

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF NEW BRAUNFELS AND THE  
GREATER NEW BRAUNFELS ECONOMIC DEVELOPMENT FOUNDATION DBA  
EARLY MATTERS – NEW BRAUNFELS, LLC.**

This Economic Development Agreement (this “*Agreement*”) is entered into as of the Effective Date (defined below) by and among the City of New Braunfels, Texas, a home rule municipality (the “*City*” or “*Grantor*”) and the Greater New Braunfels Economic Development Foundation DBA Early Matters – New Braunfels, LLC (the “*Grantee*”). The City and Grantee are individually sometimes called a “*Party*” and are together called the “*Parties*”.

**Recitals**

- A. The City is authorized by Chapter 380 of the Texas Local Government Code to make grants of public funds to promote local economic development and may contract with an entity for the administration of a supporting program; and
- B. In accordance with Chapter 380, Grantor created a program for the purpose of making such grants available; and
- C. The Grantee previously committed \$100,000 to complete a thorough assessment of the New Braunfels childcare ecosystem including community-wide involvement with businesses, schools, government, nonprofits, churches, and individuals seeking care; and
- D. The Grantee developed a shared childcare vision for New Braunfels’ future, completed a citywide Early Care and Education Final Report (the “*Report*”), assembled an Early Matters New Braunfels Steering Committee comprised of thirteen (13) community leaders, established a three-year budget that will launch the initiative, created a full-time Director job description, and secured grants totaling \$325,000 from the Kronkosky Charitable Foundation and the McKenna Foundation; and
- E. The Report determined that addressing early childhood education and childcare needs is critical to long-term economic and community vitality and has emerged as a business and economic issue. High childcare costs and limited availability affects families’ ability to work, increasing employee turnover and reducing the local labor pool. Staffing shortages, financial constraints, and quality improvement barriers limit providers’ ability to meet demand and improve services; and
- F. The Grantee intends to address early childhood education and childcare needs throughout the New Braunfels community in accordance with the recommendations and actions recommended in the Report (collectively, the “*Project*”); and
- G. Grantee requested a grant from Grantor to assist in the funding of the Project; and

- H. The City has determined that by making such grants to the Grantee, the city is promoting local economic development and stimulating business activity within the City;
- I. This Agreement has been submitted to the parties for consideration and approval, and the Parties have taken all actions required prior to the execution of this Agreement to make the same binding upon the Parties according to the terms hereof; and
- J. The Parties wish to set forth their respective rights and obligations with respect to the Project;
- K. This Agreement is in accordance with the City's adopted Chapter 380 Economic Development Program as the City Council of the City of New Braunfels has specifically determined by resolution that this Project will bring benefit to the City consistent with the General Statement of Purpose and Policy of the City's Chapter 380 Economic Development Program.

**NOW, THEREFORE**, in consideration of the promises and agreements herein set forth, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties contract and agree as follows:

**1. Performance Conditions.**

To be eligible for payment under this Agreement, Grantee must fulfill to City's satisfaction, the Scope of Services attached hereto as Exhibit A.

**2. Payments to Grantee.** Subject to Grantee meeting the terms of this Agreement, the City agrees to take the following actions:

Upon execution of this Agreement by the Parties, submission by Grantee to Grantor of an invoice approved by the City Manager or his designee, and subject to the terms and conditions herein, Grantor will direct disbursement as follows:

- a. Grantee shall be provided \$100,000 annually in funding for direct grant assistance for operation of the Program in accordance with the Scope of Services attached hereto and incorporated as Exhibit A.

**3. Term.** This Agreement shall be effective upon execution of this Agreement and shall terminate the sooner of four years from the date of execution of this Agreement or once \$300,000 has been distributed to Grantee under this Agreement. (the "**Term**").

**4. Representations and Covenants.**

Grantee hereby represents and covenants as follows:

- A. Grantee is duly authorized and existing non-profit corporation in good standing under the laws of the State of Texas; and is authorized and in good standing to transact business in the State of Texas during the Term of this Agreement.

- B. Grantee has taken all necessary corporate action to authorize its execution and delivery of this Agreement and its performance of its obligations hereunder.
- C. Grantee will use its reasonable efforts to complete all of its obligations under this Agreement when and as set forth herein.
- D. Grantee has not entered into, and will not enter into, any agreement (written or otherwise) with any person or entity that would prohibit or limit Grantee from performing all of its obligations under this Agreement.
- E. As of the date of this Agreement, there is no material litigation, claim, or proceeding pending of which Grantee has received written notice, nor to the actual knowledge of Grantee is there any material litigation, claim or proceeding threatened that would prohibit or limit Grantee from performing all of its obligations under this Agreement.
- F. No bankruptcy proceedings or other proceedings are currently pending or contemplated, and Grantee has not been informed of any potential involuntary bankruptcy proceedings.
- G. Grantee will not dissolve or take any action in furtherance thereof so long as it has not performed all of its obligations under this Agreement.

