

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Community and Human Development
AGENDA DATE: June 22, 2010
CONTACT PERSON/PHONE: Bill Lilly/541-4643
DISTRICT(S) AFFECTED: Citywide

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

A resolution authorizing the City Manager to sign a Subordination Agreement, by and among the City of El Paso, Creative Kids, Inc. ("Borrower"), and Southwest Securities, FSB, concerning the Borrower's refinancing of the first lien debt on the property located at 504 San Francisco Street and the City's continued subordinated lien interest against said property.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In 2005, Creative Kids, Inc. received a Forgivable Loan in the amount of \$510,500 from the City through the Community Development Block Grant Program, 31st Year (2005-2006), to fund a portion of the cost to renovate the building at 504 San Francisco Street to house the Creative Kids, Inc. administration and to create a working space with modern tools of communication to assist disadvantaged youth by strengthening their talents for artistic expression and to provide critical life skills important to the workplace. In 2007, their Forgivable Loan Agreement was amended to include additional funding in the amounts of \$13,724.80 and \$36,871.84 to fund change orders. The loans are secured by subordinate liens on the property (second and third lien position).

The refinancing of the first lien financing will provide Creative Kids a better interest rate thereby reducing their costs, and it will provide that the building will be paid off within 10 years rather than 15 years, which is the current time frame. The refinancing is contingent upon the City's liens remaining as subordinate debt on the property.

The CD Director approves and recommends that the City Manager be authorized to sign the subject subordination agreement.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On July 19, 2005, as part of the 2005-2006 CD Budget, Council approved the Program Sense of Place project as the initial funding for Creative Kids, Inc. On the same date, Council approved a resolution to authorize the City Manager to sign contracts and related documents with the agencies approved for funding in the Annual Action Plan for 2005-2006. A subsequent resolution enacted by Council on June 27, 2006 authorized the City Manager to sign contracts and related documents with the agencies approved for funding in the Annual Action Plan for 2006-2007.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

No funding by the City will be required by this action.

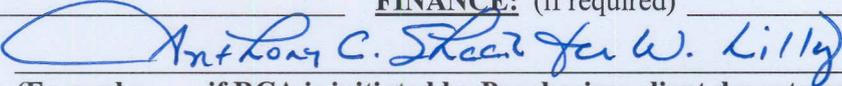
BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

NA

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Subordination Agreement, by and among the City of El Paso, Creative Kids, Inc. ("Borrower"), and Southwest Securities, FSB, concerning the Borrower's refinancing of the first lien debt on the property located at 504 San Francisco Street and the City's continued subordinated lien interest against said property.

ADOPTED this _____ day of _____, 2010.

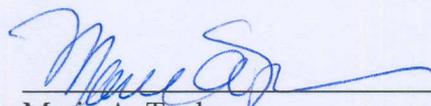
THE CITY OF EL PASO:

John F. Cook,
Mayor

ATTEST:

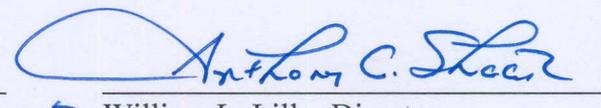
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



yol William L. Lilly, Director
Community and Human Development

SUBORDINATION AGREEMENT

This Subordination Agreement (the "Agreement") is entered as of the _____ day of _____, 2010 by and among **THE CITY OF EL PASO, TEXAS**, a home-rule municipal corporation (the "City"), **CREATIVE KIDS, INC.**, a Texas Non-Profit Corporation ("Borrower") and **SOUTHWEST SECURITIES FSB** ("Lender").

* * * * *

WHEREAS, Borrower received forgivable loans in the aggregate amount of \$561,096.64 (the "Prior Loans") from the City to renovate the property at 504 San Francisco Street, El Paso, Texas ("the Property") into an educational training facility for the benefit of low and moderate income El Paso residents, and which is legally described as follows:

A 0.1903 acre portion, more or less, out of Block 51, MILLS ADDITION, an addition to the City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds in Exhibit "A", attached hereto and made a part hereof for all purposes.

