

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT GRANT AGREEMENT

BETWEEN THE CITY OF SAN ANTONIO AND ORACLE AMERICA, INC.

This First Amendment to Economic Development Grant Agreement (this "First Amendment") is entered into as of December 15, 2016 (the "Effective Date"), by and between the City of San Antonio ("GRANTOR"), a municipal corporation governed by the laws of the State of Texas, and Oracle America, Inc. ("GRANTEE"), a Delaware corporation. Together, GRANTOR and GRANTEE may be referred to herein as the "Parties."

RECITALS

A. GRANTOR and GRANTEE entered into that certain Economic Development Grant Agreement (the "Agreement") authorized by City Ordinance No. 2014-05-15-0331, passed and approved on May 15, 2014 ("Agreement Effective Date") a copy of which is attached hereto as incorporated herein as **Exhibit A**.

B. As of December 31, 2015, GRANTEE has failed to meet the required number of qualifying Full-Time Jobs as set forth in Section 2. C. of the Agreement. However, GRANTEE has exceeded the proposed total number of Full-Time Jobs set forth in Section 2. C. of the Agreement at the site, with a number of those jobs not counting as qualifying Full-Time-Jobs under the terms of the Agreement.

C. Therefore, the Parties seek to amend the terms and conditions of the Agreement as of the Effective Date of this First Amendment and affirm that all other provisions of the Agreement remain in full force and effect.

D. City Council has authorized the City Manager or her designee to enter into this First Amendment with GRANTEE in accordance with City Ordinance No. 2016-12-16-_____ passed and approved on December 15, 2016, a copy of which is attached hereto and incorporated herein as **Exhibit B**.

AGREEMENT

NOW THEREFORE, the Parties hereby agree as follows:

1. **Definitions.** All capitalized terms used in this First Amendment without definition herein shall have the meanings ascribed to such terms in the Agreement.

2. **Amendment.**

A. The fourth Recital in the Agreement is deleted in its entirety and replaced with the following:

WHEREAS, GRANTEE intends to conduct its Business Activities (as defined below) within the city limits of the City of San Antonio until January 1, 2027

from its offices at the Project Site (or at a subsequent site located within the Inner City Reinvestment/Infill Policy Area in the City of San Antonio (a copy of such ICRIP Map is attached hereto and incorporated herein as **Exhibit C**) in the event the business unit of GRANTEE located at the Project Site finds it necessary to expand or move its premises during the term of this Agreement, a “Subsequent Project Site”) and to create and retain three hundred fifty (350) full-time jobs based upon the terms and condition set forth herein (the “Project”); and

B. Section 2. C. of the Agreement is deleted in its entirety and replaced with the following:

C. Full-Time Jobs. Following the Commencement Date of the Lease, which GRANTEE hereby acknowledges occurred on or about October 1, 2014, GRANTEE has relocated, created and retained at least three hundred (300) Full-Time Jobs at its offices at the Project Site on or before December 31, 2016, and shall add at least an additional fifty (50) Full-Time Jobs for a total of at least three hundred fifty (350) Full-Time Jobs on or before December 31, 2017, which GRANTEE must retain at the Project Site or at a Subsequent Project Site until January 1, 2027, or GRANTEE shall be subject to the recapture provisions as set out in Section 3(C) below.

1. For the purposes of this Agreement, a "Full-Time Job" shall be equivalent to two thousand and eighty (2,080) straight-time paid hours in a fiscal year. It is agreed by the Parties that for purposes of meeting the required job numbers for all purposes under this Agreement, "Full-Time Jobs" shall be calculated using both filled and open positions, so long as GRANTEE is actively recruiting to fill such open positions (so long as GRANTEE in its annual reporting demonstrates its recruitment activity with respect to such open positions and that such open positions will meet the other requirements of this Section 2. C. once such positions are filled).

