

AN ORDINANCE

2012-05-17-0361

APPROVING AN ECONOMIC DEVELOPMENT PROGRAM GRANT FOR UP TO \$520,548.00 WITH EMIT L.L.C. AND THE RIVER NORTH TIRZ BOARD FOR THE PHIPPS LAW FIRM PROJECT.

* * * * *

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (“City”) is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City of San Antonio created an Economic Development Program (the “Program”) for the purpose of making grants and loans available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, Emit L.L.C. (“Developer”) is engaged in economic development by investing \$5,020,548.00 in a commercial office development project, including approximately \$520,548.00 in public improvements at 206 Arden Grove located within the boundaries of the River North TIRZ (“Project”); and

WHEREAS, Developer is seeking an economic development grant for the purpose of defraying costs associated with undertaking the Project which will improve streets, drainage, and other infrastructure in the River North TIRZ in accordance with the River North Master Plan; and

WHEREAS, the City, the River North TIRZ Board of Directors (the “Board”), and the Developer desire to enter into an Economic Development Program Grant Agreement pursuant to the Board Resolution in **Attachment I**; and

WHEREAS, the Board is authorized to designate TIRZ funds consistent with its Project Plan and Finance Plan through an Economic Development Program Grant Agreement and is authorized to direct the City to pay for such projects from the TIRZ’s tax increment funds; and

WHEREAS, the Board and City have identified \$520,548.00 in available tax increment funds from the TIRZ, and \$15,000 in City Fees waivers and \$48,126 in SAWS Impact Fee Waiver consistent with the Inner City Reinvestment/Infill Policy Target Area for the Project; and

WHEREAS, the Board has authorized the commitment of tax increment funds earned from Project improvements for the Economic Development Program Grant Agreement in order to promote local economic development, and to stimulate business and commercial activity, within the River North TIRZ.; **NOW THEREFORE:**

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

SECTION 1. The City Council approves an Economic Development Program Grant Agreement for up to \$520,548.00 with Emit L.L.C. and the River North TIRZ Board for the Phipps Law Firm Project. The City Manager or her designee is authorized to execute the Agreement, a copy of which is attached in substantially final form as **Attachment I** and an approved Project Plan and Finance Plan.

SECTION 2. The City Manager or her designee is authorized to execute such other documents as are necessary to carry out the intent of this ordinance as approved and recommended by the City Attorney.

SECTION 3. Payment not to exceed the amount of \$520,548.00 which will be broken out in annual payments up to 19 years is authorized to Phipps Law Firm through Fund 29086018 with Cost Center and General Ledger to be determined by the Office of Budget and Management. Annual payments to Phipps Law firm shall not exceed the amount equal to the previous year's ad valorem taxes remitted to the City for a period not to exceed 19 years and at such time funds are authorized to be encumbered.

SECTION 4. 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 Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 17th day of May, 2012.

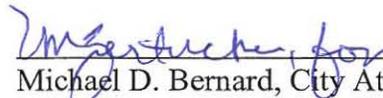

M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

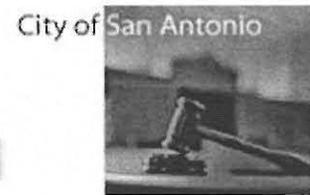
APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 16

Name:	5, 6A, 6B, 8A, 8B, 9, 12A, 12B, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25A, 25B						
Date:	05/17/2012						
Time:	10:47:57 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Economic Development Grant Agreement for up to \$520,548.00 with the Emit L.L.C. and the River North TIRZ Board for the Phipps Law Firm project, located in Council District 1. [Pat DiGiovanni, Deputy City Manager; Mark Brodeur, Director, Center City Development Office]						
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				x
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x			x	
Carlton Soules	District 10		x				

ECONOMIC DEVELOPMENT GRANT AGREEMENT OF THE CITY OF SAN ANTONIO AND RIVER NORTH TAX INCREMENT REINVESTMENT ZONE #27

This Economic Development Grant Agreement ("Agreement") is made and entered into by and among the City of San Antonio ("City"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, River North Tax Increment Reinvestment Zone #27, acting by and through its Board of Directors, ("TIRZ") and Emit, LLC, ("GRANTEE") and whom together may be referred to as the "Parties."

