

AN ORDINANCE      2012-11-08-0884

**AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER 11, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE INNER CITY TIRZ AND THE HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION FOR THE COMMERCE STREET PEDESTRIAN CONNECTIVITY PROJECT IN DISTRICT 1 FOR UP TO \$750,000.00.**

\* \* \* \* \*

**WHEREAS**, the Inner City TIRZ Board (“Board”) issued a Request for Proposals on February 3, 2012 and received 22 project submissions from which the Hemisfair Park Area Redevelopment Corporation (“HPARC”) proposal to connect the East Side to Hemisfair Park via the Commerce Street Pedestrian Connectivity Project (“Project”) was selected; and

**WHEREAS**, the City, the Board and HPARC seek to enter into an Agreement for up to \$750,000.00 in available tax increment funds for the Project which will connect the East Side to the Hemisfair Park Area in order to promote local economic development, and to stimulate business and commercial activity, within the Inner City TIRZ; **NOW THEREFORE:**

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

**SECTION 1.** The City of San Antonio approves and authorizes the City Manager or her designee to negotiate and execute Agreements, as needed to effectuate the purposes of this ordinance, with HPARC and the Board for up to \$750,000.00, a copy of which will be attached and incorporated into this Ordinance as Exhibit 1.

**SECTION 2.** Funding in the amount of \$750,000.00 for this ordinance is available in Fund 29086007, Cost Center 0703290001 and General Ledger 5201040, as part of the Fiscal Year 2013 Budget.

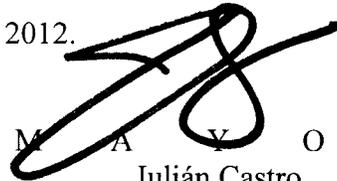
**SECTION 3.** Payment in the amount up to \$750,000.00 is authorized to the Hemisfair Park Area Redevelopment Corporation and should be encumbered with a purchase order.

**SECTION 4.** 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 Fundamental Areas, SAP Fund Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

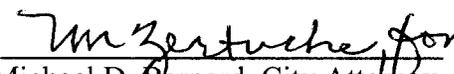
**SECTION 5.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

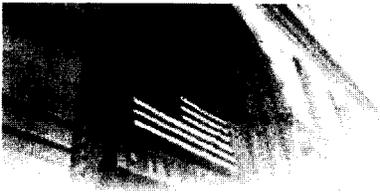
XPR  
11/8/12  
Item No. 16A

**PASSED AND APPROVED** on this 8<sup>th</sup> day of November, 2012.

  
M A Y O R  
Julián Castro

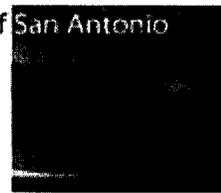
ATTEST:   
Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:   
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 16A

<b>Name:</b>	6A, 6B, 7, 9, 10, 11, 12, 13, 15, 16A, 16B, 16C						
<b>Date:</b>	11/08/2012						
<b>Time:</b>	10:08:44 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing execution of an Agreement for the Commerce Street Connectivity Project in District 1 with Hemisfair Park Area Redevelopment Corporation and the Inner City TIRZ Board for up to \$750,000.00.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		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				

EXHIBIT I

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO,  
TEXAS, HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION,  
AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE  
NUMBER 11**

**TABLE OF CONTENTS**

Background .....	1
I. Definitions .....	2
II. The Project .....	4
III. Term .....	4
IV. Duties and Obligations of Developer .....	5
V. Duties and Obligations of City and Board .....	6
VI. Compensation to Developer .....	6
VII. Insurance .....	8
VIII. Workers Compensation Insurance Coverage .....	11
IX. Default and Termination .....	14
X. Indemnification .....	15
XI. Site Inspection and Right of Entry .....	15
XII. Small Business Economic Development Advocacy Program.....	15
XIII. Examination of Records .....	15
XIV. Non-Waiver .....	16
XV. Assignment.....	17
XVI. Notice .....	17
XVII. Conflict of Interest .....	18
XVIII. Independent Contractors .....	19
XIX. Prevailing Wages & Competitive Bidding.....	19
XX. Changes and Amendments .....	20
XXI. Severability.....	21
XXII. Litigation Expenses .....	21
XXIII. Legal Authority .....	21
XXIV. Venue and Governing Law .....	21
XXV. Parties' Representations .....	21
XXVI. Captions.....	22
XXVII. Entire Agreement .....	22
Exhibit A	Construction Schedule
Exhibit B	Project Scope
Exhibit C	Payment Schedule

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS,  
BEXAR COUNTY, HEMISFAIR PARK AREA REDEVELOPMENT  
CORPORATION AND THE BOARD OF DIRECTORS OF REINVESTMENT  
ZONE NUMBER 11,  
CITY OF SAN ANTONIO, TEXAS**

This Development Agreement (“Agreement”), pursuant to Ordinance No. 2012-11-08-0884 passed and approved on the 8th day of November, 2012, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (“City”); Hemisfair Park Area Redevelopment Corporation, a Texas Local Government Corporation formed under Subchapter D of Chapter 431 of the Texas Transportation Code (“HPARC” or “Developer”), and the Board of Directors for Tax Increment Reinvestment Zone Number 11, City of San Antonio, Texas, known as the Inner City TIRZ, (“Board”) on the \_\_th day of November, 2012.

**BACKGROUND:**

**WHEREAS**, the City and Board recognizes the importance of their continued role in economic development, community development, planning and urban design in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (the “Act”); and

**WHEREAS**, on October 5, 2012, the Board selected Developer from amongst the respondents to the Request for Proposals for the Inner City TIRZ issued February 3, 2012; and

**WHEREAS**, Developer is seeking up to \$750,000.00 in tax increment funds for the Commerce Street Pedestrian Connectivity Project (“Project”) between the east side of San Antonio and Hemisfair where over \$20,000,000.00 will be invested in revitalizing such area; and

**WHEREAS**, the Board amended the Project Plan and Financing Plan defined hereunder and referred to as “Project Plan” and “Financing Plan” providing for development of the Project; and

**WHEREAS**, the City also approved the Final Project Plan and Final Financing Plan for the Zone pursuant to Ordinance No. 2012-11-08-0886 and authorized the City Manager of the City of San Antonio or her designated representative to execute this Agreement on behalf of the City; and

**WHEREAS**, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

**WHEREAS**, pursuant to said authority, the Board, the City, and the Developer each hereby enters into a binding agreement with the others for the Project as specified in the Project Plan, Financing Plan and this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the City, the Board, and the Developer agree as follows:

## **I. DEFINITIONS**

1.1 The “City,” the “Board” and the “Developer” shall have the meanings specified above.

1.2 “Act” is the Tax Increment Financing Act, Texas Tax Code Chapter 311, as amended from time to time.

1.3 “Administrative Costs” for this Agreement are limited to the \$40,000 application fee.

1.4 “Agreement” is this contract by and among City, Board and Developer, as amended from time to time.

1.5 “Available Tax Increment Funds” for each Participating Taxing Entity means the “Tax Increment” contributed by each Participating Taxing Entity to the TIF Fund, as paid out in accordance with the priority of payment listed in paragraph 6.5 below.

1.6 “City Manager” means the City Manager of the City or her designee.

1.7 “Completion” means final approval of the construction of the Project in accordance with the Developer’s engineer’s design, Project Plan, Financing Plan and this Agreement.

1.8 “Construction Phase” means all construction related aspects of the Project other than the Design Phase.

1.9 “Construction Schedule” means the timetable for constructing the Project set forth in **Exhibit A**, Construction Schedule, attached and incorporated in this Agreement for all purposes and which may be amended by the Parties from time to time pursuant to paragraph 20.2.

1.10 “Contract Progress Payment Request” (“CPPR”) means a request, prepared in accordance with the requirements of Contract Progress Payment Request Form for reimbursement to the Developer for work done in accordance with this Agreement. CPPR also reflects all waivers and/or incentives granted through City program(s) if applicable.

1.11 “Design Phase” means all design activities related to the Project, including but not limited to completion of Final Plans for the Project, any special and general conditions

and instructions to bidders, such plans, conditions and instructions to be acceptable to the City and to be approved by City prior to construction.

1.12 “Financing Plan” is the final Reinvestment Zone Financing Plan as approved and as may be amended from time to time by the Board and the City, incorporated herein for all purposes.

1.13 “Guidelines” means the 2008 Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria as passed and approved by the City Council of the City of San Antonio and amended from time to time.

1.14 “Participating Taxing Entity” means any governmental entity recognized as such by Texas law, which is participating in this TIRZ by contributing a percentage of its tax increment.

1.15 “Project” has the meaning specified in paragraph 2.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as amended from time to time.

1.16 “Project Costs” has the meaning provided by Section 311.002(1) of the Act.

1.17 “Project Plan” means the final Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

1.18 “Project Status Report” means a report, prepared and submitted by the Developer in accordance with the requirements of this Agreement, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.19 “Tax Increment” has the meaning assigned by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the Zone.

1.20 “TIF” means Tax Increment Financing.

1.21 “TIF Fund” means the tax increment fund created by the City for the deposit of Tax Increment for the Zone, entitled “Reinvestment Zone Number 11, City of San Antonio, Texas Tax Increment Fund.”

1.22 “TIF Unit” means the employees of the City department responsible for the management of the City’s Tax Increment Financing Program.

1.23 “TIRZ” means Tax Increment Reinvestment Zone.

1.24 “Zone” is Tax Increment Reinvestment Zone Number 11, City of San Antonio, Texas.

1.25 “Zone Property” means the geographic area of the City included in the boundaries of the Zone, which are described in the Project and Financing Plans incorporated herein.

Singular and Plural: Words used in the singular, where the context so permits, also include the plural and vice versa, unless otherwise specified.

