

AN ORDINANCE 2014 - 09 - 11 - 0685

**AUTHORIZING A DONATION/MAINTENANCE AGREEMENT,  
PEDESTRIAN EASEMENT, AND TEMPORARY RIGHT OF  
ENTRY WITH CRP-GREP ELAN RIVERWALK OWNER LP  
FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS ON  
RIVER WALK PROPERTY ADJACENT TO THE  
DEVELOPMENT PROJECT AT THE NORTHWEST CORNER  
OF S. ST. MARY'S STREET AND CESAR CHAVEZ BLVD.**

\* \* \* \* \*

**WHEREAS**, the Elan Riverwalk project is under construction at the northwest corner of S. St. Mary's Street and Cesar Chavez Blvd. by CRP-GREP Elan Riverwalk Owner LP; and

**WHEREAS**, the project is a residential-commercial development that will include 350 apartments, street level retail, and a parking garage; and

**WHEREAS**, on December 18, 2013, the Historic & Design Review Commission approved Case 2013-126, which included a design proposal to install new landscaping, staircases, patio spaces, and flower beds on City-owned River Walk property between the San Antonio River and the Elan Riverwalk property; and

**WHEREAS**, in addition to installing the improvements and transferring ownership of the improvements to the City upon completion, CRP-GREP has agreed to maintain the improvements and to grant the City the right to allow the public 24/7 pedestrian access to the newly constructed walkway on Elan Riverwalk property that will connect the sidewalk on the north side of Cesar Chavez Blvd. to the River Walk sidewalk; and

**WHEREAS**, the agreement provides Elan Riverwalk a temporary right of entry on City property in order to construct the improvements; and

**WHEREAS**, CRP-GREP's commitment to maintain the improvements and the City's right to cross CRP-GREP's property shall continue for so long as the improvements are maintained; and

**WHEREAS**, Transportation and Capital Improvements Department's Floodplain Management Division approved the proposed enhancements on February 5, 2014; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee or the Director of the Center City Development and Operations Department or her designee is authorized to execute a Donation/Maintenance Agreement, Pedestrian Easement, and Temporary Right of Entry with CRP-GREP Elan Riverwalk Owner LP for construction of public improvements on River Walk property adjacent

to the development project at the northwest corner of S. St. Mary's Street and Cesar Chavez Blvd. A copy of the Donation/Maintenance Agreement, Pedestrian Easement, and Temporary Right of Entry for Construction is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** The acquisition of donated public improvements must be coordinated through the City's Finance Department to assure the addition of these assets into the City's financial records and to record the proper accounting transactions.

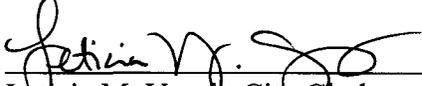
**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 11th day of September, 2014.

  
M A Y O R  
Ivy R. Taylor

**ATTEST:**

  
for Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
for Robert F. Greenlum, City Attorney

<b>Agenda Item:</b>	<b>15 ( in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 )</b>
<b>Date:</b>	09/11/2014
<b>Time:</b>	09:31:56 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance authorizing a Donation/Maintenance Agreement, Pedestrian Easement, and Temporary Right of Entry with CRP-GREP Elan Riverwalk Owner LP for construction of public improvements on River Walk property adjacent to the development project at the northwest corner of S. St. Mary's Street and Cesar Chavez Blvd. [Carlos Contreras, Assistant City Manager; Jim Mery, Deputy Director, Center City Development & Operations]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

**DONATION/MAINTENANCE AGREEMENT, PEDESTRIAN EASEMENT  
AND TEMPORARY RIGHT OF ENTRY FOR CONSTRUCTION**

**Effective Date:** \_\_\_\_\_, 2014

**City:** City of San Antonio

**City's Mailing Address:** Center City Development Office  
P.O. Box 839966  
San Antonio, Texas 78283

**CRP-GREP:** CRP-GREP Elan Riverwalk Owner, L.P.

**CRP-GREP's Mailing Address:**

**Background:** CRP-GREP Elan Riverwalk Owner, L.P. ("CRP") is constructing a residential/commercial project ("Project") located at 633 S. St. Mary's Street ("CRP Property"). Immediately west of the CRP Property is City of San Antonio River Walk property ("River Property"), which includes green space and an exposed aggregate concrete sidewalk. CRP has proposed installing new landscaping, staircases, patio spaces and flower beds on the River Property. The Historic and Design Review Commission of the City of San Antonio has approved the placement and the design of the proposed new landscaping, staircases, patio spaces and flower beds on the City of San Antonio River Walk property in Case # 2013-126. This Agreement will (1) grant CRP authority, subject to certain conditions, to enter onto City's property, described as the "Licensed Area" below, for the installation of new landscaping, staircases, patio spaces, flower beds, and supporting infrastructure on the City of San Antonio River Walk property (collectively the "Landscaping Improvements") while leaving the existing River Walk sidewalk unchanged, (2) grant to the City the right to allow the public 24/7 pedestrian access to the newly constructed walkway on the CRP Property connecting the Cesar Chavez Blvd. sidewalk to the River Walk sidewalk, (3) transfer ownership of the Landscape Improvements to City upon completion of construction, and (4) require CRP to maintain the Landscape Improvements on the City of San Antonio River Walk property.

