


## RESOLUTION

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

That the City Manager be authorized to sign a Grant Agreement between the City of El Paso and Project ARriba Advanced Retraining and Redevelopment Initiative in Border Areas, Inc. ("Grantee"), a 501(c)3 tax exempt, non-profit Texas corporation for the purpose of providing training and case management services to eligible clients who require occupational skills necessary to access jobs in hard-to-fill demand occupations that pay a living wage with benefits and career path.

APPROVED this 29<sup>th</sup> day of August 2023.

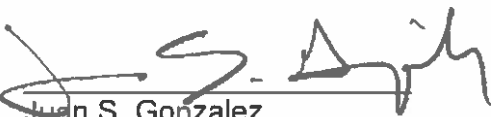
CITY OF EL PASO

  
Oscar Leeser  
Mayor

ATTEST:

  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

  
Juan S. Gonzalez  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
Elizabeth Triggs, Director  
Economic and International Development

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT

This Chapter 380 Economic Development Program Agreement ("**Agreement**") is made this 29 day of, AUG 20 23 ("**Effective Date**") between the City of El Paso, Texas, a Texas home rule municipal corporation, (the "**City**"), and **Project ARRIBA Advanced Retraining and Redevelopment Initiative in Border Areas, INC.**, a tax exempt non-profit Texas Corporation (the "**Applicant**"). For the convenience of the parties, all defined terms appear in **bold face** print when first defined.

**RECITALS**

**WHEREAS**, the City has the authority under Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purpose of promoting local economic development and stimulating business and commercial activity within the City; and

**WHEREAS**, the City desires to create a permanent and sustainable source of local health care professionals, teachers, and information technologists to address severe shortages in the City of El Paso;

**WHEREAS**, Project ARRIBA has demonstrated by past performance that it is qualified to provide training and case management services to eligible clients who require occupational skills necessary to access jobs in hard-to-fill demand occupations that pay a living wage with benefits and career path;

**WHEREAS**, such services are considered to be an important factor in promoting job creation for El Paso residents, and

**WHEREAS**, the training and case management services as further described herein, and hereinafter referred to as "Project ARRIBA" meets the requirements to receive a grant under the City of El Paso Economic Development Incentive Policy.

**WHEREAS**, the City concludes and hereby finds that this agreement promotes economic development in the City and meets the requirements of Chapter 380.

**NOW, THEREFORE**, the CITY and Applicant, in consideration of the terms, conditions and covenants contained herein hereby agree as follows:

**SECTION 1. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- A. "**Agreement**" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached and incorporated herein by reference.

- B. Annual Report.** The words annual report means a yearly account provided to the El Paso City Council that includes descriptions reporting on the outcome metrics described in this agreement.
- C. Effective Date.** means the date the El Paso City Council approves the Agreement.
- D. Event of Default.** This phrase shall have the meaning set forth in **Section 7** hereof.
- E. Grant.** The word "Grant" means a payment on an annual basis to Applicant under the terms of this Agreement payable from the City's **Impact Fund** account derived from the franchise fee paid to the City pursuant to the Franchise Agreement adopted by Ordinance No. 017460 (amended by Ordinance 018772). Under no circumstances shall the annual Grant payment exceed **\$350,000**. The maximum payment amounts shall not exceed **\$1,750,000** during the **five-year** term of this Agreement.
- F. Grant Submittal Package.** means the documentation required to be supplied to City as a condition of receipt of any Grant, with such documentation more fully described in the Grant Submittal Package, which is attached as **EXHIBIT C** to this Agreement.
- G. Property.** The word "Property" means the location of Applicant's operations, place of business and address for Notice purposes located at 1155 Westmoreland, Suite 235, in El Paso, Texas, 79925, as described in **EXHIBIT A**.

## **SECTION 2. TERM AND GRANT PERIOD.**

- A.** The agreement period will be from **September 1, 2023**, to **August 31, 2028**, and will cover expenses incurred in connection with the 2023-2028 semesters. This Agreement shall commence on the Effective Date and shall terminate on the first to occur: (i) 5 years from the Effective Date; (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 ("Term").
- B.** Applicant's eligibility for Grant payments shall be limited to **5** consecutive years within the Term of this Agreement (the "Grant Period").

