

AN ORDINANCE 2011-04-07-0269

**APPROVING AN ECONOMIC DEVELOPMENT GRANT AGREEMENT
IN THE AMOUNT OF \$2,901,669.00 WITH REGENT COMPANIES AND
AUTHORIZING A WAIVER OF \$289,897.00 IN SAWS IMPACT FEES
FOR 1800 BROADWAY.**

* * * * *

WHEREAS, Regent Companies has proposed a \$28,989,700.00 multi-family housing development located at 1800 Broadway in the Midtown Tax Increment Reinvestment Zone (“TIRZ”) in Council District 2, to consist of 221 market-rate housing units; and

WHEREAS, the project will commence construction no later than summer 2011 and includes approximately \$855,891.00 of public improvements such as curbs, gutters, sidewalks, and drainage; and

WHEREAS, the 1800 Broadway project is located within the Inner City Reinvestment/Infill Policy Target Area (ICR/IP) and is eligible for City fee waivers, as well as a San Antonio Water System (“SAWS”) fee waiver in an amount not to exceed \$289,897.00; and

WHEREAS, City staff has recommended an economic development grant, authorized by Chapter 380 of the Texas Government Code in the amount of \$855,891.00, which is equal to the amount of public improvements, to be disbursed immediately following: (1) receipt of a building permit from the City of San Antonio; (2) initiation of construction; and (3) receipt of financing; and

WHEREAS, staff is also recommended a grant, in an amount not to exceed \$2,045,778.00, to be disbursed in an amount equal to the previous year’s ad valorem taxes generated as a result of the project improvements, and remitted to the City for a period not to exceed 15 years (the “Chapter 380 Grant”); and

WHEREAS, on April 4, 2011, the Midtown TIRZ Board approved a resolution authorizing that all captured tax increments generated from this project shall remain with the City for disbursement in accordance with the Chapter 380 Grant; **NOW THEREFORE:**

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

SECTION 1. City Council approves the Economic Development Grant Agreement for an amount totaling \$2,901,699.00, a final copy of which shall be filed with this Ordinance.

SECTION 2. Funding in the amount of \$575,994.00 for this Ordinance is available in Fund 11001000, Cost Center 3401010003, General Ledger 5201040, as part of the Fiscal Year 2011 Budget and payment is authorized to Regent companies.

SECTION 3. Funding in the amount of \$279,897.00 for this Ordinance is available in Fund 29059000, Cost Center 1604010001, General Ledger 5201040, as part of the Fiscal Year 2011 Budget and payment is authorized to Regent companies.

SECTION 4. Payment not to exceed the amount of \$2,045,778.00 is authorized to Regent Companies through Fund 11001000 with Cost Center and General Ledger to be determined at time of payment. Annual payments to Regent Companies 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 15 years and at such times funds are authorized to be encumbered.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO 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.

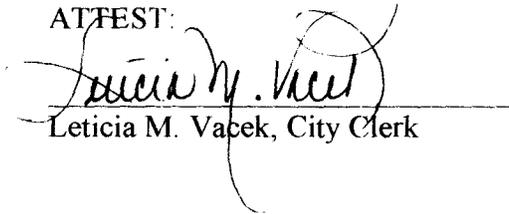
SECTION 6. This Ordinance shall become effective immediately upon the unanimous vote of the City Council or within ten days following approval by majority vote.

PASSED AND APPROVED this 7th day of April, 2011.



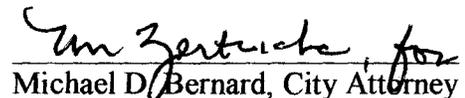
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 20

Name:	19, 20, 21, 22						
Date:	04/07/2011						
Time:	10:48:17 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Economic Development Grant Agreement in the amount of \$2,901,669.00 with Regent Companies and approving a waiver of \$289,897.00 in SAWS impact fees for 1800 Broadway. [Pat DiGiovanni, Deputy City Manager, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

STATE OF TEXAS
COUNTY OF BEXAR

§
§
§

ECONOMIC DEVELOPMENT
GRANT AGREEMENT OF
THE CITY OF SAN ANTONIO

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as the "GRANTOR"), acting by and through its City Manager or her designee, and Criterion Broadway, LP, a Delaware limited partnership, acting through its President, Pretlow Riddick (hereinafter referred to as the "GRANTEE"), and together referred to as the "Parties.

