

AN ORDINANCE 2017-12-14-1011

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM LOAN AGREEMENT WITH LKZ MANAGEMENT IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO FACILITATE THE LOCATION OF A NEW HEADQUARTERS AND THE CREATION OF AT LEAST 50 NEW JOBS.

* * * * *

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (“City”) is authorized to loan municipal funds in furtherance of public purposes for economic development projects; and

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

WHEREAS, Lynd Development Partners and Lynd Residential Partners (the “Partners”) focus on investment, acquisitions, and development and through various partnerships they currently have an ownership interest in roughly 8,000 apartment units, seven hotels, including the St. Anthony in San Antonio, and the Hancock Tower in Chicago; and

WHEREAS, the Partners are currently rebranding the company and have recently created a new company, temporarily referred to as LKZ Management, which will internalize property management of the multifamily assets they own and develop; and

WHEREAS, the Partners have identified the Travis Park Plaza Building as the preferred San Antonio location and, if selected, would require the new organization to lease 14,000 square feet of the building to serve as their corporate headquarters which is anticipated to result in the investment of approximately \$1.5 million with existing and new jobs having an average annual base salary of \$100,000; and

WHEREAS, the rebranding effort and resulting creation of the new organization will result in 35 new full-time, high wage jobs in the company’s initial year of existence and would result in the creation of an additional 15 new full-time jobs within 5 years of its operations; and

WHEREAS, LKZ Management has requested an economic development loan for the purpose of deferring costs associated with construction related to the Project; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to negotiate and execute a Chapter 380 Economic Development Program Grant Agreement with LKZ Management, provided the terms and conditions of such agreement are substantially similar to the draft agreement as shown in **EXHIBIT A**. The final Agreement shall be filed with this Ordinance upon execution.

SECTION 2. Funding for this Ordinance in the amount up to \$ 280,000.00 is available as part of the FY2018 Budget, see the table below:


Amount	General Ledger	Cost Center	Fund
\$140,000.00	5201040	1604010001	29059000
\$140,000.00	5201040	1909010001	29104000
Total Amt. \$280,000.00			

SECTION 3. Payment not to exceed the budgeted amount is authorized to LKZ Management and should be encumbered with a purchase order.

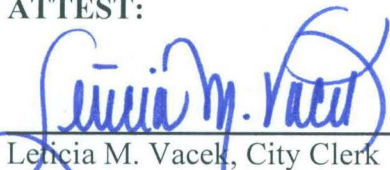
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 5. 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 14th day of December, 2017.


M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	29 (in consent vote: 4, 6, 7, 9, 10, 11, 12, 16, 18A, 18B, 18C, 19, 20, 23, 25, 26, 27, 28, 29, 30, 32, 33, 35, 38, 39, 40)						
Date:	12/14/2017						
Time:	09:20:27 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Chapter 380 Economic Development Program Loan in the amount of \$280,000.00 with LKZ Management to facilitate the location of a new headquarters in downtown San Antonio that will yield 50 new jobs to San Antonio. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x			x	
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

RR
12/14/17
Item No. 29

EXHIBIT A

DRAFT

STATE OF TEXAS

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§

**ECONOMIC DEVELOPMENT
LOAN AGREEMENT OF THE
CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This Economic Development Loan Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as "CITY"), acting by and through its City Manager or her designee, and LKZ Management LLC (hereinafter referred to as "LKZ"), and together referred to as the "Parties.

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 Ordinance No. 100684, the City created an economic development program for the purpose of making such loans available; and

WHEREAS, LKZ 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 location of a corporate headquarters at 711 Navarro, San Antonio, TX 78205 and the initial creation of 35 high wage jobs with an additional 15 full-time jobs being created within five years (the "Project"); and

WHEREAS, LKZ has requested an economic development loan for the purpose of deferring costs associated with the construction related to the Project; and

WHEREAS, City has identified economic development funds available for LKZ to use to carry out the Project; and

WHEREAS, the City Council has authorized the City Manager or her designee to enter into this Agreement with LKZ as reflected in Ordinance No. 2017-12-14 _____, passed and approved on December 14, 2017; **NOW THEREFORE:**

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

SECTION 1. AGREEMENT PURPOSE

The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio in accordance with Chapter 380 of the Texas Local Government Code. City is supporting the Project through its Economic Development Incentive Fund (EDIF) Program and Inner City Incentive Fund (ICIF) Program and is providing the funds to be used to defray costs of the Project. This economic incentive is being offered to LKZ to promote investment and job creation in a targeted industry of the City.

SECTION 2. PROJECT REQUIREMENTS

A. LKZ shall lease space at 711 Navarro, San Antonio, TX 78205 (the "Property") for a period of not less than eight (8) years.

B. LKZ shall invest or cause to be invested approximately ONE MILLION SEVEN HUNDRED AND TEN THOUSAND DOLLARS (\$1,710,000.00) in real and personal property improvements to the Property prior to _____, 201_ and in no case later than _____, 20__.

