

AN ORDINANCE 2017-12-14-1021

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM LOAN AGREEMENT WITH UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA) IN AN AMOUNT NOT TO EXCEED \$4,000,000.00 FOR THE CREATION OF AT LEAST 1,000 NEW FULL TIME JOBS AND ACCESS TO PARKING FOR THE GENERAL PUBLIC.

* * * * *

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, United Services Automobile Association (hereinafter referred to as “USAA”) is involved in an economic development project that will be located within the city limits of San Antonio that will consist of the expansion or construction of a parking garage for the purpose of enlarging its employee presence in downtown San Antonio in two downtown locations: (1) One Riverwalk Place, 700 N. St. Mary’s, San Antonio, TX 78205, which currently is comprised of 262,935 sq. ft. and 375 parking spaces; and (2) Bank of America Financial Services Center, 300 Convent, San Antonio, TX 78205, which is currently comprised of 542,835 sq. ft. and includes an 870 space parking garage, both of which are owned by USAA (together 700 N. St. Mary’s and 300 Convent shall be referred to as the “Downtown Properties”), which will help USAA to realize its projection of creating, whether via new hires or relocations of jobs from outside San Antonio, at least 1,000 net new full-time jobs in San Antonio (the “Project”); and

WHEREAS, USAA 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 Loan Agreement with USAA provided the terms and conditions of any 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 by City and USAA.

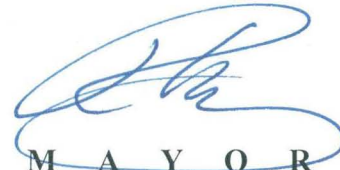
SECTION 2. Funding in the amount of \$2,000,000.00 for this ordinance is available as part of the Fiscal Year 2017 Carry Forward Budget in Fund 29059000, Cost Center 1604010001 General Ledger 5201040. Additional funding of 2,000,000.00 is available as part of the Fiscal Year 2018 Budget in Fund 53001000, Cost Center 1910160001 General Ledger 5201040.

SECTION 3. If approved by City Council, payment not to exceed the budgeted amount is authorized to be paid to USAA and should be encumbered upon the issuance of a purchase order.

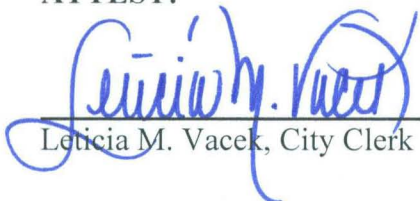
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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:	41A (in consent vote: 41A, 41B)						
Date:	12/14/2017						
Time:	09:24:00 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the negotiation and execution of a Chapter 380 Economic Development Program Loan in the amount of \$4 million to United Services Automobile Association for the creation of 1,000 net new full-time jobs to San Antonio and access to parking for the general public.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		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/azj
12/14/17
Item No. 41A

EXHIBIT A

DRAFT

STATE OF TEXAS

§

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 CGL RELP SA JV, LLC (hereinafter referred to as "Owner"), 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, United Services Automobile Association (hereinafter referred to as "USAA") is involved in an economic development project that will be located within the city limits of the City of San Antonio that will consist of the expansion or construction of a parking garage for the purpose of enlarging its employee presence in downtown San Antonio in two downtown locations: 1) One Riverwalk Place, 700 N. St. Mary's, San Antonio, TX 78205, which currently is comprised of 262,935 sq. ft. and 375 parking spaces; and 2) Bank of America Financial Services Center, 300 Convent, San Antonio, TX 78205, which is currently comprised of 542,835 sq. ft. and includes an 870 space parking garage, both of which are owned by Owner (together 700 N. St. Mary's and 300 Convent shall be referred to as the "Downtown Properties"), which will help USAA realize its projection to create, whether via new hires or relocations of jobs from outside San Antonio, 1,500 net new full-time jobs in San Antonio (the "Project"); and

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

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

WHEREAS, the City Council has authorized the City Manager or her designee to enter into this Agreement with Owner 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 parking enterprise fund and Economic Development Incentive Fund (EDIF) Program and is providing the funds to be used to defray costs of the

Project. This economic incentive is being offered to Owner to promote investment and job creation by USAA.

SECTION 2. PROJECT REQUIREMENTS

A. Owner shall expand the parking garage adjacent to One River Walk Place, 700 N. St. Mary's, San Antonio, TX 78205 which currently is comprised of 262,935 sq. ft. and 375 parking spaces, or construct a new parking garage downtown for the benefit of the Downtown Buildings that would accommodate ___ parking spaces and the location of up to approximately 2,000 full-time jobs.

B. Owner shall complete the expansion or construction of the parking garage before _____, 20__ and in no case later than _____, 20__.

