

AN ORDINANCE 2016-12-01-0916

**AUTHORIZING AN ECONOMIC DEVELOPMENT PROGRAM LOAN
IN THE AMOUNT OF UP TO \$118,000.00 TO GRAYSTREET PARTNERS
FOR RETAIL FINISH-OUT IMPROVEMENTS AT THE VOGUE
BUILDING LOCATED AT 600 NAVARRO STREET IN CITY COUNCIL
DISTRICT 1.**

* * * * *

WHEREAS, GrayStreet Partners (“Developer”) is undertaking an economic development project that will be comprised of leasing 5,900 sq. ft. of street level restaurant space at 600 Navarro Street to La Panadería (the “Project”); and

WHEREAS, the City has actively sought projects to assist in revitalizing and supporting economic development activities within Central Business District; 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 and loans 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 and loans 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 the Developer 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 approves the terms and conditions of an Economic Development Program Loan Agreement with GrayStreet Partners in an amount not to exceed \$118,000.00 for the Project.

SECTION 2. The City Manager or her designee is authorized to execute an Economic Development Loan Agreement 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 \$118,000.00 for this Ordinance is available in Fund 2910400, Cost Center 1909010001, and General Ledger 5201040, as part of the Fiscal Year 2017 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to GrayStreet Partners.

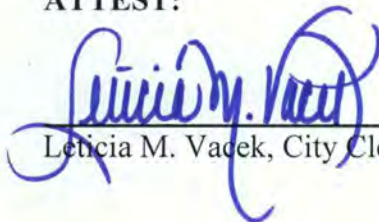
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 1st day of December, 2016.

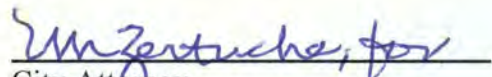

M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vadek, City Clerk

APPROVED AS TO FORM:



City Attorney

Agenda Item:	18 (in consent vote: 5, 7, 8, 9, 11A, 11B, 13, 14, 16, 18, 19, 20, 21, 23, 24, 25)						
Date:	12/01/2016						
Time:	09:23:46 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Economic Development Program Loan in an amount up to \$118,000.00 to Graystreet Partners for retail finish-out improvements at the Vogue Building located at 600 Navarro Street in City Council District 1. [Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development and Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		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			x	

ATTACHMENT I

STATE OF TEXAS § **CHAPTER 380 ECONOMIC DEVELOPMENT**
 § **LOAN AGREEMENT OF THE CITY OF SAN ANTONIO**
COUNTY OF BEXAR §

This Chapter 380 Economic Development Loan Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "CITY"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and GrayStreet Partners, LLC (hereinafter referred to as "Borrower") and whom together may be referred to as the "Parties".

RECITALS

WHEREAS, Borrower is engaged in an economic development project that will be located within the city limits of the City of San Antonio and will consist of the finish-out and leasing of 5,900 square feet of retail/restaurant space in the Vogue Building at 600 Navarro Street, a private property owned by GrayStreet Partners (the "Leased Premises"), where it will operate a restaurant (the "Project"); and

WHEREAS, once completed, the Project is anticipated to result in the investment of approximately ONE MILLION SIX HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$1,600,000.00) in real property tenant finish out improvements, within the boundaries of City Council District 1; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, CITY is authorized to loan municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, City created an economic development program for the purpose of making such loans available; and

WHEREAS, BORROWER is seeking economic incentives from the CITY to undertake and complete the Project; and

WHEREAS, the CITY and the TIRZ have identified funds to be made available to Borrower in the form of a Chapter 380 economic development program loan and certain fee waivers (the "Incentives") for use in undertaking and completing the Project in accordance with the terms and conditions of this Agreement; and

WHEREAS, Borrower has requested a Chapter 380 economic development program loan for the purpose of performing tenant finish-out on the Leased Premises which will support economic development in the downtown area and provide healthy dining options to employees, visitors and residents in the downtown area; and

WHEREAS, City has identified economic development funds available for Borrower to use to carry out the Project and to either repay to City in accordance with the terms and conditions of this Agreement or to have forgiven by City in accordance with the terms and conditions herein; and

WHEREAS, the City Council has authorized the City Manager, or her designee, to enter into this Agreement with Borrower under City Ordinance No. 2016-_____, passed and approved on _____, 2016; **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 further the public purposes of promoting local economic development and stimulating business and commercial activity in the City of San Antonio. The City is supporting the Project through this Chapter 380 Economic Development Program Loan in accordance with Chapter 380 of the Texas Local Government Code.