## **II. THE PROJECT**

2.1 The Project shall include the design, construction, and management of the design/construction process for an enhanced pedestrian and bicycle passage under IH37 at Commerce Street in compliance with the Construction Schedule in **Exhibit A** and the Payment Schedule in **Exhibit C**, both attached and incorporated herein. The Project will provide an inviting corridor connecting Hemisfair and downtown to East Side neighborhoods and amenities that are currently difficult to access, as indicated in **Exhibit B** Project Scope (the “Project”), attached and incorporated herein.

2.2 **Design Phase.** Developer has full responsibility for the Design Phase of the Project and completion of the Project in compliance with this Agreement.

2.3 **Construction Phase.** The Parties acknowledge that Developer will contract with City’s Capital Improvements Management Services (“CIMS”) for the Construction Phase pursuant to a separate agreement to be entered into between HPARC and CIMS. The Parties also understand that the Assistant Director of the City Department responsible for overseeing the TIF Unit (the “TIF Director”) may modify the Construction Schedule as indicated in Paragraph 20.2. The Payment Schedule may also be modified by the TIF Director, in compliance with Paragraph 20.2, as needed to accommodate the progress of construction by City so long as the total amount of the Agreement does not exceed \$750,000, including all eligible Project Costs.

2.4 Acceptance of the Final Plans by City shall not constitute nor be deemed a release of the responsibility and liability of Developer, its employees, associates, agents, subcontractors, and/or sub-consultants for the accuracy and competency of their designs, drawings, specifications or other documents and services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications or other documents and work prepared by Developer, its employees, subcontractors, sub-consultants and/or agents.

## **III. TERM**

3.1 The term of this Agreement shall commence on November \_\_, 2012 (“Effective Date”) and end on whichever of the following dates occurs the earliest: (i) the date the Developer receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated; or (iii) September 30, 2015; provided, however, all existing warranties and warranty bonds survive termination of this Agreement.

## **IV. DUTIES AND OBLIGATIONS OF DEVELOPER**

4.1 Developer warrants and represents that it will comply with all Federal, State and Local laws and regulations as amended from time to time and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

4.2 Subject to Article VI “Compensation to Developer,” and conditional upon receipt of the reimbursements for approved Project Costs as set forth in this Agreement, the Developer agrees to complete, or cause to be completed, the Project. The Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project and obtain or cause to be obtained, all necessary permits and approvals from the City and/or other governmental agencies with jurisdiction over construction of the Project.

4.3 Developer is responsible for designing within the budget allocated for the Project. All plan designs must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation, if applicable, before construction may begin.

4.4 Developer shall contract with CIMS, which will perform the construction of the Project in accordance with this Agreement, including compliance with all federal, state and local laws and ordinances, including, but not limited to the 2008 TIF Guidelines, Chapter 2258 of the Texas Government Code, the City Code, and the plans approved by the appropriate City department and Board.

4.5 Developer shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the costs of all construction for the Project including all applicable permit fees and licenses, which have not been waived and which are required for construction of the Project.

4.6 **Delays.** The Developer agrees to commence and complete the Project in accordance with the Construction Schedule attached as **Exhibit A**. If Project completion is delayed due to war, civil commotion, acts of God, inclement weather, governmental restrictions, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Developer’s control, then at the City’s reasonable discretion, the deadlines set forth in the Construction Schedule may be extended by the period of such delay. In the event that the Developer does not complete the Project substantially in accordance with the Construction Schedule, then the Parties, in compliance with paragraph 20.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but any such extension deadlines shall not exceed the expiration date of the Zone.

4.7 **Duty to Cooperate.** The Developer shall cooperate with the City and the Board in providing all necessary information to the City and the Board in order to assist the City and the Board in determining Developer’s compliance with this Agreement and to ensure the construction of the Project and fulfillment of the approved Final Plans for the Project.

If needed by City this will include offering interpretation of the requirements of the plans and specifications throughout construction of the Project and providing any changes, alterations or modifications to the Project, which appear to be advisable, feasible and in the best interest of City.

4.8 **Quarterly Status and Compliance Reports.** The Developer shall submit to the City and the Board written and signed Project Status Reports containing all required information, by the 15th day of each January, April, July and October throughout the duration of the Project, or more often if requested by the City, County or Board, on its construction progress and construction expenses, proof of insurance and its compliance with laws, ordinances, and contractual requirements. If Project Status Reports are not submitted on the assigned dates as above, the Developer understands that no Available Tax Increment Funds will be paid to the Developer and the City may exercise its rights in accordance with Article IX.

4.9 **Time is of the essence for this Agreement.** Developer shall perform and complete its obligations in this Agreement in a prompt and continuous manner, so as to not delay the development of the Final Plans, construction documents and the construction of the Project in accordance with the schedules approved by City. If City determines that corrections, modifications, alterations or additions are required, Developer shall complete these corrections, modifications, alterations or additions in a timely manner as required by City.

## **V. DUTIES AND OBLIGATIONS OF CITY AND BOARD**

5.1 Subject to this Agreement and termination of the Zone, the City and the Board pledge up to a maximum of \$750,000.00 in Available Tax Increment Funds as reimbursement to the Developer for approved Project Costs to be paid in accordance with Exhibit C Payment Schedule.