2. GRANTEE agrees that in addition to any other requirements contained in the Agreement, to qualify as a "Full Time Job" under this Agreement, GRANTOR covenants and agrees that it shall, as of the Effective Date of this Amendment, pay one hundred percent (100%) of its employees located at the Project Site (without relation to the number of Full-Time Jobs required to be maintained at the Project Site) at least the City's effective prevailing "living" wage as determined by the City Council in its Tax Abatement Guidelines as of the Effective Date, which is Eleven and 68/100 Dollars (\$11.68) per hour and, commencing on January 1, 2017, seventy percent (70%) of all new and existing employees working at the Project Site (without relation to the number of Full-Time Jobs required to be maintained at the Project Site) must earn at least Fifteen and 68/100 Dollars (\$15.68) per hour. GRANTEE's

failure to strictly abide by the covenants in this Section 2. C. 1. shall constitute a default hereunder and permit Grantor to recapture Grant funds as set forth in Section 3. C. 1. of the Agreement.

3. Additionally, to qualify as a "Full-Time Job" for purposes of this Agreement, each such employee, exclusive of their required minimum salary, will be offered an opportunity to participate in GRANTEE's employee benefits program which shall be substantially similar to employee benefits offered to similarly situated employees of GRANTEE in other locations. In addition, in order to qualify as a "Full-Time Job", such employees shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of GRANTEE's non-temporary full-time employees at other locations.

4. GRANTEE is also encouraged to make a good faith effort to interview and hire employees who currently reside in Bexar County and to use the services of Workforce Solutions Alamo in screening and referring eligible applicants to fill GRANTEE's Full-Time Jobs, so long as Workforce Solutions Alamo does not charge a placement fee or commission for its services. In addition, GRANTEE agrees to work with GRANTOR or the University of Texas at San Antonio and other local universities to participate in at least 2 job fairs over the next 2 years from the Effective Date.

C. Section 3. B. of the Agreement is deleted in its entirety and replaced with the following:

B. Grant Disbursement. Following: i) approval of this Amendment by a duly authorized City Ordinance and execution of this Amendment by the Parties; and ii) execution of the Lease and delivery of the Lease Acknowledgement to GRANTOR, CITY will make available to GRANTEE the Grant Funds as follows:

1. Initial Disbursement (May 15, 2014 – December 31, 2016).

Provided GRANTEE has created no less than a total of three hundred (300) Full-Time Jobs at GRANTEE's offices at the Project Site by December 31, 2016, an initial disbursement of Grant Funds shall be disbursed to GRANTEE after January 1, 2017 and within forty-five (45) days of GRANTEE submitting to GRANTOR a certification of the number of Full-Time Jobs maintained at the Project Site by December 31, 2016. The amount of the disbursement shall be equal to (-A-) the *number* of Full-Time Jobs making at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and

00/100 Dollars (\$2,500.00); and (-B-) the *number* of Full-Time Jobs making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Five Thousand and 00/100 Dollars (\$5,000.00).

2. **Second Disbursement January 1, 2017 – December 31, 2017**. Provided GRANTEE has created and maintained no less than a total of three hundred fifty (350) Full-Time Jobs at GRANTEE's offices at the Project Site by December 31, 2017, GRANTOR shall provide a second disbursement of Grant Funds which shall be disbursed to GRANTEE after January 1, 2018, and within forty-five (45) days of GRANTEE submitting to GRANTOR a certification of the number of Full-Time Jobs maintained at the Project Site by December 31, 2017. The amount of the disbursement shall be equal to: (-A-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2016 making at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00); (-B-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2016 initially making at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, which are now making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually by December 31, 2017, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00); and (-C-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2016 making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Five Thousand and 00/100 Dollars (\$5,000.00).

3. **Third Disbursement (January 1, 2018 – December 31, 2018)**. Provided GRANTEE has maintained no less than a total of three hundred fifty (350) Full-Time Jobs at GRANTEE's offices at the Project Site by December 31, 2018, GRANTOR shall provide a third disbursement of Grant Funds which shall be disbursed to GRANTEE after January 1, 2019, and within forty-five (45) days of GRANTEE submitting to GRANTOR a certification of the number of Full-Time Jobs created and maintained at the Project Site by December 31, 2018. The amount of the disbursement shall be equal to: (-A-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2017, making at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Two

Thousand Five Hundred and 00/100 Dollars (\$2,500.00); (-B-) the **number** of Full-Time Jobs created by GRANTEE *after* December 31, 2017 making initially at least at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, for which the company received a Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) grant, which are now making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually no later than December 31, 2018, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) and (-C-) the **number** of Full-Time Jobs created by GRANTEE *after* December 31, 2017 making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Five Thousand and 00/100 Dollars (\$5,000.00).

4. **Fourth Disbursement (January 1, 2019 – December 31, 2019).** Provided GRANTEE has maintained no less than a total of three hundred fifty (350) Full-Time Jobs at GRANTEE's offices at the Project Site by December 31, 2019, GRANTOR shall provide a fourth disbursement of Grant Funds which shall be disbursed to GRANTEE after January 1, 2020, and within forty-five (45) days of GRANTEE submitting to GRANTOR a certification of the number of Full-Time Jobs created and maintained at the Project Site by December 31, 2019. The amount of the disbursement shall be equal to: (-A-) the **number** of Full-Time Jobs created by GRANTEE *after* December 31, 2018, making at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00); (-B-) the **number** of Full-Time Jobs created by GRANTEE *after* December 31, 2018 making initially at least at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, for which the company received a Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) grant, which are now making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually no later than December 31, 2019, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) and (-C-) the **number** of Full-Time Jobs created by GRANTEE *after* December 31, 2018 making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Five Thousand and 00/100 Dollars (\$5,000.00).

5. **Fifth Disbursement (January 1, 2020 – December 31, 2020).** Provided GRANTEE has maintained no less than a total of three hundred fifty (350) Full-Time Jobs at GRANTEE's offices at the Project Site by December 31, 2020, GRANTOR shall provide a fifth disbursement of Grant Funds which shall be disbursed to GRANTEE after January 1, 2021, and within forty-five (45) days of GRANTEE submitting to GRANTOR a certification of the number of Full-Time Jobs created and maintained at the Project Site by December 31, 2020. The amount of the disbursement shall be equal to: (-A-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2019, making at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00); (-B-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2019 making initially at least at least Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, verified through the certification, for which the company received a Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) grant, which are now making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually no later than December 31, 2020, exclusive of benefits, verified through the certification, multiplied by Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) and (-C-) the *number* of Full-Time Jobs created by GRANTEE *after* December 31, 2019 making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) annually, exclusive of benefits, verified through the certification, multiplied by Five Thousand and 00/100 Dollars (\$5,000.00).

6. **Other Disbursements (January 1, 2017 – December 31, 2020).**

Provided GRANTEE has maintained no less than a total of three hundred fifty (350) Full-Time Jobs at GRANTEE's offices at the Project Site by each of the five disbursement threshold dates set forth above, GRANTOR shall permit GRANTEE to include the *number* of Full-Time Jobs created during the period from January 1, 2017 through December 31, 2020, making less than Fifty Thousand and 00/100 Dollars (\$50,000.00) annually, exclusive of benefits, so long as such Full-Time Jobs are making at least Seventy Thousand and 00/100 Dollars (\$70,000.00) prior to the position's 2nd year anniversary of employment with GRANTEE, verified through the certification, multiplied by Five Thousand and 00/100 Dollars (\$5,000.00).

7. **Maximum Grant Amount.** GRANTOR shall provide Grant Funds pursuant to Sections 3. B. 1., 2., 3., 4., and 5. up to a

maximum amount of One Million 00/100 Dollars (\$1,000,000.00) for the creation and maintenance of at least three hundred fifty 350 Full-Time Jobs, including those for which Grant funds were paid, regardless of any greater number of Full Time Jobs that may actually be created at the Project Site.

