

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Planning and Economic Development

AGENDA DATE: August 9, 2011

CONTACT PERSON/PHONE: Ernesto Gamboa, Deputy Director 541-4670

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and The Hub of Human Innovation Inc. (the "Applicant") in relation to the Applicant's development of a technology business incubator in El Paso, Texas.

[Planning and Economic Development, Ernesto Gamboa, (915) 541-4670]

BACKGROUND / DISCUSSION:

This item is to approve funding for a program that encourages entrepreneurship, innovation and technology in order to create higher paying jobs within the city. The program detailed in the Hub of Innovation's Proposal to the City of El Paso is in need of secure funding to help maximize the impact they will bring to the community as measured by new company formation and job creation that will help drive economic development in the El Paso region.

PRIOR COUNCIL ACTION:

June 21, 2011 – Directed the Department to Develop Contract

AMOUNT AND SOURCE OF FUNDING:

1.255 M over 4 years; restricted fund as described in Ordinance 17460

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



08-01-11

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and The Hub of Human Innovation Inc. (the "Applicant") in relation to the Applicant's development of a technology business incubator in El Paso, Texas.

APPROVED AND ADOPTED this _____ day of _____, 2011.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy, Interim Director
Planning & Economic Development

C. **City.** The word "City" means the City of El Paso, Texas.

D. **Client Company.** The words "Client Company" mean: (i) an entity which has contracted with the Applicant to receive business incubation services, which are consistent with the operation of the Project or (ii) an entity which has its operation in the El Paso region, is a viable business concern, and has received services from Applicant during the term of this Agreement.

E. **Full-Time Employee.** The words "Full-Time Employee" mean a person holding a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits.

F. **Grant.** The word "Grant" means any payment to Applicant under the terms and conditions of this Agreement and being payable from general revenue funds available from the City's Impact Fund account derived from the El Paso Electric Company franchise fee paid to the City of El Paso pursuant to the Franchise Agreement adopted by Ordinance No. 017460.

G. **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to the City on a monthly basis as a condition of receipt of any Grant payment, with such documentation more fully described in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

SECTION 2. TERM

The term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur: (i) four (4) years from the Effective Date, plus such additional time thereafter as may be necessary to process the final quarterly Grant payment pursuant to the procedures described in Sections 4 and 5 below; or (ii) the proper termination of this Agreement in accordance with the applicable provisions contained herein, or (iii) termination by mutual consent of the parties in writing. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement.

SECTION 3. AGREEMENT PURPOSE

The purpose of the Grant is to provide Applicant with capitalization funds for actual and reasonable costs incurred in operating a technology business incubator in downtown El Paso, which will support local entrepreneurship and innovation development and accelerate economic development efforts in El Paso, including, but not limited to, accelerating the creation of high-technology firms operating in the El Paso region in those targeted industries (the "Project"). For purposes of this Agreement, targeted industries are those industries directly related to the fields of life sciences, biomedical science, clean tech and clean energy technologies, Defense/Homeland Security, Automotive, and Advanced Manufacturing. The Project is anticipated to promote local

economic development and stimulate business and commercial activity in the City of El Paso.

SECTION 4. OBLIGATIONS OF APPLICANT

A. Project Requirements. Applicant agrees to maintain and operate the technology incubator, at its sole cost and expense, at 500 W. Overland Avenue, El Paso, Texas and specifically, to perform the following obligations with respect to operation of the technology incubator:

1. Applicant will provide high-quality technology incubation services on behalf of client companies and graduate companies, as applicable, to include, as appropriate:

(a) infrastructure services (e.g., use of facilities, furniture, high-speed internet access, mail delivery, conference rooms, telephone service, shared services, and other facility-related benefits);

(b) operational support services (e.g., in-kind professional support, accounting/financial management, human resources, and legal); and

(c) strategic support services (e.g., strategic partner networks, entrepreneurial education and training, access to investor financing and capitalization, product development, commercialization, and marketing, intellectual property strategy, business strategy and planning, links to higher education, specific-sector expertise, and linkages to mentors, advisory teams, and potential board of directors candidates).

