RR
11/12/15
Item No. 26C

AN ORDINANCE 2015-11-12-0955

AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH INDO-US MIM TEC PVT LTD ("INDO-MIM") IN AN AMOUNT NOT TO EXCEED $500,000.00 OVER A TWO (2) YEAR PERIOD FOR THE CREATION AND RETENTION OF 330 FULL-TIME JOBS, INCLUDING 50 HIGH WAGE JOBS.

* * * * *

WHEREAS, INDO-US MIM TEC PVT LTD (hereinafter referred to as "INDO-MIM"), a leading global supplier of precision engineered products using metal injection molding as the core manufacturing technology, has chosen to establish its U.S. corporate headquarters and manufacturing facility in San Antonio at 711 Davy Crockett Street, San Antonio, Texas 78226 which is located within the boundaries of the Port Authority of San Antonio (the "Project Site"); and

WHEREAS, in establishing its corporate headquarters and manufacturing facility, INDO-MIM is anticipated to invest approximately $24 million in personal property improvements and create 330 full-time jobs at the Project Site, to include 50 full-time jobs paying at least $47,000 annually (the "Project"); and

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

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

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting INDO-MIM in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

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

SECTION 1. The terms and conditions of a Chapter 380 Economic Development Program Grant Agreement with INDO-MIM are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute a Chapter 380 Economic Development Program Grant Agreement with INDO-MIM in accordance with the terms and conditions of this Ordinance. A copy of the Agreement, in substantially final form, is

attached to this Ordinance as Attachment I. The final agreement shall be filed with this Ordinance upon execution.

SECTION 3. Funding in the amount of $500,000.00 for this Agreement is available in Fund 29059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2016 Budget and payment is authorized to INDO-US MIM TEC PVT, Ltd.

SECTION 4. Payment not to exceed the budgeted amount is authorized to INDO-MIM and should be encumbered with a purchase order. All expenditures will comply with the approved operating budget for current and future fiscal years.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 12th day of November, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**26C (in consent vote: 26A, 26B, 26C)**
Date:	11/12/2015
Time:	01:40:20 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Chapter 380 Economic Development Incentive Fund Grant Agreement in an amount up to $500,000.00 based on the creation of 330 new full-time jobs with at least 50 new full-time jobs paying $46,000.00 annually.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor	x					
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x			x	
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

STATE OF TEXAS	§	**ECONOMIC DEVELOPMENT**
	§	**GRANT AGREEMENT OF THE**
	§	**CITY OF SAN ANTONIO**
COUNTY OF BEXAR	§	

This Economic Development Grant Agreement (hereinafter referred to as "this 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 "GRANTOR"), acting by and through its City Manager or her designee, and INDO-US MIM TEC PVT, Ltd., a foreign national entity, formed under the laws of India (or a wholly owned subsidiary of INDO-US MIM TEC PVT, Ltd., incorporated or organized under a United States domestic jurisdiction and meeting the criteria set for in Article 15 of the Tax Abatement between GRANTEE and GRANTOR of even date hereof), and leading global supplier of precision engineered products using metal injection molding (MIM) as the core manufacturing technology (hereinafter referred to as "GRANTEE") and together referred to as the "Parties".

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant municipal funds 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, GRANTOR created an economic development program for the purpose of making such grants available; and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio and will consist of the construction of its U.S. corporate headquarters and manufacturing facility to be located within the Indo Reinvestment Zone within the boundaries of the Port Authority of San Antonio (the "Project Site"); and

WHEREAS, GRANTEE intends to conduct its business activities (as defined below) at the Project Site for a period of not less than sixteen (16) years and to create and maintain a cumulative total of three hundred and thrity (330) full-time employees (the "Project"); and

WHEREAS, GRANTEE is seeking an economic development grant from GRANTOR for the purpose of defraying costs associated with undertaking and completing the Project, and

WHEREAS, the GRANTOR has identified Economic Development Incentive Funds available to provide an economic development program grant to incentivize GRANTEE to undertake and complete the Project; and

WHEREAS, the City Council has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2015-11-12-_____, passed and approved on November 12, 2015, to grant funds to support the Project; **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 purpose of this Agreement is to assist GRANTEE in defraying costs associated with the Project through the award of public funds in the form of an economic development grant. Upon completion, the

Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. GRANTOR is supporting the Project through this Agreement to promote state or local economic development and to stimulate business and commercial activity in the municipality. In connection with this Project, Grantor and Grantee have entered into a Tax Abatement Agreement of even date hereof relative to Grantee's personal property locate on the Real Property ("Tax Abatement Agreement")

SECTION 2. PROJECT REQUIREMENTS

A. Property. The Project Site shall be located on real property described in Exhibit A as:

> 16.795 acres located within the Port Authority of San Antonio boundaries, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, on Lot 1, Block 2 of the replat of the Port Authority subdivision bounded by the fence line south of the secure yard for 333 MORRIS WITT, 36th STREET on the West, Davy Crockett Road on the south and the property line east of the truck court separating the property from 311 MORRIS WITT and as more particularly described in the metes and bounds map attached as **Exhibit "A"** and incorporated herein (the "Real Property").