WHEREAS, GRANTEE is the owner of approximately 0.544 acres of real property located at 206 Arden Grove, as more particularly described in "Attachment A" attached hereto (the "Property"); and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio that will consist of a four story 25,000 square foot office building, and \$520,548.00 in public improvements to be located on the Property bringing in approximately 25 jobs within the next five years ("Project"); and

WHEREAS, the City's governing body recommended to the TIRZ that the Project be reimbursed for public infrastructure undertaken and completed by GRANTEE; and

WHEREAS, GRANTEE is seeking an economic development grant from the City and the TIRZ for the purpose of defraying costs associated with the Public Improvements as further described in this Agreement; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010(b) and Section 311.010(h) of the Texas Tax Code, the City and the TIRZ are authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and the TIRZ; and

WHEREAS, the City and the TIRZ have identified grant funds to be made available to GRANTEE for the Project and the Board of Directors of the TIRZ has authorized the TIRZ to enter in this Agreement with GRANTEE in accordance with the Resolution attached hereto as "Attachment B", dated May 2, 2012; and

WHEREAS, the City Council of City has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2012-0_ - ___ - ___, passed and approved on May 17, 2012 to grant funds and, in accordance with the City's Inner-City Reinvestment Infill Policy, has approved a waiver of certain impact fees otherwise charged by the San Antonio Water System to the Project (the "SAWS Impact Fee Waiver");
NOW THEREFORE:

The Parties severally and collectively agree, and by the execution hereof are bound for the consideration stated, to the mutual obligations and performance and accomplishment of the tasks herein:

SECTION 1. AGREEMENT PURPOSE

GRANTEE shall undertake the development of a four-story 25,000 square foot office building, and a minimum of \$520,548.00 in Public Improvements to be located on the Property bringing approximately 25 jobs to the area within the next five years. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio and the TIRZ. The City and TIRZ are supporting the Project through this Economic Development Program Grant to provide funds to be used to defer costs for Public Improvements associated with the Project.

SECTION 2. PROJECT REQUIREMENTS

A. GRANTEE shall make a minimum Investment (as hereafter defined) of \$5,020,548.00 in the Project, which shall include approximately \$520,548.00 of Public Improvements (as hereafter defined). For the purposes of this Agreement, "Public Improvements" shall include street, drainage, and other infrastructure improvements pertaining to development of the Property, as more particularly described in "Attachment C", attached and incorporated herein. Notwithstanding any other provision of this Agreement to the contrary, the City and TIRZ agree that GRANTEE shall not be required to expend the particular amounts described in **Attachment C** so long as the cumulative amount expended for the Public Improvements, at a minimum, achieves GRANTEE's performance obligations under this Subsection. For purposes of this Agreement, "Investment" means all expenditures made by GRANTEE directly or indirectly, without limitation, to develop the Project, including: architectural, engineering and surveying expenses, financing costs and fees, construction period interest, property acquisition, closing and settlement expenses, demolition, construction, site preparation, paving, landscaping, utilities, project marketing, legal expenses, and reasonable fees paid to consultants, contractors and developer.

B. GRANTEE shall make all commercially reasonable efforts to commence construction on or before August 31, 2012 and shall use commercially reasonable efforts to complete construction no later than December 31, 2013, subject to Force Majeure. The commencement date shall be determined by the issuance of a building permit for the Project and City's receipt of correspondence from the general contractor for Project confirming that construction of the Project has commenced. The completion date shall be determined by the issuance of a Certificate of Occupancy for the Project by City (not to be unreasonably withheld).

C. GRANTEE shall make available to City any Project progress reports generated by GRANTEE during the construction. In addition, should City request a progress report on the Project from GRANTEE, GRANTEE shall provide such a report within 15 business days.

D. GRANTEE shall comply with all applicable Federal, State and local laws and regulations, as amended from time to time and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

E. **Liens and Claims**. No Public Improvements with a lien still attached may be offered to the City for dedication. If any lien or claim of lien, whether choate or inchoate (collectively, any

“Mechanic’s Lien”) is filed against GRANTEE’s regarding the Public Improvements on the Project by reason of any work, labor, services or materials supplied or claimed to have been supplied by, or on behalf of, GRANTEE, or any of its agents or Contractors, GRANTEE shall cause the same to be satisfied or discharged of record, or effectively prevent the enforcement or foreclosure against the Project’s Public Improvements by injunction, payment, deposit, bond, court order or otherwise.

F. GRANTEE is responsible for complying with all applicable City Code including provisions of the Unified Development Code enforced pursuant to the City’s subdivision platting authority and as amended from time to time, including, but not limited to those provisions related to drainage, utilities, and substandard public street rights-of-ways for development and construction of the Project including the Public Improvements. In addition, GRANTEE shall follow the River North Master Plan as adopted by City and low impact development strategies for water quality, storm water and drainage where appropriate for the Project. This Agreement in no way obligates the City to approve any subsequent permits or requests for the Project as GRANTEE is still responsible for acquiring all necessary permits and/or approvals as needed for the Project.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT

A. **Economic Development Program Grant.** The TIRZ is providing GRANTEE with an Economic Development Program Grant. The TIRZ is directing the City to administrate this Agreement by disbursing the Grant Funds and monitoring GRANTEE’s compliance with the terms and conditions of this Agreement. Such grant shall be as follows:

1. The TIRZ is providing up to \$520,548.00 in tax increment reimbursements from the Tax Increment Fund (hereafter defined), held by the City as fiscal agent, to be paid to GRANTEE as set forth herein.
2. The Grant Funds shall be used to reimburse GRANTEE for Investments in costs of the Public Improvements for the Project.