2. During the term of this Agreement, Applicant will establish contractual obligations in its service contracts with its client companies for the provision of data and information necessary for Applicant to complete the documentation required for each Grant Submittal Package.

3. Applicant will develop a workable selection process for client companies, which is well communicated and appropriate to the mission and the context of the technology incubator and correlated to specific product and business criteria for prospective client companies.

4. Applicant agrees to use its best good faith efforts to obtain funding from other non-governmental funding sources as those funding opportunities become available.

5. Applicant agrees to seek out opportunities for collaboration and partnership with entities involved in expansion of the targeted industries in El Paso, Texas, and specifically, entities affiliated with the Medical Center of the Americas regional campus as a priority activity.

B. Compensation, Reporting and Compliance.

1. Applicant will perform services for the Project within the monetary limits contained in Exhibit "B" (the "Project Budget"), attached hereto and incorporated by reference herein for all purposes. In no event shall compensation to the Applicant exceed the lesser of Applicant's costs attributable to the work performed in the budget year, or the monetary limits described in Section 5 of this Agreement nor shall the City pay for expenses or services which are or will be reimbursed by another funding source or for services which are not performed. However, Applicant may make transfers of funds between or among budget categories for the given budget year as contained in Exhibit "B", subject to the approval of the City Manager or designee, provided that:

(a) The dollar amount of all transfers among existing categories is equal to or less than ten percent (10%) of the total amount of the Grant funding allocated for the budget year;

(b) The transfer will not change the scope or objective of the Project funded under this Agreement; and

(c) Applicant submits a written request for the revision of the Project Budget, which must contain a complete explanation and justification of changes made, and is subject to the approval of the City Manager or designee. The revised Project Budget will substitute the original Project Budget (or any prior revised Project Budget) upon the City Manager or designee's approval and acceptance thereof, without the need for a written amendment to this Agreement.

2. On a monthly basis, Applicant will complete and submit a Grant Submittal Package in the form attached hereto as Exhibit "A", together with the requisite verifiable documentation, in order to request disbursement of Grant funds as a reimbursement for the costs of services provided pursuant to this Agreement in the prior monthly period. In order to receive a disbursement of the Grant, Applicant must submit a Grant Submittal Package. Only Grant payments reflecting those actual costs which are allowable under the terms of this Agreement and the approved Project Budget shall be disbursed and in no event may the total aggregate of Grant payments for the given budget year exceed the maximum amount of the Grant allocated for that budget year. Budget line items in the Project Budget represent the maximum amount which may be reimbursed under each line item for the given budget year, subject to the capped maximum amount of Grant payment allotted for the budget year.

Further, Applicant will comply with the following additional terms and conditions:

(a) All requests for disbursement of Grant funds submitted by Applicant must be supported by valid invoices or other supporting documentation of financial liability in the Applicant's files or other documentation acceptable to the City. Documentation obtained by Applicant for employees of client companies may be in the form of quarterly IRS 941 returns, Texas Workforce Commission Employer Quarterly Reports, or employee rosters that show the hours worked and positions filled;

(b) All line items reported in the Project Budget and requested for Grant disbursement must reconcile with the corresponding line item in the Applicant's general ledger accounts, on a current basis, and with year to date balances. Accounting records required to be maintained in the Applicant's files in relation to payment under this Agreement include, but are not limited to:

- (i) Balance Sheet (both monthly and year to date);
- (ii) Income Statement;
- (iii) General Ledger;
- (iv) Payroll Check Register, as applicable; and
- (v) Spreadsheet that details the amounts requested for Grant disbursement.

(c) Grant payments will be made on the basis of reimbursement of actual allowable expenditures, provided, however, failure to achieve the performance standards specified in Section 5(B) will result in a proportional reduction of the maximum allowable Grant payment for the budget year, as further described in Section 5(B); and

3. The City's determination of the amount of the Grant payment due to Applicant is final so long as such determination is made in accordance with the terms and conditions of this Agreement; provided, however, Applicant may appeal to the City Council within thirty (30) days of payment, in which event the City Council shall hear the appeal within thirty (30) days and the City Council's determination of the amount of the Grant payment shall be final so long as such determination is made in accordance with the terms and conditions of this Agreement. Nothing herein shall limit Applicant's rights and remedies as described in Sections 8 and 11 of this Agreement.