WHEREAS, the terms of the Prior Loans are memorialized in a Forgivable Loan Agreement dated November 4, 2005, as amended by a First Amendment to Forgivable Loan Agreement dated September 28, 2006, and a Second Amendment to Forgivable Loan Agreement dated July 20, 2007 (collectively, "Loan Agreement"); and

WHEREAS, at this time, Borrower's obligations under the Loan Agreement are secured by second and third priority liens against the Property, as evidenced by a Deed of Trust dated December 14, 2005 in favor of the City and recorded under Clerk's File No. 200500114581, Real Property Records, El Paso County, Texas and a Deed of Trust dated July 20, 2007 in favor of the City and recorded under Clerk's File No. 20070072339, Real Property Records, El Paso County, Texas (collectively, the "Prior Deeds of Trust"); and

WHEREAS, Borrower has requested that Southwest Securities FSB ("Lender") enter into a loan transaction with Borrower whereby Borrower will borrow from Lender the principal sum of \$147,000.00 (the "Subsequent Loan"), for the purpose of refinancing the remaining balance of that certain promissory note dated December 23, 2004 in the original principal amount of \$180,000.00, payable to State National Bank, now known as Compass Bank, secured by a Deed of Trust of even date with said note, said Deed of Trust recorded under Clerk's File No. 20050002473; and

WHEREAS, to secure its obligations to Lender for the Subsequent Loan, Borrower desires to grant a first priority lien on the Property to Lender and accordingly, Borrower has requested that the City's Prior Deeds of Trust remain in a subordinate position; and

WHEREAS, Lender is willing to enter into the loan transaction with Borrower provided that the lien interests which secure the payment of the Prior Loans is subordinated to the lien interest of Lender with respect to the Subsequent Loan; and

WHEREAS, it is to the mutual benefit of Borrower and the City that Lender provide Borrower with loan refinancing and the City is willing that the lien securing the payment of the Subsequent Loan, when recorded, be prior and superior to the City's Prior Deeds of Trust, because the refinancing will strengthen Borrower's financial capacity to continue to operate its educational training facility for the benefit of low and moderate income El Paso residents, which is a public benefit to the citizens of the City of El Paso, Texas; and

WHEREAS, the parties hereto enter into this Agreement for the purpose of evidencing their agreements concerning the priority of the liens which are described above against the Property.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other good and valuable consideration, the receipt of sufficiency of which is hereby acknowledged, and to induce Lender to issue the Subsequent Loan above referred to, the City, Borrower, and Lender hereby agree as follows:

1. **Subordination.** The City hereby subordinates to Lender, its successor's and assigns, the City's Prior Deeds of Trust herein described to the rights and interests of Lender as evidenced by the subsequent Deed of Trust filed or to be filed with respect to the Subsequent Loan as herein described, together with all renewals and extensions thereof, until such time as said Subsequent Loan is paid in full, the purpose of such subordination being to place Lender in a first lien position regarding the Property with respect to the Subsequent Loan and security therefor.

2. **Conditions.** The subordination by the City is expressly conditioned upon the occurrence of the above-described events by Lender and the City remaining in a subordinated lien position with regard to the hereinabove described Property following the occurrence of the above-described events by Lender.

3. **Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Texas.

4. **City's Exercise of Rights and Remedies.** This Agreement shall not prevent the City from exercising its rights under its Prior Deeds of Trust securing same, provided that the exercise of any such remedies will be subordinated and made inferior to the rights, remedies and lien in favor of Lender securing the hereinabove described loan.