## **5. Events of Default, Delay, and Termination.**

- A. Any Party's failure to comply with and adhere to their respective performance conditions or obligations hereunder, or under the terms of the Agreement, shall constitute an event of default under this Agreement. If Grantee fails to comply with any of the required performance obligations in section 1 of this Agreement, Grantee shall pay back on a pro rata monthly basis for each month of the year for which Grantee received payment and was not meeting the required performance obligations.
- B. Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement such that another Party's remedies are available, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if such breach has been cured within sixty (60) days following the receipt of such notice; provided, however, if such breach is not reasonably curable within such 60-day period, and Grantee has commenced and is pursuing such remedies as shall be reasonably necessary to cure such breach, then Grantee shall have an additional ninety (90) days to cure such breach (the "**Cure Period**").
- C. In the event of a breach of this Agreement by Grantee beyond the applicable notice and Cure Period, the City may (i) terminate this Agreement by the delivery of written notice to Grantee; or (ii) suspend payment of the Grant Payment otherwise due to Grantee following the date of termination; and (iii) seek to recover from Grantee any legal expenses incurred by City to enforce Grantee's compliance with its obligations under the terms of this Agreement. Notwithstanding the foregoing, in no event may the City terminate this Agreement solely for Grantee's failure to satisfy one or more of the Investment Conditions.

- D. In the event of a breach of this Agreement by the City beyond the applicable notice and Cure Period, Grantee, as its sole and exclusive remedies, may (i) seek to exercise its rights to enforce City's obligations hereunder in order to receive Grant Payments due to Grantee; (ii) seek to recover from City any legal expenses incurred by Grantee to enforce City's payment of monetary obligations under this Agreement; and/or (iii) terminate this Agreement by the delivery of written notice to the City.
- E. Time is of the essence in this Agreement. Notwithstanding the foregoing, any deadlines provided in this Agreement shall be subject to any event of Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean any contingency or cause beyond the reasonable control of any Grantee, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action or inaction including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions, fire, earthquake, tornado, hurricane, explosions, floods, epidemics, strikes, slowdowns, work stoppages, unusually severe weather or global recessions; provided, however, that in no event shall any event of Force Majeure extend any deadline in this Agreement by more than twelve months. In addition, if the Grantee notifies the City that it is unable to satisfy any deadline provided in this Agreement due to adverse economic conditions, the City agrees to meet with the Grantee to better understand the impact of those adverse economic conditions on the Grantee and consider making good faith adjustments to the terms of this Agreement to address the impacts of such adverse economic conditions upon the Grantee.

## **6. Authority.**

- A. The City hereby represents and warrants that the City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.
- B. Grantee hereby represents and warrants that it has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions.

## **7. Miscellaneous Provisions.** The following miscellaneous provisions are included in this Agreement:

- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement.
- b. **Assignment.** This Agreement cannot be assigned by Grantee without the prior written consent of the City, which consent may not be unreasonably denied, delayed, conditioned or withheld (it being understood that reasonable reasons for

the City to deny such consent include, without limitation, the lack of financial viability of the assignee, the business reputation of the assignee, the assignee's engaging in a type of business that would reflect poorly on the City, the assignee's lack of compliance with City ordinances and laws, etc.). Notwithstanding the foregoing, Grantee may assign this Agreement (in whole or in part), without the prior written consent of the City to any affiliate of Grantee (currently existing or later formed), provided that such assignee assumes the obligations and liabilities of Grantee in writing in a form reasonably approved by the City.

- c. 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 Comal County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Comal County, Texas.
- d. Compliance with Applicable Law. Grantee agrees to comply with all applicable federal, state, and local laws throughout the term of this Agreement.
- e. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Each Party warrants and represents that the individual executing this Agreement on behalf of that individual's represented Party has full authority to execute this Agreement and bind the represented Party to the same.
- f. Severability. In the event any provision in 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.
- g. 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 identified below. Any Party changing its address for notices under this Agreement shall do so by giving formal written notice to the other Party no later than the same day that such change is made. For notice purposes, each Party agrees to keep the other informed at all times of its current address. The addresses of the Parties are:

If to City:

City of New Braunfels  
Attn: City Manager  
550 Landa Street  
New Braunfels, TX 78130

With copy to:

City of New Braunfels  
Attn: City Attorney  
550 Landa Street  
New Braunfels, TX 78130

If to Grantee: NEED  
NEED  
NEED

Notices, approvals, and other communications provided for herein shall be deemed delivered upon actual delivery.