## **SECTION 3. AGREEMENT PURPOSE.**

The purpose of this program will be to create a permanent and sustainable source of local health care professionals, teachers, and other demand careers to address the severe shortage in the El Paso, Texas region. Applicant will provide long term, high skilled training, and case management services to eligible El Paso City residents. These residents require the occupational skills necessary to access jobs in hard to fill demand occupations, as determined by El Paso's local economy. Occupations may include, but are not limited to school teachers, medical professions (e.g., nursing) and other demand occupations.

The Applicant sponsors training that will lead to a Bachelors Degree, Associates Degree and/or Licensed Certification primarily in nursing and health-related areas, education, information technology and other demand occupations. The health field occupations include but are not limited to, Registered Nurse, Licensed Vocational Nurse, Physical Therapy Assistant, Radiology Tech, Respiratory Care Tech, Donor Care Specialist, and Other Allied Health Fields. The education majors will primarily fill vacancies in both junior high and high school in the sciences, math and bi-lingual education. The information technology occupations include but are not limited to, Computer Information Systems, Network and Telecommunications Administrator and Specialized Certifications.

- Beneficiaries of the services to be provided hereunder must reside in the City of El Paso and Applicant shall provide services that meet the requirements as detailed in this agreement.
- Participants eligible for the program will be from the City of El Paso, Texas who have historically experienced a high level of unemployment and/or lack the occupational skills necessary to maintain employment.

Minimum entry requirements for program participation are:

- Must be at the higher levels (3-6) of ESL at the El Paso Community College (EPCC) and/or
- High School Diploma or GED
- U.S. Citizenship or Alien Registration, and must live within the El Paso City limits
- 5<sup>th</sup> Grade reading and math level for ESL population, 7<sup>th</sup> Grade reading and math level for Housing of the City of El Paso and Empowerment Zone Residents and 9<sup>th</sup> Grade reading and math level for all other El Paso County Residents
- ESL student and/or English language proficiency

Eligible participants will fall at or below 200% of the Health & Human Services Poverty Guidelines for FY2024 through FY 2029.

#### **SECTION 4. OBLIGATIONS OF APPLICANT.**

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

- A. Applicant will maintain a minimum of **80% academic retention rate** over the life of this agreement.
- B. Applicant will maintain a minimum **80% year to year combined graduation and persistence rate** over the life of this agreement.
- C. Applicant will **maintain cohesive relationships** with Employer Partners and Job Placed Graduates to determine Employer/Employee satisfaction over the life of this agreement, and report at the end of the grant term.

- D. Of the City Participants sponsored at Project ARRIBA, **60%** will be **at or below 100% HHS poverty levels** over the life of this agreement.
- E. **Case Manage** a total of 750 new City Participants over the life of the agreement (150 participants annually). The new city participants shall either be in training programs or being job placed, for demand occupations in nursing, healthcare, education, information technology and other demand occupations.
- a. For purposes of this agreement, **“New City Participants”** means a student that has never been enrolled in the Project ARRIBA program nor utilized any of their services.
- F. **Graduate** 350 new City participants on or before **August 31, 2028** (70 participants annually), in the following targeted occupations: nursing, healthcare, education, information technology and other demand occupations.
- G. **Job Place** 300 new City participants at or above **\$16.43/hr.**, on or before **August 31, 2028** (60 participants annually), in the following targeted occupations: nursing, healthcare, education, information technology and other demand occupations.
- H. Of the new City Participants sponsored at Project ARRIBA, 15 (3 participants annually) will be enrolled in the Applicant’s **“Bridges to Success”**, ESL to Living Wage model. These participants will be at or have completed ESL levels 3-6 and will continue their in-demand training leading to graduation and job placements within a 5-year period.
- I. In order to obtain funding for the second through fifth years under this agreement, applicant must prove that it **received funding** from a state or federal program in an **amount equal to the amount granted by the CITY** to Applicant in years one, two, three, or four as applicable. Failure to secure such funding in the year preceding year two, three, four, or five will terminate this Agreement.
- J. In addition to any reports required, the Applicant shall provide **monthly written reports** to the City on the status of performance measures by the **20<sup>th</sup>** of the month following the report month.
- K. The Applicant shall submit a **written mid-year report** to City on the status of fundraising activities during the fiscal year, use of grant funds, and progress in the performance measures required under this Agreement. The mid-year report will be in a form acceptable to the City.
- L. The Applicant shall provide a **written comprehensive annual report** to the City and **oral presentation** to City Council regarding the outcome of the grant. The annual report shall include a description of the project, review of the activities accomplished, and project goals achieved during the fiscal year. This report should also identify positive outcomes and areas needing improvement. This report is due not later than **90 days after September 1** of each year.

Applicant, during normal business hours, at its principal place of business in El Paso, shall allow the City or its agents reasonable access to operating records, accounting books, and any other records related to the economic development considerations and incentives described herein, which are in Applicant's possession, custody, or control, for purposes of verifying the Qualified Expenditures and for audit, if so requested by the City. The confidentiality of such records will be maintained in accordance with all applicable laws.

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. The Applicant shall provide the assistance and information needed by the CITY in monitoring and evaluating the performance of this agreement. It is understood that the CITY, or its designee, will perform periodic fiscal and annual programmatic monitoring reviews including a review of the 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.

- a. Monitoring reviews will include a written report to the 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 payments will be withheld under this Agreement.
- b. 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 a breach of this Agreement and cause for termination of this Agreement by City Council. If the Agreement is terminated under these circumstances, it will be considered terminated for cause due to APPLICANT's non-compliance. Such termination will not be considered appealable.
- c. The City shall have the discretion to extend the 60-day period for reasons the City may judge to be extenuating circumstances.

#### **N. NON-RELIGIOUS ACTIVITIES**

The Applicant will provide all services under this Agreement in a manner that is exclusively non-religious in nature and scope. There shall be no religious services, proselytizing, instruction, or any other religious preference, influence, or discrimination in connection with providing the services hereunder.

**O. INDEMNIFICATION AND INSURANCE**

THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE APPLICANT INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE APPLICANT EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM ANY AND ALL LIABILITIES AND OBLIGATIONS INCURRED DUE TO ITS NEGLIGENCE, ANY ACTIONS OUTSIDE ITS SCOPE OF AUTHORITY, ANY OF ITS NEGLIGENT ACTS OR ANY OMISSION TO ACT, ANY BREACH OF AGREEMENT, OR ACTIONS OF THE APPLICANT OUTSIDE THE SCOPE OF THIS AGREEMENT.

APPLICANT agrees to maintain for the life of this Agreement, liability insurance in the minimum amounts of \$250,000.00 for each person and \$500,000.00 for each single occurrence covering bodily injury or death and \$100,000.00 for each single occurrence of damage to or destruction of property. Such insurance shall name the CITY as an additional insured with regard to all suites, actions, demands, claims and liabilities arising out of, occasioned by or relating to this Agreement or the activities carried out hereunder. It shall also contain a provision that it may not be canceled or lapse without a 30-days' prior written notice to CITY. APPLICANT shall produce a copy of its liability insurance policy, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to CITY **within 30 days** of the signing of this Agreement.

- a. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE DIRECTOR, AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.
- b. The CITY reserves the right to review the insurance requirements of this section during the effective term of this Agreement and to adjust insurance coverage and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry, if applicable, as well as the claims history of the APPLICANT.
- c. CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by CITY, APPLICANT shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof. APPLICANT remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

Notwithstanding any suspension or termination hereof, APPLICANT shall not be relieved of any liability to CITY for damages or indemnification due to CITY by virtue of breach of this Agreement by APPLICANT or by virtue of this Section. CITY may withhold payments to APPLICANT until such time as the exact amount of damages due to the CITY from APPLICANT is agreed upon or is otherwise determined.

**P. 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 APPLICANT shall be solely responsible to APPLICANT, and the CITY shall not have any authority, responsibility, or liability with respect thereto.