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to establish and provide for the administration of one or more programs, including a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, under City Ordinance No. 100684, GRANTOR created and adopted such a program; and

WHEREAS, GRANTEE is undertaking an economic development project that will be located within the City's Midtown Tax Increment Reinvestment Zone at 1800 Broadway, in the City's downtown area; and

WHEREAS, the economic development project will consist of GRANTEE investing approximately \$28,989,700.00 to develop at least 195,244 square feet of residential rental space for at least 221 market-rate apartments and completing approximately \$855,891.00 in public improvements (the "Project"); and

WHEREAS, GRANTEE has requested an economic development grant for the purpose of defraying costs associated with undertaking and completing the Project; and

WHEREAS, GRANTOR has identified economic development funds available for GRANTEE to use to carry out the Project under the terms and conditions of this Agreement; and

WHEREAS, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2011-04-07-0269, passed and approved on April 7, 2011; **NOW THEREFORE**:

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

The Project is anticipated to promote local economic development and stimulate business and commercial activity in the City of San Antonio. The GRANTOR is supporting the Project through this economic development grant to provide funds for the purpose of defraying costs associated with the Project's construction and this Agreement is a component of a larger incentive package offered by GRANTOR and intended, in part, to spur development in GRANTOR's Tax Increment Reinvestment Zone and Inner City Reinvestment Infill Policy area and to attract additional future development.

SECTION 2. AGREEMENT PERIOD

This Agreement shall commence upon its full execution by the Parties ("Effective Date") and shall terminate upon the earliest of the following events: (i) GRANTOR's payment to GRANTEE of the

Maximum Disbursement Amount (defined below), or (ii) December 31, 2029. This period shall be referred to throughout this Agreement as the "Term."

SECTION 3. PROJECT REQUIREMENTS

A. GRANTEE shall invest approximately TWENTY EIGHT MILLION NINE HUNDRED EIGHTY NINE THOUSAND SEVEN HUNDRED DOLLARS (\$28,989,700.00) in direct costs associated with the acquisition of and improvements to the real property located at 1800 Broadway Street, San Antonio, Texas, as further described in Attachment I (the "Project Site").

B. GRANTEE shall cause Commencement of Construction (defined below) of the Project to occur by December 1, 2011 (the "Construction Commencement Deadline") and shall cause the Project to consist of: (i) the development of at least 221 market-rate apartments with at least 195,244 square feet within the Project Site; (ii) approximately EIGHT HUNDRED FIFTY FIVE THOUSAND EIGHT HUNDRED NINETY ONE DOLLARS (\$855,891.00) of public improvements to include, without limitation, curbs, sidewalks, landscaping, parking, drainage improvements, utility line removal/excavation/relocation/burial, demolition, environmental remediation and related architectural, engineering and construction management expenses associated with such work (the "Public Improvements") as further described in Attachment II. For purposes hereof, "Commencement of Construction" shall mean the beginning of physical construction activity on the Project Site.

C. GRANTEE shall use commercially reasonable efforts to complete construction of the Project before December 1, 2013, but shall cause completion of construction of the Project to occur no later than April 1, 2014, subject to Force Majeure (the "Completion Date").

D. GRANTEE shall comply with all applicable laws and regulations applying to the construction and operation of the Project.

E. GRANTEE shall provide updates on the construction of the Project upon receipt of reasonable written request of GRANTOR. Such updates shall include information necessary for GRANTOR to determine GRANTEE's compliance with the terms and conditions of this Agreement.

SECTION 4. ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM GRANT FUNDS

A. **Economic Development Chapter 380 Program Grant Funds.** GRANTOR agrees to provide GRANTEE with Economic Development Program Grant Funds in a total cumulative amount of TWO MILLION NINE HUNDRED ONE THOUSAND SIX HUNDRED SIXTY NINE DOLLARS (\$2,901,669.00) (the "Maximum Disbursement Amount"), subject to the terms and conditions of this Agreement. This amount represents funding from GRANTOR's Economic Development Incentive Fund ("EDIF") and General Fund.