B. **Grant Disbursement.** The Grant Funds will be distributed over the Term of this Agreement, subject to the terms and conditions herein, as follows:

1. **Initial Requirements.** Grant disbursement shall require:
 - (a) Execution of the Agreement by all Parties; and
 - (b) Receipt of evidence of the issuance of all necessary permits from the City of San Antonio for the commencement of construction on the Project; and
 - (c) GRANTEE providing to City the following: (i) a letter from a qualified financial institution confirming GRANTEE has funds available on deposit or under an existing credit facility exceeding \$5,020,548.00, which is the estimated cost of constructing the Project; (ii) written confirmation from GRANTEE that it has received the necessary building permits to cause the Commencement of Construction of the four story 25,000 square foot office building comprising a portion of the Project; (iii) a letter from GRANTEE’s general contractor that

Commencement of Construction of the Project has occurred prior to September 30, 2012; and (iv) a construction schedule and budget for the Public Improvements. City shall determine in its sole discretion whether the evidence provided by GRANTEE is sufficient to satisfy the foregoing conditions.

2. **Property Tax Increment Reimbursement (Maximum of \$520,548.00)**. Subject to the terms and conditions of this Agreement and the Payment Conditions (defined herein), for each tax year commencing with the inclusion of the Project in the TIRZ and then annually throughout the remainder of the Term as defined in Section 4, the TIRZ shall pay to GRANTEE no later than 45 business days following submission of a tax invoice by GRANTEE indicating full payment of all taxes by GRANTEE on the Project, an amount equal to: (a) the actual amount of real property taxes paid by GRANTEE to City with respect to the Project (including land and improvements) for the immediately preceding tax year, *less* (b) the actual amount of real property taxes payable by GRANTEE to City with respect to the Property for the the tax year in which the Project was included in the TIRZ (the difference between (a) and (b) is the "Annual Property Tax Increment Reimbursement"). GRANTEE shall also provide with each annual tax invoice GRANTEE submits to City information showing amounts paid by GRANTEE for the construction of the Public Improvements during each tax year for which Reimbursement is requested. Such information shall include, but is not limited to, paid invoices to contractors and vendors and an updated construction schedule and budget for the Public Improvements. GRANTEE shall only receive reimbursement for actual construction costs incurred and paid by GRANTEE, not to exceed the amount of tax increment attributed to the Project annually. Payment of the Annual Property Tax Increment Reimbursement to GRANTEE shall occur in accordance with the following conditions (collectively, the "Payment Conditions"):
 - (a) For each tax year during the Term of this Agreement, TIRZ shall pay the Annual Property Tax Increment Reimbursement to GRANTEE if the City or other participating taxing entities have deposited funds into the Tax Increment Fund for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code. Payment of the Annual Property Tax Increment Reimbursement to GRANTEE from the Tax Increment Fund shall come solely from City real property taxes attributable to the Project. For purposes of this Agreement, "Tax Increment Fund" means that certain fund established by the City for the TIRZ, pursuant to Section 311.004, Texas Tax Code.
 - (b) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the TIRZ, the TIRZ shall defer payment of any Annual Property Tax Increment Reimbursement due to GRANTEE under this Section, during that tax year.
 - (c) For any particular tax year during the Term of this Agreement, the TIRZ shall pay as much of the Annual Property Tax Increment Reimbursement to GRANTEE as possible from City tax increment attributable to the Project, and the

TIRZ shall defer payment of any unpaid balance of the Property Tax Increment Reimbursement due to GRANTEE under this Section during that tax year.