**Q. AUTHORITY TO CONTRACT**

APPLICANT represents and warrants that the person executing this Agreement and all documents related thereto has the authority to commit the APPLICANT to the obligations, financial and otherwise, required by this Agreement.

**R. DISCRIMINATION PROHIBITED**

- a. No person in the United States shall, on the grounds of race, creed, color, national origin (including immigration status where an alien holds proper work authorization), sex, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the APPLICANT pursuant to this Agreement, as set forth in Title 24 CFR Section 570.602.
- b. APPLICANT must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner, which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Contract.

**S. Conflict of Interest**

APPLICANT covenants that during the term of this Agreement, APPLICANT, its associates, officers and employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Agreement and that none of its paid personnel shall be employees of the CITY or have any contractual relationship with the CITY.



**T. Hatch Act**

Neither the funds advanced pursuant to this Agreement, nor any personnel who may be employed by the APPLICANT with funds advanced pursuant to this Agreement shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.

**U. Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no Resident Commissioners, shall be entitled to any share or part of this Agreement between CITY and APPLICANT or to any benefits arising there from.

**V. Political and Lobbying Activities Prohibited**

- a. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.
- b. APPLICANT hereby agrees to sign the **Certification Regarding Lobbying**, attached hereto and made a part of this Agreement as **EXHIBIT B** and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to CITY. APPLICANT shall require the language of the Certification and Disclosure be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

**W. Composition**

Applicant shall notify the CITY in writing within thirty (30) days in the event of any change in Applicant's ownership, organization, control, management and non-profit or tax status. Applicant shall periodically, or at least annually, submit to the CITY a list of its current membership and board of directors with their appropriate titles.

**X. Assignment**

APPLICANT may not assign or otherwise transfer this Agreement either as to obligations or benefit without the prior written consent of the CITY.

**Y. Required Documentation**

APPLICANT hereby agrees to provide any and all documentation necessary to fulfill any and all grants (federal, state, or local) requirements pertaining hereto.

**Z. Warranty**

APPLICANT represents that the information furnished to the CITY, upon which CITY relied to make this grant, is correct and true.

**AA. Liability**

APPLICANT shall be liable to the CITY for the full amount of any funds received pursuant to the terms of this Agreement, which APPLICANT knowingly accepts or disburses in violation of the terms and conditions herein.

**BB. Acknowledgment in Printed Materials**

APPLICANT is encouraged to acknowledge the CITY for its support of the provision of services under this Agreement in all appropriate printed materials. However, the CITY reserves the right to approve, in whole or in part, the form of such acknowledgments, which APPLICANT proposes to include in any printed materials.

**SECTION 5. GRANT SUBMITTAL PACKAGE.**

In order to receive the disbursement of the Grant, the Applicant must submit a Grant Submittal Package, as specified below.

- A. The Applicant shall submit one monthly Grant Submittal Package which shall be in the form provided in **EXHIBIT C**, together with the requisite documentation. The Applicant shall submit by the 20<sup>th</sup> of the following month for which disbursement is requested. A failure by the Applicant to timely submit a Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant payment for that month.
- B. Applicant further understands that any payment or contribution by beneficiaries for services supported or subsidized by this agreement shall be used for payment of only program costs. Revenue remaining after payment of all Program expenses shall be considered Program Income subject to all the requirements of this Agreement and Title 24 Code of Federal Regulations hereinafter referred to as “CFR”, Section 570.504.
- C. The City’s determination of the amount of the Grant payment due to the Applicant is final.

Applicant shall provide all required invoices and other required documentation to City electronically at the following address: [EDcompliance@elpasotexas.gov](mailto:EDcompliance@elpasotexas.gov)

**SECTION 6. OBLIGATIONS OF THE CITY.**

During the Term of this Agreement, and so long as an Event of Default has not occurred and Applicant is in compliance with the Agreement, the City agrees as follows:

- A. The CITY agrees to reimburse the Applicant on a monthly basis for program costs (85% of annual allocation) and administrative services (15% of annual allocation) provided subject to the terms and conditions in this Agreement.

(1) For purposes of this Agreement, “program costs” are: participant training costs (tuition, books, child care, and other support services), client services’ salaries, enrollment costs (orientation, testing, intake, and individual service strategies), and expenses related to the delivery of case management program services.

