

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED  
ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

**AN ORDINANCE**

**AUTHORIZING AN ENCROACHMENT AGREEMENT WITH RIVER BANK  
LTD. FOR A BUILDING OVERHANG ON THE SAN ANTONIO RIVER WALK  
IN CITY COUNCIL DISTRICT 1.**

\* \* \* \* \*

**WHEREAS**, the licensed improvement or facility will not be located on, extend onto, or intrude on (A) the roadway; or (B) a part of the sidewalk needed for pedestrian use;

**WHEREAS**, the licensed improvement or facility will not create a hazardous condition or obstruction of vehicular or pedestrian travel on the municipal street; and

**WHEREAS**, the design and location of licensed the improvement or facility includes all reasonable planning to minimize potential injury or interference to the public in the use of the municipal street.

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

**SECTION 1.** The City Manager or her designee is authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The City Manager and her designee should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 29093000, WBS Element OR-00001-01-01-01-01 and General Ledger 4407711.

**SECTION 3.** 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 4.** This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

**PASSED AND APPROVED** this \_\_\_**th** day of \_\_\_\_, **2013**.

**M A Y O R**  
Julián Castro

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Leticia M. Vacek, City Clerk

\_\_\_\_\_  
Robert F. Greenblum, City Attorney

## ATTACHMENT I

**Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.**

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State of Texas        }  
                                  }  
County of Bexar     }

### **ENCROACHMENT AGREEMENT**

THIS AGREEMENT is issued as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by City of San Antonio, ("City") to River Bank Limited ("River Bank, Ltd.") and is authorized by ordinance number \_\_\_\_\_.

#### BACKGROUND:

City controls and/or owns the area generally known as the River Walk.

River Bank, Ltd. will be building a roof overhang extending into the public right of way on the River Walk.

By this agreement, the parties set out how their respective interests will be regulated.

#### TERMS AND CONDITIONS:

##### 1. **Purpose and Scope of Agreement**

River Bank, Ltd. may use the hereinafter described property for the following purpose, subject to the conditions and stipulations herein set forth:

To build and maintain a roof overhang protruding into the right- of-way, as graphically depicted as Encroachment Area on **Exhibit A** and shown on **Exhibit B**, for so long as the roof overhang remains standing and in good condition.

##### 2. **Encroachment Location(s)**

A portion of the public right-of-way next to the building built upon the tract described and graphically depicted on **Exhibit C** ("Encroachment Location").

##### 3. **Risk of Entry**

City makes no warranty whatsoever as to physical conditions which exist now, or may exist hereafter, at said Encroachment Location, and River Bank, Ltd. accepts said Encroachment Location "AS IS" and agrees to enter thereupon at River Bank, Ltd.'s own risk.

#### 4. **River Bank, Ltd.'s Duties**

River Bank, Ltd. agrees, without qualification or limitation:

- (a) to make no modifications to City's Encroachment Location(s) without first (i) notifying City of the necessity therefor and (ii) coordinating with City to avoid or minimize disruption of service to City customers and damage to City's facilities or Right of Way. Any such modifications are at River Bank, Ltd.'s expense.
- (b) to perform construction, demolition, repair, modifications, additions and any other activities in compliance with all applicable laws and regulations and in a manner that does not interfere with the operations of City;
- (c) to assume all risks of, and all liability for, loss or damage to property or facilities installed by it and any other financial loss sustained by it, except for loss intentionally caused by City;
- (d) to neither cause nor permit use of the rights herein granted by any other person, except River Bank, Ltd.'s lawful successors;
- (e) that City retains all of its rights with respect to the Encroachment Location. Specifically, City retains the right to access, repair, maintain, or augment its right of way at the Encroachment Location. Any damage to River Bank, Ltd.'s facilities that is both reasonable and necessary to City's exercise of its rights is the sole responsibility of River Bank, Ltd. subject to City's duties as prescribed by this agreement; and
- (f) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF CUSTOMERS OR OF ANY OTHER THIRD PARTIES, OCCASIONED BY ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

## 5. City's Duties

City agrees, without qualification or limitation, to make no modifications to River Bank, Ltd.'s roof overhang at the Encroachment Location without first notifying River Bank, Ltd. of the modifications.

## 6. Incompatible Facilities

The rights of River Bank, Ltd. under this Agreement are made subordinate to the right of the City to use the Affected Right-Of-Way for a public purpose. It is understood and agreed that should the City deem it in the public interest to use the Encroachment Location, or any portion thereof, for a public purpose that conflicts with rights granted under this Agreement, then, and in that event, the City acting through the Director of Downtown Operations may cancel this Agreement on 30 days prior written notice. The River Bank, Ltd. shall have the same right of cancellation upon giving the City 30 days written notice of the River Bank, Ltd.'s intention to cancel. Upon the termination or cancellation by the City or the River Bank, Ltd. this Agreement shall become null and void, and the River Bank, Ltd., or anyone claiming any rights under this instrument, shall remove any improvements and encroachments from the Affected Right-Of-Way at River Bank, Ltd.'s expense. All work shall be done at River Bank, Ltd.'s sole cost and to the satisfaction of the City. The determination by the Director of Downtown Operations or his designee as to the public necessity of the use of the Property shall be final and binding upon the parties.

## 7. Cost

River Bank, Ltd. shall pay \$500 to the City for the permissions granted under this Agreement. This Agreement is entered into between City and River Bank, Ltd. with the understanding that River Bank, Ltd.'s use of the permission herein granted shall not result in any cost to City. No claims for payment or performance shall be made of City by River Bank, Ltd. and any reasonable and necessary expenses incurred by City related to River Bank, Ltd.'s exercise of the rights herein contained shall be promptly reimbursed to City by River Bank, Ltd.,. In enforcing this Agreement, the prevailing party shall be entitled to collect reasonable attorney's fees, court costs, and interest on the principal sum at the legal rate of interest.

## 8. Notices

Except as expressly otherwise provided, any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, or by commercial overnight delivery service addressed to the recipient as set forth below or to such other address or individual, as may be designated by notice given by the party to the other.

**City:**  
**City of San Antonio**  
**Attention: Director of Downtown Operation**  
**P.O. Box 839966**  
**San Antonio, TX 78283-3966**

**River Bank, Ltd.:**  
**River Bank Limited**  
**816 Camaron, No. 100**  
**San Antonio, TX 78212**

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and if given by registered or certified mail, return receipt requested, or by commercial overnight delivery service on the date of receipt thereof.

9. **Successors and Assigns**

The permission hereby given shall be binding upon the heirs, administrators, executors and assigns of both parties.

10. **Prohibited Interests in Contracts**

10.01. The Charter of the city of San Antonio and its Ethics Code prohibit a city officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the city or any city agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the city or in the sale to the city of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a city officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a city contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

10.02. River Bank, Ltd. warrants and certifies as follows:

- (i) River Bank, Ltd. and its officers, employees and agents are neither officers nor employees of the city.

(ii) River Bank, Ltd. has tendered to the city a Discretionary Contracts Disclosure Statement in compliance with the city's Ethics Code if applicable.

10.03. River Bank, Ltd. acknowledges that City's reliance on the above warranties and certifications is reasonable.

11. **Administrative Agreements**

The Director of Downtown Operations ("DTOP") and the Assistant Director of DTOP may, without further council action, agree to, sign, and deliver on behalf of the City, all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement.

12. **Public Information**

City acknowledges that this instrument is 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 waives an otherwise applicable exception to disclosure.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above set forth.

**City of San Antonio**, a Texas municipal corporation

**River Bank, Limited**, a Texas limited partnership, by and through its sole general partner; **River Bank Management, LLC**, a Texas limited liability company, by and through its sole manager.

By: \_\_\_\_\_

By: \_\_\_\_\_

Jim Mery, Director of Downtown Operations

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
City Attorney's Office

**ACKNOWLEDGMENT**

THE STATE OF TEXAS  
COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument as \_\_\_\_\_ of \_\_\_\_\_ and acknowledged to me that he executed the same for purposes and considerations therein expressed in the capacity stated, and on behalf of that entity.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires \_\_\_\_\_