**Consideration:** CRP's desire to make a gift to the public of Landscape Improvements, and CRP's desire to maintain those Landscape Improvements as long as they remain in place.

**Licensed Area:** The area depicted on Exhibit A.

**Right of Entry:** City, subject to the terms and conditions contained herein, hereby grants to CRP the right to enter into and occupy the Licensed Area for purposes set forth in this agreement.

**Pedestrian Access Easement:**

CRP hereby grants to the City the right to utilize, and to allow all members of the public to utilize, each on a non-exclusive basis, the sidewalk to be constructed as part of the Project for pedestrian access to the River Walk sidewalk to and from the north side sidewalk of Cesar Chavez Blvd. CRP

shall be allowed to modify and reconstruct the design of the sidewalk on the CRP Property provided that the replacement sidewalk path continues to be convenient to the public for access to the River Walk and acceptable to the City's Disability Access Office. Any temporary closures lasting longer than 24 hours shall require prior written approval of City. During any temporary closure, CRP shall place appropriate directional signage to indicate closure and identify nearest alternate route that is handicapped accessible. CRP shall revise signage if requested to do so by City.

**Purpose of the Right of Entry and Rights of CRP:** CRP shall have the right to temporarily occupy the Licensed Area for the purpose of (1) completion of the Project and Landscape Improvements, and (2) for the continued maintenance of the Licensed Area and for no other purpose.

**Term:** Subject to delays caused by force majeure, CRP shall complete the Landscape Improvements within six months of CRP commencing work on the Landscape Improvements (subject to force majeure delays). CRP's commitment to maintain the Landscape Improvements and the City's right to cross CRP's property shall continue for so long as the Landscape Improvements are maintained and remains in their installed location.

**Permits and Inspections:** CRP shall obtain all necessary governmental permits and inspections required for the Landscape Improvements, including without limitation from the Department of Development Services of the City of San Antonio.

**Compliance with laws:** CRP shall comply with all applicable federal, state and local laws in connection with the Landscape Improvements.

**Condition of Licensed Area:** CRP shall promptly repair any damage to the Licensed Area caused by CRP actions performing the Project or Landscape Improvements or while performing its ongoing maintenance obligations of the Licensed Area required by this agreement. Such repairs shall include replacement of damaged landscaping and shall be done to the satisfaction of City.

**Indemnity:** CRP AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY FROM ANY AND ALL CLAIMS IN ANY WAY ARISING FROM CRP'S CONSTRUCTION OR MAINTENANCE OF THE LANDSCAPE IMPROVEMENTS, INCLUDING FOR CLAIMS BASED ON THE NEGLIGENCE OF CITY, BUT IN NO EVENT FOR ANY CLAIM ARISING FROM THE GROSS NEGLIGENCE OR INTENTIONAL ACTIONS OF THE CITY OR ITS AGENTS OR EMPLOYEES.

**Insurance:** CRP and CRP's contractors shall carry adequate levels of insurance for CRP's and CRP's contractor's activities on the Licensed Area. CRP shall have its insurance agents, or its contractor's insurance agents, issue certificates of insurance listing City as an additional insured under such policies and shall have any changes made to such policies as may be reasonably requested by City's Risk Manager. City shall have full authority to restrict CRP's access to the Licensed Area until such insurance certificates have been delivered, reviewed and approved by City.

**Certifications and Warranties:** Effective upon completion of the Project including final governmental inspections, and final acceptance of the Landscape Improvements by City, CRP hereby assign (to the extent permissible under any applicable agreements) to City all warranties and

certifications obtained by CRP from any and all contractors, subcontractors, engineers or other design consultants involved in the Landscape Improvements.

**Ownership of the Landscape Improvements:** Upon completion of the Project and Landscape Improvements, including final governmental inspections, and final acceptance of the Landscape Improvements by City, City shall become the owner of the Landscape Improvements.

Executed and agreed to by the following:

City of San Antonio

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

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, Assistant City Manager of THE CITY OF SAN ANTONIO, a Texas municipal corporation, on behalf of said municipal corporation.

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

CRP-GREP Elan Riverwalk Owner, L.P.,  
a Delaware limited partnership

By: CRP-GREP Elan Riverwalk GP, L.L.C.,  
a Delaware limited liability company,  
its General Partner

By: CRP-GREP Elan Riverwalk, L.L.C.,  
a Delaware limited liability company,  
its Manager

By: GS Riverwalk Holdings, L.L.C.,  
a Delaware limited liability company,  
its Developer Member

By: *Nicholas Whittaker*  
Name: Nicholas Whittaker  
Title: Director  
Date: 8/14/14

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the 14<sup>th</sup> day of August, 2014, by Nicholas Whittaker Director of GS Riverwalk Holdings, L.L.C., as Developer Member of CRP-GREP Elan Riverwalk, L.L.C., as Manager of CRP-GREP Elan Riverwalk GP, L.L.C., as General Partner of CRP-GREP Elan Riverwalk Owner, L.P., on behalf of said entity.

*Carmen Garza Chapa*  
Notary Public, State of Texas