5.2 To the extent permitted by Texas law, no director, officer, employee or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

## **VI. COMPENSATION TO DEVELOPER**

6.1 **CPPR Approval.** Developer shall submit to the City a completed Contract Progress Payment Request ("CPPR") in accordance with the Payment Schedule, Exhibit C, for the Project in order for those eligible expenses to qualify for TIF reimbursement. The CPPR shall be presented to the Board for review and possible reimbursement authorization after the City review and approval, as evidenced by a written CPPR Approval issued by the City.

6.2 **Corrections to CPPR.** Should there be discrepancies in the CPPR or if more information is required, Developer will have 30 days upon notice by City to correct any discrepancies or submit additional information requested by City.

6.3 Developer shall receive, in accordance with the Financing Plan and the Project Plan, a maximum of \$750,000.00 in reimbursements for eligible Project Costs.

6.4 The sole source of the funds to reimburse the Developer for Project Costs is the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the Participating Taxing Entities to the TIF fund created and maintained by the City for TIRZ Number 11. Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within 30 days after the deposit of the City's Tax Increment Payment to the TIF Fund, if the Developer is in compliance with laws, statutes, ordinances and this Agreement.

6.5 **Priority of Payment.** Developer acknowledges that there are other pre-existing contractual requirements on the TIF Fund. The Parties agree that the City and the Board may use Tax Increment Funds to pay eligible expenditures in the following order or priority of payment: (i) to pay all other ongoing Administrative Costs to the City for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City, then the ongoing Administrative Costs of the City shall be reimbursed on a pro rata basis; (ii) pre-existing contracts; (iii) to reimburse the City under any reclaim of funds pursuant to Article IX; (iv) to reimburse the Developer for the Project as provided in the Development Agreement and in the Project Plan to the extent that funds are available. No funds will be paid from the TIF Fund to a Participating Taxing Entity or the Developer for its financial or legal services in any dispute arising under this Agreement or a related interlocal agreement between the Developer and a Participating Taxing Entity or between Participating Taxing Entities.

6.6 **Partial Payments.** If Available Tax Increment Funds do not exist in an amount sufficient to make payments in full when the payments are due, partial payment shall be made in the order of priority above, and the remainder shall be paid as Tax Increment Funds become available. No fees, costs, expenses or penalties shall be paid to any Party on any late payment.

6.7 **Repayment of Invalid Payments.** If any payment to Developer is held invalid, ineligible, illegal or unenforceable under federal, state or local laws, including but not limited to the charter, codes, or ordinances of the City, then such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by the Developer to the City for deposit into the TIF Fund, and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never in this Agreement.

6.8 **Environmental Remediation.** In the event any environmental remediation costs are incurred by the Developer, the Developer shall not seek reimbursement of those costs from the TIF Fund.

6.9 Neither the City nor the Board shall issue any TIF bonds or notes to cover any Project Costs whether directly or indirectly related to the Project.

6.10 **Not an Obligation of the General Fund.** Any payment made to the Developer for this Project is from tax increments and shall never be an obligation of the City's general fund, but are only obligations of the TIF Fund, and are subject to limitations herein. Neither the City nor the Board can guarantee that Available Tax Increment Funds shall completely reimburse the Developer's eligible costs.

## **VII. INSURANCE**

7.1 **Applicability.** The Developer will require that the insurance requirements contained in this Article be included in all its contracts or agreements for the construction of the Project where Developer is seeking payment under this Agreement, unless specifically exempted in writing by the City.

7.2 **Proof of Insurance.** Prior to the commencement of any work under this Agreement, Developer shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "Hemisfair/Commerce Street Pedestrian Corridor Project" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in paragraph 7.5 of this Article. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TIF Unit. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

7.3 **Right to Review.** The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.

7.4 **Required Types and Amounts.** The Developer's financial integrity is of interest to the City, therefore, subject to the Developer's right to maintain reasonable deductibles in such amounts as are approved by the City, the Developer or the Developer's contractor, shall obtain and maintain in full force and effect during the construction of the Project, and any extension hereof, at the Developer's or the Developer's contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII) or otherwise acceptable to the City, in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/ Impact -- sufficiently broad to cover disposal liability. h. Damage to property rented to you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

7.5 **Requests for Changes.** The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and the City may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any such policies). Developer and/or Developer's contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the addresses provided below within ten days of the requested change. Developer and/or Developer's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following addresses:

City Clerk  
City of San Antonio  
Attn: Risk Management Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
Planning and Community Development  
Department  
TIF Unit  
1400 S. Flores  
San Antonio, Texas 78204

7.6 **Required Provisions and Endorsements.** Developer agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the City and its respective officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio if City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- d. Provide 30 calendar days advance written notice directly to City at the same addresses listed in paragraph 7.5 of this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

7.7 **Cancellation, Suspension, and Non-Renewal.** Within five calendar days of a suspension, cancellation or non-renewal of coverage, Developer and/or Developer's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same addresses listed in paragraph 7.5 of this Article. City shall have the option to suspend Developer's and/or Developer's contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and either the City may exercise its remedies under Article IX of this Agreement.

7.8 **City's Remedies.** In addition to any other remedies the City may have upon Developer and/or Developer's contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, the City shall have the right to order Developer to stop work, and/or withhold any payment(s), which become due to the Developer until Developer and/or Developer's contractor demonstrates compliance with the requirements.

7.9 **Responsibility for Damages.** Nothing herein contained shall be construed as limiting in any way the extent to which Developer and/or Developer's contractor may be held responsible for payments of damages to persons or property resulting from Developer's or its subcontractors' performance of the work covered under this Agreement.

7.10 **Primary Insurance.** It is agreed that Developer's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City for liability arising out of operations under this Agreement.

7.11 **Obligation of Developer.** Developer agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in paragraph 7.4 from each subcontractor to Developer and provide a Certificate of Insurance and Endorsement that names the Developer and the City as an additional insured. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in this Agreement. Developer and any subcontractors are responsible for all damages to their own equipment and/or property. Developer must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to this Agreement in Quarterly Status and Compliance Reports.

7.12 **“All Risk”.** Prior to the commencement of any construction and at all times during the performance of such construction Developer and/or Developer’s contractors shall obtain and keep in full force and effect builder’s “all risk” insurance policies affording coverage of such construction. The Builder’s Risk Policies shall be written on an occurrence basis and on a “replacement cost” basis, insuring 100% of the insurable value of construction improvements.

## **VIII. WORKERS COMPENSATION INSURANCE COVERAGE**

### **8.1 Definitions:**

- a. Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a age agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project.
- b. Duration of the project - begins upon commencement of work on the Project until the Project is complete and accepted by the City.
- c. Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Developer has undertaken to perform on the Project, regardless of whether that person contracted directly with the Developer or has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the Project. "Services" for purposes of this Article 8 include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

8.2 Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory

requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the Project, for the duration of the Project.

8.3 Developer must provide to City a certificate of coverage prior to proceeding under this Agreement.

8.4 If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the Project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

8.5 The Developer shall obtain from each person providing services on a project, and shall provide to the City:

- a. a certificate of coverage, prior to that person beginning work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- b. no later than seven days after receipt by the Developer, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the phase of the Project.

8.6 The Developer shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

8.7 The Developer shall notify the City in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

8.8 The Developer shall post on the Zone Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

8.9 The Developer shall contractually require each person with whom it contracts to provide services on the Project, to:

- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable phase of the Project;
- b. provide to the Developer, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all

employees of the person providing services on the Project, for the duration of the Project;

- c. provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- d. obtain from each other person with whom it contracts, and provide to the Developer:
  - (1) a certificate of coverage, prior to the other person beginning work on the Project; and
  - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- e. retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- f. notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. perform as required by subparagraphs a-g with the certificates of coverage to be provided to the person for whom they are providing services.

8.10 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Developer is representing to the City that all employees of the Developer who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Developer to administrative penalties, criminal penalties, civil penalties, or other civil actions.

8.11 Developer's failure to comply with any of these provisions is a breach of this Agreement, which entitles the City to declare the Agreement void and exercise all legal remedies including to terminate if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the City without necessity of the 90 day cure period set forth in Article IX.

## **IX. DEFAULT AND TERMINATION**

9.1 **City's Right to Terminate.** If the City determines that Developer has failed to (1) complete the design for the Project; (2) execute an agreement with CIMS for construction of the Project; (3) issue payment for construction of the Project, which failure does not arise from a lack of TIF increment; or (4) perform any other material obligation of the Project Plan and Financing Plan or this Agreement, the City may terminate this Agreement.

- a. Prior to termination, the City shall provide written notice to Developer and the Board stating its intent to terminate and detailing its objection(s) or concern(s).
- b. If the objection and/or concern as set out in the notice is not resolved within 90 calendar days from the date of such notice, this Agreement will terminate effective as of the date such notice is sent. City may also require that Developer reimburse City.
- c. Neither City nor Board is liable for expenses incurred in connection with the stated reasons, objections or concerns leading to Developer's default of this Agreement unless said default is cured to City's satisfaction.
- d. Funds which become due and owing under this provision shall be paid to the City within 90 calendar days after Developer receives notice from the City.

9.2 The Developer shall receive reimbursement for all approved and valid invoices for work performed pursuant to this Agreement. Once the City sends notice, the City shall not make any further payments to the Developer and may seek repayment of any and all funds disbursed by City unless the Developer's breach is cured to the satisfaction of the City (provided, however, that the City may not seek repayment of funds paid to Developer related to the Design Phase due to a breach solely arising from a construction issue occurring in the Construction Phase). If the Developer's breach is not cured within the time period provided, the City, in its sole discretion, may exercise its rights under this Article or extend the cure period.