THE STATE OF TEXAS  
COUNTY OF BEXAR

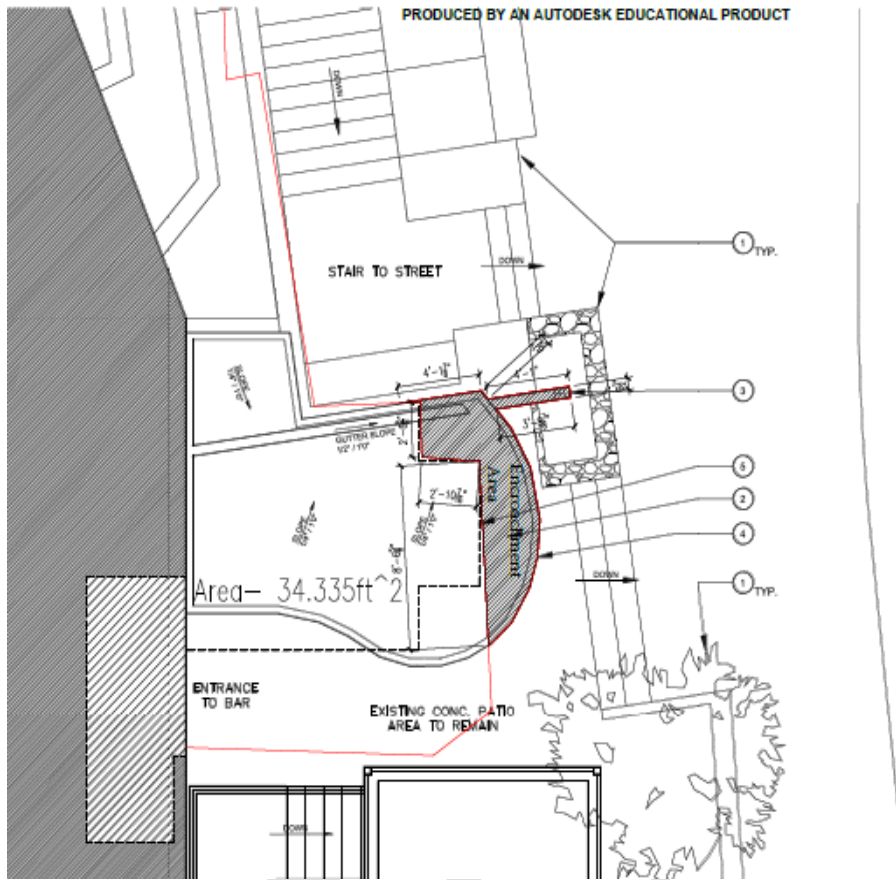
BEFORE ME, the undersigned authority, on this day personally appeared Jim Mery, known to me to be the person whose name is subscribed to the foregoing instrument as Director of Downtown Operations of the City of San Antonio, Texas, a Texas municipal corporation, and acknowledged to me that he executed the same for purposes and considerations therein expressed on behalf of that entity.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2013

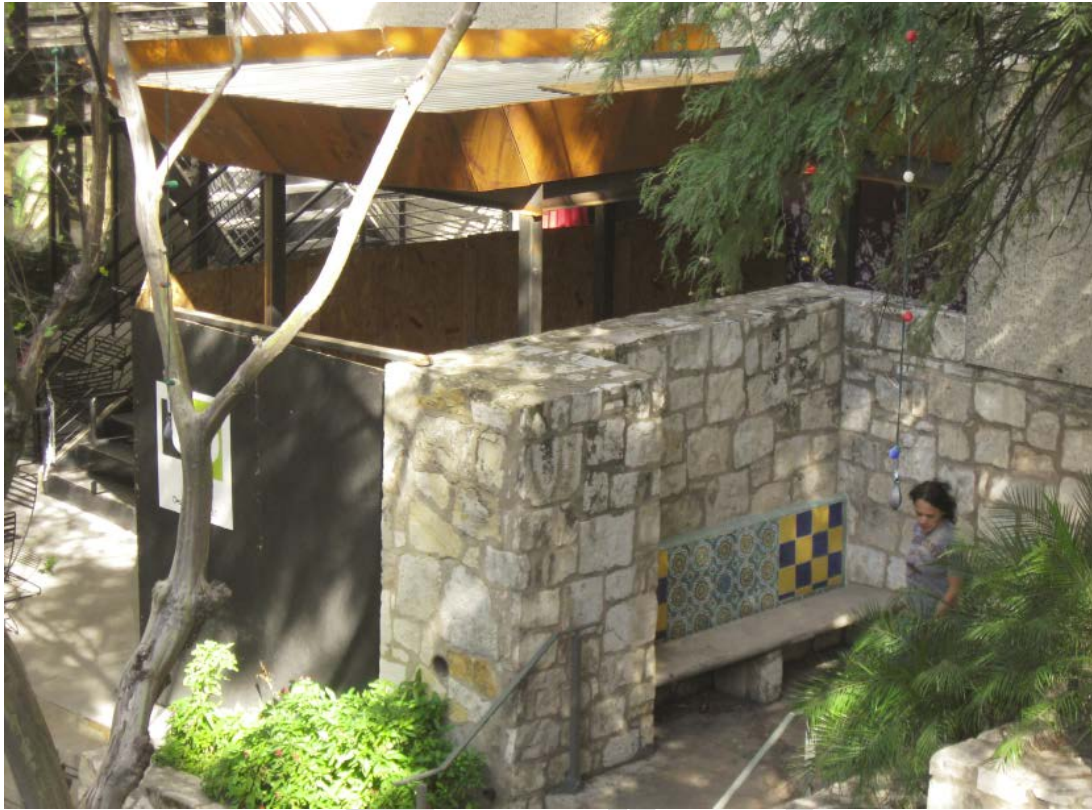
\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires \_\_\_\_\_



EXHIBIT A



**EXHIBIT B**





DRAFT





Exhibit C

**VICKREY & ASSOCIATES, Inc.**  
CONSULTING ENGINEERS

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**METES AND BOUNDS DESCRIPTION  
FOR A 0.0027 ACRE TRACT OUT OF CITY OF SAN ANTONIO RIVER WALK PROPERTY  
AND THE REMAINING PORTION OF LOT 20, BLOCK 23, NEW CITY BLOCK 416  
CITY OF SAN ANTONIO BEXAR COUNTY TEXAS**

Being a 0.0027 acre (117 square feet) tract of land out of the City of San Antonio River Walk Property and the remaining portion of Lot 20, Block 23, New City Block 416, as shown on the subdivision plat for the Losoya Subdivision, recorded in Volume 9300, Page 172, Deed and Plat Records of Bexar County Texas, said 0.0027 acre tract being more particularly described as follows, with all bearings being referenced to North American Datum of 1983, Texas State Plane Coordinate System, South-Central Zone (4204):

**COMMENCING** at a found mag nail at a common corner of said Lot 20, City of San Antonio River Walk Property, and Tract 1-B as conveyed from San Antonio 2000, LTD to H. E. San Antonio I, LLC by Special Warranty Deed recorded in Volume 12911, Page 998, Official Public Records of Real Property of Bexar County Texas, said corner being North 03°12'11" West (North 03°04'00" West-Record), a distance of 18.90 feet from the southwest corner of said Lot 20 and Tract 1-B, thence, South 86°47'49" West (South 86°56'00" West-Record), along the common line of said Lot 20, City of San Antonio River Walk Property, and Tract 1-B, a distance of 1.60 feet to a common corner of said Lot 20, City of San Antonio River Walk Property, and Tract 1-B, thence, North 08°06'36" West (North 07°58'25" West-Record), along the common line of said Lot 20, City of San Antonio River Walk Property, and Tract 1-B, a distance of 15.73 feet to a point at edge of rock wall on said common line, for the **POINT OF BEGINNING** and southeast corner of the herein described tract;

Thence; South 87°14'14" West, departing said common line, into and across said City of San Antonio River Walk Property and along said rock wall, a distance of 0.25 feet to a corner of a wood sided building, for the southwest corner of the herein described tract;

Thence; North 05°46'07" West, along said edge of wood sided building and rock wall, a distance of 3.89 feet to corner of rock wall, same point also being an interior corner of said wood sided building, for a corner of the herein described tract;

Thence; North 88°32'03" West, along the common line of said edge of rock wall and wood sided building, across said City of San Antonio River Walk Property, into and across said remaining portion of Lot 20, a distance of 5.25 feet to a corner of said wood sided building, for a corner of the herein described tract;

Thence; into and across said remaining portion of Lot 20, the following four (4) calls:

North 02°36'01" West, along the edge of said existing wood sided building, a distance of 2.55 feet to a point at a rock sided building corner, for a corner of the herein described tract,



South 86°53'13" West, along said rock sided building, a distance of 2.87 feet to a building corner, for a corner of the herein described tract,

North 03°06'47" West, partially along said rock sided building, a distance of 11.56 feet to a set screw in concrete, for the northwest corner of the herein described tract,

North 54°09'14" East, a distance of 3.58 feet to a set screw in concrete, for a corner of the herein described tract, and

North 88°19'25" East, a distance of 4.77 feet to a set screw on the common line of said Tract 1-B and remaining portion of Lot 20, for the northeast corner of the herein described tract;

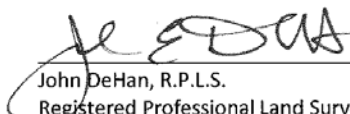
Thence; along the common line of said Tract 1-B and remaining portion of Lot 20, the following two (2) calls:

South 03°12'11" East, a distance of 12.20 feet to a point inside of the building, for a corner of the herein described tract, and

South 08°06'36" East, a distance of 8.07 feet returning to the **POINT OF BEGINNING** and containing 0.0027 of an acre (117 square feet) of land, more or less.

V&A Job No. 1535-026  
May 3, 2011

Certified this 3<sup>rd</sup> day of May, 2011

  
\_\_\_\_\_  
John DeHan, R.P.L.S.  
Registered Professional Land Surveyor  
Texas Registration No. 6042  
Vickrey & Associates, Inc.