B. Lease Agreement. GRANTEE shall enter into a Lease Agreement (the "Lease") prior to November 12, 2015 with the Port Authority of San Antonio ("Lessor") to lease the Project Site for a term of not less than sixteen (16) years commencing no later than the Commencement Date under the Lease (as such term is defined in the Lease and hereinafter referred to as the "Commencement Date"). Upon execution of the Lease, GRANTEE shall provide an Acknowledgement of Lease (**Exhibit "B"**), executed by GRANTEE and Lessor, to GRANTOR that described the general terms of the Lease including the term of the Lease, the square footage of the Project Site and the conditions under which the Lease may be terminated. A summary of the Lease attached hereto and incorporated herein as **Exhibit "E"**.

C. Business Activities. GRANTEE shall construct, or cause to be constructed, and operate its corporate headquarters and manufacturing facility at the Project Site. As provided in the lease term, GRANTEE shall, after the construction of certain improvements as described in the Lease, conduct its "Business Activities", which include those of a leading global supplier of precision engineered products using metal injection molding as the core manufacturing technology at the Project Site. Except as provided herein, GRANTEE covenants and agrees that it shall not change the Business Activities without the written consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization (being defined as a parent, subsidiary, direct or indirect at any level, or affiliate organization of GRANTEE or any entity which succeeds to or receives an assignment of GRANTEE's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any parent, subsidiary or affiliate of such entity) occupies the Project Site and continues to use the premises for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to comply with and assume all applicable terms herein from and after the date it succeeds to GRANTEE's interest in this Agreement, and if requested by GRANTOR the Related Organization must enter into an amendment to this Agreement evidencing such agreement. In the event of any such transfer to a Related Organization, GRANTEE must notify GRANTOR in writing of same no later than the 30th day following the effective date of such transfer. GRANTEE acknowledges that any change in the principal use of the Project Site from the Business Activities described herein without prior written approval of GRANTOR, to the extent same is required under this Agreement, may result in a loss of the economic development grants to be

provided to GRANTEE under this Agreement and the recapture of any and all grant funds disbursed under this Agreement in accordance with Section 3.C below.

D. Full-Time Jobs. Upon the Commencement Date of the Lease, GRANTEE shall create THREE HUNDRED THIRTY (330) Full-Time Jobs as follows:

Prior to December 31, 2017	So long as the Rent Commencement Date (as such term is defined in the Lease) occurs by May 31, 2017, GRANTEE shall create and maintain at least ONE HUNDRED THIRTEEN (113) Full-Time Jobs at the Property; provided, however, in the event the Rent Commencement Date occurs after May 31, 2017, GRANTEE's obligation to create and maintain the initial 113 Full-Time Jobs at the Property shall be deemed to be merged with its obligation to create an additional 47 Full-Time Jobs prior to December 31, 2018, such that the job creation milestone set forth immediately below shall be a total of 160 Full-Time Jobs created and maintained by GRANTEE prior to December 31, 2018, it being agreed that such merger of jobs creation and maintenance shall have no affect on GRANTEE's right to receive grant payments as set forth herein.
Prior to December 31, 2018	GRANTEE shall create and maintain at least an additional FORTY-SEVEN (47) Full-Time Jobs for a cumulative total of ONE HUNDRED SIXTY (160) full-time jobs at the Property;
Prior to December 31, 2019	GRANTEE shall create and maintain at least an additional FIFTY (50) Full-Time Jobs for a cumulative total of TWO HUNDRED TEN (210) full-time jobs at the Property;
Prior to December 31, 2020	GRANTEE shall create and maintain at least an additional SIXTY (60) full-time jobs for a cumulative total of TWO HUNDRED SEVENTY (270) Full-Time Jobs at the Property; and

Prior to December 31, 2021	GRANTEE shall create and maintain at least an additional SIXTY (60) Full-Time Jobs for a cumulative total of THREE HUNDRED THIRTY (330) full-time jobs at the Property.

1. For the purposes of this Agreement, a Full-Time Job shall be equivalent to a minimum of two thousand eighty (2,080) straight-time paid hours in a fiscal year.

2. To qualify as a "Full-Time Job employee" for purposes of this Agreement, each such employee will be offered an opportunity to participate in GRANTEE's group healthcare benefits package, which consists substantially, though not necessarily all, of benefits such as medical, dental, vision, voluntary term life supplement, critical illness insurance, short term disability, accident/sickness insurance, and long term disability, substantially similar as those employee benefits offered to similarly situated employees (i.e., performing similar functions with similar duties and responsibilities) of GRANTEE in the United States in terms of value, cost to employees and number of options available. All coverage offered to employees and their qualified family members shall be at a reasonably affordable cost that meets the minimum essential coverage requirement under the Affordable Care Act. The current benefits offered to employees on the date of the execution of this Agreement are those set forth in **Exhibit B** of the Tax Abatement Agreement, which may be revised from time to time by GRANTEE upon written notice to GRANTOR, so long as such benefits comply with this Section 2.