4. It is expressly understood that all costs and expenses incurred by Applicant are Applicant's sole liability. The City shall not be liable to Applicant or any other entity for any costs incurred by Applicant in performance of this Agreement.

5. Applicant agrees to submit reports to the City, utilizing the form attached hereto as Exhibit "C", which will provide quarterly progress and annual year-end reports on the year-end performance standards below (the "Performance Indicators") that Applicant must meet to remain eligible for receipt of a total year-end Grant payment amount that is not subject to any reduction, as specified in Section 5(B):

(a) Client Companies.

Minimum number of participating Client Companies by year end, on a cumulative basis:

Year 1: 6-9 **Year 2:** 15-21 **Year 3:** 24-32 **Year 4:** 34-47

(b) Revenue From Operations.

Minimum revenue source distribution by year end:

	Year 1	Year 2	Year 3	Year 4
Operations	3%-5%	7%-9%	10%-12%	11%-15%

(c) Employees of Client Companies.

Minimum number of full-time employees at Client Companies by year end:

Year 1: 19-25 **Year 2:** 57-75 **Year 3:** 118-157 **Year 4:** 224-299

(d) Full-time Employee Compensation at Client Companies.

Minimum average compensation of full-time employees of Client companies by year end to fall within the stated range:

Year 1: \$41,250.00-\$55,000.00

Year 2: \$39,000.00-\$52,000.00

Year 3: \$37,500.00-\$50,000.00

Year 4: \$36,750.00-\$49,000.00

Submission of the required reports is a condition of continued receipt of the Grant. If the quarterly progress report or the annual year-end report is due, then it should accompany the Applicant's Grant Submittal Package, but if not submitted together, the report(s) may be submitted ten (10) business days in advance.

6. Applicant understands and agrees that failure to meet the Performance Indicators in the manner set forth in Section 5(B) below, will result in the reduction described therein and additionally, that failure to meet the required Performance Indicator scoring threshold stated in Section 5(B) for two consecutive funding years shall constitute an event of default under this Agreement.

SECTION 5. OBLIGATIONS OF CITY

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), the City shall comply with the following terms and conditions:

A. Consideration. In consideration for satisfactory performance of the activities required by Section 4 of this Agreement, the City will disburse grant funds not to exceed the lesser of One Million Two Hundred Fifty Five Thousand Dollars (\$1,255,000.00) or Applicant's costs attributable to the work performed pursuant to the Agreement, subject to the terms and conditions contained herein.

1. The City agrees to process any Grant payments to Applicant within ten (10) business days after approval of Applicant's Grant Submittal Package, which must be submitted on a monthly basis.

2. It is expressly understood by the parties of this Agreement that, except as otherwise provided herein, payment of the Grant in no way obligates the City's general

fund or any monies or credits of the City and creates no debt of, nor any liability to, Applicant or third parties. All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

B. Performance Indicator Evaluation. City shall evaluate Applicant's performance based upon the Performance Indicators stated in Section 4(B)(5) and shall score each indicator as either Favorable (meaning Applicant has met or exceeded the Performance Indicator) or Unsatisfactory (meaning Applicant has failed to meet the Performance Indicator by twenty-five percent (25%) or more). Grantee must score "Favorable" in two (2) of the four (4) Performance Indicators (the "scoring threshold"):

1. If Applicant fails to meet the above "Favorable" scoring threshold by the year-end reporting period, the Grant payment amount requested for the fourth quarter of that funding year shall be reduced by twenty-five percent (25%), as a reduction against the prior Grant payment disbursements for that year.

2. Notwithstanding the foregoing, if Applicant fails to meet the "Favorable" scoring threshold for two consecutive funding years, such failure shall constitute an event of default, subject to the provisions stated in Section 11.

C. Maximum Grant Amount. Under no circumstances shall the City be required to disburse under this Agreement more than an aggregate of all payments made that would exceed the lesser of One Million Two Hundred Fifty Five Thousand Dollars (\$1,255,000.00) or Applicant's costs attributable to the work performed pursuant to the Agreement, nor shall Applicant be entitled to receive the Grant unless it satisfies the requirements of Section 4 of this Agreement.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Applicant shall maintain the fiscal records and supporting documentation for all expenditures of funds to be reimbursed or credited to Applicant under this Agreement in a manner that conforms to this Agreement. Applicant shall retain such records, and any supporting documentation for the greater of three (3) years from the end of the Agreement term period, or (2) the period required by other applicable laws and regulations.

B. Applicant shall give City, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit records, files, documents, written or photographic material, videotape, and other papers, things, or property belonging to or in issue by Applicant pertaining to the funds expended by Applicant which are reimbursed or credited under this Agreement. Copying and auditing will be performed at a reasonable time and place, such as during the Applicant's usual business hours, and at Applicant's principal place of business or office. This right shall continue for three (3) years after termination or expiration of this Agreement. The City or its designee may additionally request the copying, mailing and/or electronic transmission of records by Applicant.

SECTION 7. MONITORING

A. The City reserves the right on its behalf to perform, or have its designees perform, a periodic on-site or desk audit monitoring of Applicant's compliance with the provisions of this Agreement. The monitoring shall be conducted in a reasonable time, place and manner by the City. Applicant shall provide the assistance and information needed by the City in monitoring and evaluating the performance of the Project. It is understood that the City, or its designee, will perform periodic fiscal and annual programmatic monitoring reviews including a review of any financial audit conducted by the Applicant. The City, and/or its designees may request the copying, mailing, and/or electronic transmission of Applicant's records in connection with an on-site or desk audit monitoring.

B. Monitoring reviews will include a written report to Applicant documenting findings and concerns that will require a written response to the City. An acceptable response must be received by the City within 30 days from the Applicant's receipt of the monitoring report audit review letter, or otherwise future Grant payments will be withheld under this Agreement.

C. Failure of Applicant to take all actions necessary to resolve and close monitoring or audit findings within 60 days of receipt of the monitoring report or audit review letter shall be considered an event of default under this Agreement. The City Manager or designee shall have the discretion to extend the 60-day period for reasons the City Manager or designee may judge to be extenuating circumstances.

SECTION 8. EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under this Agreement:

A. Failure to Operate the Technology Incubator. Applicant's failure or refusal to operate the technology business incubator pursuant to the Project requirements during the term of this Agreement, and Applicant's failure or refusal to cure within thirty (30) days after written notice from the City describing such failure, shall be deemed an event of default; provided, however, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but the Applicant has not yet commenced such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall also be deemed an event of default.

B. Failure to Favorable Perform. In the event Applicant fails to meet the "Favorable" scoring threshold as described in Section 5(B), for two consecutive funding years, such failure to perform, shall be deemed an event of default following Applicant's failure or refusal to cure within thirty (30) days after written notice from the City describing such failure.

C. False Statements. In the event the Applicant provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to cure same within thirty (30) days after written notice from the City describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Applicant fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall also be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become false or misleading after the time that it was made, and Applicant fails to provide written notice to the City of the false or misleading nature of such warranty, representation or statement within ten (10) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section, all Grant Payments previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.

D. Insolvency. The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.

E. Other Defaults. Failure of Applicant or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or City fails to cure such failure within thirty (30) days after written notice from the other party describing such failure shall be deemed an event of default; provided, however, if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Applicant or City also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default.

F. Failure to Cure. If any event of default by Applicant shall occur, and after Applicant fails to cure same in accordance herewith, then this Agreement is terminated without any further action required of the City and the City's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

G. Effect of Termination. Upon receipt of the City's notice of termination, Applicant shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement and shall cease to incur costs thereunder. The Applicant agrees and understands that the City will not be liable to Applicant or to third parties for any costs

incurred subsequent to receipt of a notice of termination. Further, it is understood and agreed that upon notice of termination and following the applicable cure period, Applicant shall provide one final Grant Submittal Package request within thirty (30) days, which will include only those reimbursable expenses incurred prior to the notice of termination.

SECTION 9. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF APPLICANT

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 10. CONFLICT OF INTEREST

A. Applicant shall ensure that no employee, officer, board member or agent of Applicant shall participate in the selection or awarding of any contract or agreement which will be reimbursed 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, board member or 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 work. Applicant shall adhere to ethics rules comparable to Title 2, Section 2.92.050 Standards of Conduct, City of El Paso Ethics Code, available for review on the City's official website or at the Office of the City Clerk.

B. Except for eligible administrative costs, no employee, agent, or officer of Applicant, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in the client companies, or the proceeds thereunder, either for themselves or those with whom they have family or business ties.

SECTION 11. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Agreement:

A. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

B. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

C. Assignment. Applicant understands and agrees that the City expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds or any assignment of this Agreement without the City's prior written consent. Any such attempt to sell, transfer, assign or convey without the City's prior written consent shall result in the immediate termination of this Agreement, with no ability for the Applicant to cure.

D. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.

E. Captions. The captions of various sections of the Agreement are for convenience of reference only, and shall not alter the terms and conditions of this Agreement.

F. Confidentiality Obligations. The confidentiality of employment records and any other records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the City will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant or other third party as a basis for nondisclosure.

G. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

H. Employment of Undocumented Workers. During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the Grant payments received by Applicant from the City as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is notified by City of a violation of this section, plus interest from the date the Grant payment(s) was paid to Applicant, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to City. The

City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.

I. Execution of Agreement. The El Paso City Council has authorized the City Manager to execute this Agreement on behalf of the City.

J. Independent Contractor. City and Applicant understand that Applicant is an independent contractor and that no term or provision hereof or act of Applicant in performance of this Agreement shall be construed as making Applicant an agent or employee of the City. All officers and employees of the Applicant shall be solely responsible to the Applicant, and the City shall not have any authority, responsibility, or liability with respect thereto.

K. Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY: City of El Paso
City Manager
2 Civic Center Plaza
El Paso, Texas 79901

Copy To: City of El Paso
Economic Development Department Director
2 Civic Center Plaza
El Paso, Texas 79901

APPLICANT: The Hub of Human Innovation Inc.
500 W. Overland Ave. Ste. 230
El Paso, TX 79901

L. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.

M. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

N. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

O. Waiver. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

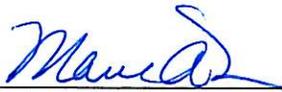
(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this Agreement on this
____ day of _____, 20__.

CITY OF EL PASO, TEXAS

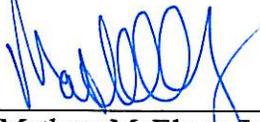
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew McElroy, Interim Director
Planning and Economic Development Department

ACKNOWLEDGMENT

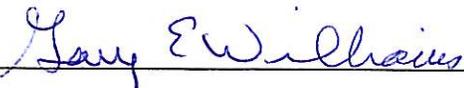
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of
_____, 20 __, by **Joyce A. Wilson**, as **City Manager of the City of El Paso,**
Texas (CITY).

Notary Public, State of Texas

My Commission Expires:

APPLICANT:
HUB FOR HUMAN INNOVATION INC.

By: 

Gary E. Williams, President of the Board

[ACKNOWLEDGMENT ON FOLLOWING PAGE]