1. **Initial Disbursement.** GRANTOR shall disburse the following initial amount to GRANTEE following: 1) GRANTOR's passage of a City ordinance approving this Agreement; 2) execution of this Agreement by the Parties; and 3) GRANTEE providing to GRANTOR the following: (i) a letter from GRANTEE's lender and/or equity partner(s) confirming financial commitment to complete Project; and (ii) written confirmation from GRANTEE that it has received the necessary building permits to cause the Commencement of Construction of the Project; and (iii) written confirmation from GRANTEE that Commencement of Construction of the Project has occurred by December 1, 2011:

a. An Economic Development Grant in the amount of EIGHT HUNDRED FIFTY FIVE THOUSAND EIGHT HUNDRED NINETY ONE DOLLARS AND NO CENTS (\$855,891.00).

In no case shall the initial disbursement exceed a cumulative total of EIGHT HUNDRED FIFTY FIVE THOUSAND EIGHT HUNDRED NINETY ONE DOLLARS AND NO CENTS (\$855,891.00) (the "Initial Disbursement"). Additionally, GRANTOR shall determine whether the evidence required in this section and provided by GRANTEE is sufficient to satisfy the preceding conditions for disbursement.

2. **Property Tax Reimbursement.** Subject to the terms and conditions of this Agreement, for each tax year commencing with the 2013 tax year (begins on January 1, 2013) and then annually throughout the remainder of the Term not to exceed fifteen (15) years or the disbursement by GRANTOR of an amount not to exceed TWO MILLION FORTY FIVE THOUSAND SEVEN HUNDRED SEVENTY EIGHT DOLLARS AND NO CENTS (\$2,045,778.00) whichever occurs first, GRANTOR shall pay to GRANTEE no later than forty-five (45) days following the submission of a tax invoice by GRANTEE indicating payment of taxes by GRANTEE, an amount equal to: (a) the actual amount of real property taxes paid by GRANTEE to GRANTOR with respect to the Project Site (including land and improvements) for the immediately preceding tax year, *less* (b) the amount of real property taxes paid by GRANTEE to GRANTOR with respect to the Project Site for the 2012 tax year (the difference between (a) and (b) being referred to herein as "Annual Property Tax Reimbursement"). It is understood that GRANTEE shall continue to pay all taxes owed on the Project Site as required by law. Taxes owed or paid shall be determined by the Bexar County Appraisal District. Prior to GRANTOR disbursing funds under this Section 4A.2, GRANTEE must provide to GRANTOR evidence indicating that all taxes owed on the Project Site have been paid in full for the tax year for which payment of the Annual Property Tax 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 Project Site to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then the termination and recapture provisions of Section 8 of this Agreement shall apply.

3. **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 GRANTOR within sixty (60) days following written notice from GRANTOR to GRANTEE.

SECTION 5. GRANT WITHHOLDING, FORFEITURE AND REFUND

A. It is expressly understood and agreed by the Parties hereto that if GRANTEE fails to submit to GRANTOR in a reasonably timely and satisfactory manner any information or report required under this Agreement, GRANTOR may, at its sole option and in its sole discretion, suspend this Agreement and withhold any or all payments otherwise due or requested by GRANTEE hereunder as provided in Section 7 below. If GRANTOR withholds such payments, it will notify GRANTEE in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by GRANTOR until such time as the delinquent obligations for which funds are withheld are fulfilled by GRANTEE.

B. If Commencement of Construction fails to occur by the Construction Commencement Deadline, GRANTOR may terminate this Agreement and cause GRANTEE to forfeit all funds disbursed to GRANTEE under this Agreement as provided in Section 8 below. Further, all incentives offered by GRANTOR to GRANTEE pursuant to this Project, including those not the subject of this Agreement, shall expire if Commencement of Construction does not occur by December 1, 2011.

C. GRANTEE shall refund to GRANTOR any sum of money overpaid by GRANTOR to GRANTEE in the event funds disbursed by GRANTOR were in excess of the Annual Property Tax Reimbursement or the Maximum Disbursement Amount. To exercise this right, GRANTOR must provide written notice to GRANTEE (the "Refund Request") informing GRANTEE that an overpayment has occurred and providing reasonable documentation of such overpayment. Such refund shall be made by GRANTEE to GRANTOR within sixty (60) calendar days after GRANTEE's receipt of the Refund Request.