3. In addition to those requirements stated above, no less than FIFTY (50) Full-Time Jobs of the THREE HUNDRED AND THIRTY (330) that are created in accordance with Section 2 (D) above, shall have an annual salary of at least FORTY-SIX THOUSAND DOLLARS AND 0 CENTS ($46,000.00)("High-Wage Jobs"). These FIFTY (50) jobs must be created as follows:

a) so long as the Rent Commencement Date (as such term is defined in the Lease) occurs by May 31, 2017, GRANTEE shall create and maintain at least at least TEN (10) High-Wage Jobs must be created prior to December 31, 2017; provided, however, in the event the Rent Commencement Date occurs after May 31, 2017, GRANTEE's obligation to create and maintain the initial 10 High-Wage Jobs at the Property shall be deemed to be merged with its obligation to create an additional 10 High-Wage Jobs prior to December 31, 2018, such that the HIGH-Wage job creation milestone set forth immediately below shall be a total of 20 High-Wage Jobs created and maintained by GRANTEE prior to December 31, 2018, it being agreed that such merger of High-Wage jobs creation and maintenance shall have no affect on GRANTEE's right to receive grant payments as set forth herein; and

a) at least TEN (10) High-Wage Jobs must be created prior to December 31, 2017; provided, however, in the event the Rent Commencement Date occurs after May 31, 2017, GRANTEE's obligation to create and maintain the initial 10 High-Wage Jobs at the Property shall be deemed to be merged with its obligation to create an additional 10 High-Wage Jobs prior to December 31, 2018, such that the job creation milestone set forth immediately below shall be a total of 20 High-

Wage Jobs created and maintained by GRANTEE prior to December 31, 2018, it being agreed that such merger of jobs creation and maintenance shall have no affect on GRANTEE's right to receive grant payments as set forth herein.

b) at least an additional TEN (10) High-Wage Jobs must be created prior to December 31, 2018.

c) at least an additional TEN (10) High-Wage Jobs must be created prior to December 31, 2019.

d) at least an additional TEN (10) High-Wage Jobs must be created prior to December 31, 2020.

e) at least an additional TEN (10) High-Wage Jobs must be created prior to December 31, 2021.

The High-Wage Jobs created through this provision are intended to be part of and not in addition to the total job requirements of Section 2(D).

E. GRANTEE shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

F. In accordance with the City's Economic Development Incentive Fund Guidelines, throughout the Term of this Agreement, GRANTEE must pay all employees located at the Project Site at least the minimum wage of ELEVEN DOLLARS AND FORTY-SEVEN CENTS ($11.47) an hour which was the then current minimum wage requirement specified in the City's Tax Abatement Guidelines at the time GRANTEE submitted its incentive application with GRANTOR. Commencing on the first anniversary of the date on which GRANTEE begins manufacturing products at the Project Site and GRANTEE covenants and agrees that at least seventy percent (70%) of all new and existing employees working at the Project Site must earn at least FOURTEEN DOLLARS AND SIXTY-SIX CENTS ($14.66) per hour.

G. GRANTEE must coordinate with GRANTOR, or an agreed upon community partner such as a Chamber of Commerce, to participate in at least two small, local business outreach events to assist both parties in identifying small, minority, and women-owned businesses and encourage their participation in GRANTEE's procurement and contracting activities.

H. GRANTEE must comply with any and all terms of the Tax Abatement Agreement between the GRANTOR and GRANTEE approved by City Ordinance No. 2015-11-12-_____ and attached as **Exhibit C**.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT.

A. **Economic Development Program Grant.** GRANTOR is providing GRANTEE with an Economic Development Program Grant in the amount of FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS ($500,000.00) ("Grant Funds") payable over a two (2) year period. The Grant Funds shall be used for the purpose of purchasing equipment to be installed and operated at the Project Site.

1. GRANTEE shall provide GRANTOR with an Equipment List (Exhibit D), identifying all equipment to be purchased with the Grant Funds. The Equipment List shall identify equipment by nomenclature, serial number and purchase price. The Equipment list may

be modified from time to time as the project progresses and the needed equipment for the Project Site is finalized.

2. Such equipment shall be purchased solely with Grant Funds and GRANTEE shall have sole ownership of such equipment upon purchase.

3. GRANTOR shall have, until the end of the Term of the Agreement, a purchase money security interest in equipment identified in the Equipment List and GRANTEE acknowledges GRANTOR'S first-priority lien on the identified equipment. GRANTEE agrees to execute any lien document requested by GRANTOR, including any filings required by the Uniform Commercial Code, to perfect its lien following the purchase of equipment identified in the Equipment List. GRANTOR shall, at GRANTEE's request, discharge the lien at the end of the Term provided GRANTEE is not in default at that time.

B. **Grant Disbursement.** Following: i) approval of this Agreement by a duly authorized City Ordinance and execution of the Agreement by the Parties; ii) execution of the Lease and delivery of the Lease Acknowledgement to GRANTOR; and iii) GRANTEE providing GRANTOR with the Equipment List identified in Section 3(A)(1), GRANTOR pay GRANTEE the Grant Funds as follows:

1. No later than sixty (60) days following i), ii) and, iii) above, TWO HUNDRED FIFTY THOUSAND DOLLARS AND 0 CENTS ($250,000.00).

2. An additional amount of TWO HUNDRED FIFTY THOUSAND DOLLARS AND 0 CENTS ($250,000.00) no later than the one-year anniversary of the Rent Commencement Date (as such term is defined in the Lease) and upon a showing by GRANTEE that GRANTEE is in compliance with the terms of this Agreement.

C. **Recapture of Program Grant Funds .**

1. Should GRANTEE comply with the requirements of Section 2(A), (B), (C), (E) and (F) of this Agreement, and subsequent to meeting those requirements, during the Term:

a. Relocates its Business Activities outside of the Project Site ; or

b. Ceases to conduct its Business Activities for a period of ninety (90) consecutive days, or

c. Sells all or a substantial portion of its assets without GRANTOR's consent, but only if such sale results in a failure to comply with Sections 2(B), 2(C), 2(D), or 2(F) herein; or

d. Fails to keep adequate records necessary for the CITY to determine if GRANTEE is in compliance with this Agreement; or

e. Fails to comply with the wage requirements stated in Section 2(F); then

GRANTOR shall have the right to recapture one-hundred percent (100%) of Grant Funds disbursed under this Agreement from GRANTEE no later than sixty (60) days following a written

request delivered to GRANTEE, which written request will afford GRANTEE a 60-day opportunity to either correct the failure resulting in the recapture right or to pay back any Grant Funds previously advanced.

2. Should GRANTEE comply with the requirements of Section 2(A), (B), (C), (E) and (F) of this Agreement, and subsequent to meeting those requirements, fails to comply with Section 2(D) in the following manner:

a. Fails to create or maintain at least ONE HUNDRED AND THIRTEEN (113) Full-Time Jobs including the required TEN (10) High Wage Jobs through December 31, 2017, then GRANTOR shall have the right to recapture Grant Funds in the amount of ONE THOUSAND FIVE HUNDRED AND FIFTEEN DOLLARS AND FIFTEEN CENTS ($1,515.15) for each Full-Time Job (that is not a High-Wage Job) not created or maintained and TEN THOUSAND DOLLARS AND 0 CENTS ($10,000.00) for every High Wage Job not created or maintained in compliance with the terms of this Agreement.

b. Creates and maintains the initial ONE HUNDRED THIRTEEN (113) Full-Time Jobs including TWENTY (20) High Wage Jobs, but fails to hire the additional FORTY SEVEN (47) Full-Time Jobs including the additional TEN (10) High Wage Jobs through December 31, 2018, then GRANTOR shall have the right to recapture Grant Funds in the amount of ONE THOUSAND FIVE HUNDRED AND FIFTEEN DOLLARS AND FIFTEEN CENTS ($1,515.15) for each Full-Time Job (that is not a High-Wage Job) not created or maintained and TEN THOUSAND DOLLARS AND 0 CENTS ($10,000.00) for every High Wage Job not created or maintained in compliance with the terms of this Agreement.

c. Creates and maintains the cumulative ONE HUNDRED THIRTEEN (160) Full-Time Jobs including THIRTY(30) High Wage Jobs, but fails to hire the additional FIFTY (50) Full-Time Jobs including the additional TEN (10) High Wage Jobs through December 31, 2019, then GRANTOR shall have the right to recapture Grant Funds in the amount of ONE THOUSAND FIVE HUNDRED AND FIFTEEN DOLLARS AND FIFTEEN CENTS ($1,515.15) for each Full-Time Job (that is not a High-Wage Job) not created or maintained and TEN THOUSAND DOLLARS AND 0 CENTS ($10,000.00) for every High Wage Job not created or maintained in compliance with the terms of this Agreement.

d. Creates and maintains the cumulative TWO HUNDRED TEN (210) Full-Time Jobs including the FORTY (40) High Wage Jobs, but then fails to hire the additional SIXTY (60) Full-Time Jobs, including the additional TEN (10) High Wage Jobs through December 31, 2020, then GRANTOR shall have the right to recapture Grant Funds in the amount of ONE THOUSAND FIVE HUNDRED AND FIFTEEN DOLLARS AND FIFTEEN CENTS ($1,515.15) for each Full-Time Job (that is not a High-Wage Job) not created and maintained and TEN THOUSAND DOLLARS AND 0 CENTS ($10,000.00) for every High Wage Job not created or maintained in compliance with the terms of this Agreement.

e. Creates and maintains the cumulative TWO HUNDRED SEVENTY (270) Full-Time Jobs including FIFTY (50) High-Wage Jobs, but fails to hire the additional SIXTY (60) Full-Time Jobs including the additional TEN (10) High Wage Jobs through

December 31, 2021, then GRANTOR shall have the right to recapture Grant Funds in the amount of ONE THOUSAND FIVE HUNDRED AND FIFTEEN DOLLARS AND FIFTEEN CENTS ($1,515.15) for each Full-Time Job (that is not a High-Wage Job) not created and maintained and TEN THOUSAND DOLLARS AND 0 CENTS ($10,000.00) for every High-Wage Job not created or maintained in compliance with the terms of this Agreement.

f. Creates and maintains the required THREE HUNDRED THIRTY (330) Full-Time Jobs including FIFTY (50) High Wage Jobs, but fails to maintain such jobs for the Term of the Agreement, then GRANTOR shall have the right to recapture Grant Funds in the amount of ONE THOUSAND FIVE HUNDRED AND FIFTEEN DOLLARS AND FIFTEEN CENTS ($1,515.15) (that is not a High-Wage Job) not created or maintained for each Full-Time Job and TEN THOUSAND DOLLARS AND 0 CENTS ($10,000.00) for every High Wage Job not maintained for the Term of this Agreement.

3. Should at any time after December 31, 2021 and thereafter during the Term of this Agreement, the cumulative amount of Full-Time Jobs falls below ONE HUNDRED SIXTY-FIVE (165), or the cumulative amount of High Wage Jobs falls below TWENTY-FIVE (25), GRANTOR shall, in either case, have the right to recapture ONE HUNDRED PERCENT (100%) of Grant Funds disbursed to GRANTEE.

4. Upon GRANTOR indicating in writing of its intent to recapture Grant Funds from GRANTEE, said recaptured Grant Funds shall be paid by GRANTEE within sixty (60) calendar days of receiving GRANTOR's written notification of recapture.

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed in this Agreement and terminate on the tenth (10th) anniversary of the Effective Date unless extended by a mutual agreement in writing (the "Term").

SECTION 5. DEPARTMENT OBLIGATIONS

A. GRANTOR shall make the Grant Funds available to GRANTEE as described in this Agreement.

B. GRANTOR shall not be liable to GRANTEE or other entity for any costs incurred by GRANTEE other than those which GRANTOR is obligated to reimburse pursuant to the terms of this Agreement.

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 period required for record retention or by any other applicable laws and regulations.

B. GRANTEE will covenant and agree that, upon five business days prior notice received by it from the GRANTOR, GRANTEE shall allow designated representatives of the GRANTOR access to the Project Site during normal business hours for inspection for the sole purpose of determining if the terms and conditions of this Agreement are being met. This inspection is independent of GRANTOR's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The

GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been conducting Business Activities, and to verify the number of full-time employees at the Facility; provided, however, that the GRANTOR shall not have the ability to obtain copies of GRANTEE's records or remove any information or documents from GRANTEE's files. Similarly, GRANTOR shall not have the ability to obtain copies of GRANTEE'S records or files that are protected by the trade secret privilege, the attorney-client privilege, as attorney work product, or by any applicable law, statute, regulation, or ordinance. Should any good faith dispute or question arise as to the validity of the data provided, the 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. GRANTOR's representatives may be accompanied by GRANTEE's representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Project Site or the Business Activities; and (b) comply with GRANTEE's reasonable security and confidentiality requirements. Any information provided by GRANTEE shall be subject to applicable law or regulation, may be marked confidential and proprietary as appropriate, and if appropriately marked protected from further disclosure pursuant to applicable law or regulation.

SECTION 7. MONITORING

A. GRANTOR reserves the right to confirm, subject to the limitations of Section 6 above, GRANTEE's compliance with the terms and conditions of this Agreement by requesting certain employee information from GRANTEE including employee identification numbers, employee's date of hire and employee wage information. Upon the request of GRANTOR, GRANTEE shall provide such information within a reasonable time but in no case more than thirty (30) days following GRANTOR's request. Following receipt of GRANTEE's requested information, GRANTOR will provide GRANTEE 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 may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. GRANTEE shall provide to GRANTOR an annual certification with reasonable supporting information evidencing the creation of and filling of the number of jobs at the Project and compliance with the minimum wage requirements as specified in this Agreement.

C. Any information provided by GRANTEE shall be subject to applicable law or regulation, may be marked confidential and proprietary as appropriate, and if appropriately marked protected from further disclosure pursuant to applicable law or regulation.

SECTION 8. CONFLICT OF INTEREST

A. 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 GRANTOR's Code of Ethics.

SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

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 9 in all agreements specifically associated with the funds made available through this Agreement unless such agreements were entered into before the date of this Agreement.

SECTION 10. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that it possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform its 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. GRANTOR shall have the right to suspend or terminate this Agreement in accordance with Sections 16 and 17 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.

SECTION 11. LITIGATION AND CLAIMS

A. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any subcontract specifically associated with the funds provided hereunder. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the GRANTOR immediately of any legal action filed against the GRANTEE or any subcontractor related to the Project Site of which GRANTEE is actually aware, or of any proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations of or settlements relating to, or failure to comply with, federal and state regulations. The above notwithstanding GRANTEE is not required to notify GRANTOR of claim or litigation which arises 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. GRANTOR and GRANTEE acknowledge that GRANTOR 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. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 12. 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 both parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

B. It is understood and agreed by the parties hereto 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 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 13. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE commits a Default Event, GRANTOR shall provide GRANTEE with written notification as to the nature of the Default Event. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any Default Event. Should GRANTEE fail to cure any Default Event within this period of time, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part by withholding 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.

B. In the case of a Default Event that occurs for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its reasonable discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR 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 13 may be lifted at the reasonable discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement unless GRANTOR improperly exercised its right of suspension.