Exhibit B – PROJECT BUDGET

7/14/2011

Table: THE HUB AND CLEAN ENERGY INCUBATOR PROGRAM DETAILED CASH-FLOW STATEMENT					
Months	2011/2012	2012/2013	2013/2014	2014/2015	Total
CLEAN ENERGY INCUBATOR	12	12	12	12	Total
Director Salary	\$130,000	\$132,500	\$135,000	\$137,500	\$535,000
Fringes	\$33,700	\$34,300	\$35,000	\$35,520	\$138,520
Travel	\$7,000	\$7,920	\$8,000	\$8,500	\$31,420
Phone	\$1,200	\$1,200	\$1,200	\$1,200	\$4,800
Sub-total	\$171,900	\$175,920	\$179,200	\$182,720	\$709,740
Software	\$8,000	\$2,000	\$2,000	\$2,000	\$14,000
Proof of Concept	\$100,000	\$58,000	\$24,000	\$24,000	\$206,000
Market Reports	\$15,000	\$15,000	\$15,000	\$15,000	\$60,000
Interns	\$10,000	\$10,000	\$10,000	\$10,000	\$40,000
Topic Experts/patent support	\$25,000	\$30,000	\$30,000	\$30,000	\$115,000
Supplies/Misc.	\$12,000	\$12,000	\$12,000	\$11,500	\$47,500
Sub-total	\$170,000	\$127,000	\$93,000	\$92,500	\$482,500
CEI Total	\$341,900	\$302,920	\$272,200	\$275,220	\$1,192,240
THE HUB OF HUMAN INNOVATION					
Business Support Salaries	\$162,500	\$167,375	\$172,396	\$177,568	\$679,839
Interns	\$30,000	\$30,000	\$30,000	\$40,000	\$130,000
Fringes	\$55,250	\$56,925	\$59,104	\$60,407	\$231,685
Marketing/education programs	\$45,250	\$46,000	\$40,000	\$46,000	\$177,250
Supplies and equipment	\$19,000	\$23,200	\$18,000	\$20,000	\$80,200
Contract Services	\$29,000	\$28,000	\$28,000	\$33,000	\$118,000
Travel	\$19,500	\$19,500	\$20,500	\$22,500	\$82,000
Workshops, training, rent, misc.	\$55,000	\$62,000	\$50,000	\$65,000	\$232,000
Build-out of offices	\$8,000	\$20,000	\$62,000	\$34,400	\$124,400
THE HUB OF HUMAN INNOVATION Total	\$423,500	\$453,000	\$480,000	\$498,875	\$1,855,375
GRAND TOTAL	\$765,400	\$755,920	\$752,200	\$774,095	\$3,047,615
CEI Grant Income	\$130,905	\$69,095			\$200,000
Other Grants	\$115,000	\$125,000	\$165,000	\$180,000	\$585,000
Income from Incubator	\$35,000	\$60,000	\$80,000	\$100,000	\$275,000
Private Contributions	\$115,000	\$170,000	\$205,000	\$250,000	\$740,000
sub-total income	\$395,905	\$424,095	\$450,000	\$530,000	\$1,800,000
City of El Paso Incentive Policy	\$380,000	\$325,000	\$300,000	\$250,000	\$1,255,000
Total	\$775,905	\$749,095	\$750,000	\$780,000	\$3,055,000
GAP	\$10,505	(\$6,825)	(\$2,200)	\$5,905	\$7,385

Exhibit C - Quarterly / Year End Progress Report

	(Reported)				(Required)			
	Year 1	Year 2	Year 3	Year 4	Year 1	Year 2	Year 3	Year 4
Average Capital Investment Cost								
Average Yearly Operating Cost								
% Revenue From Operations					3% - 5%	7% - 9%	10% - 12%	11% - 15%
Incubator Space								
Incubator Space Leased								
Annual Lease Income								
Number of Client Companies					6 - 9	15 - 21	24 - 32	34 - 47
Incubator Occupancy Rate								
Avg. Length of Tenancy								
Number of Management Staff								
Ratio of Incubator staff / Clients								
% of time spend advising clients								
Avg % of client turnover								
Total number of Client Full time employees					19 - 25	57 - 75	118 - 157	224 - 299
Full Time Client Employee Compensation					\$41.25-55K	\$39-52K	\$37.5-50K	\$36.75-49K
Cost per Job								
Total Revenue of Client Companies								
Total \$ of debt capital raised								
Total \$ of equity capital raised								

Note: Only those companies who have physical facilities in the City of El Paso and who employ residents of the City of El Paso will be counted in these metrics.

Please include all applicable documents substantiating any compensation other than salary if used in the compensation metric. ...acceptable documents include but are not limited to copies of employment contracts or documents outlining the valuation process used by the company .

Certification: I hereby attest that the information contained on this form has been collected and compiled in good faith and is true and correct to the best of my abilities.

_____ dated _____
(Authorized Signature)