C. Upon completion of the improvements, LKZ shall:

- (1) locate its corporate headquarters to the Property and commence Business Activities which shall consist of property management and investment; and
- (2) create THIRTY-FIVE (35) full-time jobs within one year of occupying the Property; and
- (3) create an additional FIFTEEN (15) full-time jobs within five years of occupying the Property.

In order to meet the full-time job requirement, the average annual salary of the newly created full-time jobs must be ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) with THIRTY-SEVEN (37) full-time jobs having a base salary over FIFTY THOUSAND DOLLARS (\$50,000.00) and THIRTY full-time jobs having a base salary over SEVENTY THOUSAND DOLLARS (\$70,000.00).

D. LKZ shall comply with all applicable laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM LOAN

A. **Economic Development Program Loan.** CITY has agreed to provide LKZ with an Economic Development Program Loan in an amount of TWENTY DOLLARS (\$20.00) per square foot leased at the Property not to exceed TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) (the "Loan Funds"). City and LKZ agree that the Loan Funds shall be secured solely by a lien on the Property that is the subject of LKZ's economic development project. Such lien shall not include any rights of foreclosure and shall be subordinate to purchase money liens and secured loans.

B. **Loan Disbursement.** Promptly following the location of Business Activities at the Property, the City will make the Loan Funds available to LKZ in the total amount of TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00), to be paid to LKZ in ___ disbursement(s) of _____, according to the following schedule and subject to future appropriations by the City Council of CITY:

C. **Repayment of Loan Funds.** LKZ shall be obligated to pay City the total amount of TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) on the fifth (5th) year anniversary of this Agreement (the "Due Date"). Such payment shall be paid in full by LKZ to City no later than sixty (60) days following the Due Date.

D. **Payment of Principal and Accrued Interest.** In addition to the principal amount of the Loan Funds, LKZ shall also pay accrued interest on the Loan Funds in the amount of the applicable federal rate (the "AFR") published by the Internal Revenue Service. The AFR shall be determined as of the date of the disbursement.

E. **Sufficient Amounts.** Each payment made pursuant to SECTION 3(C) and 3(D) above shall be sufficient to pay the total amount of principal and Accrued Interest on the Economic Development Program Loan becoming due and payable upon that date.

F. **Unconditional Obligation to Repay the Program Loan.** The obligations of LKZ to make the loan payment and interest payment required by SECTIONS 3(C) and 3(D) above 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, LKZ shall pay all payments required to be made on account of this Agreement (which payments shall be net of any other obligations of LKZ) as prescribed in SECTION 3(C) and 3(D) free of any deductions and without abatement, diminution or set-off.

G. **Prepayment.** Should LKZ 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 or interest for such payment shall be applied.

H. **Loan Forgiveness.** Due to the economic nature of the City's loan, LKZ shall have a right to reduce or eliminate the amount of the repayment of the loan in accordance with the following:

- 1) On the first (1st) anniversary of this Agreement, LKZ shall have created not less than 35 full-time jobs with an average annual salary of \$100,000.00 or the full amount of the Loan Funds shall be due on the Due Date.
- 2) So long as LKZ meets the requirements of Section 3(H)(1) above, then no later than the fifth (5th) year anniversary of this Agreement, LKZ shall certify to City that it has created no less than FIFTY (50) full-time jobs meeting the criteria of Section 2(C) above, then 100% of the Loan and coinciding interest shall be forgiven.
- 3) On the fifth (5th) anniversary of this Agreement, should LKZ meet the requirements of Section 3(H)(1) above, but fail to meet the requirements of Section 3(H)(2) above, then for every Full-Time Job below fifty (50), LKZ shall repay the City the Loan Funds in a percentage equal to the percentage of Full-Time Jobs it has failed to create. For instance, should LKZ, on the fifth anniversary of this Agreement, only have created 40 of 50 required full time jobs, then LKZ shall repay the City twenty-percent (20%) of the Loan Funds and associated interest (40 representing 80% of 50).
- 4) Any amount not reduced through this Section 3(H) shall be due and payable to City in accordance with Sections 3(C) and 3(D).
- 5) For every qualifying job in which LKZ has received loan forgiveness by the City, LKZ must retain such job for the Term of this Agreement or be subject to the repayment of the forgiven amount per job. For instance, should LKZ certify to City on the fifth anniversary that it has created 50 qualifying Full-Time Jobs, and the City forgives the full repayment amount of \$280,000.00, then LKZ must retain those 50 Full-Time Jobs for a period of five (5) years following the fifth anniversary or must repay the City an amount equal to \$5,600.00 for every Full-Time Job that it received credit for creating on the fifth anniversary which it does not retain annually. Therefore, every year following the fifth anniversary for a period of five (5) years, LKZ shall certify to the City the number of Full-Time Jobs which correlate to the number of Full-Time Jobs certified on the fifth anniversary that it has retained since the fifth anniversary.

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

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

1. City, by written notice to LKZ, shall declare the unpaid balance of the Economic Development Program Loan payable under SECTION 3(C) and 3(D) of this Agreement, and due immediately; and
2. 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 LKZ under this Agreement.