(2) For purposes of this Agreement “administrative costs” are: expenses including, personnel, fringe benefits, occupancy, equipment lease and maintenance, communications, insurance, supplies and postage. Costs will be allocated to the grant based on the ratio of program participants to the total participants served by Project ARriba in any given month.

- B. Reimbursements will follow receipt of a requisition for payment and requisite documentation. Only those costs, which are allowable under the terms of this Agreement shall be reimbursed. Valid invoices or other supporting documentation of financial liability in the Applicant’s files or other documentation acceptable to the CITY must support all requisitions for payment submitted.
- C. The CITY will process any eligible Grant payment **within 30 days** after receipt of the monthly report of activities conducted under this Grant Agreement.
- D. Under no circumstances shall the total aggregate of grant payments exceed **\$350,000** per year, or **\$1,750,000** over the life of the agreement. In no event shall compensation to the Applicant exceed the lesser of Applicant’s costs attributable to the work performed.

## **SECTION 7. EVENTS OF DEFAULT.**

Each of the following Paragraphs **A through F** shall constitute an Event of Default:

- A. **Failure to Comply.** Applicant’s failure to comply with, or to perform any obligation or condition of this Agreement or in any related documents, or Applicant’s failure to comply with or to perform any obligation or condition of any other agreement between the City and Applicant.
- B. **False Statements.** Any representation or statement made or furnished to the City by Applicant pursuant to this Agreement or any document(s) related hereto, that is/are false or misleading in any material respect; or if Applicant obtains actual knowledge that any such 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 representation or statement within 10 days after Applicant learns of its false or misleading nature.

- C. **Insolvency.** Applicant files a voluntary petition in bankruptcy, a proceeding in bankruptcy is instituted against the Applicant and the Applicant is thereafter adjudicated bankrupt, a receiver for the Applicant's assets is appointed, or any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant.
- D. **Property Taxes.** If Applicant allows its personal or real property taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within 30 days after written notice thereof from the City and/or El Paso Central Appraisal District.
- E. **Notice and Opportunity to Cure.** If an Event of Default occurs, the City will provide Applicant with written notice of the default and Applicant shall have 30 days from the receipt of said notice to cure the default (the "Cure Period"). If the default cannot be remedied within the Cure Period but the Applicant has made a diligent effort to effect a cure, the Cure Period may be extended at the City's sole discretion for a reasonable time. The City, in its sole discretion, shall determine what constitutes "a reasonable time" and what constitutes "a diligent effort" for purposes of this provision. If the City agrees to extend the Cure Period past the 30 days, the City shall notify the Applicant, in writing, of the expiration date of the extended cure period.
- F. **Failure to Cure.** If an Event of Default occurs and, after receipt of written notice and opportunity to cure as herein provided, the Applicant fails to cure the default in accordance with the provisions herein, then this Agreement may be terminated by the City by written notice to the Applicant at which time the City's obligations hereunder will end and the City may exercise any other right or remedy available at law or in equity.

## **SECTION 8. RECAPTURE.**

Should the Applicant default under **Section 7** of this Agreement and provided that the cure period for such default has expired, all Grants previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Applicant **within 60 days** from the date of such termination.

## **SECTION 9. SUSPENSION OR TERMINATION**

In accordance with Title 24 CFR Section 85.43, the City may suspend or terminate this Agreement should APPLICANT materially fail to comply with the terms of this Agreement. The CITY shall give the APPLICANT **ten (10) days** written notice of the suspension or termination with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. APPLICANT shall invoice CITY for all services completed and shall be compensated in accordance with the terms of this Agreement for services performed prior to the date specified in such notice.

The CITY and APPLICANT may also, in accordance with Title 24 CFR Section 85.44, terminate this Agreement for convenience.

If APPLICANT breaches any term or condition of this Agreement, or if any change of circumstances renders it unlikely that the APPLICANT will perform the services required hereunder, the CITY may take one or more of the following actions:

- Withhold further cash payments, either pending corrective action by the APPLICANT, or permanently, if there is inadequate or no corrective action by the APPLICANT;
- Disallow costs for all or part of the activity or action not in compliance;
- Wholly or partly suspend or terminate this Agreement;
- Withhold further Agreements to the APPLICANT;
- Pursue any other remedies that are available at law or equity.