SECTION 14. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement in the event GRANTEE commits a Default Event that remains uncured past any applicable cure period at any time before the date of completion specified in Section 5 of this Agreement. GRANTOR will provide GRANTEE with written notification as to the nature of the Default Event and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification to cure any Default Event. Should GRANTEE fail to cure any Default Event within this period of time, the GRANTOR may, as its sole and exclusive remedies, upon issuance to GRANTEE of a written Notice of Termination, either suspend this Agreement pursuant to the provisions of SECTION 14 above, or terminate this Agreement in whole or in part, in which case the GRANTOR may either: (1) withhold further payments to GRANTEE; or (2) accelerate the repayment of the grant. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of a Default Event that occurs for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its reasonable discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR 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. Except as provided in Section 17(A), the Economic Development Program Grant may be terminated in whole or in part only as follows:

1. By the GRANTOR (with the written consent of the GRANTEE), in which case the two parties shall agree upon the termination conditions, including the repayment of funds, the effective date, and, in the case of partial termination, the portion to be terminated; or

2. By GRANTEE upon written notification to the GRANTOR, setting forth the reasons of such termination, a proposed pay-back plan of any funds granted, the effective date, and, in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the GRANTOR determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the GRANTOR may terminate the award in its entirety under SECTION 15.

SECTION 15. SPECIAL CONDITIONS AND TERMS

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 GRANTOR 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 GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR 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 16. SUBCONTRACTS

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under all subcontracts specifically associated with the funds provided hereunder complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts specifically associated with the funds provided hereunder, GRANTOR is in no way liable to GRANTEE's subcontractors.

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity specifically funded in whole or in part under this Agreement.

SECTION 17. DEBARMENT

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

SECTION 18. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that 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 GRANTOR 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 19. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of GRANTOR and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. GRANTEE shall be held responsible for all funds received under this Agreement. Notwithstanding the foregoing, GRANTEE may assign the Agreement, upon consent of City, in conjunction with a sale or merger of the company so long as the entity that will succeed to GRANTEE's rights under this Agreement assumes in writing all of GRANTEE's obligations hereunder.

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. AUTHORIZED RELIEF FROM PERFORMANCE *(Force Majeure)*

For purposes of this Section, "Force Majeure" is defined as an act of God, natural disaster, acts of public enemies, failures to act by any Governmental Authority, riots, perils of the sea, or any other extraordinary cause beyond the reasonable control of GRANTEE. It also includes explosion or other casualty or accident which is not the result of negligence, intentional act or misconduct on the part of GRANTEE. In addition to relief expressly granted in this Agreement, GRANTOR may grant relief from performance of this Agreement if GRANTEE is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain release based upon this Section 21, GRANTEE must file a written request with the GRANTOR's Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

WITNESS OUR HANDS, EFFECTIVE as of November 12, 2015 (the "Effective Date"):

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2015-11-12-_____, dated November 12, 2015, and GRANTEE pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl L. Sculley
CITY MANAGER

_____
_____
_____

_____
Name
Title

ATTEST:

_____
Leticia Vacek
CITY CLERK

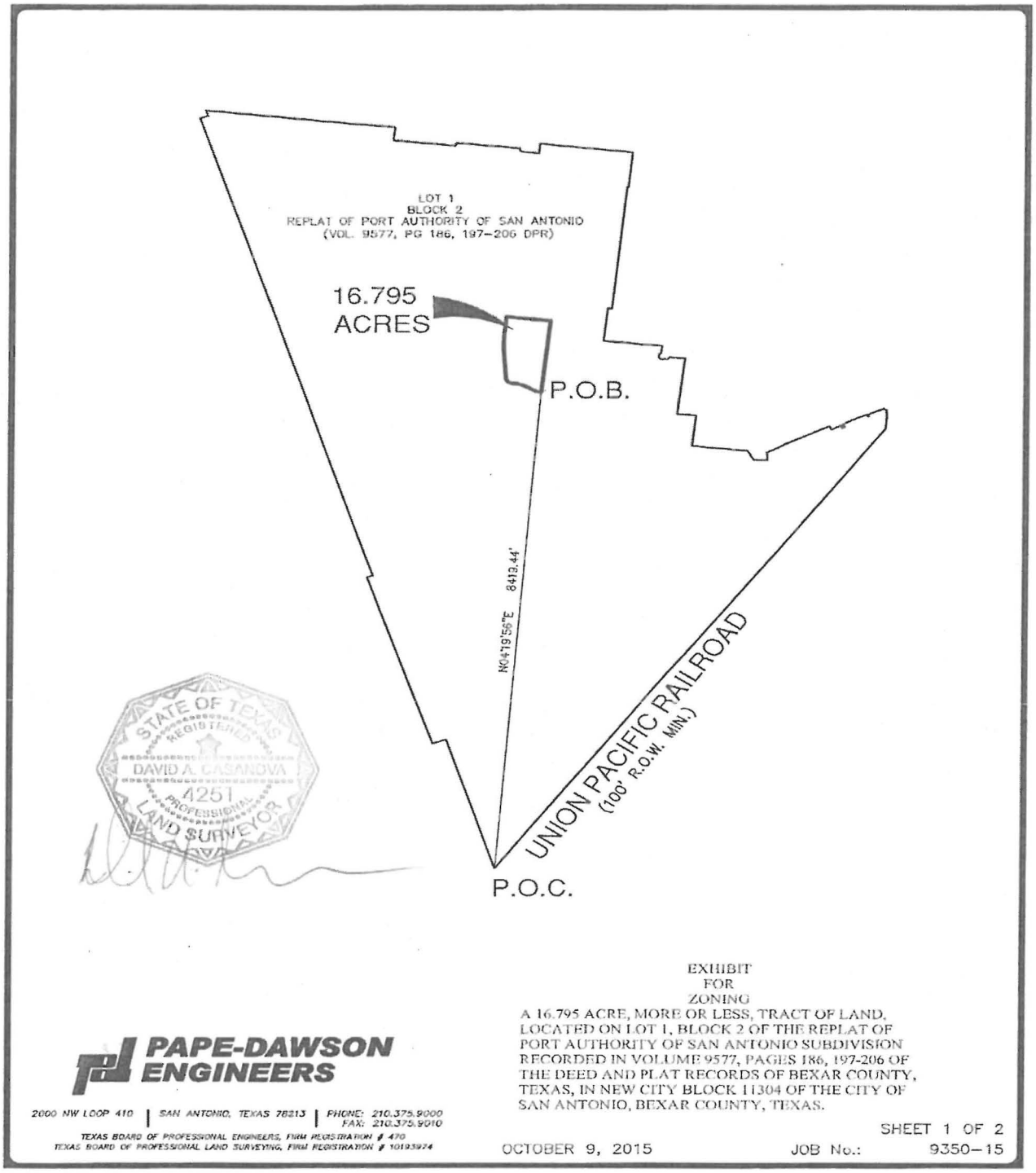
APPROVED AS TO FORM:

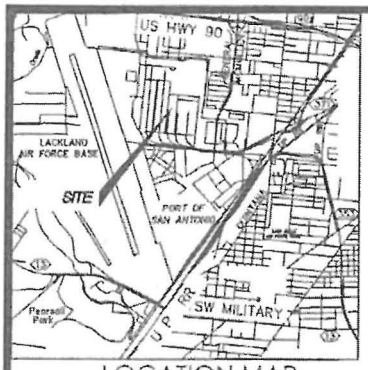
_____
Martha G. Sepeda
ACTING CITY ATTORNEY

EXHIBITS:
EXHIBIT A: Real Property Description
EXHIBIT B: Acknowledgement of Lease
EXHIBIT C: Tax Abatement Agreement
EXHIBIT D: Equipment List
EXHIBIT E: Summary of the Lease

Exhibit A

Real Property Description





LOCATION MAP

NOT-TO-SCALE

LEGEND:

DR DEED RECORDS OF BEXAR COUNTY, TEXAS
OPR OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY, TEXAS
DPR DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS
FIR FOUND 1/2" IRON ROD

NOTES:

1. THE PROFESSIONAL SERVICES PROVIDED HEREWITH INCLUDE THE PREPARATION OF A FIELD NOTE DESCRIPTION.
2. "THIS DOCUMENT WAS PREPARED UNDER 22TAC663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED."

1 inch = 200'

200 0 100 200

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C1	523.10'	19°43'19"	N65°59'20"W	179.17'	180.06'
C2	500.00'	32°25'13"	N71°02'15"W	279.16'	282.92'
C3	100.00'	83°13'00"	N45°38'21"W	132.81'	145.24'
C4	1337.00'	9°45'05"	N00°50'42"E	227.28'	227.55'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N04°01'51"W	81.86'
L2	N04°01'51"W	423.07'
L3	N05°58'02"E	345.48'
L4	S84°04'00"E	656.01'
L6	S06°02'22"W	1270.26'