9.3 Notwithstanding the above, in the event Developer fails to furnish any documentation required in Article XIII (Examination of Records) or Article IV, Paragraph 4.8, (Quarterly Status and Compliance Reports) within 30 days following the written request for same, then the Developer shall be in breach of this Agreement without necessity of the 90 day notice and cure period.

9.4 Additionally, City shall have the right to seek any remedy at law to which it may be entitled including all lawful defenses, counterclaims, offsets, settlements, deductions or credits.

## **X. INDEMNIFICATION**

**10.1 Developer and City acknowledge they are governmental units of the State of Texas and are subject to, and comply 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 or causes of action that may be asserted by third parties for accident, injury or death.**

**10.2 Nothing in this Agreement waives any governmental immunity available to Developer or City under the laws of the State of Texas.**

## **XI. SITE INSPECTION AND RIGHT OF ENTRY**

11.1 The Developer shall allow the City and the Board access to the Project property owned or controlled by the Developer for inspections during and upon completion of construction of the Project, and to documents and records considered necessary by the City and the Board to assess the Developer's compliance with this Agreement.

## **XII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM**

12.1 The City, through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy ("SBEDA") Program. Information regarding the SBEDA Ordinance may be found on the City's Economic Development Department (EDD) website and is also available in hard copy form upon request to the City. Developer understands and agrees that for portions of the Project undertaken by Developer in the award of contracts, subcontracts and other opportunities for design, construction and operation of the Project, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee.

12.2 Immediately upon the completion of the scope of work for design and for construction and prior to issuing bids or solicitations for any prime or subcontractors, Developer shall submit a copy of the scope of work to EDD's Small Business Office (the "SBO"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (API), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (the "Plan"). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.

## **XIII. EXAMINATION OF RECORDS**

13.1 **Right to Review.** Following notice to the Board and the Developer, the City reserves the right to conduct, at its own expense, examinations, during regular business hours and of the books and records related to this Agreement (including contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or the Developer's services hereunder) no matter where the books and records are located. The City also reserves the right to perform any and all additional audits relating to the Board's and/or the Developer's services, provided that such audits are related to those services performed by the Board and/or the Developer for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or the Developer.

13.2 **Preservation of Records.** All applicable records and accounts of the Board and/or the Developer relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Board and/or the Developer throughout the term of this Agreement and for 12 months after the termination of this Agreement, and then transferred, upon City request, at no cost to the City, to the City for retention. During this time, the City, at its own expense, may require that any or all of such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within 10 business days following written request.

13.3 Should the City discover errors in internal controls or record keeping associated with the Project, the Board and/or the Developer shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed 60 days after discovery and notification by the City to the Board and/or the Developer of such discrepancies. The Board and/or the Developer shall inform the City in writing of the action taken to correct such discrepancies.

13.4 If the Board and/or the Developer overcharged, then such overcharges shall be immediately returned to the TIF Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than 2% of the greater of the budget or payments to the Developer for the year in which the discrepancy occurred, and the TIF Fund is entitled to a refund due to these overcharges, then the Developer shall pay the cost of the audit.

#### **XIV. NON-WAIVER**

14.1 No course of dealing on the part of the City, the Board, or the Developer nor any failure or delay by the City, the Board, or the Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement. No provision of this Agreement can be waived by the City unless such a waiver is in writing, and approved by Ordinance from City Council of City.

14.2 The receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance

of the assignee or a release of the Developer from further observance or performance by the Developer of the covenants contained in this Agreement.

## **XV. ASSIGNMENT**

15.1 The City and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City creates without Developer's prior consent. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send Developer written notice of the assignment within 15 days of such assignment.

15.2 The Developer may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City as evidenced by an ordinance passed and approved by the City Council, when a qualified purchaser or assignee specifically agrees to assume all of the Developer's obligations under this Agreement; provided, however, that this subparagraph shall not affect Developer's ability to contract with CIMS for the Construction Phase as set forth in paragraph 2.3 above. This restriction on Developer's rights is subject to the right to assign as provided in paragraph 15.6 below.

15.3 Any work or services herein shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms to the provisions of this Agreement. Compliance by the Developer's contractors and/or subcontractors with this Agreement shall be the responsibility of the Developer.

15.4 City shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of the Developer, for performance of work or services under this Agreement.

15.5 Any restrictions on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent assignment to a lending institution or other provider of capital in order to obtain financing for the Project. Developer shall notify the City of all such assignments to a lending institution or other provider of capital. In no event shall the City be obligated in any way to said financial institution or other provider of capital. The City shall only issue a check or any other form of payment made payable only to the Developer.

15.6 Each transfer or assignment to which there has been consent, shall be in writing, in a form reasonably satisfactory to City and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and the Board to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the City. Failure to obtain, the City's consent in writing, or failure to comply with the provisions herein first shall prevent any such transfer or assignment from becoming effective. If the City approves the assignment or transfer, Developer shall be released from such duties and obligations.

**XVI. NOTICE**

16.1 All official communications among the Parties sent under this Agreement shall be written and mailed registered or certified mail, postage prepaid, documented facsimile or delivered personally to an officer of the receiving Party at addresses below. Communications delivered by facsimile shall be deemed delivered when receipt of such is during normal business hours or the next business day if after normal business hours. Any communication delivered in person shall be deemed received when actually received by an officer of the Party to whom the communication is properly addressed.

**CITY**

Planning and Community Development  
Department

ATTN: TIF Unit  
1400 S. Flores  
San Antonio, TX 78204

**BOARD**

Board of Directors, Inner City Tax Increment  
Reinvestment Zone Number 11  
City of San Antonio, Texas  
C/O Planning and Community Development

1400 S. Flores  
San Antonio, TX 78204  
FAX: (210) 207-7914

**DEVELOPER**

Andres Andujar  
Chief Executive Officer  
Hemisfair Park Area Redevelopment Corporation  
434 South Alamo Street  
San Antonio, Texas, 78205

With a Copy to:

Golden Steves Cohen & Gordon LLP  
300 Convent Street, Suite 2600  
San Antonio, Texas 78205  
Attn: Stephen L. Golden

16.2 Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within 15 business days of such change.

**XVII. CONFLICT OF INTEREST**

17.1 The Board and the Developer each acknowledges that it is informed that the Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are 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: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.2 In accordance with Section 311.0091(h)(1) of the Act, and pursuant to paragraph 17.1 above, the Board and the Developer each warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Board and the Developer each further warrants and certifies that each member of the Board and that the Developer has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVIII. INDEPENDENT CONTRACTORS**

18.1 All Parties expressly agree that in performing their services under this Agreement, the Board and the Developer at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or the Developer respectively shall be independent contractors of the Board and/or the Developer. The City shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Board and/or the Developer, under this Agreement unless any such claims are due to the fault of City.

18.2 Developer is solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of the Developer's employees, contractors, or subcontractors will be deemed employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity because of the Agreement.

18.3 No Party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

## **XIX. PREVAILING WAGES & COMPETITIVE BIDDING**

19.1 The TIF program is a discretionary program, and it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to TIF Development Agreements. The Board and the Developer each individually agree that the Developer will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

19.2 In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Developer shall request upon advertisement of bids, and the City will provide Developer with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to

perform the contract. Developer will ensure that the wage determination becomes a part of the contract. The Developer is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer calls for bids for construction of a given phase. The Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Developer's general contractor and all subcontractors for each phase.

19.3 The Developer is subject to and shall include the following clause in all contracts described in this section and shall also forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Developer or any subcontractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

19.4 **Competitive Bidding.** Contracts for the construction of the Project financed through Available Tax Increment Funds shall be competitively bid in a process acceptable to the City, or in compliance with Chapter 252 of the Local Government Code, and be constructed by or on behalf of the Developer, in compliance with all applicable law unless: (1) Available Tax Increment Funds go toward financing 30% or less of the cost for a specific public improvement for the Project, in compliance with Chapter 212 of the Local Government Code; and (2) such public improvement is not a building or structure of any sort. Should the Developer not competitively bid the Project, the Developer must obtain written approval by the City in order to be eligible for partial reimbursement of those Project Costs not competitively bid pursuant to the regulations in Chapters 252 and 212 of the Local Government Code. Partial reimbursements to the Developer in that event shall not exceed 30% of the Project Costs that would otherwise have been eligible for total reimbursements had they been competitively bid.

## **XX. CHANGES AND AMENDMENTS**

20.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing executed by the City, the Board and the Developer and evidenced by passage of a subsequent City ordinance.

20.2 Notwithstanding the above, the Construction Schedule as detailed in **Exhibit A** and the Payment Schedule in **Exhibit C** may be amended by approval of the City, as evidenced by an agreement in writing between the Developer and the TIF Director, as long as the overall Final Project Plan and Final Financing Plans are not materially changed by such amendment. In the event an amendment to the Construction Schedule or Payment Schedule will result in a material change to the overall Final Project Plan or

Final Financing Plan, then such amendment shall comply with the requirements of paragraph 20.1 above. No change under this paragraph may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity nor can the Construction Schedule be extended beyond the term of this Agreement. The Developer shall rely on the determination of the TIF Director whether a change in the Construction Schedule or Payment Schedule would result in a material change.

20.3 Changes in local, state and federal rules, regulations or laws applicable to the Parties' services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement as of the effective date of the rule, regulation or law.

#### **XXI. SEVERABILITY**

21.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under federal, state or local laws, then said clause or provision shall not affect any other clause or provision and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. In addition a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable will be added to the Agreement.

#### **XXII. LITIGATION EXPENSES**

22.1 Under no circumstances will the available Tax Increment Funds from this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ regarding this Agreement involving the City or any other public entity. The Parties shall bear their own costs, including, but not limited to, attorneys' fees, for any action at law or in equity brought to enforce or interpret any provision of this Agreement. This paragraph does not affect the indemnity provisions herein.

#### **XXIII. LEGAL AUTHORITY**

23.1 Each person executing this Agreement represents and guarantees that he or she has legal authority to execute this Agreement on behalf of their respective Party and to bind said Party and their successors and assigns to all of the terms, conditions and obligations of this Agreement.

#### **XXIV. VENUE AND GOVERNING LAW**

24.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

#### **XXV. PARTIES' REPRESENTATIONS**

25.1 The City, Board and Developer jointly negotiated this Agreement, which shall not be construed against a Party simply because that Party primarily assumed responsibility for drafting.

**XXVI. CAPTIONS**

26.1 All captions used in this Agreement are for the convenience of reference only and shall not be construed to have any effect or meaning as to the Agreement between the Parties.

**XXVII. ENTIRE AGREEMENT**

27.1 This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

27.2 Exhibits A through C attached to this Agreement are incorporated herein and shall be considered a part of this Agreement, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

**[SIGNATURES ON NEXT PAGE]**

**EXECUTED BY THE PARTIES IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original on this the \_\_\_\_ day of November, 2012.

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

**DEVELOPER: HEMISFAIR PARK AREA  
REDEVELOPMENT CORPORATION,** a Texas  
Local Government Corporation

\_\_\_\_\_  
Sheryl Sculley  
CITY MANAGER

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

ATTEST:

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

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

**BOARD OF DIRECTORS  
INNER CITY TIRZ #11**

\_\_\_\_\_  
Ivy Taylor  
BOARD CHAIRWOMAN

ATTEST:

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Michael D. Bernard  
City Attorney

# EXHIBIT A

## Construction Schedule

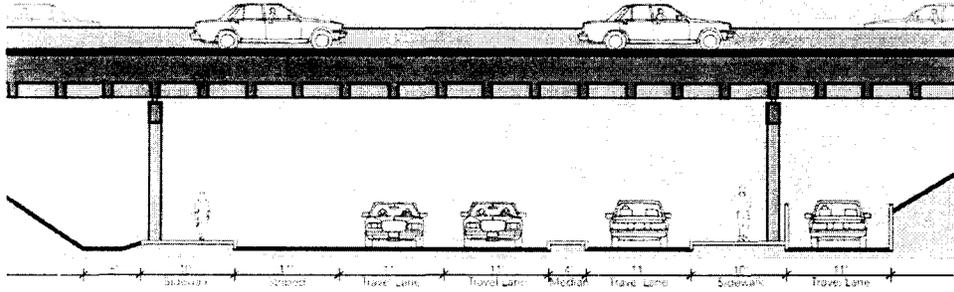
	2012	2013				2014	
	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr
Design		■					
Paver Construction			■				
Enclosure Construction							■

## **EXHIBIT B**

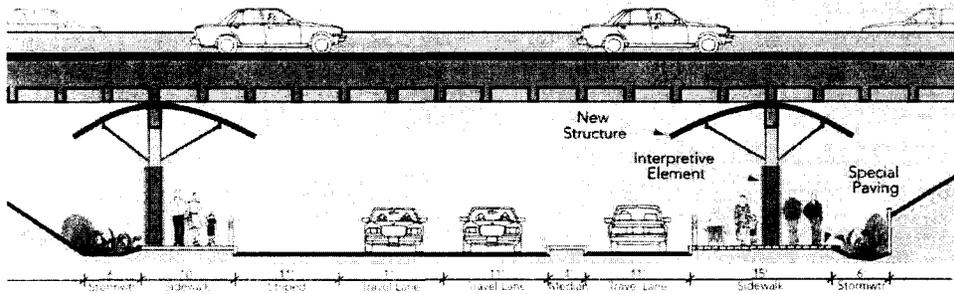
### **Scope of Work**

The scope of the Developer's TIRZ 11 project includes the design, construction, and management of the design/construction process for an enhanced pedestrian and bike passage under IH37 at Commerce Street. The project will provide an inviting corridor connecting Hemisfair and downtown to neighborhoods and amenities to the east that are currently difficult to access. The following sections show the existing conditions and a concept for the Project.

Commerce St- Existing Section Looking East (under I-37)



Commerce St- Proposed Section Looking East (under I-37)



## EXHIBIT C

### Payment Schedule

The following schedule is an estimate of the invoices to be submitted and may be amended by City department in charge of TIF or by CIMS to ensure the completion of the Project:

#### Progress Payments

Dec 2012	\$64,166.67
Jan 2013	\$24,166.67
Feb 2013	\$24,166.67
Mar 2013	\$7,500.00
Apr 2013	\$0.00
May 2013	\$127,750.00
Jun 2013	\$127,750.00
Jul 2013	\$0.00
Aug 2013	\$0.00
Sep 2013	\$0.00
Oct 2013	\$0.00
Nov 2013	\$0.00
Dec 2013	\$0.00
Jan 2014	\$0.00
Feb 2014	\$0.00
Mar 2014	\$127,750.00
Apr 2014	\$127,750.00
May 2014	\$0.00
Jun 2014	\$0.00

#### Final Completed Project

Jul 2014	\$119,000.00
<b>Total</b>	<b>\$750,000.00</b>