- (d) It is expressly agreed that all deferred Property Tax Increment Reimbursements (the “Deferred Amounts Due”) shall accrue without interest and be payable at the earliest reasonable opportunity to GRANTEE by TIRZ upon the availability of City tax increment attributable to the Project in the Tax Increment Fund.
 - (e) At any time during the Term of this Agreement and provided that GRANTEE has no Deferred Amounts Due and there exist unallocated amounts of City tax increment attributable to the Project in the Tax Increment Fund, the TIRZ shall consider any reasonable request made by GRANTEE to pay amounts in addition to the Annual Property Tax Increment Reimbursement up to the Maximum Disbursement Amount. It is expressly understood that the TIRZ has no obligation to pay additional amounts.
 - (f) The GRANTEE understands and agrees that any expenditure made by the GRANTEE in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, or the TIRZ. The GRANTEE shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and/or unanticipated effects covered under legal doctrine of force majeure.
3. **Obligation to Pay Taxes.** It is understood that GRANTEE shall continue to pay all taxes owed on the Property as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District. Prior to TIRZ disbursing funds under Section 3.B.(ii), GRANTEE must provide to City evidence indicating that all taxes owed by GRANTEE on the Property have been paid in full for the tax year for which payment of the Annual Property Tax Increment Reimbursement is sought, subject to GRANTEE's right to protest taxes as permitted by law. If, during the Term of this Agreement, GRANTEE allows its ad valorem taxes due on the Property to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then City's and TIRZ's remedies under this Agreement shall apply.
4. **Property Tax Reconciliation.** In no case shall disbursements made to GRANTEE under this Agreement exceed the Maximum Disbursement Amount. Should such disbursements exceed the Maximum Disbursement Amount, no further disbursements shall be due to GRANTEE and any excess funds disbursed shall be due and payable by GRANTEE to City or TIRZ within 60 days following written notice from City to GRANTEE, provided such written notice is given within one year following the expiration of the Term.

SECTION 4. AGREEMENT TERM

This Agreement shall commence upon _____ 2012 and terminate upon the earlier of: (A) the payment of Grant Funds by City and/or TIRZ to GRANTEE in the amount of the Maximum Disbursement Amount; (B) the termination date of the TIRZ as designated in the Ordinance creating the TIRZ or the date all obligations of the TIRZ are paid in full but, if such termination is earlier then in accordance with Section 16 Paragraph A of this Agreement, or (C) termination of this Agreement as otherwise provided herein ("Term").

SECTION 5. CITY AND TIRZ OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2 or Section 3 of this Agreement, as applicable, City and TIRZ will pay GRANTEE in accordance with Section 3 above.

B. Neither City nor TIRZ will be liable to GRANTEE or any other entity for any costs incurred by GRANTEE in connection with this Agreement.

C. The City agrees to act as the fiscal agent of the TIRZ by making disbursements under this Agreement. Additionally, the City shall monitor GRANTEE's compliance with the terms and conditions of this Agreement and provide updated information to the TIRZ regarding the progress of the Project.

D. Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ TIF funds, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or the City.

E. Notwithstanding the previous and as the Project is located within the Inner City Reinvestment/Infill Policy Target Area, the Project is eligible for certain fee waivers that total approximately \$15,000 in City fees and \$48,126 from the SAWS Impact Fee Waiver.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records and any supporting documentation for the greater of: (1) five years from the end of the Agreement Term; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the City, give the City, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the cost of Project (the "Records"). City's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the City. GRANTEE shall not be required to disclose to the City or TIRZ

any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized City representatives shall give the City and TIRZ the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. The obligations of this Section 6 shall survive Termination of the Agreement.

SECTION 7. MONITORING

A. The City reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. The City will provide GRANTEE and TIRZ with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

SECTION 8. CONFLICT OF INTEREST & GIFTS

A. GRANTEE shall use good faith efforts to ensure that no employee, officer, or individual agent of City shall participate in the selection, award or administration of a subcontract supported 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, or individual 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 subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the City's Code of Ethics.

B. City may terminate this Agreement immediately if the GRANTEE has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting. Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the City may obtain reimbursement for any expenditure made to the GRANTEE resulting from the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. As a condition of entering into this agreement, GRANTEE represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. Grantee understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of GRANTEE from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein.

C. City and TIRZ will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to City and TIRZ for any money

it has received from City or TIRZ for performance of the provisions of this Agreement if City or TIRZ suspends or terminates this Agreement for reasons enumerated in this Section.

SECTION 11. LITIGATION AND CLAIMS

A. GRANTEE shall give City immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out of the performance of any activities hereunder. Except as otherwise directed by City, GRANTEE shall furnish immediately to City copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the City immediately of any legal action, known to GRANTEE, filed against the GRANTEE or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to City within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, GRANTEE is not required to notify City of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. The TIRZ and GRANTEE acknowledge that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. **Applicable Law and Venue.** This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Performance under this Agreement lies in Bexar County, Texas and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. ATTORNEY'S FEES

A. In the event that GRANTEE should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the City.

B. In the event City or TIRZ should default under any of the provisions of this Agreement and the GRANTEE should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of City or TIRZ herein contained, City and TIRZ agree to pay to the GRANTEE reasonable fees of such attorneys and such other expenses so incurred by the GRANTEE.

SECTION 13. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties.

B. It is understood and agreed by the Parties that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions or deletions to the terms of this Agreement (other than those terms in Section 2 or Section 3) required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, City shall provide GRANTEE with written notification as to the nature of the non-compliance and give GRANTEE a 60 day period following the date of the GRANTEE's receipt of City's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, the City may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended. Parties agree that any such Suspension shall not delay, preclude or alter the payment of Deferred Amounts Due accrued prior to the date of non-compliance hereunder assuming the suspension is unrelated to the Public Improvements.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such 60 day period, the City may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise City of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section may be lifted only by City upon a showing of full compliance with or written waiver by City of the term(s) in question.

D. Neither City nor TIRZ shall be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION

A. Should GRANTEE fail to timely commence construction in accordance with Section 2(b) above, this Agreement shall terminate automatically and any and all incentives offered to GRANTEE by City and TIRZ shall extinguish. City and TIRZ shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that GRANTEE has failed to comply with any term of any Agreement with the City and TIRZ. City will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a 60 day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should GRANTEE fail to cure any default within this period of time, City and/or TIRZ may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement, withhold further payments to GRANTEE and seek repayment of any and all funds disbursed by City and/or TIRZ.

B. In the case of default for causes that cannot with due diligence be cured within such 60-day period, the 60-day cure period shall be extended for such additional time as may be reasonable under the circumstances, provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise City and/or TIRZ of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. **Recapture of Program Grant Funds.** Should GRANTEE:

1. Fail to commence the Project on or before August 31, 2012, unless such failure to commence is due to Force Majeure;
2. Fail to complete the Project no later than September 30, 2013, unless such failure to complete is due to Force Majeure;
3. Fail to utilize the Grant Funds for Public Improvements to the Project;
4. Fail to keep adequate records necessary for the City to determine if GRANTEE is in compliance with this Agreement; or
5. Breaches this Agreement in any manner set forth in this Agreement; then

City shall have the right to terminate this Agreement and recapture the Grant Funds. Upon termination, City shall be entitled to the repayment of Grant Funds within 60 calendar days from the date it notifies GRANTEE in writing of termination.

D. **Other Remedies Available.** City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above. However, such termination and repayment shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

SECTION 16. SPECIAL CONDITIONS AND TERMS

A. Termination of TIRZ. The Parties agree that, in the event that the City, acting in accordance with State law, terminates the TIRZ or adopts an ordinance that causes the termination date of the TIRZ to occur on a date earlier than provided in the ordinance that initially established the TIRZ, the City may, if in accordance with State law, establish a fund in an amount that will be sufficient to pay any other amounts that may become due, including compensation due to or to become due to the trustee or escrow agent, as well as to pay the principal of and interest on any other obligations incurred on behalf of the TIRZ. Alternatively, should the Project become located in another TIRZ, GRANTEE may petition for assignment to said TIRZ in accordance with Section 20. GRANTEE may also petition the City, acting in its sole discretion, to amend this Agreement to provide for the payment of Annual Property Tax Increment Reimbursements by the City to GRANTEE in accordance with the material terms and conditions of this Agreement.

B. Employment. GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement. If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay the City or TIRZ the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by the City of such violation. The City, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to City or TIRZ at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such violation notice until paid.

SECTION 17. SUBCONTRACTING

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by GRANTEE complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE. For purposes of this Agreement, the term "subcontract" shall include a contract entered into by GRANTEE and a general contractor for the construction of the Project.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, neither City nor TIRZ is liable to GRANTEE's subcontractor(s).

SECTION 18. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the City.

SECTION 19. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties that, except as expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and the City or TIRZ or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 20. ASSIGNMENT

A. This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Each transfer or assignment, to which there has been consent, shall be by instrument in writing, in form reasonably satisfactory to the City and the TIRZ and shall be executed by the transferee or assignee who shall agree in writing to be bound by and to perform the terms, covenants and conditions of this Agreement. Failure to first obtain, in writing, the City or TIRZ's consent, or failure to comply with the provisions herein shall prevent any such transfer or assignment from becoming effective. In the event the City and TIRZ approves the assignment or transfer of this Agreement, as provided above, the GRANTEE shall be released from the duties and obligations of the Agreement.

B. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a parent, subsidiary, affiliate entity or newly-created entity resulting from a merger, acquisition or other corporate restructure or reorganization of GRANTEE, or to any entity owned or controlled, or under common control, directly or indirectly by GRANTEE, without the written consent of the non-assigning Parties. Following completion of construction of the Project, GRANTEE shall also have the right to assign this Agreement to any party that acquires the Project, subject to the prior written consent of the City Manager or her designee, which shall not be unreasonably withheld. In either of such cases, GRANTEE shall give City no less than 30 days prior written notice of the proposed assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of City and TIRZ shall release City and TIRZ from performing any of the terms, covenants and conditions herein. However, provided that a permitted assignment of this Agreement by GRANTEE following completion of construction of the Project shall relieve GRANTEE of any liability hereunder arising following the assignment provided that the assignee has expressly assumed all obligations and liabilities of GRANTEE under this Agreement attributable to the period following the date of such assignment. Any assignment of this Agreement in violation of this Section shall enable City and/or TIRZ to terminate this Agreement and exercise its rights under Section 15 of this Agreement.