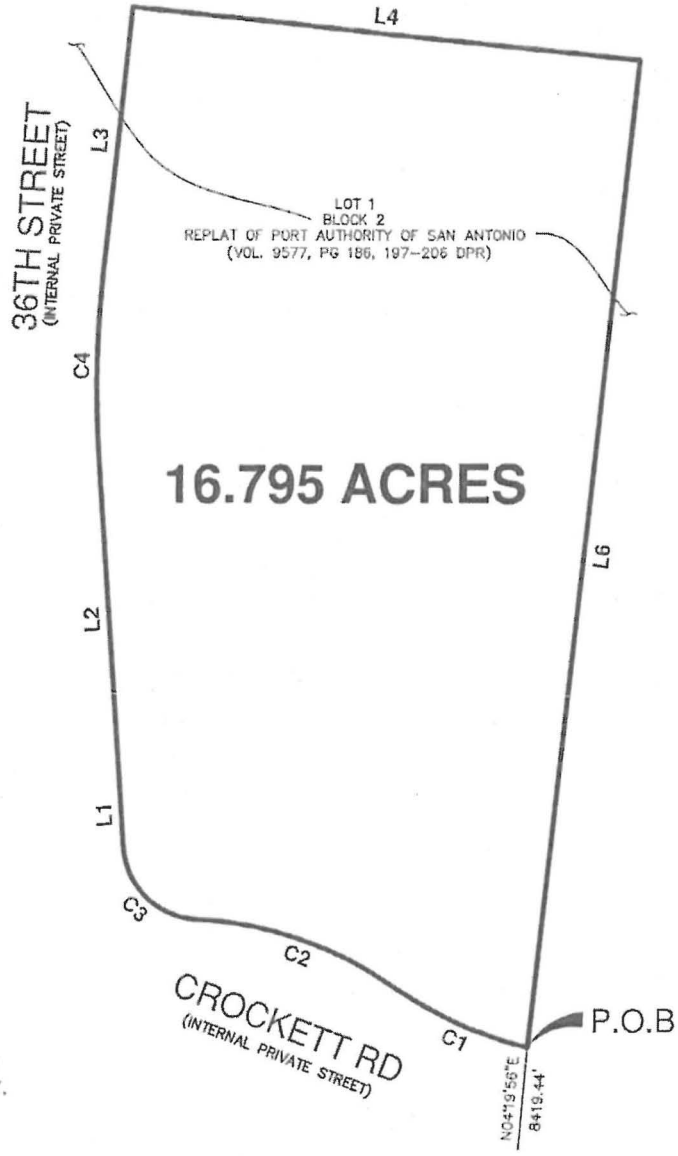


EXHIBIT
FOR
ZONING

A 16.795 ACRE, MORE OR LESS, TRACT OF LAND, LOCATED ON LOT 1, BLOCK 2 OF THE REPLAT OF PORT AUTHORITY OF SAN ANTONIO SUBDIVISION RECORDED IN VOLUME 9577, PAGES 186, 197-206 OF THE DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS, IN NEW CITY BLOCK 11304 OF THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS.

PAPE-DAWSON ENGINEERS

2000 NW LOOP 410 | SAN ANTONIO, TEXAS 78213 | PHONE: 210.375.9000 FAX: 210.375.9010

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470
TEXAS BOARD OF PROFESSIONAL LAND SURVEYING, FIRM REGISTRATION # 10193974

Date: Oct 09, 2015, 1:46pm User ID: MHolmes
File: N:\Survey\15\15-9300\9350-15\9350-15 ZN-16.795 AC.dwg

OCTOBER 9, 2015 JOB No.: 9350-15

SHEET 2 OF 2

PAPE-DAWSON ENGINEERS

FIELD NOTES
FOR
ZONING

A 16.795 acres, more or less, tract of land, located on Lot 1, Block 2 of the Replat of Port Authority of San Antonio Subdivision recorded in Volume 9577, Pages 186, 197-206 of the Deed and Plat Records of Bexar County, Texas, in New City Block 11304 of the City of San Antonio, Bexar County, Texas. Said 16.795 acre tract being more fully described as follows:

COMMENCING: At a point at the southern most corner of said Lot 1;

THENCE: N 04°19'56" E, over and across said Lot 1, a distance of 8419.44 feet to the POINT OF BEGINNING of the herein described tract;

THENCE: Continuing over and across said Lot 1 the following bearings and distances:

Northwesterly, along a non-tangent curve to the right, said curve having radius of 523.10 feet, a central angle of 19°43'19", a chord bearing and distance of N 65°59'20" W, 179.17 feet, for an arc length of 180.06 feet to a point;

Northwesterly, along a non-tangent curve to the left, said curve having a radius of 500.00 feet, a central angle of 32°25'13", a chord bearing and distance of N 71°02'15" W, 279.16 feet, for an arc length of 282.92 feet to a point;

Northwesterly, along a reverse curve to the right, said curve having a radius of 100.00 feet, a central angle of 83°13'00", a chord bearing and distance of N 45°38'21" W, 132.81 feet, for an arc length of 145.24 feet to a point;

N 04°01'51" W, a distance of 81.86 feet to a point;

N 04°01'51" W, a distance of 423.07 feet to a point;

Northeasterly, along a tangent curve to the right, said curve having a radius of 1337.00 feet, a central angle of 09°45'05", a chord bearing and distance of N 00°50'42" E, 227.28 feet, for an arc length of 227.55 feet to a point;

N 05°58'02" E, a distance of 345.48 feet to a point;

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Transportation | Water Resources | Land Development | Surveying | Environmental
2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 www.Pape-Dawson.com

S 84°04'00" E, a distance of 656.01 feet to a point;

S 06°02'22" W, a distance of 1270.26 feet to the POINT OF BEGINNING, and containing 16.795 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with an exhibit prepared under job number 9350-15 by Pape-Dawson Engineers, Inc.

"This document was prepared under 22TAC663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: October 9, 2015
JOB NO. 9350-15
DOC. ID. N:\Survey15\15-9300\9350-15\Word\9350-15 FN-16.795 AC.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-00

STATE OF TEXAS
REGISTERED
DAVID A. CASANOVA
4251
PROFESSIONAL
LAND SURVEYOR

PAPE-DAWSON ENGINEERS