5. **Notice of Default.** Neither the City nor Lender shall complete a non-judicial foreclosure or foreclosure sale of the Property or recordation of a deed in lieu of foreclosure with respect to the Property unless and until the City or Lender, as the case may be, has first been given sixty (60) days written notice of the default(s) or event(s) of default on the loan advanced to the Borrower ("Default Notice"), giving rise to the City's or the Lender's right to complete such foreclosure remedies, and the City or the Lender having failed, within such sixty (60) day period to cure such default(s) or event(s) of default; provided, however, that the City or the Lender, as the case may be, shall be entitled during such sixty (60) day period to continue to pursue all of its rights and remedies under its respective loan documents, except completion of the foreclosure remedies. The City's or the Lender's failure to give any such notice for any reason shall not act to impair or waive any remedy or right of the City or the Lender under this

Agreement or any of City's or the Lender's loan documents for the hereinabove described loans. The City and the Lender shall give the notice at the address set forth below or such other address as each may instruct to the other in writing from time to time.

6. **Right to Cure Default.** That with respect to the exercise of the cure rights provided herein, the following shall apply:

- (a) The City or the Lender, as the case may be, shall have the right, but not the obligation, to elect to cure the noticed default(s) or event(s) of default (the "Noticed Defaults") by giving the other lending party written notice of its intention to cure the Noticed Defaults within the sixty (60) day cure period described above (the "Cure Period") and thereafter curing all Noticed Defaults within the Cure Period.
- (b) If a cure of all the Noticed Defaults is completed within the Cure Period, the other lending party will rescind, cancel, or otherwise dismiss any pending foreclosure proceeding or action.
- (c) Following the timely cure of all Noticed Defaults by the City or Lender, as the case may be, the other lending party shall not exercise its right to accelerate or will de-accelerate the amounts due under its loan documents by reason of the Noticed Defaults being cured; provided, however that nothing herein shall be construed to waive or limit any of the City's or the Lender's rights or remedies as to any uncured Noticed Default or any subsequent default by Borrower.
- (d) All amounts advanced by the City or the Lender, as the case may be, to cure a default or the debt hereunder shall be deemed advanced by the City or Lender, as applicable, and shall be secured by its respective existing lien.
- (e) Nothing in this Section is intended to limit or modify any covenant, term, or condition in the Lender's loan documents or the City's loan documents.

7. **Right to Cure all Outstanding Debt.** Unless expressly agreed in writing to the contrary, the parties hereto agree that City's and Lender's right to cure all Noticed Defaults shall include the right to pay in full any outstanding indebtedness evidenced by the other lending party's Note and loan documents and will result in the release of or if requested, the assignment of, the respective lien securing the same upon full payment of the debt.

8. **Notices.** Any Notices required by this Agreement shall be sufficient if sent by certified mail, return receipt requested, to the parties as follows:

CITY OF EL PASO:

City of El Paso
Director
Community and Human Development Department
2 Civic Center Plaza
El Paso, Texas 79901

LENDER:

Southwest Securities FSB
671 S. Mesa Hills, Suite 2B
El Paso, Texas 79912
Attention: Christine Alarcon

BORROWER:

Creative Kids, Inc.
504 San Francisco Street
El Paso, Texas 79901
Attn: Executive Director

Notice of change of address must be given in writing in the same manner as other notices are given pursuant to this section.

9. **Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Texas.

10. **Amendments.** Unless otherwise provided herein, this Agreement may be amended only by written instrument signed by the parties.

11. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the legal representatives, successors, and assigns of the parties.

12. **Severability.** Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however that all such counterparts shall constitute one and the same instrument.

14. **Further Assurances.** The parties hereto agree to execute and deliver such other additional documents and instruments as may be reasonably necessary or proper in order to fully effect the terms, provisions and intentions expressed in this Agreement.

15. **Captions.** The captions to the various paragraphs of this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

16. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto relating to the Agreement. There exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

EXECUTED as of the date first set forth above.