SECTION 6. DEFAULT AND GRANTOR'S REMEDIES

A. **Default Events.** Any one of the following that occurs and continues beyond the applicable cure period shall constitute a Default Event:

1. Failure of GRANTEE or GRANTOR to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed under any term or condition of this Agreement following the expiration of sixty (60) days' written notice to cure from the non-defaulting party; and/or
2. The dissolution or liquidation of GRANTEE or the filing by GRANTEE of a voluntary petition in bankruptcy, or failure by GRANTEE to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair GRANTEE's ability to carry on its obligations under this Agreement; and/or
3. The commission by GRANTEE of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or
4. The admittance of GRANTEE, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of GRANTEE shall be appointed in any proceeding brought against GRANTEE and shall not be discharged within ninety (90) days after such appointment.

B. **Non-Waiver of Default.** 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 7. SUSPENSION

A. In the event GRANTEE materially fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance. GRANTEE shall have sixty (60) days from the date of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement to the extent of the non-compliance and withhold further payments or reimbursements related to the non-compliance to GRANTEE until the default has been cured. 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.

B. In the case of default for causes that cannot with due diligence be cured within such sixty (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 Suspension advise GRANTOR, in writing, 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 7 shall be lifted upon a reasonable showing by GRANTEE to GRANTOR of compliance with or written waiver by GRANTOR of the term(s) in question.

D. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 8. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement if GRANTEE materially defaults in the performance of its obligations under this Agreement and GRANTEE fails to cure such default within the time period set forth below. GRANTOR will provide GRANTEE with written notification as to the nature of the default, and GRANTEE shall have sixty (60) days from the date of GRANTOR's written notification to cure any such default. Should GRANTEE fail to cure any default within this period of time, GRANTOR may, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement, withhold further payments to GRANTEE and, if GRANTEE has failed to complete construction of the Project, seek repayment of any and all funds disbursed by GRANTOR.

B. In the case of default for causes that cannot with due diligence be cured within such sixty (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 GRANTOR, in writing, 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. Repayment of Economic Development Program Grant Funds. Provided that GRANTOR has disbursed any Economic Development Program Grant Funds to GRANTEE pursuant to the terms and conditions of this Agreement, if (i) GRANTEE does not cause completion of construction as evidenced by a Certificate of Occupancy for the Project issued by the City on or before the Completion Date, and (ii) GRANTOR terminates this Agreement as provided in Section 8, then GRANTEE shall refund all applicable Economic Development Program Grant Funds (Property Tax Reimbursement and/or Initial Disbursement) to GRANTOR within sixty (60) calendar days after the date of termination.

D. Other Remedies Available. GRANTOR shall have the right to seek any and all remedies to which it may be entitled at law or in equity 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 remedies shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled.

SECTION 9. 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) Four [4] years from the end of the Term period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, within five (5) business days following advance written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers belonging to or in use by GRANTEE pertaining to this Agreement (the "Records"). The GRANTOR's access to GRANTEE's books and 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 GRANTOR. In no event shall GRANTOR's access to GRANTEE's Records include any access to any

personnel and/or medical records of any employees of GRANTEE. GRANTEE shall not be required to disclose to GRANTOR 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, GRANTOR 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 terminate four (4) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided in Section 7 and 8 above. All Records shall be retained by GRANTEE for a period of four (4) 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. GRANTEE agrees to maintain the Records in an accessible location.

SECTION 10. AUDIT

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement through a performance or financial audit, at the sole cost and expense of GRANTOR. Should such audit be performed, GRANTOR shall provide GRANTEE with a copy of any reports or findings that may be presented. If the audit notes deficiencies in GRANTEE's performances under the terms of this Agreement, the audit 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 audit may be cause for suspension or termination of this Agreement.

SECTION 11. 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 (2) business days following its deposit into the custody of the United States Postal Service or one (1) 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 (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

(Whether personally delivered or mailed):

Center City Development Office
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

TO GRANTEE:

- If mailed:

Criterion Broadway, L.P.
Attn: Pretlow Riddick
14160 N. Dallas Parkway, Suite 750
Dallas, TX 75254

With a copy to:

Regent Communities, Inc.
Attn: Robert Richardson
5949 Sherry Lane, Suite 1225
Dallas, TX 75225

- If by personal or overnight delivery:

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

Same as address above.