8. **Failure to Reach Milestones.** Notwithstanding anything contained in the Agreement or this First Amendment, if GRANTEE fails to achieve the Full Time Jobs milestones set forth in Sections 3. B. 1., 2., 3., 4., or 5. by the dates specified in such Sections, then, following notice from GRANTOR of such failure, GRANTEE shall have the ability to cure such failure within the period specified in Section 15 below or such additional cure period as may be granted by GRANTOR in its sole discretion, if any.

9. **Grant Funds Extinguished.** Following the date for payment by GRANTOR of the fifth disbursement any and all undisbursed Grant Funds shall be extinguished and Grantor shall have no obligation to pay Grantee for additional Full-Time Jobs created, or otherwise.

10. **Job Number Maintenance.** Following the date for the fifth grant disbursement, GRANTEE shall be required to maintain: (-A-) 350 Full-Time Jobs; and (-B-) the Full-Time Jobs for which GRANTOR has disbursed Grant funds (at both the \$50,000 and \$70,000 levels) or shall be subject to the recapture of funds in accordance with Section 3. C. below.

11. **Grant Payment per Job.** The Parties acknowledge and agree that the purpose of the grant funding hereunder, Full-Time Job creation and maintenance shall only count once, in that once a Full-Time Job is created, GRANTEE will not get another grant disbursement for such job created in the event the person hired in at the position leaves the position and the position is refilled with another worker. In addition, in each case whereby GRANTEE is provided a Two Thousand Five Hundred and 00/100 Dollar grant for a fulltime position because of an increase in salary from Fifty Thousand and 00/100 Dollars (\$50,000.00) to at least Seventy Thousand and 00/100 Dollars (\$70,000.00) or a Five Thousand and 00/100 (\$5,000.00) grant for a Full-Time Job making some lower amount to at least Seventy Thousand and 00/100 Dollars (\$70,000.00), then in either event, the parties agree that in order to qualify for the grant, such Full-Time position must: (i) receive an increase in pay to at least Seventy Thousand and 00/100 Dollars (\$70,000.00) prior to the position's 2nd year anniversary with

GRANTEE; and (ii) all such jobs shall be created within the time period of January 1, 2017 through December 31, 2020.

D. Sections 3. C. 2. and 3 C. 3. of the Agreement are deleted in their entirety and replaced with the following:

2. Should GRANTEE comply with the requirements of Sections 2. A., B., and C. of this Agreement, and subsequent to meeting those requirements, fails to maintain throughout the balance of the Term of this Agreement at least: (-A-) three hundred fifty (350) Full-Time Jobs; and at least all the Full-Time Jobs at the Project Site or a Subsequent Project Site for which GRANTEE received the disbursement of Grant Funds hereunder, then GRANTEE shall be entitled to recapture a portion of the Grant Funds allocable to the number of Full Time Jobs for which Grant Funds were paid that were not maintained by GRANTEE (the "Jobs Shortfall") in the following percentages:

Year in which Jobs Shortfall occurs	GRANTOR's recapture percentage
Years 2016 through 2023	100% of Grant Funds allocable to the Jobs Shortfall
Year 2024	80% of Grant Funds allocable to the Jobs Shortfall
Year 2025	60% of Grant Funds allocable to the Jobs Shortfall
Year 2026	40% of Grant Funds allocable to the Jobs Shortfall

3. If at any time after the Effective Date, should GRANTEE fail to maintain at least three hundred (300) Full-Time Jobs or at least seventy-five percent of the Full-Time Jobs for which Grant Funds were paid during the Term of this Agreement, then GRANTOR shall have the right to recapture one hundred percent (100%) of all of the Grant Funds disbursed to GRANTEE.

E. Section 4. of the Agreement is deleted in its entirety and replaced with the following:

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date of the Agreement, which GRANTOR and GRANTEE acknowledge and agree is May 15, 2014, and terminate on January 1, 2027.

4. **No Other Changes.** Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement shall continue in full force and effect and along with this First Amendment shall be read and construed as one instrument.

5. **Entire Agreement; Waiver.** This First Amendment constitutes the final, complete and exclusive statement between the parties to this First Amendment pertaining to the amendment of the terms and conditions of the Agreement as set forth herein, supersedes all prior and contemporaneous understandings or agreements of the parties pertaining to the matters set forth herein, and is binding on and inures to the benefit of their respective heirs, representatives, successors, successors-interest, and assigns. No Party has been induced to enter into this First Amendment by, nor is any Party relying on, any representation or warranty not expressly set forth in this First Amendment. Any agreement made after the date of this First Amendment is ineffective to modify, waive, or terminate this First Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this First Amendment, and specifically states that agreement modifies this First Amendment.

6. **Choice of Law.** This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.

7. **Counterparts.** This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought. A copy of a signature received through telefax or email transmission shall bind the party whose signature is so received as if such signature were an original.

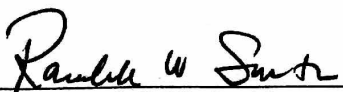
Signatures appear on next page.

WITNESS HEREOF, the parties hereto have executed in triplicate originals this First Amendment as of the Effective Date first written above.

CITY OF SAN ANTONIO,
a municipal corporation

ORACLE AMERICA, INC.
a Delaware corporation

Sheryl L. Sculley
City Manager



Name: Randall W. Smith
Title: VP Real Estate & Facilities

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit: Exhibit A (Ordinance Authorizing Grant Agreement)
 Exhibit B (Ordinance Authorizing First Amendment)
 Exhibit C (Copy of ICRIP Map)

Exhibit A
(Ordinance Authorizing Agreement)

RR
5/15/14
Item No. 11

AN ORDINANCE 2014 - 05 - 15 - 0331

APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ORACLE AMERICA, INC. IN THE AMOUNT OF \$1,000,000.00 PAYABLE OVER THREE (3) YEARS FOR THE CREATION OF 200 FULL-TIME JOBS.

* * * * *

WHEREAS, Oracle America, Inc. (“Oracle”) is a Fortune 500 company with over \$37 billion in revenue and 120,000 employees worldwide that provides enterprise software and computer hardware products to global customers; and

WHEREAS, in response to its continued growth, Oracle evaluated a number of sites throughout the southwest United States to undertake an expansion of its contracting and financial operations that would result in the creation of 200 full-time jobs (the “Project”); and

WHEREAS, Oracle has chosen to undertake the Project in San Antonio at 613 NW Loop 410 in City Council District 1 (the “Project Site”); and

WHEREAS, Oracle is seeking a grant from the City in the amount of \$1,000,000.00 to offset costs associated with undertaking 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 City 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 Oracle 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 City Council hereby approves the terms and conditions of an Economic Development Program Grant Agreement with Oracle America, Inc. to provide \$1,000,000.00 from the Economic Development Incentive Fund.

SECTION 2. The City Manager or a designated representative is authorized to execute an Agreement as approved in Section 1 above. The final Agreement shall be filed with this ordinance upon execution.

SECTION 3. Funding in the amount of \$1,000,000.00 for this ordinance is contingent upon approval of Fiscal Year 2015's Budget for Fund 29059000, Cost Center 1604010001 and General Ledger 5201040.

SECTION 4. If approved by council, payment not to exceed the budgeted amount is authorized to and should be encumbered with a purchase order.

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 be effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 15th day of May, 2014.


M A Y O R
Julián Castro

ATTEST:


Lucinda M. Vacek, City Clerk

APPROVED AS TO FORM:

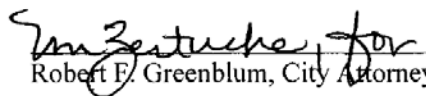
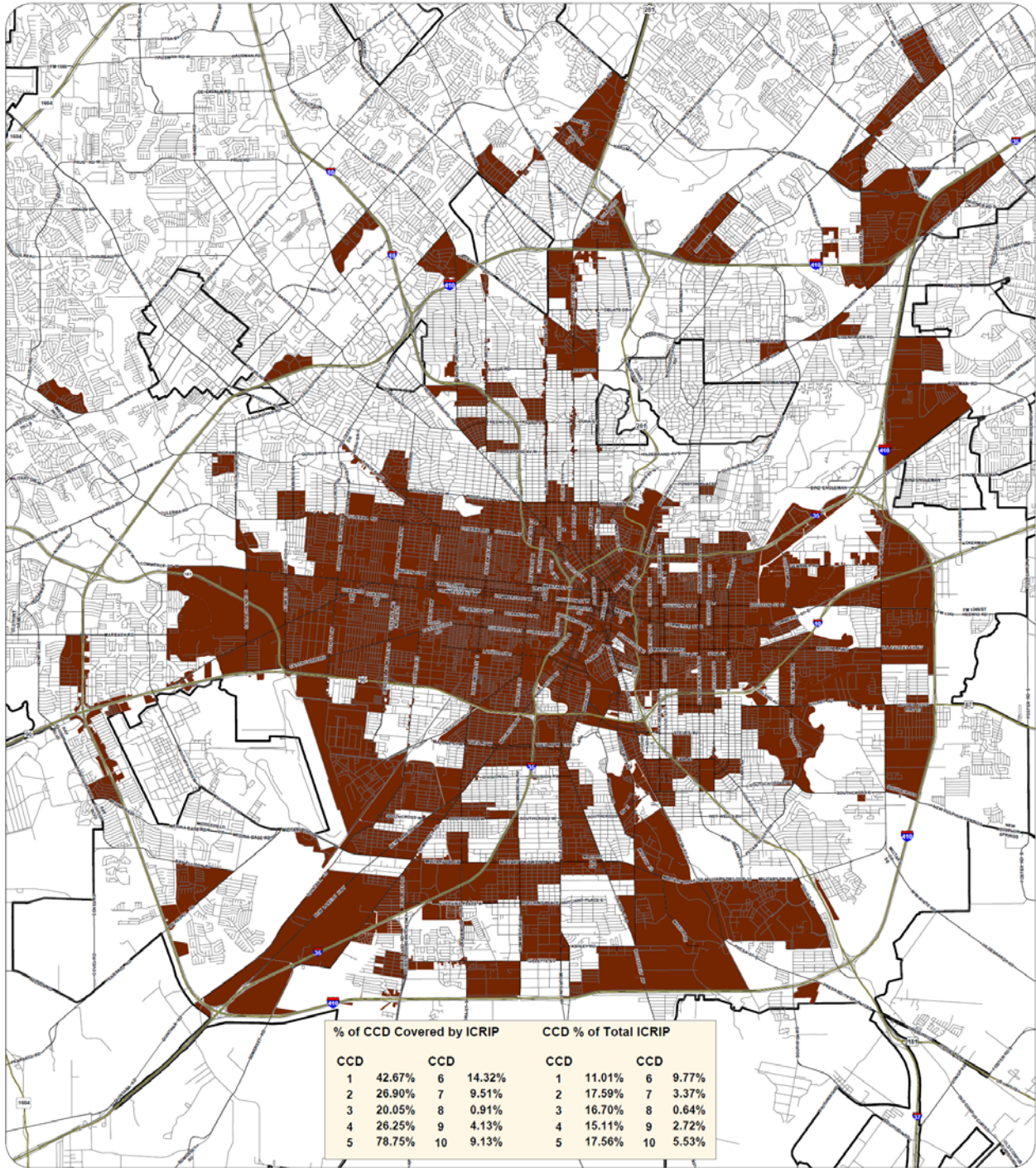

Robert E. Greenblum, City Attorney

Exhibit B (Ordinance Authorizing First Amendment)
[TO BE ATTACHED AFTER CONSIDERATION AND APPROVAL]

Exhibit C (Copy of ICRIP Map)



ICRIP, as Amended 1/10/2013
18.02% or 84.08 Sq. Mi. of CoSA