C. Attorneys' Fees and Expenses. In the event LKZ should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of LKZ herein contained, LKZ 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 execution and shall terminate on the TENTH (10th) anniversary of the Effective Date (the "Term").

SECTION 6. DEPARTMENT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, the City will make an Economic Development Loan in an amount not to exceed TWO HUNDRED EIGHTY THOUSAND DOLLARS (\$280,000.00) as described in Section 3(A) to LKZ in the amounts and at the times specified by Section 3(A) of this Agreement, and subject to the conditions and limitations set forth in this Agreement.

B. CITY will not be liable to LKZ or other entity for any costs incurred by LKZ.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. LKZ shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. LKZ shall retain such records, and any supporting documentation, for the greater of: (1) Four [4] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. LKZ 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 LKZ pertaining to the Economic Development Loan (the "Records"). The City's access to LKZ's books and records will be limited to information needed to verify that LKZ is and has been complying with the terms of this Agreement and to verify advances made by the City and re-payments made by LKZ 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. LKZ shall not be required to disclose to the City any information that by law LKZ 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 LKZ to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of LKZ. The rights to access the Records shall continue as long as the Records are retained by LKZ. 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 LKZ 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. LKZ 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 LKZ, including but not limited to the ownership and capital structure of LKZ.

SECTION 8. MONITORING

A. City reserves the right to confirm LKZ's compliance with the terms and conditions of this Agreement. City will provide LKZ with a written report of the monitor's findings. If the monitoring report notes deficiencies in LKZ's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by LKZ and a reasonable amount of time in which to attain compliance. Failure by LKZ 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. LKZ shall provide to City a statement with reasonable supporting information evidencing the creation of and filling of the number of jobs required by this Agreement.

SECTION 9. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

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

If intended for LKZ, to:

SECTION 10. CONFLICT OF INTEREST

A. LKZ shall use reasonable business efforts to ensure that no employee, officer, or individual agent of LKZ 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. LKZ shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. LKZ 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 LKZ under this Agreement shall involve, and no portion of the funds received by LKZ 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. LKZ 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 LKZ or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. LKZ 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. LKZ shall give City immediate notice in writing of any action, including any proceeding before an administrative agency, filed against LKZ arising out the performance of any subcontract hereunder. Except as otherwise directed by City, LKZ shall furnish immediately to City copies of all pertinent papers received by LKZ with respect to such action or claim. LKZ shall notify the City immediately of any legal action filed against the LKZ or any subcontractors, or of any proceeding filed under the federal bankruptcy code. LKZ 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 LKZ is not required to notify City of claim litigation which arise out of LKZ's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. City and LKZ 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 LKZ.

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 LKZ fails to comply with the terms of any agreement with the City, including those in Attachment I, Attachment II and this Agreement, City shall provide LKZ with written notification as to the nature of the non-compliance. City shall grant LKZ 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 LKZ fail to cure any default within this period of time, the City may, upon written Notice of Suspension to LKZ, suspend this Agreement in whole or in part and withhold further payments to LKZ or accelerate the due date of the repayment of the loan, and prohibit LKZ 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 LKZ'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 LKZ shall: (1) immediately upon receipt of Notice of Suspension advise City of LKZ'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 with or written waiver by City 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, City shall not be liable to LKZ or to LKZ's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 16. TERMINATION

A. City shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 5 of this Agreement whenever City determines that LKZ has failed to comply with any term of any Agreement with the City. City will provide LKZ with written notification as to the nature of the non-compliance, and grant LKZ 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 LKZ fail to cure any default within this period of time, the City may as its sole and exclusive remedies, upon issuance to LKZ of a written Notice of Termination, terminate this Agreement in whole or in part and either: (1) withhold further payments to LKZ; 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. In the case of default for causes beyond LKZ'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 LKZ shall: (1) immediately upon receipt of Notice of Termination advise City of LKZ'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 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 LKZ) 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 LKZ 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).

D. 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, LKZ 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 LKZ of any agreement with City.

SECTION 17. SPECIAL CONDITIONS AND TERMS

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

SECTION 18. SUBCONTRACTS

A. LKZ 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 LKZ.

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

C. LKZ 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 funded in whole or in part under this Agreement.

SECTION 19. DEBARMENT

By signing this Agreement, LKZ 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 LKZ 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. 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 LKZ from liability under this Agreement and shall not release LKZ from performing any of the terms, covenants and conditions herein. LKZ 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 LKZ 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 LKZ. The burden of proof for the need for such relief shall rest upon the LKZ. To obtain release based upon *force majeure*, the LKZ must file a written request with the City. Should City grant temporary relief to LKZ, it shall in no case relieve LKZ from any repayment obligations as specified in Section 3(C) and 3(D) of this Agreement.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of _____, 201_:

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2017-12-14_____, dated December 14, 2017, and LKZ Management LLC pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

LKZ MANAGEMENT LLC
a _____

Sheryl L. Sculley
CITY MANAGER

Name:
Title:

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

DRAFT