SECTION 12. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

The time periods set forth in this Agreement shall be extended due to events of Force Majeure, including but not limited to an act of war, order of legal authority, act of God, or other causes beyond the reasonable control of GRANTEE (collectively, "Force Majeure"). If there is a dispute between GRANTOR and GRANTEE as to the occurrence or duration of an event of Force Majeure, the burden of proof shall rest upon GRANTEE. To obtain an extension based upon Force Majeure, GRANTEE must provide written notice to GRANTOR of the occurrence of the Force Majeure event within ten (10) 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.

SECTION 13. CONFLICT OF INTEREST

GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE 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 of San Antonio's Code of Ethics.

SECTION 14. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- A. GRANTEE shall not exclude from participation in, deny the benefits of, subject to discrimination under, or deny access to opportunities to participate in the construction of the Project, to any person on the grounds of race, color, national origin, religion, sex, age or handicap.
- 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 include the substance of this Section 14 in all agreements related to the construction of the Project.

SECTION 15. CHANGES AND AMENDMENTS

This Agreement represents the entire agreement between GRANTOR and GRANTEE with respect to the matters described herein and the same may not be modified, altered or amended except by written agreement signed by both GRANTOR and GRANTEE.

SECTION 16. SPECIAL CONDITIONS AND TERMS

GRANTEE understands and agrees that if GRANTEE is a “business” and if GRANTOR’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then GRANTEE is required to refund money, pursuant to 80(R) HB 1196, GRANTEE has received from GRANTOR through this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six (6) months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.

SECTION 17. SUBCONTRACTS

A. GRANTEE shall use reasonable business efforts to ensure that performance rendered under subcontracts, if any, complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, if subcontracting any of the performances hereunder, expressly understands that GRANTOR is in no way liable to GRANTEE's subcontractor(s).

C. GRANTEE shall obtain assurances from subcontractors, if any, that they will not exclude from, deny the benefit of, or subject to discrimination under any program or activity funded in whole or in part under this Agreement, any person on the grounds of race, creed, color, disability, national origin, sex or religion.

D. Should any subcontracts or supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to include in the contract it enters into with its general contractor the obligation to give a good-faith effort to comply with GRANTOR’s SBEDA Program, currently identified under Ordinance No. 2010-06-17-0531, and as amended.

SECTION. 18. DEBARMENT

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

SECTION 19. NON-ASSIGNMENT

This Agreement is not assignable by either party without the written consent of the non-assigning party. 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 other entity owned or controlled, directly or indirectly, by GRANTEE, without GRANTOR’s written consent. 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 GRANTOR’s prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. In either of such cases, GRANTEE shall give GRANTOR prior written notice of the assignment or other transfer ten (10) days prior to the effective date of the assignment or as soon as legally permissible, whichever is later. 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 does not relieve GRANTOR or GRANTEE from liability under this Agreement and shall not release GRANTOR or GRANTEE from performing any of the terms, covenants and conditions herein; 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 19 shall enable GRANTOR to terminate this Agreement and exercise its rights under Section 8 of this Agreement.

SECTION 20. 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 21. 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 set forth.

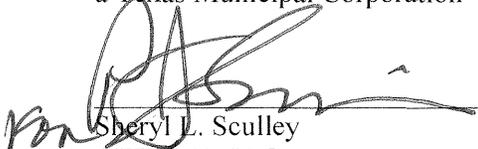
C. Either Party will have the right to suspend or terminate this Agreement if there is a dispute as to the legal authority to enter into this Agreement, any amendments hereto or failure to render performances hereunder.

WITNESS OUR HANDS, EFFECTIVE as of April 7th, 2011:

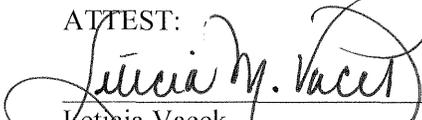
Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2011-04-07-0269, dated April 7, 2011, and Criterion Broadway, pursuant to the authority of its general partner.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

CRITERION BROADWAY, LP
a Delaware Limited Partnership

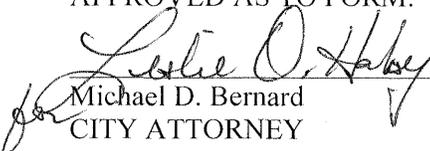

Sheryl L. Sculley
CITY MANAGER

By: CPC GP, LLC, its general partner

ATTEST:

Leticia Vacek
CITY CLERK




W. Pretlow Riddick, President

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY