

AN ORDINANCE 2012-12-13-1005

**AUTHORIZING AN ECONOMIC DEVELOPMENT PROGRAM LOAN
IN THE AMOUNT OF \$400,000.00 TO SOUTH FRIO DEVELOPMENT,
L.L.C. FOR THE PEANUT FACTORY LOFT PROJECT IN CITY
COUNCIL DISTRICT 5.**

* * * * *

WHEREAS, South Frio Development, L.L.C. (“Developer”) is undertaking an economic development project that will be comprised of a \$10 million adaptive reuse housing development to include 98 market rate housing units and 500 square feet of retail space located on 3 parcels of land on Frio Street and Colima Street in City Council District 5(the “Project”); and

WHEREAS, the Project is located within the Westside Tax Increment Reinvestment Zone and in accordance with the Center City Housing Incentive Policy (CCHIP) which was approved by City Council on June 21, 2012, qualifies for a 15 year real property tax reimbursement grant and City and SAWS fee waivers; and

WHEREAS, in addition to CCHIP incentives, the Developer is seeking a Chapter 380 Economic Development Program Loan in the amount of \$400,000.00 to defer construction costs associated with undertaking and completing the Project; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the “City”) is authorized to establish and provide for the administration of one or more programs, including programs for making grants and loans of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the “Program”) for the purpose of making grants and loans available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, the City finds that the goals of Chapter 380 will be met by assisting the Developer in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE:**

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

SECTION 1. Subject to the Project receiving the required zoning, The City Council approves the terms and conditions of an Economic Development Program Loan Agreement with South Frio Development, L.L.C. in an amount not to exceed \$400,000.00 for the Project.

SECTION 2. The City Manager or her designee is authorized to execute an Economic Development Grant Agreement in accordance with the terms and conditions of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution.

SECTION 3. Funding in the amount of \$400,000.00 for this Ordinance is available in Fund 11001000, Cost Center 7001990059, General Ledger 5201040, as part of the Fiscal Year 2013 Budget.

SECTION 4. Payment not to exceed the budgeted amount is authorized to South Frio Development, LLC and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

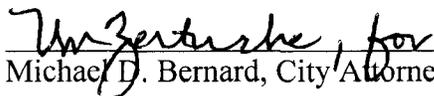
PASSED AND APPROVED this 13th day of December, 2012.


M A Y O R
Julián Castro

ATTEST:


Leticia M. Vadek, City Clerk

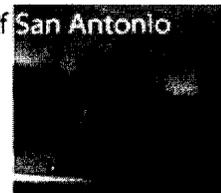
APPROVED AS TO FORM:


Michael D. Bernard, City Attorney



Request for
COUNCIL
 ACTION

City of San Antonio



Agenda Voting Results - 23B

Name:	23A, 23B						
Date:	12/13/2012						
Time:	03:14:32 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a Chapter 380 Economic Development Program Loan in the amount of \$400,000.00 to South Frio Development, LLC.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x			x	
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

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 this "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 SOUTH FRIO DEVELOPMENT LLC (hereinafter referred to as "DEVELOPER") and who together may be referred to as the "Parties."

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, CITY is authorized to loan or grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

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

WHEREAS, DEVELOPER is engaged in a redevelopment project that will be located within the city limits of San Antonio that will consist of a mixed-use development project consisting of 98 market rate housing units to be located at the site of the former Birdsong Peanut Factory located at 1025 S. Frio and an adjacent lot located at 325 Colima St. in City Council District 5; and

WHEREAS, as part of the redevelopment project, DEVELOPER is leasing a parcel of land purchased from the City by South Frio Parking LLC (the "Lessor"), commonly known as 905 S. Frio, and intends to make improvements to the property and convert it into a surface parking lot for the redevelopment project (the "Project"); and

WHEREAS, DEVELOPER is seeking an economic development loan from the CITY for the purpose of defraying costs associated with undertaking the Project; and

WHEREAS, the CITY has identified Inner City Incentive Funds to be made available to DEVELOPER for use in completing the Project; and

WHEREAS, the City Council of CITY has authorized the City Manager or her designee to enter into this Agreement with DEVELOPER in accordance with City Ordinance No.2012-12-13-____, passed and approved on December 13, 2012 to loan funds to support the Project; **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

DEVELOPER shall undertake the development of a mixed-use development structure consisting of 98 housing. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. The CITY is supporting the Project through this

Economic Development Program Loan to provide funds to be used to defer costs associated with the Project.

SECTION 2. PROJECT REQUIREMENTS

A. DEVELOPER shall secure the required zoning for the Project prior to the commencement of construction.

B. DEVELOPER shall invest a minimum of TEN MILLION DOLLARS AND NO CENTS (\$10,000,000.00) in the Project. This amount is inclusive of any funding that the CITY may provide under this Agreement.

C. DEVELOPER shall commence construction on or before February 15, 2013 and complete construction no later than August 1, 2014. The commencement date shall be determined by the issuance of a building permit for the Project and the completion date shall be determined by the issuance of a Certificate of Occupancy for the Project.