THE CITY OF EL PASO:

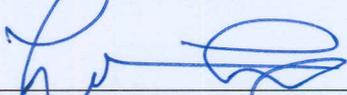
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



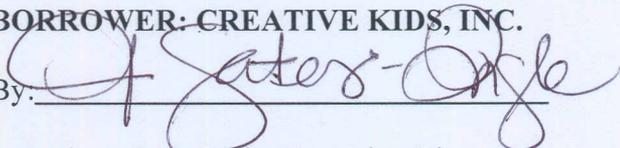
William L. Lilly, Director
Community and Human Development

SOUTHWEST SECURITIES, FSB:


By: _____
Christine Alarcón V.P.
Name (Printed)/Title

BORROWER CONSENT

The undersigned Borrower consents to the foregoing Subordination.

BORROWER: CREATIVE KIDS, INC.
By: 

Andrea Gates-Ingle, Executive Director

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2010, Joyce A. Wilson as City Manager of the CITY OF EL PASO, a municipal corporation, on behalf of said corporation.

Notary's Commission Expires:

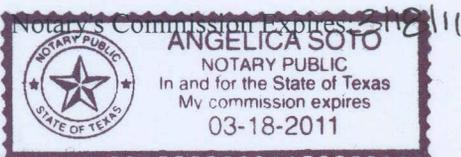
Notary Public, State of Texas

Notary's name (printed)

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 9 day of June, 2010, by Christine Alarcon as V.P. of SOUTHWEST SECURITIES, FSB, on behalf of said entity.



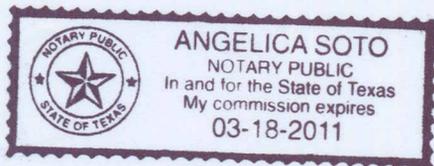
Angelica Soto
Notary Public, State of Texas
Angelica Soto
Notary's name (printed)

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 9 day of June, 2010, by Andrea Gates-Ingle, as Executive Director of CREATIVE KIDS, INC., on behalf of said entity.

Notary's Commission Expires: 3/18/11



Angelica Soto
Notary Public, State of Texas
Angelica Soto
Notary's name (printed)

AFTER RECORDING RETURN TO:

Southwest Securities, FSB
Attn: Christine Alarcon
671 S. Mesa Hills, Suite 2B
El Paso, Texas 79912

EXHIBIT "A"

Being a portion of Block 51,
Anson Mills Map
City of El Paso, El Paso County, Texas
Prepared for: Access Remodeling and Construction
December 17, 2004

METES AND BOUNDS DESCRIPTION

Being a portion of Block 51, Anson Mills Map, City of El Paso, El Paso County, Texas and being more particularly described as follows:

Commencing for reference at an existing city monument lying 10 feet north of the centerline intersection of Durango Street and Overland Street thence along the centerline of Durango Street North $15^{\circ}33'45''$ West a distance of 313.33 feet, Thence leaving said centerline South $74^{\circ}26'15''$ West a distance of 155.33 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152 for the southeasterly corner of herein described parcel of land for The "TRUE POINT OF BEGINNING"

Thence South $74^{\circ}26'21''$ West a distance of 62.02 feet to a point for the Southwesterly corner of herein described parcel of land;

Thence North $13^{\circ}52'58''$ West a distance of 141.28 feet to a point on the southerly right of way line of San Francisco Street for the northwesterly corner of herein described parcel of land;

Thence along said right of way line North $80^{\circ}29'15''$ East a distance of 58.21 feet to a point for the Northeasterly corner of herein described parcel of land;

Thence leaving said right of way line South $15^{\circ}33'45''$ East a distance of 135.09 feet to the "TRUE POINT OF BEGINNING" and containing 0.1903 acres of land more or less.

NOTE: Bearings based on existing city monuments found lying 10 feet north of the centerline intersection of Durango Street and Overland Street and lying 10 feet north of the centerline intersection of Anthony Street and Overland Street. (South $74^{\circ}26'15''$ West)

A plat of even date accompanies this description.

R. R.
Ron R. Conde
R.P.L.S. No. 5152



Job# 11204-62
R.C.
LGL-04\11204-62.LGL

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79935 / (915) 592-0283

POOR QUALITY ORIGINAL
BEST AVAILABLE FILM