#### **SECTION 10. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.**

The City may terminate this Agreement without an event of default and 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 11. GENERAL PROVISIONS**

- A. APPLICANT'S SALE OR TRANSFER OF THE DEVELOPMENT.** Prior to any sale or other transfer of ownership rights in the Development, Applicant shall notify the City in writing of such sale or transfer 30 business days before the effective date of such sale or transfer.
- B. 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 the same document.
- C. 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.
- D. 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. 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.

- E. **NO JOINT VENTURE.** The parties acknowledge and agree that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or the design, construction, or operation of the Development, or any portion thereof.
- F. **NO WAIVER.** Either party may waive any default without waiving any prior or subsequent defaults. Either party's failure to exercise or delay in exercising any right under this Agreement, will not operate as a waiver of such right.
- G. **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.
- H. **TIME IS OF THE ESSENCE.** The times and dates specified in this contract are material to this Agreement. For the purpose of this agreement "**business days**" means Monday through Friday excluding City of El Paso holidays and "**calendar days**" means Monday through Sunday excluding City of El Paso holidays.
- I. **TEXAS CORPORATION AND VENUE.** Applicant warrants that it is incorporated in and otherwise entitled to do business in the State of Texas as a non-profit corporation. If APPLICANT is doing business under an assumed name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk must be provided to the CITY. This Agreement is entered into in the CITY and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.
- J. **NOTICES.** The parties will send all notices required by this Agreement in writing, postmarked, and delivered by certified mail. All notices are considered received 3 business days after the postmark date. Parties may change their address by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the City:

The City of El Paso  
Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

With a Copy to:

The City of El Paso  
Attn: Economic Development  
P. O. Box 1890  
El Paso, Texas 79950-1890

To the Applicant:

ROMAN ORTIZ, CHIEF EXECUTIVE OFFICER  
Project ARRIBA Advanced Retraining and  
Redevelopment Initiative in Border Areas Inc.  
1155 Westmoreland, Suite 235  
El Paso, Texas 79925

Applicant shall provide all required invoices and other required documentation to City electronically at the following address: [EDcompliance@elpasotexas.gov](mailto:EDcompliance@elpasotexas.gov)

- K. **CONFIDENTIALITY.** The Applicant acknowledges that this Agreement is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).
- L. **GOVERNING LAW.** This Agreement is governed by Texas law.
- M. **VENUE.** The venue for disputes regarding this Agreement between the parties will be El Paso County, Texas.
- N. **SEVERABILITY.** A future finding of invalidity of any provision of this Agreement does not affect the validity of any remaining provisions of this Agreement.
- O. **HEADINGS.** The headings and subheadings of this Agreement are for information purposes only and are not substantive terms.
- P. **GOVERNMENTAL FUNCTIONS.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- Q. **COMPLIANCE WITH THE LAWS.** The parties will comply with all applicable laws, administrative orders, and any rules or regulations relating to the obligations under this Agreement. If applicable, then the Applicant will procure all licenses and pay all fees or other charges as required to complete the Work under this agreement.
- R. **AUDITING RECORDS FOR THE SPECIFIC PROJECT.** The Applicant will allow the City to inspect and copy all records pertaining to the Development of this Agreement.
- S. **FORCE MAJEURE.** There is no breach of contract should either party's obligations within this Agreement be delayed due to an act of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority, fire, explosion, flood, theft, malicious damage, strike, lockout, or any cause or circumstances whatsoever beyond either party's reasonable control. The delayed party must resume performing its obligations in this Agreement after the reason for the delay is resolved.

- T. SUCCESSORS AND ASSIGNS.** This Agreement is binding on the City and the Applicant, and the Applicant's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- U. THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries for this Agreement.
- V. PROVISIONS SURVIVING THIS AGREEMENT.** Representations, releases, warranties, covenants, indemnities, and confidentiality survive past the execution, performance, and termination of this Agreement.
- W. REPRESENTATIONS AND WARRANTIES.** The Applicant warrants to the City that the Applicant has all required licenses, permits, and expertise to perform the Work of this Agreement. The person executing this Agreement on behalf of both parties have the authority to sign on behalf of their respective parties.
- X. ENTIRE AGREEMENT.** This Agreement reflects the final, complete and exclusive understandings of the parties hereto, and may not be waived, altered or modified except by written agreement of both parties.

*[Signatures begin on the following page.]*



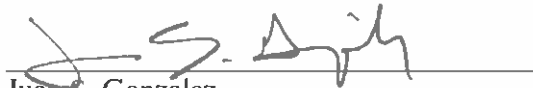
IN WITNESS WHEREOF, the parties hereby execute this Agreement.

CITY OF EL PASO:



Cary Westin  
Interim City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez  
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Director  
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS §

§

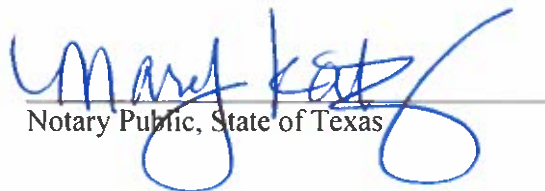
COUNTY OF EL PASO §

*Tracey Jerome FOR:* This instrument was acknowledged before me on the 20<sup>th</sup> day of AUGUST, 2023, by Cary Westin as Interim City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.



My Commission Expires:

06/04/2026



Notary Public, State of Texas

[Signatures continue on the following page]

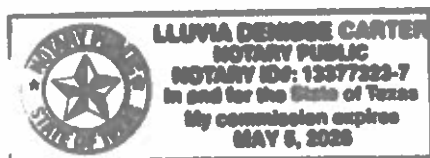
APPLICANT:  
Project ARRIBA

  
\_\_\_\_\_  
Roman Ortiz  
Chief Executive Officer

ACKNOWLEDGMENT

STATE OF                   §  
                                  §  
COUNTY OF           §

This instrument was acknowledged before me on the 14th day of August, 2023, by  
Roman Ortiz As Chief Executive Officer For Project ARRIBA.



  
\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

May 5, 2026

**EXHIBIT A**  
**[PROJECT]**

Project ARRIBA. (Advanced Retraining & Redevelopment Initiative in Border Areas) is a community-based nonprofit that operates as a workforce and economic development initiative. Their mission is to assist economically disadvantaged individuals in gaining the education and job skills needed for demand occupations that pay a living wage in El Paso, Texas.

Currently, Project ARRIBA, is housed at 1155 Westmoreland, Suite 235, El Paso Texas 79925.

**EXHIBIT B**  
**[CERTIFICATION REGARDING LOBBYING]**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, the best of his or her knowledge and belief, that:

1. No Municipal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person of influencing or attempting to influence an officer or employee of any agency, Federal, State, or Municipal, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of a Federal loan, the entering into of any cooperative agreement and the extension, continuation renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

APPLICANT: PROJECT ARRIBA ADVANCED  
RETRAINING AND REDEVELOPMENT  
INITIATIVE IN BORDER AREAS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**  
**[GRANT SUBMITTAL PACKAGE**  
**FORM]**

**Project ARRIBA.** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the      day of           , 20    . Pursuant to the Agreement, Applicant submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

1. This *completed* **“Exhibit C” Grant Submittal Package Form**, along with signature.
2. **Documentation evidencing programs costs:**
  - a. Participant training costs (tuition, books, child care, and other support services), client services’ salaries, enrollment costs (orientation, testing, intake, and individual service strategies), and expenses related to the delivery of case management program services.
3. **Documentation evidencing Administrative costs:**
  - a. Costs related to expenses including personnel, fringe benefits, occupancy, equipment lease and maintenance, communications, insurance, supplies and postage. Costs will be allocated to the grant based on the ratio of program participants to the total participants served by Project ARRIBA in any given month.

It is understood by **Applicant** that the City of El Paso has up to **thirty (30) days** to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

**Project ARRIBA.**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_