C. Also notwithstanding the language in this Section, the City authorizes the TIRZ to assign this Agreement to any other Tax Increment Reinvestment Zone (Zone) should this Project be included in the boundaries of said Zone and the Board of said Zone agrees to the assignment of

and assumption of all the duties, rights and obligations of the TIRZ as evidenced by a Board resolution. City staff and/or TIRZ shall be responsible for providing GRANTEE written notice no less than 30 days of the proposed assignment.

D. Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, shall the City be obligated in any way to said financial institution or other provider of capital. The City shall only issue a check or any other form of payment made payable only to the GRANTEE.

SECTION 21. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

City may grant temporary relief from any deadline for performance of any term of this Agreement if GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain an extension based upon Force Majeure, GRANTEE must provide written notice to City of the occurrence of the Force Majeure event within ten days following the date that GRANTEE becomes aware of the event and the fact that it will delay GRANTEE's performance of its obligations under this Agreement. City will not unreasonably withhold consent. Consent from TIRZ shall not be required under this Section.

SECTION 23. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two business days following its deposit into the custody of the United States Postal Service or one business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO CITY and TIRZ:

TO GRANTEE:

(If mailed):
Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

(for mail & personal or overnight delivery):
EMIT, LLC
100 N.E. Loop 410, Suite 1500
Attn: Martin J. Phipps
San Antonio, Texas 78209

(If by personal or overnight delivery):

Center City Development Office
Attn: Director
100 Houston St., 19th Floor
San Antonio, Texas 78205

(for mail & personal or overnight delivery)

Planning and Community Development Department
Cliff Morton Development & Business Service Center
Attn: Tax Increment Finance Unit
1901 S. Alamo
San Antonio, TX 78204

SECTION 24. PUBLIC INFORMATION

GRANTEE acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

SECTION 25. INCORPORATION OF ATTACHMENTS

Each of the Attachments listed below are an essential part of the Agreement and are incorporated herein for all purposes.

ATTACHMENTS: Attachment A – Property
Attachment B – TIRZ Resolution
Attachment C – Public Improvements of Project

Signatures appear on next page.

EXECUTED AND AGREED TO BY THE PARTIES ON THIS THE ___ DAY OF ___ 2012 in three duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2012-____-____-_____, dated May 17, 2012, and Emit LLC (Grantee) pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

GRANTEE:
Emit LLC, a Texas Limited Liability Corporation,

Pat DiGiovanni
DEPUTY CITY MANAGER

Martin J. Phipps, President

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

Name:
Title:

**RIVER NORTH TAX INCREMENT
REINVESTMENT ZONE #27:**

ATTEST:

Name:
BOARD CHAIRPERSON

Name:
BOARD VICE-CHAIRPERSON

APPROVED AS TO FORM:

Xochil Rodriguez
ASSISTANT CITY ATTORNEY

ATTACHMENT A
Subject Property



FIELD NOTES FOR
0.544 ACRES

BEING a 0.544 acre (23,697 sq. ft.) tract of land located in NCB 783, City of San Antonio, Bexar County, Texas, being the remainder of that tract described to Paradigm Hotel SA River Walk, L.P. (Paradigm) of record in Vol. 13161, Pg. 473 of the Deed Records of Bexar County, Texas, said 0.544 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the east line of Arden Grove (50' R.O.W.) for the southwest corner of that tract described to San Antonio Museum of Art (SAMA) of record in Vol. 9925, Pg. 2284 of said Deed Records, same being the northwest corner of said Paradigm tract and hereof;

THENCE, leaving the east line of Arden Grove, along the south and southwest line of said SAMA tract, same being the north and northeast line of said Paradigm tract and hereof, the following three (3) courses and distances:

1. S89°52'31"E, a distance of 117.22 feet to a 1/2 inch iron rod found for an angle point hereof;
2. S13°49'38"E, a distance of 84.61 feet to a 1/2 inch iron rod found for an angle point hereof;
3. S38°32'49"E, a distance of 16.60 feet to a 1/2 inch iron rod found in the west line of the San Antonio River (R.O.W. width varies) for the southernmost corner of said SAMA tract, same being the easternmost corner of said Paradigm tract and hereof;