SECTION 2. PROJECT REQUIREMENTS

A. Investment. Borrower shall invest ONE-MILLION SIX HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$1,600,000.00) (the "Minimum Investment") on tenant finish-out work of the Leased Premises.

B. Improvements and Construction. Borrower shall commence any necessary construction and/or demolition at the Leased Premises on or before December 31, 2016 (the "Commencement Date"), and shall use commercially reasonable efforts to complete construction (the "Completion Date") no later than June 30, 2017 subject to Force Majeure as defined in this Agreement. The Commencement Date shall be determined by the issuance of a building permit for the Leased Premises and CITY'S receipt of correspondence from the general contractor for the Project certifying that construction has commenced. The Completion Date shall be determined by the issuance of a Certificate of occupancy for the Leased Premises by CITY, not to be unreasonably withheld.

1. Borrower shall provide progress reports to CITY on the Project and Leased Premises on a quarterly basis through the term of this Agreement. In addition to the quarterly progress reports, should CITY request an interim progress report during the term of this Agreement, Borrower shall provide such progress report within fifteen (15) business days.

2. Borrower shall comply with all applicable Federal, State and local laws and regulations, including federal Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS) and Texas Commission on Environmental Quality (TCEQ) rules and regulations and all other regulations and laws relating to the environment, Asbestos Containing Materials (ACM), Hazardous Substances or exposure to ACM and Hazardous Substances as applicable and shall develop and operate the Project in accordance with the terms and conditions of this Agreement and the attached Lease Agreement.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM LOAN

A. Economic Development Program Loan. In consideration of full and satisfactory performance of the obligations required by Section 2 and this Agreement, City shall make a Chapter 380 Economic Development Program Loan in the amount of TWENTY DOLLARS AND 0 CENTS (\$20.00 per/sq.ft.) per square foot of tenant finish-out work on the first floor of the Leased Premises, not to exceed a cumulative amount of ONE HUNDRED EIGHTEEN THOUSAND DOLLARS AND 0 CENTS (\$118,000.00) (the "Loan Funds"). The funds made available to Borrower through this Agreement are

made solely from lawfully available funds that have been appropriated by CITY. Under no circumstances shall CITY's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, CITY shall have no obligation or liability to pay any funds to Borrower unless CITY appropriates funds to make such payment during the budget year in which such funds are payable. Further, CITY shall not be obligated to pay Borrower, any commercial bank, lender or similar institution for any loan or credit agreement made by Borrower. Borrower shall use the Loan Funds exclusively for the purpose of undertaking and completing the Project.

B. **Loan Disbursement.** It is agreed and acknowledged that CITY shall have no duty to disburse more than the amount of the Loan Funds and that the Loan Funds shall be used exclusively for tenant finish-out work on the first floor of the Leased Premises. The Loan Funds shall be disbursed to the Borrower within sixty (60) days after and contingent on the following:

- (1) Execution of this Agreement by all Parties; and
- (2) Receipt of evidence of the issuance of a building permit from the CITY of San Antonio for the Project's location on or prior to the Commencement Date; and
- (3) Commencement of construction on the Project to be evidenced by the submission and receipt of a letter confirming commencement by the general contractor to CITY on or prior to the Commencement Date; and

C. **Repayment of Program Loan.** Should CITY disburse and Borrower accepts the Loan Funds, then Borrower shall be obligated to repay City the Loan Funds in annual installments of TWENTY-THREE THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS (\$23,600.00) for a period of FIVE (5) years beginning on DECEMBER 31, 2017 in accordance with the following schedule:

LOAN SCHEDULE

DECEMBER 31, 2017	\$23,600.00
DECEMBER 31, 2018	\$23,600.00
DECEMBER 31, 2019	\$23,600.00
DECEMBER 31, 2020	\$23,600.00
DECEMBER 31, 2021	\$23,600.00

All payments will be considered on time if received on or before the date indicated in the above Loan Schedule. All payments due under this Agreement shall be made payable to the City of San Antonio and sent to:

City of San Antonio
Attn: Director
Center City Development & Operations Department
P.O. Box 839966
San Antonio, TX 78283-3966

- 1) **Accrued Interest.** There shall be zero-percent (0%) accrued interest on the Loan Funds.

- 2) **Sufficient Amounts.** Each payment made pursuant to SECTION 3(C) above shall be sufficient to pay the total amount of repayment due and payable upon that date.
- 3) **Acceleration of Loan Repayment.** Should Borrower, in the sole discretion of City, breach a material term of this Agreement and CITY terminates the Agreement, then the Loan Funds shall be due and payable to CITY no later than sixty (60) days following CITY's Notice of Termination to Borrower.
- 4) **Unconditional Obligation to Repay the Program Loan.** The obligations of Borrower to repay the Loan Funds are absolute and unconditional, irrespective of any defense or any rights of set-off, re-coupment or counterclaim it might otherwise have against the City, and during the Term of this Agreement, Borrower shall pay all payments required to be made on account of this Agreement (which payments shall be net of any other obligations of Borrower) as prescribed in Section 3(C) free of any deductions and without abatement, diminution or set-off. Until such time as the principal of the Loan Funds is fully paid or provision for the payment thereof shall have been made.
- 5) **Prepayment.** Should Borrower repay the amount of the Loan Funds in whole, or in part, prior to the scheduled payment dates or the expiration of the dates specified in Section 3(C) of this Agreement, no penalty for such prepayment shall be applied.

D. **Forgiveness of Program Loan.** Should CITY disburse and Borrower accepts the Loan Funds, then Loan Funds will be eligible for forgiveness, in lieu of repayment, at 20% per year. For each year of forgiveness, Borrower must provide evidence that the Leased Premises have remained leased, occupied, and active for at least 80% of the preceding 12 months; otherwise, payment for that year will be required as per the Loan Schedule in Section C.

SECTION 4. LOAN DEFAULT AND CITY'S REMEDIES

A. **Loan Default Events.** Any one of the following which occurs and continues shall constitute a Loan Default Event:

1. Failure of Borrower to make any Loan Payment required by SECTION 3(C) when due; and/or
2. Failure of Borrower to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed under this Agreement or the Lease Agreement following the expiration of thirty (30) days written notice to cure; and/or
3. The dissolution or liquidation of Borrower or the filing by Borrower of a voluntary petition in bankruptcy, or failure by Borrower to promptly cause to be lifted any execution, garnishment or attachment of such consequence as will impair Borrower's ability to carry on its obligations under this Agreement and/or the Lease Agreement; and/or
4. The commission by Borrower of any act of voluntary or involuntary bankruptcy under any state or federal law; and/or
5. The admittance of Borrower, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of Borrower shall be appointed in any proceeding brought against Borrower and shall not be discharged within ninety (90) days after such appointment.

B. Remedies to CITY upon a Loan Default Event. Should Borrower cause or allow a Loan Default Event to occur and it shall be continuing:

1. City, by written notice to Borrower, shall declare the unpaid balance of the Loan Funds payable under SECTION 3(C) of this Agreement, and due immediately. Should Borrower not pay the unpaid balance due within ten (10) business days of the City providing written notice, then Borrower shall be assessed a ten-percent (10%) fee onto the total amount due; and
2. City shall have access to and may inspect, examine and make copies of the books and records and any and all accounts, data and federal income tax and other tax returns of Borrower; and
3. City may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of Borrower under this Agreement.
4. It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between Borrower and the CITY 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.

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

D. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

SECTION 5. AGREEMENT PERIOD

This Agreement shall commence upon its Effective Date listed on the signature page and shall terminate upon the earlier of: (A) the full-repayment of the loan funds by Borrower to the City; or (B) termination of this Agreement as otherwise provided herein (the "Term").

SECTION 6. CITY OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by this Agreement, City will make a Chapter 380 Economic Development Program Loan to Borrower in accordance with Section 3 above.

B. City will not be liable to Borrower or other entity for any costs incurred by Borrower.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. Borrower shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Borrower shall retain such records, and any supporting documentation, for the greater of: (1) Five (5) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. Borrower shall, following reasonable advance written notice from the City, give the City, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Borrower pertaining to the Economic Development Loan (the "Records"). The City's access to Borrower's books and records will be limited to information needed to verify that Borrower is and has been complying with the terms of this Agreement and to verify advances made by the City and re-payments made by Borrower and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by City. Borrower shall not be required to disclose to the City any information that by law Borrower is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Borrower to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Borrower. The rights to access the Records shall continue as long as the Records are retained by Borrower. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 15 and 16 below, or any portion thereof, for reason of default. All Records shall be retained by Borrower for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Borrower agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the City as set forth above. All of the above notwithstanding, the City and the citizens shall have no right to access any confidential or proprietary records of Borrower, including but not limited to the ownership and capital structure of Borrower.

SECTION 8. MONITORING

A. City reserves the right to confirm Borrower's compliance with the terms and conditions of this Agreement. City will provide Borrower with a written report of the monitor's findings. If the monitoring report notes deficiencies in Borrower's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Borrower and a reasonable amount of time in which to attain compliance. Failure by Borrower to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 15 and 16 herein.

B. The Borrower shall allow the CITY access to the Project Property for inspections during and upon completion of construction, and to documents and records reasonably considered necessary by the CITY to assess the Borrower's compliance with this Agreement.

SECTION 9. 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.

If intended for CITY, to:

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

If intended for Borrower, to:

GrayStreet Partners
Attn: XXXXXXXXXX
200 Concord Plaza, Suite 900
San Antonio, TX 78216

SECTION 10. CONFLICT OF INTEREST

A. Borrower shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Borrower 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 subBorrower on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. Borrower shall comply with Chapter 171, Texas Local Government Code as well as the City's Code of Ethics.

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

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. As a condition of entering into this Agreement, BORROWER represents and warrants that it will comply with the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance 2010-06-17-0531. As part of such compliance, BORROWER shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall BORROWER retaliate against any person for reporting instances of such discrimination. BORROWER shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's relevant marketplace. BORROWER understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of BORROWER from participating in City contracts, or other sanctions as provided by applicable law. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by Borrower under this Agreement shall involve, and no portion of the funds received by Borrower 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. Borrower shall include the substance of this Section 11 in all agreements associated with the funds made available through this Agreement.

SECTION 12. 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. City will have the right to suspend or terminate this Agreement in accordance with Sections 15 and 16 herein if there is a dispute as to the legal authority, of either BORROWER or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Borrower is liable to City for any money it has received from CITY for performance of the provisions of this Agreement if City suspends or terminates this Agreement for reasons enumerated in this Section 12.

SECTION 13. LITIGATION AND CLAIMS

A. Borrower shall give City immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Borrower arising out the performance of any subcontract hereunder. Except as otherwise directed by City, Borrower shall furnish immediately to City copies of all pertinent papers received by Borrower with respect to such action or claim. Borrower shall notify the City immediately of any legal action filed against the Borrower or any subcontractor, or of any

proceeding filed under the federal bankruptcy code. Borrower shall submit a copy of such notice to City within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding Borrower is not required to notify City of claim litigation which arise out of Borrower's operations on the Project, including without limitation, personal injury actions (slip and falls) and other operational activities or relationships.

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

C. 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 14. CHANGES AND AMENDMENTS

A. Except as provided in Section 14(C) 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 City approval and authorization of Borrower.

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 15. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Borrower fails to comply with the terms of any agreement with the City, City shall provide Borrower with written notification as to the nature of the non-compliance. City shall grant Borrower a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance under such agreement. Should Borrower fail to cure any default within this period of time, the City may, upon written Notice of Suspension to Borrower, suspend this Agreement in whole or in part and withhold further payments to Borrower or accelerate the due date of the repayment of the loan, and prohibit Borrower 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 default for causes beyond Borrower's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that Borrower shall: (1) immediately upon receipt of Notice of Suspension advise City of Borrower'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 15 may be lifted only at the sole discretion of the City upon a showing of compliance or written waiver by City of the term(s) in question.

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

E. Any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

E.

SECTION 16. TERMINATION

A. City shall have the right to terminate this Agreement for non-compliance, in whole or in part, whenever City determines that Borrower has failed to comply with any term of any Agreement with the City. City will provide Borrower with written notification as to the nature of the non-compliance, and grant Borrower a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should Borrower fail to cure any default within this period of time, the City may as its sole and exclusive remedies, upon issuance to Borrower of a written Notice of Termination, terminate this Agreement in whole or in part and either: (1) withhold further payments to Borrower; or (2) accelerate the repayment of the loan. 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. Should Borrower fail to timely meet the Commencement Date for the Project in accordance with Section 3(B) above, at CITY's sole discretion, and with 30 days' notice to Borrower, CITY may terminate the Agreement, in which instance any and all Loan Funds disbursed to Borrower by CITY shall be repaid.

C. In the case of default for causes beyond Borrower's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City may, in its sole discretion, extend the cure period provided that Borrower shall: (1) immediately upon receipt of Notice of Termination advise City of Borrower'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.

D. Except as provided in Section 16(A), the Economic Development Program Loan may be terminated in whole or in part only as follows:

1. By the City (with the consent of the Borrower) 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 the Borrower upon written notification to the City, setting forth the reasons of such termination, a proposed pay-back plan of any funds loaned, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the City determines in its sole discretion that the remaining portion of

the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety under Section 16(A).

E. Notwithstanding any exercise by City of its right of suspension under Section 15 of this Agreement, or of early termination pursuant to this Section 16, Borrower shall not be relieved of repayment of loaned funds under this Agreement or any liability to City for actual damages due to City by virtue of any breach by Borrower of any agreement with City, including the Lease Agreement and this Agreement.

F. The City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if Borrower defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above.

SECTION 17. SPECIAL CONDITIONS AND TERMS

Borrower, 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 Borrower is convicted of a violation under 8 U.S.C. Section 1324a (f), then Borrower shall repay the CITY the Incentives paid under 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 Borrower is notified by the CITY of such violation. The CITY, in its sole discretion, may extend the period for repayment herein. Additionally, Borrower shall pay interest on the amounts due to CITY 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.

Borrower acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to this Agreement waives an otherwise applicable exception to disclosure.

SECTION 18. SUBCONTRACTING

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

B. Borrower, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Borrower's subcontractor(s).

C. Borrower assures and shall obtain assurances from all of its contractors 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 funded in whole or in part under this Agreement.

SECTION 19. DEBARMENT

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

SECTION 20. 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 Borrower and the City 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 21. INDEMNIFICATION

A. The BORROWER covenants and agrees to FULLY DEFEND, INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to the BORROWER'S activities under this AGREEMENT, including any acts or omissions of the BORROWER, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the BORROWER, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law.

IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. THE BORROWER SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE CITY HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY BORROWER OR BORROWER'S PREDECESSORS IN TITLE, OR THE FAILURE OF BORROWER OR BORROWER'S PREDECESSORS IN TITLE, TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by BORROWER to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. BORROWER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The BORROWER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY related to or arising out of the BORROWER'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the BORROWER's cost to the extent required under the INDEMNITY in this Section

THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The CITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the BORROWER of any of its obligations.

B. BORROWER shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, and its respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever which are asserted by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. BORROWER'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Section A above, the provisions in Section A control over those set forth in this Section. Prior to expending any money that BORROWER would be obligated to INDEMNIFY, the CITY shall send written notice to BORROWER describing in reasonable detail the claim and allowing BORROWER to cure such claim within 15 calendar days of receiving the notice.

SECTION 21. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of City and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve Borrower from liability under this Agreement and shall not release Borrower from performing any of the terms, covenants and conditions herein. Borrower shall be held responsible for all funds received under this Agreement.

SECTION 22. 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 23. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

City may grant temporary relief from performance of this Agreement if the Borrower is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the Borrower. The burden of proof for the need for such relief shall rest upon the Borrower. To obtain release based upon *force majeure*, the Borrower must file a written request with the City. Should City grant temporary relief to Borrower, it shall in no case relieve Borrower from any repayment obligations as specified in Section 3(B) and 3(C) of this Agreement.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 2016:

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2016-__-__-_____, dated _____, 2016, and GRAYSTREET PARTNERS pursuant to the authority of its _____ General Manager_____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

GRAYSTREET PARTNERS

Lori Houston
ASSISTANT CITY MANAGER

BY _____
NAME
TITLE

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY