to finish financing the construction of this facility in the Medical Center area (District 8).

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South Texas Research Facility

- New state-of-the art medical research building.
- \$150 - \$200 million capital investment.
- Approximately 150 new, high-paying jobs -- mostly scientists and researchers.
- STRF will house the:
 - Institute of Integration of Medicine and Science to direct a \$26 million Clinical Translation Science Award; and
 - Core research activities on cancer, healthy aging, the neurosciences, and regenerative medicine.

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UT HSC Impact

- Leading catalyst of City's \$24.5 billion Bioscience and Healthcare Industry
- Directly employ over 5,000
- Ranked in Top 5% of National Institute of Health funded research universities
- #1 public medical school in nation for graduating Hispanics
- Annual economic impact of \$914M in 2009

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Project Benefits

- City's \$3.3M investment will greatly enhance the university's research capabilities by:
 - Increasing opportunities for growing local entrepreneurs and companies;
 - Helping attract talented researchers and scientists;
 - Demonstrating an investment in our own local research institutions and talent; and
 - Providing opportunities to leverage other research, such as military medicine.
- Also provides the City the opportunity to leverage its investment through the San Antonio Economic Development Corporation (SAEDC).

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Terms of the Grant Agreements

- The City's Grant Agreement with the SAEDC:
 - Provide \$3.3 million to the SAEDC over 3 years.
 - The SAEDC must execute a Grant Agreement with UT HSC to invest these funds in the STRF.
- The SAEDC Grant Agreement with UT HSC:
 - Invest these funds in the STRF.
 - Assign to the SAEDC 15% of the university's net equity proceeds from its equity interest in any start-up company over 10 years.
 - SAEDC can potentially achieve cash distributions equal to the principal plus a return on investment up to \$4 million over 20 years.
 - The SAEDC can appoint an advisory member to the UT HSC Intellectual Property Review Committee.

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Fiscal Impact

- This Ordinance appropriates funding in the amount of \$3.3 million over three years beginning in FY 2012 with the initial \$1.1 million payment on or before October 31, 2011.
- Funding for the initial payment would be made through the Economic Development Incentive Fund (EDIF).
- Funding for the remaining \$2.2 million is subject to future annual appropriations into the EDIF by City Council.

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Recommendation

- Staff recommends approval of this Ordinance:
 - Authorizing the City to enter into an Economic Development Agreement with the San Antonio Economic Development Corporation; and
 - Authorizing the SAEDC to enter into a Grant Agreement with the UT Health Science Center.

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CITY COUNCIL ITEM #4

BACK-UP SLIDES: Economic Development Grant Agreement for the UT Health Science Center

INTERNATIONAL AND ECONOMIC DEVELOPMENT DEPARTMENT

June 23, 2011

Potential UTHSCSA Investment Opportunity



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Why Invest in Research?



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