D. DEVELOPER make available to CITY any reports generated during the construction and leasing phase of the project.

E. DEVELOPER, in conjunction with the Lessor, shall improve the parcel lot known as 905 S. Frio in accordance with State of Texas regulatory requirements by providing environmental remediation, fencing, lighting, landscaping and other public improvements consistent with the use of the 905 S. Frio parcel as a surface parking lot for the Project.

F. DEVELOPER 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 and Attachment I.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM LOAN

A. Economic Development Program Loan. CITY is providing DEVELOPER with an Economic Development Program Loan in a cumulative amount not to exceed FOUR HUNDRED THOUSAND DOLLARS AND 0 CENTS (\$400,000.00) (the "Loan Funds"). The purpose of the Loan Funds is to provide an economic incentive to undertake the Project, including improvements to and redevelopment of 905 S. Frio parcel as a surface parking lot. The funds made available to DEVELOPER through this Agreement are made solely from lawfully available funds that have been appropriated by CITY.

1. Disbursement. The Loan Funds shall be disbursed to DEVELOPER in lump sum following:
 - (a) execution of the Agreement by both Parties; and
 - (b) evidence that the Project has received the necessary zoning; and
 - (c) evidence that the Project has received the necessary financing to be undertaken and completed; and
 - (d) evidence of the issuance of a building permit from the City of San Antonio for the Project's location;
2. Use. The Loan Funds shall be used exclusively for the purpose of improving the parcel located at 905 S Frio. Eligible improvements include environmental remediation, paving,

fencing, lighting, landscaping, and other public improvements. Should the cost of improvements exceed the amount of Loan Funds, DEVELOPER is solely responsible for providing additional funds necessary to complete the Project. Should the cost of improvements be less than the Loan Funds, Developer shall return any unused Loan Funds to City within thirty (30) days of completing the improvements to 905 S. Frio.

3. Repayment of Loan. Should CITY disburse the Loan Funds, then DEVELOPER shall be obligated to repay CITY the Loan Funds as follows:

January 1, 2015	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2016	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2017	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2018	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2019	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2020	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2021	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2022	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2023	FORTY THOUSAND DOLLARS (\$40,000.00)
January 1, 2024	FORTY THOUSAND DOLLARS (\$40,000.00)

4. Payment of Principal and Accrued Interest. In addition to the principal amount of the Incentive Loan Funds, DEVELOPER shall also pay interest on the outstanding amount beginning on January 1, 2014 ("Accrued Interest"). Accrued Interest on the outstanding loan amount shall be at a fixed-rate of four-percent (4%). The amount of the Accrued Interest payment shall be referred to as an "Interest Payment."

5. Sufficient Amounts. Each payment made pursuant to Article III(B)(3) and (4) above shall be sufficient to pay the total amount of principal and Accrued Interest on the Incentive Loan Funds becoming due and payable upon that date.

6. Acceleration of Loan Repayment. Should DEVELOPER, in the sole discretion of City, breach a material term of this Agreement and CITY terminates the Agreement in accordance with Section 17, then the Loan Funds shall be due and payable to CITY no later than sixty (60) days following CITY's Notice of Termination to DEVELOPER.

7. Loan Forgiveness. Annually, commencing upon the date the first repayment is due in accordance with Section 3(B)(3), the City shall forgive up to FORTY THOUSAND DOLLARS AND 0 CENTS (\$40,000.00) upon the determination by City that at least THIRTY-PERCENT (30%) TO FIFTY-PERCENT (50%) of the 98 housing units are leased for Student Housing. The determination by City shall be made from information submitted by Developer of the leasing activity for the preceding year. The forgiveness will be based on a sliding scale and is as follows:

Allocated Student Housing Units	Annual Loan Forgiveness (Principal)		Payment Required for Year
49-98	40,000.00	100%	0.00
40-48	34,000.00	85%	6,000.00
35-39	30,000.00	75%	10,000.00
30-34	26,000.00	65%	14,000.00
0-29	0.00	0%	40,000.00

Any Loan Funds not forgiven shall be immediately due in accordance with Section 3(B)(3).

(a) For the purposes of this Agreement, "Student Housing" shall mean a housing unit leased by at least one individual who is currently and actively enrolled in an accredited institution of higher learning (e.g. a college, university).

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the effective date listed on the signature page of this Agreement and terminate following the receipt of final payment in accordance with Section 3(A) (3) but no later than February 1, 2024 (the "Term").

SECTION 5. DEPARTMENT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, CITY will make an Economic Development Program Loan of FOUR HUNDRED THOUSAND DOLLARS AND NO CENTS (\$400,000.00) available to DEVELOPER .

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

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

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

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

SECTION 9. MONITORING

A. CITY reserves the right to confirm DEVELOPER's compliance with the terms and conditions of this Agreement. CITY will provide DEVELOPER with a written report of the monitor's findings. If the monitoring report notes deficiencies in DEVELOPER's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by DEVELOPER and a reasonable amount of time in which to attain compliance. Failure by DEVELOPER 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. DEVELOPER shall provide to CITY a statement with reasonable supporting information evidencing the number of housing units leased to students, the cost of improvements made to 905 S. Frio, and any other related information as required by this Agreement.