- h. Effective Date. The Effective Date of this Agreement shall be the last date indicated below reflecting execution of this Agreement by each Party.
- i. 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. Grantee shall execute this Agreement prior to the City of New Braunfels.
- j. Personal Liability of Public Officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.
- k. No Joint Venture; No Third Party Beneficiaries. It is acknowledged and agreed to by the parties to this Agreement that the terms hereof are not intended to, and shall not constitute a partnership or joint venture between the parties. Further, this Agreement does not establish rights in any third parties. The City, and its respective officials, officers, and agents, do not assume any responsibility or liability to any third parties in connection with the development of the Project.
- l. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following each Saturday, Sunday, or legal holiday.
- m. Indemnity. Grantee agrees to indemnify the City, and its officials and officers (in their capacities as officials and officers), from and against any third party claims, losses, damages, causes of action, suits, and liabilities arising out of any negligence of Grantee in its operation of the Project; provide that Grantee shall not be obligated to indemnify the City for claims arising out of the willful misconduct or gross negligence of the City or its agents.
- n. No Waiver of Immunity. No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to the City and/or its elected officials, officers, employees, and agents under Federal or Texas law nor waive any defenses or remedies at law available to the City and/or its elected officials, officers, employees, and agents under Federal or Texas law.

*Signatures on Following Page*

This Agreement to be effective on the last date executed by the respective Parties below (the "*Effective Date*").

**GRANTEE**

By: \_\_\_\_\_  
NAME, TITLE

Date: \_\_\_\_\_

**CITY OF NEW BRAUNFELS**

Robert Camareno, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Gayle Wilkinson, City Secretary

\_\_\_\_\_  
Valeria Acevedo, City Attorney

## EXHIBIT A

### STATEMENT OF PURPOSE

Early Matters San Antonio (EMSA) will provide consultation and technical assistance to the New Braunfels Economic Development Foundation (NBEDF) on behalf of establishing and launching Early Matters New Braunfels to improve early childhood and childcare access and quality for the new Braunfels area. All consultation and technical assistance is in support of implementing initiatives to improve early childhood access, quality, and affordability in Greater New Braunfels.

### 12-MONTH GOALS

- Establish Early Matters New Braunfels as a recognized region of Early Matters Texas and partner of Early Matters San Antonio
- Actively work to foster positive relationships with Greater New Braunfels and Comal County childcare providers to determine their needs and opportunities for support
- Be a resource to existing and new childcare providers on achieving and/or maintaining their Texas Rising Star accreditation
- Determine and begin implementation of 3-5 technical assistance offerings for providers as the first steps of creating a Shared Services Alliance to reduce operational burdens and increase provider sustainability
- Serve as a resource to local school districts to support pre-k enrollment and expansion
- Serve as a resource to local businesses and civic organizations to increase awareness and support of childcare as an essential component of economic development
- Monitor local and state policy activity related to early childhood
- Assist Early Matters San Antonio with implementation and communication about the comprehensive online search tool to local parents and providers
- Leverage and adapt, as necessary, Early Matters San Antonio social media for the Greater New Braunfels community
- Create operational funding synergies with Early Matters San Antonio

### ACTIVITIES AND DELIVERABLES

- Support for recruitment and selection of Executive Director
  - Assistance in building the job description, promoting the role through Early Matters San Antonio networks, participation in interviewing candidates, and act in an advisory capacity on decision making.
- Coaching for the Executive Director and bridging to other Early Matters regions
  - Weekly coaching for the Executive Director (in person or via video conference) to assist in identification and prioritization of tasks; guidance in navigating relationships with providers and stakeholders; and consistent progress towards goals.
  - Connection and introductions to Early Matters Texas and other Early Matters regions leaders.
- Meeting facilitation support for Steering Committee, providers, and business community
- Assistance in development of business engagement strategy and resources, including facilitation of Best Place for Working Parents ® campaign, steering committee development and training, business policies best practices, and near-site/off-site facilities support.
- Marketing and communications support
  - Assistance in developing the website and social media, including social media templates and content, template PowerPoint presentations, and letterhead (using Early Matters San Antonio as base templates).
- Assistance and coaching in research, development, and start-up of an early stage shared service alliance, including best practices
- Inclusion in the comprehensive Provider Search Tool application and Pre-K Enrollment Campaign
- Inclusion and coaching in development of local, regional and statewide policy advocacy, including support for the Executive Director in participating in Early Matters Texas policy meetings, advocacy coaching, and facilitation of community discussions toward policy agenda setting
- Advisory capacity in the performance evaluation of the Executive Director
- Support for data development, reporting and analysis to include key metrics of kindergarten readiness, childcare scholarship provider quality, childcare zip code desert mapping, and other agreed upon measures
- Early Matters San Antonio will pay for the annual Early Matters Texas dues on behalf of Early Matters New Braunfels for one year