

AN ORDINANCE **2012-01-12-0013**

CONSENTING TO THE ASSIGNMENT OF THE CITY'S ECONOMIC DEVELOPMENT GRANT AGREEMENT AND SAWS IMPACT FEE WAIVERS FROM AUSTIN HIGHWAY PARTNERS L.P. TO SIETE ACRES; AUTHORIZING THE AMENDMENT OF SUCH AGREEMENT UPON ASSIGNMENT.

* * * * *

WHEREAS, on April 7, 2011, City Council approved an Economic Development Grant Agreement (the "Agreement") with Austin Highway Partners L.P. for an economic development project to be located at 1111 Austin Highway, San Antonio, TX 78209 (the "Project Site") that would consist of 278 market rate apartment units, 431 parking spaces and approximately \$950,000.00 of public improvements to include curbs, gutters, sidewalks (the "Project"); and

WHEREAS, the Project qualified for SAWS impact fee waivers in the amount of \$345,435.00 which represents 1% of the Project's cumulative investment of \$34,543,500.00; and

WHEREAS, Austin Highway Partners L.P. has requested an assignment of the Agreement and SAWS impact fee waivers to Siete Acres who owns the real property and who intends to secure financing to undertake and complete the project; and

WHEREAS, the terms of the Agreements allow for an assignment upon the consent of the City Council; and

WHEREAS, Siete Acres is seeking an amendment of the terms of the Agreement to provide for a one- year extension to undertake and complete the Project; and

WHEREAS, the City staff recommends the assignment and amendment of terms for the purpose of completing the Project; **NOW THEREFORE:**

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

SECTION 1. The City Council consents to the assignment of the City's Economic Development Grant Agreement and SAWS Impact Fee Waivers from Austin Highway Partners L.P. to Siete Acres. Upon assignment, the terms and conditions of the First Amendment to the Economic Development Grant Agreement are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute the Assignment and First Amendment to the Economic Development Grant Agreement with Siete Acres in accordance with the terms and conditions of this ordinance. A copy of the Assignment and First Amendment, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution.

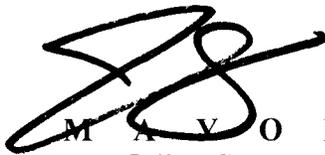
SECTION 3. Funding in the amount of \$100,000.00 for this ordinance is available in Fund 11001000, Cost Center 8002380001 and General Ledger 5201040 as part of the Fiscal Year 2011 Budget and payment is authorized to Siete Acres.

SECTION 4. Payment not to exceed the amount of \$2,446,992.95 is authorized to Siete Acres through Fund 11001000 with Cost Center and General Ledger to be determined at time of payment. Annual payments to Siete Acres shall not exceed the amount equal to the previous year's General Fund portion of ad valorem taxes remitted to the City for a period not to exceed 20 years which is currently estimated to be \$122,349.65 annually and at such time funds are authorized to be encumbered.

SECTION 5. 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 6. This Ordinance shall be effective on and after the tenth day after passage.

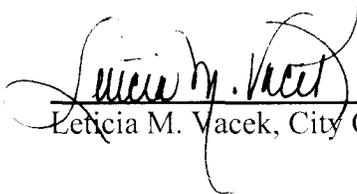
PASSED AND APPROVED this 12th day of January, 2012.



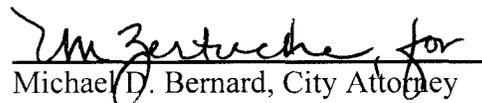
M A Y O R
Julián Castro

ATTEST:

APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk

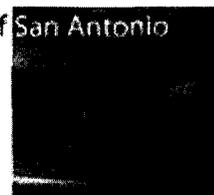


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 19

Name:	7, 8, 9, 10, 11, 12, 13, 14, 15, 17A, 17B, 17C, 17D, 17F, 17G, 17H, 17I, 19, 20, 21, 22, 23, 24, 25A, 25B						
Date:	01/12/2012						
Time:	02:12:48 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the amendment and assignment of the Economic Development Grant Agreement and associated SAWS impact fee waiver with Midway Austin Highway Partners to Siete Acres. [Pat DiGiovanni, Deputy City Manager; Mark Brodeur, Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

ATTACHMENT I

**ASSIGNMENT AND FIRST AMENDMENT TO THE ECONOMIC
DEVELOPMENT GRANT AGREEMENT**

**BETWEEN THE CITY OF SAN ANTONIO AND MIDWAY AUSTIN HIGHWAY
PARTNERS, L.P.**

This Assignment and First Amendment to the Economic Development Grant Agreement (this "First Amendment") is entered into by and between the City of San Antonio ("City"), a municipal corporation governed by the laws of the State of Texas, Midway Austin Highway Partners, L.P. ("Midway"), a limited partnership of the State of Texas, and Siete Acres AHP, L.L.C. ("Siete Acres"), a limited liability company organized and existing under the laws of the State of Texas. Together, City, Midway and/or Siete Acres may be referred to, herein, as the "Party" or collectively as "the Parties."

RECITALS

- A. City and Midway entered into that certain ECONOMIC DEVELOPMENT GRANT AGREEMENT (the "Agreement") authorized by City of San Antonio Ordinance No. 2011-04-07-0270, passed and approved on April 7, 2011, and attached hereto as EXHIBIT A.
- B. Midway has been unable to secure financing to meet the obligations of the Agreement and is seeking to assign all of its interest to Siete Acres.
- C. Siete Acres has agreed to abide by all terms and conditions of the Agreement so long as the terms are amended to provide for additional time to complete the Project.
- D. The City is required to consent to any assignment of the Agreement and to agree in writing to any amendment of the Agreement's terms.
- E. The Parties, now seek to assign and amend the terms and conditions of this Agreement as stated in this First Amendment and affirm that all other provisions of the Agreement remain in full force and effect.

AMENDMENT

NOW THEREFORE, the Parties hereby agree and amend as follows:

- 1. Definitions. All capitalized terms used in this First Amendment without definition herein shall have the meanings assigned to such terms in the Agreement.
- 2. Assignment. The Parties hereby mutually agree to assign the Agreement as follows:

- (A) Midway, as assignor, agrees to assign any and all of its interests, rights and privileges it may have in the Agreement to Siete Acres.
- (B) Siete Acres, as assignee, agrees to abide by all terms and conditions of the Agreement as amended herein.
- (C) The City hereby consents to the assignment of the Agreement from Midway to Siete Acres as amended herein.
- (D) Midway is released of any liability as Grantee under the Agreement arising from and after the effective date hereof and Siete Acres expressly assumes all obligations and liabilities of Grantee under the Agreement arising from and after the effective date hereof.

3. Amendment. The Parties hereby mutually agree to amend the Agreement as follows:

- (A) All references to Midway Austin Highway Partners, L.P. shall be deleted and replaced with "Siete Acres."
- (B) Section 2 is amended by deleting "December 31, 2033" and replacing with "December 31, 2034."
- (C) Section 3(B) is amended by deleting "December 1, 2011" and replacing with "December 1, 2012."
- (D) Section 3(C) is amended by deleting "December 31, 2013" and replacing with "December 31, 2014."
- (E) Section 4(A)(2)(ii) is amended by deleting "2013 Tax Year" and replacing with "2014 Tax Year."
- (F) Section 11 is amended by deleting notification to Midway and inserting the following:

With copy to:
Law Office of Richard J. Karam
The Ariel House
8118 Datapoint Dr.
San Antonio, TX 78229

And

Landbridge Partners
Attn: Sunshine Thacker
70 N.E. Loop 410, Ste. 570
San Antonio, TX 78216

3. Effective Date. This First Amendment shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto as Attachment II and made a part of this First Amendment.
4. No Other Changes. Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement shall continue in full force and effect and with this First Amendment shall be read and construed as one instrument.
5. Choice of Law. This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. Counterparts. This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

Signatures appear on next page.

A handwritten signature in black ink, appearing to be 'Sunshine Thacker', is written in the bottom right corner of the page.

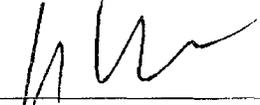
WITNESS HEREOF, the parties hereto have executed in triplicate originals this First Amendment on the _____ day of _____ 201_.

CITY OF SAN ANTONIO

a municipal corporation

MIDWAY AUSTIN HIGHWAY PARTNERS, L.P. (as Assignor)
a Texas limited partnership

Sheryl L. Sculley
City Manager


Name: E.R. Sanford, II
Title: Executive Vice President

ATTEST:

ATTEST:

Leticia Vacek
City Clerk


Name: Bradley R. Fossle
Title: President

APPROVED AS TO FORM:

SIETE ACRES (as "Assignee")
a Texas limited liability company

Michael D. Bernard
City Attorney


Name: Guillermo C. Nicolas
Title: Manager

ATTEST (if necessary):

Name:
Title:



ATTACHMENT I: Economic Development Grant Agreement

COSA/Midway/Siete
Assignment and Amendment
12/8/2011

Handwritten signature in black ink, consisting of a stylized, cursive name.

**ATTACHMENT II: CITY ORDINANCE APPROVING ASSIGNMENT AND
AMENDMENT**

COSA/Midway/Siete
Assignment and Amendment
12/8/2011

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