SECTION 10. CONFLICT OF INTEREST

A. DEVELOPER shall use reasonable business efforts to ensure that no employee, officer, or individual agent of DEVELOPER 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. DEVELOPER 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. DEVELOPER shall, to the best of its knowledge and belief, 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 DEVELOPER under this Agreement shall involve, and no portion of the funds received by DEVELOPER 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. DEVELOPER shall, to the best of its knowledge and belief, 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 DEVELOPER or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. DEVELOPER 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. DEVELOPER shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against DEVELOPER arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, DEVELOPER shall furnish immediately to CITY copies of all pertinent papers received by DEVELOPER with respect to such action or claim. DEVELOPER shall notify the CITY immediately of any legal action, known to DEVELOPER, filed against the DEVELOPER or any subcontractor, or of any proceeding filed under the federal bankruptcy code. DEVELOPER 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 DEVELOPER is not required to notify CITY of claim litigation which arise out of DEVELOPER'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 DEVELOPER 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. ATTORNEY'S FEES

A. In the event DEVELOPER 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 DEVELOPER herein contained, DEVELOPER agrees to pay to the CITY reasonable fees of such attorneys and such other expenses so incurred by the CITY.

SECTION 15. CHANGES AND AMENDMENTS

A. Except as provided 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 DEVELOPER.

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 16. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event DEVELOPER fails to comply with the terms of any agreement with the CITY, CITY shall provide DEVELOPER with written notification as to the nature of the non-compliance. CITY shall grant DEVELOPER a sixty (60) day period from the date of the CITY's written notification delivered by certified mail, to cure any issue of non-compliance under such agreement. Should DEVELOPER fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to DEVELOPER, suspend this Agreement in whole or in part and withhold further payments to DEVELOPER and prohibit DEVELOPER 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 DEVELOPER'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 DEVELOPER shall: (1) immediately upon receipt of Notice of Suspension advise CITY of DEVELOPER'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 DEVELOPER or to DEVELOPER's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 17. 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 DEVELOPER has failed to comply with any term of any Agreement with the CITY. CITY will provide DEVELOPER with written notification as to the nature of the non-compliance, and grant DEVELOPER a sixty (60) day period from the date of the CITY's written notification delivered by certified mail, to cure any issue of non-compliance under such Agreement. Should DEVELOPER fail to cure any default within this period of time, the CITY may as its sole and exclusive remedies, upon issuance to DEVELOPER of a written Notice of Termination, terminate this Agreement in whole or in part and either: (1) withhold further payments to DEVELOPER; 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 DEVELOPER'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 DEVELOPER shall: (1) immediately upon receipt of Notice of Termination advise CITY of DEVELOPER'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 DEVELOPER) 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 DEVELOPER 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, DEVELOPER 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 DEVELOPER of any agreement with CITY, including Attachment I, Attachment II and this Agreement.

SECTION 18. SPECIAL CONDITIONS AND TERMS (RESERVED)

SECTION 19. SUBCONTRACTS

A. DEVELOPER 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 DEVELOPER.

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

C. DEVELOPER 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.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, DEVELOPER covenants to comply with the CITY's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

SECTION. 20. DEBARMENT

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

SECTION 21. 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 DEVELOPER 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 22. 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 DEVELOPER from liability under this Agreement and shall not release DEVELOPER from performing any of the terms, covenants and conditions herein. DEVELOPER shall be held responsible for all funds received under this Agreement.

SECTION 23. 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 24. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

CITY may grant temporary relief from performance of this Agreement if the DEVELOPER 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 DEVELOPER. The burden of proof for the need for such relief shall rest upon the DEVELOPER. To obtain release based upon *force majeure*, the DEVELOPER must file a written request with the CITY.

SECTION 25. NOTICE

Any notice required or permitted to be given hereunder by one party or another shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person the address set forth herein below for the party to whom the notice is given; (b) placed in the US mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized delivery overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the US Postal Service or an overnight delivery service; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice. The addresses for notice under this Agreement are as follows:

TO CITY (if mailed):

Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

TO SOUTH FRIO DEVELOPERS, LLC:

427 W. Cevallos
San Antonio, Texas 78204

TO CITY (if by hand or overnight delivery)

Center City Development Office
Attn: Director
100 Houston St., 19th Floor
San Antonio, Texas, 78205

WITNESS OUR HANDS, EFFECTIVE as of _____, 2012(the "Effective Date"):

Accepted and executed in two duplicate originals on behalf of the CITY of San Antonio pursuant to Ordinance Number 2012-12-13-_____, dated December 13, 2012, and DEVELOPER pursuant to the authority of its Company Agreement.

CITY:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

DEVELOPER:

**SOUTH FRIO DEVELOPMENT
LLC**
a limited liability corporation

Sheryl L. Sculley
CITY MANAGER

Name: Michael Wibracht
Title: Managing Member

ATTEST:

ATTEST:

Leticia Vacek
CITY CLERK

Name: Samantha Garcia
Title: Notary Public

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY