

**ASSIGNMENT AND APPROVAL
OF
CITY OF SAN ANTONIO TAX ABATEMENT AGREEMENT
FOR REAL AND PERSONAL PROPERTY
AND
ESTOPPEL CERTIFICATE**

WHEREAS, on the 15th day of December, 2011, the City Council of the City of San Antonio passed Ordinance No. 2011-12-15-1054 approving the City of San Antonio Tax Abatement Agreement for Real and Personal Property (the “Agreement”) granting Rocky Creek Partners, L.L.C., a Texas limited liability company (“Rocky Creek”), a 10-Year 100% Tax Abatement for Real Property Improvements at 1010 South Flores, San Antonio, Texas, among other benefits (the “Project”), a true and correct copy of which is attached hereto as Exhibit “A” and made part hereof by this reference; and,

WHEREAS, Rocky Creek subsequently entered into a Commercial Contract – Improved Property, as Seller, with Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common (“Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common ”), as Buyer (the “Contract”), for the purchase and sale of the Rocky Creek real property and improvements described as Lot 11, Block 4, NCB 2972, Bexar County, Texas (“Property”); and,

WHEREAS, as part of the purchase and sale of the Property, the future benefits of the Agreement and Project are required to be assigned to the Buyer at the time of Closing the Contract; and,

WHEREAS, pursuant to Article 5. Paragraph H. and Article 11. of the Agreement, Seller must notify the City of San Antonio (the “City”) in writing at least thirty (30) days prior to the Closing of the Contract, that Rocky Creek, as Seller, seeks to assign the Agreement to Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common , as Buyer, at Closing, and shall request the City Council’s written approval thereof. Upon such approval, the Seller shall assign all of Seller’s future rights, title and interests in the Agreement to Buyer and Buyer shall be bound by all the terms and/or provisions and representations contained in the Agreement; and,

WHEREAS, as a condition to Closing, Buyer requests that such approval be granted and that the City provide an estoppel certificate assuring Buyer that the Agreement is in good standing.

WHEREFORE, PREMISES CONSIDERED, and for the mutual considerations exchanged by and between the parties hereto, the parties enter into this assignment, approval and estoppel certificate (this “Approval”) which is as follows:

**I.
ASSIGNMENT AND ASSUMPTION OF AGREEMENT**

1.01. Rocky Creek, as Assignor, does hereby sell, assign, and transfer all its remaining future rights, titles, and interest in and to the said Agreement to Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common , as Assignee, to take effect upon the Closing of the Contract.

1.02. Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common assumes and agrees to be bound by all of the future terms and conditions of the said Agreement which are required of Rocky Creek thereunder, and to hold Rocky Creek harmless thereof.

II.

CITY OF SAN ANTONIO'S CONSENT TO THE ASSIGNMENT

2.01. The City acknowledges receipt of Rocky Creek's request in writing (at least thirty (30) days prior to the Closing of the Contract), that Rocky Creek seeks to assign the Agreement to the Buyer at Closing, and requesting the City Council's written approval thereof.

2.02. The City Council of the City of San Antonio has provided such approval under Ordinance No. _____ approving the assignment of all future rights, title and interests in the Agreement to Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common, who shall be bound by all the terms and/or provisions and representations contained in the Agreement.

2.03. From and after the effective date of the City Council's approval, the City agrees to recognize Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common as the owner of all future rights, title and interest under the Agreement.

III.

CITY OF SAN ANTONIO ESTOPPEL CERTIFICATE

3.01. The following statements set forth below in this City of San Antonio Estoppel Certificate (the "Certificate") are provided to Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common with the understanding that Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common is relying on such representations and certifications as an inducement to close the Contract and to accept the assignment of the Agreement.

Accordingly, the City of San Antonio hereby represents and certifies as follows:

1. The Agreement is in full force and effect and has not been modified, supplemented or amended other than as set forth in Schedule I attached hereto, and neither the City nor Rocky Creek has waived any of its rights thereunder.
2. The Agreement is in full force and effect without default and Rocky Creek has satisfactorily performed each and all of its obligations and responsibilities required of it under the Agreement.
3. There are no outstanding defaults by Rocky Creek nor, to the knowledge of the City are there any facts or circumstances that would constitute or give rise to a default under the Agreement.

IV.

MISCELLANEOUS

4.01. Notices. Except as may be otherwise specifically provided in this Approval, all notices required or permitted hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the respective addresses set forth in herein or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith.

4.02. Texas Law to Apply. This Approval shall be construed under and in accordance with laws of the State of Texas, and all obligations of the parties created hereunder are performance in Bexar County, Texas.

4.03. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Approval.

4.04. Headings. The headings used in this Approval are used for administrative purposes only, and do not constitute substantive matter to be considered in construing the terms of this Approval.

4.05. Parties Bound. This Approval shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Approval.

4.06. Legal Construction. In case any one or more of the provisions contained in this Approval shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Approval shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.07. Counterparts. This Approval may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original.

4.08. Gender. Wherever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

4.09. Prior Agreements Superseded. This Approval supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

4.10. No Agency/Partnership. This Approval does not create the relationship of principal and agent between the parties, and under no circumstances will one party be considered an agent of the other. Likewise, this Approval does not create a partnership between the parties, and under no circumstance will either party hold themselves out to be the partner of the other to third parties.

4.11. Cost of Enforcement or Defense. In the event either party is required to employ legal counsel or to incur other expense to enforce any obligation under this Approval, or to defend against any claim, demand, action, or proceeding caused by any parties failure to perform any obligation imposed by this Approval, and provided that legal action is filed and such action establishes a default under this Approval by one of the parties, the other party shall be entitled to recover from the amount of all reasonable attorney's fees of such counsel and all other expenses incurred in enforcing such obligation or in defending against such claim, demand, action, or proceeding.

4.12. Authority. The signatories to this Approval represent to all other parties that they have the authority to execute this Approval and bind the entity they represent to the terms and conditions of this Approval, and that no other consent is necessary.

EXECUTED on this the 12th day of April, 2022.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

ASSIGNOR:

ROCKY CREEK PARTNERS, L.L.C.,
a Texas limited liability company

DocuSigned by:
Guillermo Nicolas
By: _____
F8B43B74163B4AF...
Guillermo C. Nicolas, Manager

ASSIGNEE:

Bridge Over Troubled Water, LLC and Sylmar Foothill, LLC as tenants in common,

DocuSigned by:
Dana Goodman
By: _____
ECD422B91EA94DC...
Dana Goodman, Manager, Sylmar Foothill, LLC

DocuSigned by:
Michael Foley
By: _____
3687FB57137E448...
Michael Foley, Managing Member, Bridge Over Troubled Water, LLC