C. Upon completion of the expansion of the parking garage at One Riverwalk Place or the completion of other newly-constructed parking facilities to service the Downtown Properties, and in consideration of the loan provided for in this Agreement, Owner shall:

- (1) make the parking supply associated with the Downtown Properties accessible to the general public Mondays through Thursdays after 7 p.m., on Fridays after 6 p.m. and all days on weekends and holidays. Although Owner may charge for usage of the parking, Owner shall not charge more than the parking rates adopted by the City for the City's St. Mary's Parking Garage; and
- (2) make ten-percent (10%) of the parking supply associated with the Downtown Properties available to San Antonio Virtual Valet or other City-sponsored valet service for weeknights and weekends.

It is understood that the parking spaces made available under this Section 2(C) are unreserved spaces, do not require any spaces to be marked "reserved," and does not permit public parking in any spaces that are marked reserved.

D. Owner 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 USAA with an Economic Development Program Loan in an amount of FOUR MILLION DOLLARS AND 0 CENTS (\$4,000,000.00) (the "Loan Funds").

B. **Loan Disbursement.** Promptly following the issuance of a building permit for the expansion of the One Riverwalk Place parking garage or construction of new parking facilities to serve the Downtown Properties, the City will make the Loan Funds available to Owner in the total amount of FOUR MILLION DOLLARS AND 0 CENTS (\$4,000,000.00), to be paid to Owner in two equal disbursements of TWO MILLION DOLLARS AND 0 CENTS (\$2,000,000.00), according to the following schedule and subject to future appropriations by the City Council of CITY:

- 1) First disbursement in the amount of TWO MILLION DOLLARS AND 0 CENTS (\$2,000,000.00) shall be made following the issuance of a building permit for the expansion of the One Riverwalk Place parking garage or for the construction of new parking facilities to service the Downtown Properties (the "First Disbursement"); and

- 2) Second disbursement in the amount of TWO MILLION DOLLARS AND 0 CENTS (\$2,000,000.00) shall be made twelve (12) months following the first disbursement (the "Second Disbursement").

C. **Repayment of Loan Funds.** Subject to Section 3.H., below, OWNER shall be obligated to pay City the total amount of FOUR MILLION DOLLARS AND 0 CENTS (\$4,000,000.00) on the fifth (5th) year anniversary of the issuance of a certificate of occupancy for the expanded garage at One Riverwalk Place or the newly-constructed parking facilities that are serving the Downtown Properties (the "Due Date"). Such payment shall be paid in full by OWNER 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 FOUR MILLION DOLLARS AND 0 CENTS (\$4,000,000.00), OWNER shall also pay accrued interest on the Loan Funds in an amount computed at the applicable federal rate (the "AFR") published by the Internal Revenue Service. The applicable AFR shall be that in effect as of the date of the First Disbursement and Second Disbursement, respectively.

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 Funds becoming due and payable upon that date.

F. **Unconditional Obligation to Repay the Loan Funds.** Subject to Section 3.H., below, the obligations of USAA 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, recoupment or counterclaim it might otherwise have against the City, and during the term of this Agreement OWNER shall pay all payments required to be made on account of this Agreement (which payments shall be net of any other obligations of OWNER) as prescribed in SECTION 3(C) and 3(D) free of any deductions and without abatement, diminution or set-off.

G. **Prepayment.** Should OWNER 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 development nature of the City's loan, OWNER shall have a right to reduce or eliminate the amount of the repayment of the loan in accordance with the following:

- 1) No later than the fifth (5th) year anniversary of the issuance of a certificate of occupancy for the expanded garage at One Riverwalk Place or the newly-constructed parking facilities that are serving the Downtown Properties (the "Measurement Date"), USAA shall certify to the City, in a reasonably acceptable manner, the number of Full-Time Jobs paying an annual base salary of not less than FIFTY THOUSAND DOLLARS AND 0 CENTS (\$50,000.00) created and retained from and after August 14, 2017.
- 2) For every qualifying Full-Time Job that meets the requirements of Section 3(H)(1) above, the City shall reduce the amount of loan repayment owed to City by USAA by FOUR THOUSAND DOLLARS AND 0 CENTS (\$4,000.00) up to ONE THOUSAND Full-Time Jobs (and the total Loan Funds). Such reduction shall also reduce the amount of corresponding interest associated with the reduced amount.

- 3) 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).
- 4) For every qualifying job in which Owner has received loan forgiveness by the City, USAA must retain such job for a period of five (5) years following the Measurement Date or be subject to the repayment of the forgiven amount per job. For example, should USAA certify to City on the Measurement Date that it has created 1,000 qualifying Full-Time Jobs, and the City forgives the full repayment amount of \$4,000,000.00, then USAA must retain those 1,000 Full-Time Jobs for a period of five (5) years following the Measurement Date or Owner must repay the City \$1,000.00 for every Full-Time Job that it received credit for creating on the Measurement Date that it has not so retained. Therefore, every year following the Measurement Date for a period of five (5) years, USAA shall certify to the City the number of Full-Time Jobs that correlate to the number of Full-Time Jobs certified on the Measurement Date that it has retained since the Measurement Date.

SECTION 4. LOAN DEFAULT AND CITY'S REMEDIES

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

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

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

1. City, by written notice to Owner, shall declare the unpaid balance of the Economic Development Program Loan Funds 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 Owner or USAA under this Agreement.

C. **Attorneys' Fees and Expenses.** In the event USAA or Owner should materially 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 USAA or Owner herein contained, USAA 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 fifth (5th) anniversary of the Measurement Date.

SECTION 6. DEPARTMENT OBLIGATIONS

A. In consideration of satisfactory performance of activities stated in Section 2 of this Agreement, the City will make an Economic Development Loan in an amount not to exceed FOUR MILLION DOLLARS AND 0 CENTS (\$4,000,000.00), as described in Section 3(A), to Owner 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 USAA, Owner or other entity for any costs incurred by USAA or Owner.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. Owner shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Owner 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. USAA and Owner 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 the records maintained by USAA or Owner pertaining to the Economic Development Loan (the "Records"). The City's access to USAA's or Owner's books and records will be limited to information needed to verify that USAA and Owner are and have been complying with the terms of this Agreement, and to verify advances made by the City and re-payments made by USAA or Owner (if any is required), and to verify that the Loan Funds are being 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. USAA or Owner shall not be required to disclose to the City any information that by law USAA or Owner 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 USAA or Owner to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of USAA or Owner. The rights to access the Records shall continue as long as the Records are retained by USAA or Owner. 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 USAA and Owner 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. USAA agrees to maintain the Records in an accessible location and, only to the extent required by law and after reasonable written notice to USAA and Owner of no less than 15 business days, 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 USAA or Owner, including but not limited to the ownership and capital structure of USAA or Owner.

SECTION 8. MONITORING

A. City reserves the right to confirm USAA's and Owner's compliance with the terms and conditions of this Agreement. City will provide USAA and Owner with a written report of the monitor's findings. If the monitoring report notes deficiencies in USAA's and Owner's performance under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by USAA or Owner and a reasonable amount of time in which to attain compliance. Failure by USAA or Owner 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. USAA or Owner 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
Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for USAA, to:

[Add Owner]

SECTION 10. CONFLICT OF INTEREST

A. USAA and owner shall use reasonable business efforts to ensure that no employee, officer, or individual agent of USAA or Owner 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. USAA and Owner 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. USAA and Owner 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 USAA or Owner under this Agreement shall involve, and no portion of the funds received by Owner 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. Owner 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 it 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 USAA or Owner or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Owner 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. Owner shall give City immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Owner arising out the performance of any subcontract hereunder. Except as otherwise directed by City, Owner shall furnish immediately to City copies of all pertinent

papers received by Owner with respect to such action or claim. USAA shall notify the City immediately of any legal action filed against Owner or any subcontractors, or of any proceeding filed under the federal bankruptcy code. Owner 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 Owner is not required to notify City of claim litigation which arise out of Owner'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 USAA and Owner 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 USAA.

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 USAA or Owner fails to comply with the terms of any agreement with the City, City shall provide USAA or Owner, as appropriate, with written notification as to the nature of the non-compliance. City shall grant USAA or Owner, as appropriate, 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 USAA or Owner fail to cure any default within this period of time, the City may, upon written Notice of Suspension to USAA and Owner, suspend this Agreement in whole or in part and withhold further payments to Owner or accelerate the due date of the repayment of the loan, and prohibit Owner 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 USAA's or Owner'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 USAA shall: (1) immediately upon receipt of Notice of Suspension advise City of USAA's or Owner'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 USAA or Owner or any of their 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 USAA has failed to comply with any term of any Agreement with the City. City will provide USAA and Owner with written notification as to the nature of the non-compliance, and grant USAA and Owner 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 USAA and Owner fail to cure any default within this period of time, the City may as its sole and exclusive remedies, upon issuance to USAA and Owner of a written Notice of Termination, terminate this Agreement in whole or in part and either: (1) withhold further payments to USAA; 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 USAA's and Owner'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 USAA or Owner shall: (1) immediately upon receipt of Notice of Termination advise City of USAA's or Owner's, as appropriate, 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 Owner) 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 Owner 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, USAA 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 USAA or Owner of any agreement with City.

SECTION 17. SPECIAL CONDITIONS AND TERMS

USAA and Owner understands and agrees that if Owner 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 Owner is required to refund money, pursuant to 80(R) HB 1196, Owner 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. Owner 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 owner.

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

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

DRAFT

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 USAA Real Estate Company pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

CGI RELP SA JV, LLC

a _____

Sheryl L. Sculley
CITY MANAGER

Name:
Title:

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY