

ORDINANCE 2022-06-16-0454

APPROVING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE MISSION DRIVE-IN TIRZ BOARD OF DIRECTORS, THE CITY OF SAN ANTONIO, AND R&A GARCIA PROPERTIES OF LUFKIN, LLC FOR THE NICHAS COMIDA MEXICANA PROJECT, LOCATED AT 3331 ROOSEVELT AVE, IN COUNCIL DISTRICT 3.

* * * * *

WHEREAS, in accordance with the Tax Increment Financing Act (the “Act”), Chapter 311 of the Texas Tax Code, the City through Council Ordinance No. 2008-12-11-1174, established Tax Increment Reinvestment Zone Number Thirty-Two, known as the Mission Drive-In TIRZ, and a Board of Directors (“Board”) authorized with all the rights, powers, and duties provided by the Act, in order to promote development and revitalization activities within TIRZ; and

WHEREAS, the City and Board recognizes the importance of their continued role in economic development, community development and urban design; and

WHEREAS, the Project consists of the demolition of the existing buildings on the property, and the construction of a new Nicha’s Comida Mexicana restaurant to include a surface parking lot with approximately 200 parking spaces. The new restaurant will provide indoor and outdoor dining; and

WHEREAS, on December 10, 2020, through Ordinance 2020-12-10-0900, City Council authorized the execution of the Project Development Agreement with R&A Garcia Properties of Lufkin, LLC for an amount not to exceed \$600,000; and

WHEREAS, in accordance with Section 311.010(b) of the Act, the Board is authorized to enter into agreements to dedicate revenue from the tax increment fund to pay for eligible project costs related to the construction of public infrastructure and eligible project costs that benefit the TIRZ; and

WHEREAS, on May 19, 2022, the Mission Drive-In TIRZ board approved Resolution T32 2022-05-19-02R authorizing a First Amendment to the Project Development Agreement with R&A Garcia Properties of Lufkin, LLC to amend the project commencement date to July 2022 and project completion date to December 31, 2023, for the Nicha’s Comida Mexicana Project located at 3331 Roosevelt Avenue in San Antonio, Texas and within the Mission Drive-In TIRZ in City Council District 3; and

WHEREAS, it is now necessary for the City Council to approve the First Amendment to the Project Development Agreement between R&A Garcia Properties of Lufkin, LLC and the Board for the public improvements. **NOW THEREFORE:**

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


SECTION 1. The terms and conditions of the First Amendment to the Project Development Agreement by and between R&A Garcia Properties of Lufkin, LLC and the Board of Directors of Tax Increment Reinvestment Zone #32, attached hereto as **Exhibit A**, are hereby approved.

SECTION 2. The City Manager or his designee is authorized to execute this Agreement, which has been incorporated into this Ordinance for all purposes.

SECTION 3. TIF Department staff is hereby authorized to amend the Mission Drive-In TIRZ Project and Finance Plans to include this Project.

SECTION 4. This Ordinance is effective immediately upon passage by eight affirmative votes; otherwise, it is effective on the tenth day after passage.

PASSED AND APPROVED this 16th day of June, 2022.


M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:


Debbie Racca-Sittre, City Clerk


Andrew Segovia, City Attorney



City of San Antonio

City Council A Session Meeting June 16, 2022

28.

2022-06-16-0454

Ordinance approving a First Amendment to the Development Agreement between the Mission Drive-In TIRZ Board of Directors, the City of San Antonio, and R&A Garcia Properties of Lufkin, LLC for the Nicha's Comida Mexicana Project, located at 3331 Roosevelt Ave, in Council District 3 to to amend the project commencement and completion dates. [Lori Houston, Assistant City Manager; Veronica Garcia, Interim Director, Neighborhood and Housing Services Department]

Councilmember Castillo moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

Aye:	Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Courage, Perry
No:	Pelaez
Absent:	Sandoval

Exhibit A

**FIRST AMENDMENT TO NICHAS COMIDA MEXICANA PROJECT
DEVELOPMENT AGREEMENT**

FOR VALUE RECEIVED, the receipt and sufficiency of which is acknowledged, this First Amendment to the Project Development Agreement ("First Amendment") is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation in Bexar County, Texas, the Board of Directors ("Board") for Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas, and R&A Garcia Properties of Lufkin, LLC a Texas limited liability company ("Developer"). This agreement refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

RECITALS

WHEREAS, Developer and Board entered into a Project Development Agreement (the "Agreement") authorized by City of San Antonio Ordinance No. 2020-12-10-0900, passed and approved on December 10, 2020, and attached hereto as EXHIBIT A.

WHEREAS, the Parties now seek to amend the terms and conditions of the Agreement in order to extend the deadline for completion of the Project.

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. The Parties mutually agree to amend the following sections of the Agreement:

(A) The Introductory Paragraph on Page 1 of the agreement is deleted in its entirety and replaced with the following:

This Development Agreement ("Agreement"), pursuant to City Ordinance No. 2020-12-10-0900, and subsequently amended pursuant to Ordinance No. 2022 - _____, is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation in Bexar County, Texas, the Board of Directors ("Board") for Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas, and R&A Garcia Properties of Lufkin, LLC a Texas limited liability company ("Developer"). This agreement refers to the City and the Developer collectively as the "Parties" and singularly as the "Party."

(B) The **BACKGROUND** section on Page 1 of the agreement is amended by adding an eighth and ninth paragraph as follows:

WHEREAS, due to the changes in the construction schedule for the Project, Developer has requested additional time to complete the Project; and

WHEREAS, on _____, 2022, the Board approved Resolution T32 2022-__-__-__R authorizing an extension of the deadline to complete the Project.

(C) **ARTICLE V. THE PROJECT** is amended by deleting all of subsection 5.1 and substituting the following in its place:

PROJECT. The Project consists of the partial and/or full demolition of the current buildings on the two properties, and the construction of a new Nicha's Comida restaurant and an approximate 200 vehicle surface parking lot. The new restaurant will provide indoor and outdoor dining. Eligible project costs include, but are not limited to, the demolition, utilities, exterior lighting, landscaping, monument signage, improved sidewalks, curb cuts, bicycle facilities, fencing, civil engineering costs, architecture costs, and geotechnical costs. The Project is anticipated to begin by July of 2022 and is estimated to be completed by December 31, 2023, subject to Force Majeure.

(D) **ARTICLE VI. DUTIES AND OBLIGATIONS OF DEVELOPER** is amended by deleting all of subsection 6.7 and substituting the following in its place:

DELAYS. Developer is responsible for the Project's construction, which shall be completed no later than December 31, 2023. If the commencement or completion of the Project is delayed by reason(s) beyond the Developer's control (including, without limitation, events of Force Majeure), then at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the commencement and completion deadlines set forth in this Agreement may be extended by no more than six (6) months. In the event that Developer does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with Article XXII Changes and Amendments of this Agreement, the Parties may extend the deadlines in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reasonably reach an agreement on the extension of the Construction Schedule, or if Developer fails to complete the Project in compliance with the revised Construction Schedule, other than as a result of Force Majeure, this constitutes a material breach.

2. All other terms, conditions, covenants and provisions of the Agreement are hereby continued and shall remain in effect in their original form, except for the provisions expressly modified by this First Amendment.

This First Amendment has been fully executed as of the date of signature of the last party to sign.

SIGNATURE PAGE TO FOLLOW

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

**BOARD OF DIRECTORS
Mission Drive-In TIRZ #32**

City Manager or his designee

Date: _____

Board Chair

Date: _____

**R&A GARCIA PROPERTIES OF LUFKIN, LLC
a Texas limited liability corporation**

By:

By: _____

Date: _____

APPROVED AS TO FORM:

Thomas Rice
Assistant City Attorney

EXHIBIT A