THENCE, S37°35'45"W, along the west line of the San Antonio River, same being the southeast line of said Paradigm tract and hereof, a distance of 142.71 feet to a 5/8 inch iron rod with aluminum cap stamped "San Antonio River Authority" found for the northeast corner of that tract described to San Antonio River Authority (SARA) of record in Vol. 15334, Pg. 2297 of said Deed Records, for the easternmost, southeast corner hereof;



THENCE, leaving the west line of the San Antonio River, along the north and northwest line of said SARA tract, same being the southerly line of said Paradigm tract and hereof the following two (2) courses and distances:

1. N53°22'05"W, a distance of 11.48 feet to a 5/8 inch iron rod with aluminum cap stamped "San Antonio River Authority" found for an angle point hereof;
2. S36°00'54"W, a distance of 21.93 feet to a 5/8 inch iron rod with aluminum cap stamped "San Antonio River Authority" found in the north line of 9th Street (58' R.O.W.), same being the southwest line of said Paradigm tract, for southernmost corner hereof;

THENCE, N51°30'11"W, along the north line of 9th Street, same being the southwest line of said Paradigm tract and hereof, a distance of 45.76 feet to a 1/2 inch iron rod with plastic cap stamped "CDS/Muery-SA, TX" set for the intersection with the east line of Arden Grove, same being the southwest corner of said Paradigm tract and hereof;

THENCE, N00°50'21"W, along the east line of Arden Grove, same being the west line of said Paradigm tract and hereof, a distance of 190.90 feet to the POINT OF BEGINNING, containing an area of 0.544 acres of land, more or less, within these metes and bounds.

The bearing basis for this survey is Grid North, Texas State Plane Coordinate System, South Central Zone, NAD 1983 (93).

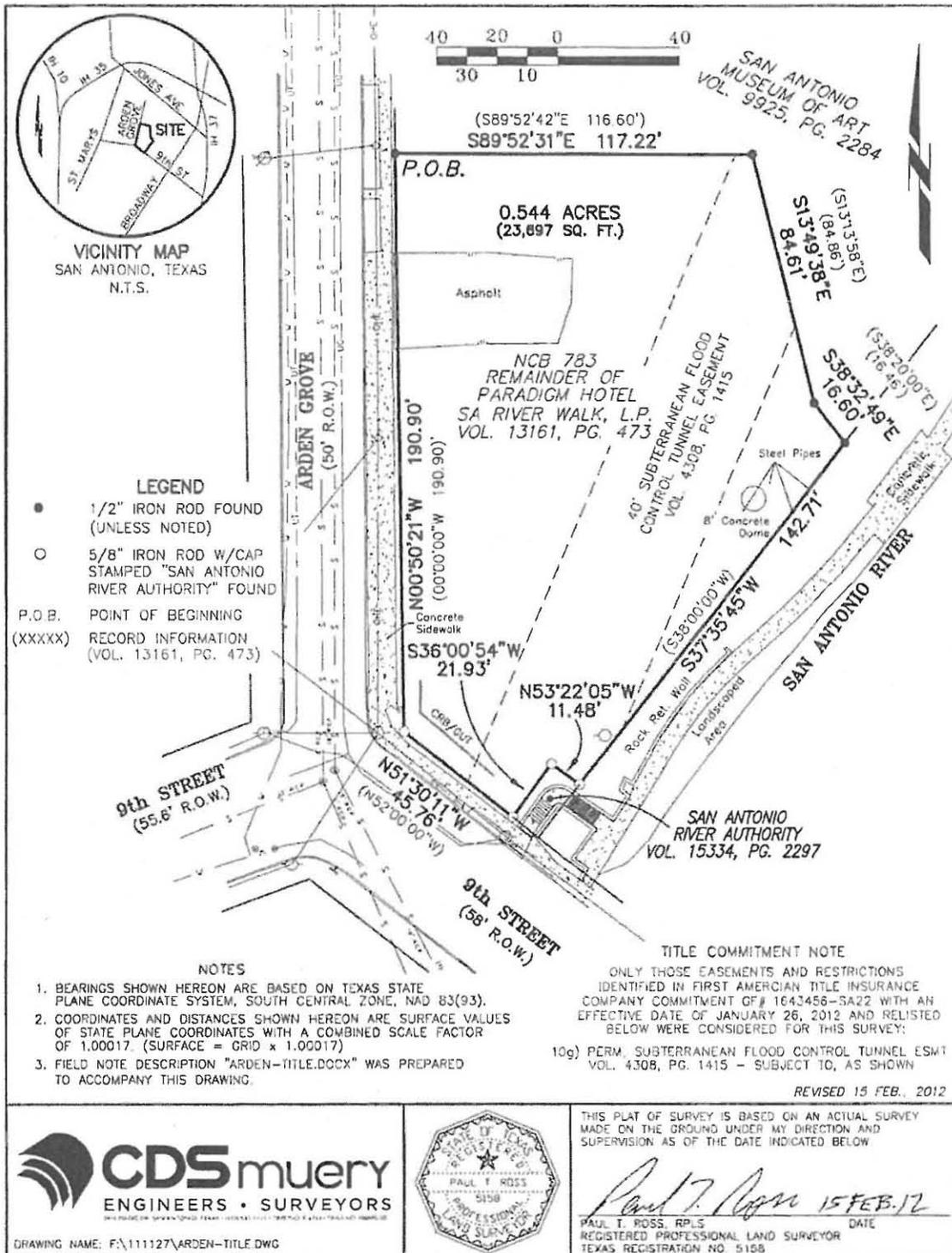
I, Paul T. Ross, a Registered Professional Land Surveyor, do hereby certify that the above field notes and the drawing which accompanies it were prepared using information obtained by an on-the-ground survey made under my direction and supervision.



Paul T. Ross 15 FEB 12
 Paul T. Ross Date
 Registered Professional Land Surveyor
 Texas Registration No. 5158

Page 2 of 2
FA11127Arden-Title.docx
Feb. 15, 2012

3411 Magic Drive • San Antonio, Texas 78229 • Phone: (210) 581-1111 • TBE No. F-1733 • TBPLS No. 100495-00



5/7/12:3:PM

ATTACHMENT B
TIRZ Resolution

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER 27, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE RIVER NORTH TIRZ AUTHORIZING THE COMMITMENT OF TAX INCREMENT FUNDS FOR A CHAPTER 380 GRANT FOR THE PHIPPS OFFICE PROJECT WITH EMIT L.L.C. AND THE CITY OF SAN ANTONIO.

WHEREAS, the City of San Antonio (“City”), the River North TIRZ Board (“Board”) and Emit L.L.C. (“Developer”) desire to enter into a Chapter 380 Economic Development Program Grant pursuant to Ordinance No. _____; and

WHEREAS, Developer is engaged in economic development by investing \$5,020,548.00 in a commercial office development project, including approximately \$520,548.00 in public improvements at 206 Arden Grove located within the boundaries of the River North TIRZ (“Project”); and

WHEREAS, Developer is seeking an economic development grant for the purpose of defraying costs associated with undertaking the Project which will improve streets, drainage, and other infrastructure in the TIRZ and in compliance with the River North Master Plan; and

WHEREAS, the Board is authorized to designate TIRZ funds consistent with its Project Plan and Finance Plan through a Chapter 380 Economic Development Program Grant Agreement and is authorized to direct the City to pay for such projects from the TIRZ’s tax increment funds; and

WHEREAS, the Board and City have identified \$520,548.00 in available tax increment funds from the TIRZ for the Project; and

WHEREAS, the Board authorizes the commitment of tax increment funds earned from Project improvements for the Chapter 380 Economic Development Program Grant Agreement in order to promote local economic development, and to stimulate business and commercial activity, within the River North TIRZ.; **NOW THEREFORE:**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX REINVESTMENT ZONE NUMBER 27, THE RIVER NORTH TIRZ, CITY OF SAN ANTONIO, TEXAS:

Section 1: The recitals set out above are adopted in their entirety.

Section 2: The River North TIRZ Board authorizes the City to commit up to \$520,548.00 in tax increment in a Chapter 380 Economic Development Program Grant Agreement for the Project, consistent with the terms stated in the attached letter and an approved Project Plan and Finance Plan, contingent upon City Council approval.

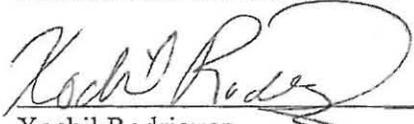
PASSED, APPROVED and ADOPTED this 2nd day of May 2012.


Board Chairperson

ATTEST:


Board Vice Chairperson

APPROVED AS TO FORM:


Xochil Rodriguez,
Assistant City Attorney

ATTACHMENT C
Public Improvements

GRANTEE is responsible for completion of the following Public Improvements in accordance with this Agreement, City Code and the River North Master Plan as amended from time to time:

Improvement	Approximate Cost
1. Street/Curb/Sidewalk/Landscaping Improvements to 9 th Street.	\$236,928.00
2. Street/Curb/Sidewalk/Landscaping Improvements to Arden Grove.	(for both 1 & 2)
3. Replace 6" Water Line with 12" Water Line from St. Mary's/9 th Street to Arden Grove/9 th Street supplying water to the Property and for future water needs for neighboring tracts on Arden Grove.	\$75,720.00
4. Removal of overhead utility lines and burial of those Electric Utility Lines on or along Arden Grove and 9 th Street.	\$207,900.00
	Total: \$520,548.00