JRP
06/18/2015
Item No. 67B

AN ORDINANCE 2015-06-18-0592

APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, THE BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS AND BLUE STAR CONTEMPORARY ART MUSEUM TO FUND FAÇADE IMPROVEMENTS AT 116 AND 132 BLUE STAR LOCATED WITHIN THE BOUNDARIES OF THE INNER CITY TIRZ.

* * * * *

WHEREAS, Tax Increment Reinvestment Zone Number Eleven (the "Inner City TIRZ") was designated on December 14, 2000, through Ordinance 93101 and amended boundaries and extended term on December 5, 2013, through Ordinance 2013-12-05-0871 by City Council to support development, redevelopment, revitalization and public infrastructure improvements within an area adjacent to downtown San Antonio; and

WHEREAS, the Inner City TIRZ has supported numerous social capital and economic development projects intended to implement the goals of existing neighborhood plans and previous planning studies which are encompassed in the boundary of the Inner City TIRZ ; and

WHEREAS, on June 16, 2014 the Inner City TIRZ published a "Request for Applications" for Social Capital Projects within the Inner City TIRZ; and

WHEREAS, staff reviewed the applications and made recommendations to the Inner City TIRZ Board to provide funding for selected programs; and

WHEREAS, on November 14, 2014 the Inner City TIRZ Board of Directors recommended the award of $50,000.00 to Blue Star Contemporary Art Museum (the "Developer") to fund façade improvements at 116 and 132 Blue Star; and

WHEREAS, the façade improvements will consist of improved handicap accessibility to the entrances, including wheelchair accessible approach and automatic doors, increased and improved lighting in and around the porch and stairwell; improved and more secure railing along the elevated foundation/porch area; repair and refinishing of the concrete façade; and preparing of the façade for a rotating series of temporary murals and projections turning the façade into a new public art exhibition site (the "Project"); and

WHEREAS, City staff has negotiated a Development Agreement with the Developer that was recommended by the Inner City TIRZ Board of Directors on May 1, 2015 for approval by City Council **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the Development Agreement with Blue Star Contemporary Art Museum for the Project within the Inner City TIRZ in the amount of $50,000.00 are approved. A copy of the Development Agreement in substantially final form is attached to this Ordinance as **Exhibit A**. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

SECTION 2. The City Manager or her designee is authorized to execute the attached Development Agreement, in substantial form, incorporated into this Ordinance for all purposes.

SECTION 3. City Staff is authorized to amend the Inner City TIRZ Project and Finance Plans to include this Project.

SECTION 4. There is no fiscal impact from the proposed action. All funding for the proposed projects will be paid from the Inner City TIRZ fund from available tax increment and will not impact the City's General Fund.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective ten (10) days after passage.

PASSED AND APPROVED this 18th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda,
Acting City Attorney

Agenda Item:	**67B (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 28, 29, 30, 31, 32, 33, 34, 35A, 35B, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64A, 64B, 65A, 65B, 66A, 66B, 66C, 67A, 67B, 67C, 68A, 68B, 68C, 69A, 69B, 69C, 69D, 70A, 70B, 70C, 70D, 70E)**
Date:	06/18/2015
Time:	10:00:14 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a Development Agreement with Blue Star Contemporary Art Museum in an amount up to $50,000.00 of Inner City TIRZ Tax Increment funds for support of façade improvements at 116 and 132 Blue Star located within the boundary of the Inner City TIRZ.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

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DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS CONTEMPORARY ART FOR SAN ANTONIO d/b/a BLUE STAR CONTEMPORARY ART MUSEUM, and THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS

This Development Agreement ("Agreement"), pursuant to City of San Antonio Ordinance Number 2015-__-__-____, passed and approved on the ____ day of _____, 2015, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas ("the City"); Contemporary Art of San Antonio d/b/a Blue Star Contemporary Art Museum, a 501(c)(3) nonprofit organization, ("the Developer"), and the Board of Directors for Reinvestment Zone Number Eleven, City of San Antonio, Texas, a tax increment reinvestment zone (the "Board") and whom together may be referred to as the "Parties."

BACKGROUND:

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

WHEREAS, a tax increment reinvestment zone created pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the "Act") may only be designated by the City within the city limits; and

WHEREAS, by Ordinance Number 93101, dated December 14, 2000, the City created Reinvestment Zone Number Eleven in accordance with the Act, to promote development and redevelopment of the Zone Property, the Inner City area, through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future, and established a Board of Directors for the Zone, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, in accordance with the Act, the City created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such Boards under the Act or by action of the City Council; and

WHEREAS, on the _____day of _____, 2015 the Board approved funding for this project; and

WHEREAS, the Board will adopt and approve an amended Project Plan and an amended Finance Plan defined hereunder and referred to as "Project Plan" and "Finance Plan" which will include this project for development of the Zone Property; and

WHEREAS, pursuant to the Act and City of San Antonio Ordinance Number 2015-__-__-____, passed and approved on the ____ day of _____, 2015, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and

Finance Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

WHEREAS, pursuant to said authority above, the Board, the City, and the Developer each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as may be specified in any future amended Project Plans, and Finance Plans 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:

ARTICLE I. DEFINITIONS

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

1.2 "Act" means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as amended from time to time.

1.3 "Administrative Costs" means reasonable costs directly incurred by any Participating Taxing Entity related to its agreement to participate in the funding of the Zone, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the Zone incurred prior to entering into and during this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective.

1.4 "Agreement" means this document by and among the City, the Board and the Developer, which may be amended from time to time.

1.5 "Available Tax Increment Funds" 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 Section 7.6 below.

1.6 "Captured appraised value of real property taxable by a taxing unit for a year" has the meaning provided by §311.012(b) of the Act.

1.7 "City Manager" means the City Manager of the City or her designee.

1.8 "City Code" means the City Code of the City of San Antonio, as amended.

1.9 "Completion" means final approval of the construction of a Public Improvement in the Zone in accordance with the Developer's engineer's design, Project Plan, Finance Plan and this Agreement. In order for a Public Improvement to have achieved a state of "Completion" for the purpose of reimbursement under Article VII of this Agreement, the improvement must:

(1) be approved and accepted by the City or appropriate entity as evidenced by a letter of acceptance issued by an authorized official of the City or appropriate entity.

1.10 "Construction Schedule" means the timetable for constructing the Public Improvements specified in this Agreement, which timetable is more particularly set forth in **Exhibit A**, Construction Schedule, attached and incorporated in this Agreement for all purposes and which timetable may be amended by the Parties from time to time pursuant to Section 22.2.

1.11 "Contract Progress Payment Request" ("CPPR") means a request, prepared in accordance with the requirements of **Exhibit D**, Contract Progress Payment Request Form, attached and incorporated herein, for reimbursement to the Developer for work completed in accordance with the definition of "Completion" on specific improvement in the Zone in accordance with the Public Improvements in the Project Plan and the timeline detailed in **Exhibit A**. The CPPR shall also reflect all waivers granted through any City program or incentives.

1.12 "CPPR Approval" means a written acknowledgement from the City to the Developer that the CPPR was completed and submitted correctly, and that the CPPR is ready for presentation to the Board for approval and consideration of reimbursement to the Developer.

1.13 "Developer" means Contemporary Art of San Antonio d/b/a Blue Star Contemporary Art Museum, a 501(c)(3) nonprofit organization.

1.14 "Effective Date" means the last date that a Party signs this Agreement.

1.15 "Finance Plan" means the amended Reinvestment Zone Financing Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which Plan is hereby incorporated into this Agreement by reference for all purposes, as if set out in its entirety.

1.16 "Guidelines" means the current Tax Increment Financing (TIF) and Reinvestment Zone policy as passed and approved by the City Council of the City of San Antonio and amended from time to time.

1.17 "Participating Taxing Entity" means any governmental entity recognized as such by Texas law, which is participating in this Project by contributing a percentage of its tax increment.

1.18 "Phase" means a portion of the Project that is being constructed by the Developer during a specific timeline.

1.19 "Project" has the meaning specified in Section 3.1 of this Agreement.

1.20 "Project Costs" has the meaning provided by Section 311.002(1) of the Act.

1.21 "Project Plan" means the amended 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.

1.22 "Project Status Report" means a report, prepared and submitted by the Developer in accordance with the requirements of this Agreement, and **Exhibit B** attached and incorporated herein for all purposes, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.23 "Public Improvements" include those improvements that provide a public benefit and that are listed in this Agreement in Section 3.1. When an improvement has both private and public benefits, only that portion dedicated to the public may be reimbursed to the Developer, such as, but not limited to, grading and environmental studies.

1.24 "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.

1.25 "TIF" means Tax Increment Financing.

1.26 "TIF Fund" means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled "Reinvestment Zone Number Eleven, City of San Antonio, Texas Tax Increment Fund."

1.27 "TIF Unit" means the employees of the City department responsible for the management of the City's Tax Increment Financing Program.

1.28 "TIRZ" means Tax Increment Reinvestment Zone.

1.29 "Zone" means Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas.

1.30 "Zone Property" means the contiguous geographic area of the City that is included in the boundaries of the Zone, which are more particularly described in the Project and Finance 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.

ARTICLE II. REPRESENTATIONS

2.1 **No Tax Increment Bonds or Notes**: The City, the Board and the Developer represent that they understand and agree that neither the City nor the Board shall issue any bonds or notes to cover any costs directly or indirectly related to the Developer's improvement of the Zone under this Agreement.

2.2 **City Authority.** The City represents to the Developer that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

2.3 **Board's Authority**. Board represents to the Developer that as of the date of the Board's signature to this Agreement the Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 93101, passed and approved on December 14, 2000, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 **Developer's Authority and Ability to Perform.** The Developer represents to the City and to the Board that the Developer is a 501(c)(3) nonprofit organization; that the Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement; that the Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation nor result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and that the Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

2.5 **Reasonable Efforts of All Parties.** The City, the Board and the Developer represent each to the others that they shall each make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

2.6 **All Consents and Approvals Obtained.** The City, the Board and the Developer represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.7 **Right to Assign Payment.** The City and the Developer may rely upon the payments to be made to them out of the TIF Fund as specified in this Agreement and the Developer may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to the Developer.

2.8 **Developer's Continuing Duty to Complete Improvements.** The City, the Board and the Developer represent each to the others that they understand and agree that even after the Zone terminates, the Developer shall diligently work to successfully complete any and all required improvements that are not completed before the Zone terminates. Such completion shall be at no additional cost to the City and/or the Board.

2.9 **No Interlocal Agreements.** The City, the Board and the Developer represent each to the others that they understand and agree that the City is the only participating taxing entity contributing one hundred percent (100%) of its tax increment to the TIF Fund, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

2.10 **Developer Bears Risk of Reimbursement.** The Developer understands and agrees that any expenditure made by the Developer in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, Board or participating taxing entities. The Developer shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, unanticipated effects covered under legal doctrine of force majeure.

2.11 **Not an Obligation of the General Fund.** Any contributions made by the Developer in anticipation of reimbursement from tax increments 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.

ARTICLE III. THE PROJECT

3.1 **The Project**. The Project is projected to include the following Public Improvements to be constructed by the Developer: modification of the exterior spaces located at 116 and 132 Blue Star, the site of the Blue Star Museum and Mosaic after-school program for at-risk youth, respectively. The modifications and work to be completed will include incorporation of improved handicap accessibility to the entrances, including but not limited to improved wheelchair accessible approach and automatic doors, increased and improved lighting in and around the porch and stairwells; improved and more secure railing along the elevated foundation/porch area; repair and refinish the concrete façade at 116 and 132 Blue Star; preparing the façade of Blue Star Contemporary Art Museum for a rotating series of temporary murals and projections, turning the façade into a new public art exhibition site and other improvements as more thoroughly set forth in the Exhibit F attached and incorporated herein for all purposes.

3.2 **Public Purpose.** The Developer shall maintain the Project and related Public Improvements, and keep the Public Improvements open to the general public until September 30, 2025. If Developer fails to maintain and or keep the Project and related Public Improvements open to the public until September 30, 2025, then Developer shall return any payments received under this Agreement for the construction of Public Improvements. This Section 3.2 shall survive termination of this Agreement.

3.3 **Competitive Bidding**. Contracts for the construction of the Public Improvements 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, 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 a Public Improvement, 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.

3.4 **Private Financing**. The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded by the Developer's own capital or through commercial or private construction loans/lines of credit secured solely by the Developer. The Developer may use all or any or part of the Zone Property as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication. The City and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse the

Developer for eligible Project Costs it has expended. These Available Tax Increment Fund reimbursements made to the Developer are not intended to reimburse the Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

3.5 **Reimbursement**. Neither the City nor the Board can guarantee that Available Tax Increment Funds shall completely reimburse the Developer, but those Available Tax Increment Funds shall constitute the only source of reimbursement to the Developer for the construction of the Public Improvements within the Project.

ARTICLE IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on whichever of the following dates should occur the earliest: (i) the date the Developer receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or (iii) termination of the Inner City TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

ARTICLE V. DUTIES AND OBLIGATIONS OF DEVELOPER

5.1 **Compliance with Laws and Ordinances**. Notwithstanding any other provision of this Agreement, the Developer agrees to retain and exercise supervision over the construction of the Public Improvements of the Project, shall comply and require its contractors and subcontractors to comply with all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City Code (including the Unified Development Code such as Universal Design and Construction requirements), all City ordinances, state, federal and local law, as amended.

5.2 **Duty to Complete.** Subject to Article VII, "Compensation to Developer," the Developer agrees to complete, or cause to be completed, the Public Improvements described in Section 3.1 and **Exhibit F** of this Agreement. The Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. The Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of Public Improvements.

5.3 **Commencement of Construction.** From the Effective Date of this Agreement forward, the Developer shall not commence any construction on any Phase of the Project until the plans and specifications for a Phase have been approved in writing by the appropriate City department and the requirements of all federal, state and local laws have been met. For purposes of this Section 5.3, letters of certification or acceptance issued by the City shall constitute written approval of the City.

5.4 **Payment and Performance Bonds.** For all Phases, in accordance with Chapter 2253 of the Texas Government Code, the Developer shall cause its general contractor or general contractors to obtain payment and performance bonds naming the City as a beneficiary or obligee of the bonds. The Developer and its contractors must wait for approval of the bonds by the City's Risk Management Department prior to construction, in order for the Public Improvements to be eligible for reimbursement. Failure to meet the City's minimum standards

for these bonds prior to the commencement of construction for each Phase will be considered a breach of this Agreement. The payment and performance bonds for each Phase shall be in an amount sufficient to cover the entire contract cost of the Public Improvements for that Phase.

The City's Risk Management Department shall determine whether the bonds meet the minimum standard. Failure of the Developer to comply with this Section or Chapter 2253 of the Texas Government Code is a breach of this Agreement, and the City may exercise the full range of legal remedies available, including but not limited to: terminating this Agreement, exercising its rights under Article X, and/or removing the value of Phases and lots which are ineligible for reimbursement.

5.5 **Supervision of Construction.** Notwithstanding any other provision of this Agreement, the Developer agrees to retain and exercise supervision over the construction of all public and private improvements of the Project, and cause the construction of all Public Improvements to be performed, at a minimum, in accordance with federal, state and local laws and ordinances, including, but not limited to the current TIF Guidelines, the Project Plan, the Financing Plan, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City and the Board. The Developer also agrees to provide reports including inspections of such construction and of compliance with such laws, ordinances, and contractual requirements to the City and to the Board quarterly, or more often if requested by the City or the Board, using the form attached as **Exhibit B**, as it may be amended. Developer's failure to comply with this Section 5.5 is a breach of this Agreement, and the City may terminate this Agreement and exercise the full range of legal remedies available to the City, including Article X.

5.6 **Discretionary Program.** The Developer agrees that the TIF program is a discretionary program and that the City has no obligation to extend TIF to the Developer. In exchange for receiving TIF, the Developer agrees that it has no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future City charter, City Code, City ordinances, and City Unified Development Code, state or federal laws and regulations.

5.7 **Payment of Applicable Fees**. The Developer shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses, which have not been waived and are required for construction of the Project.

5.8 **Delays.** The Developer agrees to commence and complete the Project in accordance with the Construction Schedule (**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 each 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 Section 22.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the Zone. If the Parties cannot reach an agreement on the extension of the

Construction Schedule, or if the Developer continues to fail to complete the Project in accordance with the revised Construction Schedule, then the City may exercise its remedies including but not limited to termination of the Agreement.

5.9 **Litigation Against the City.** City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

5.10 **Utility payments.** The Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the development of the Zone Property for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas. The Project shall be subject to Section 35.501 et seq. of the San Antonio City Code (impact fees) and the Developer shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

5.11 **Tree Ordinance.** In accordance with Sections, 5.1 and 5.5 above, the Developer shall comply and shall cause its contractors and subcontractors to comply with the City Code provisions for tree preservation, located in Chapter 35, Article IV of the City's Unified Development Code.

5.12 **Date of Rendering to Appraisal District.** The Developer shall render, or cause to be rendered, any and all residential buildings and commercial buildings to the Bexar Appraisal District before December 31 of each year of this Agreement if the buildings were completed prior to December 31 of that year.

5.13 **Infrastructure Maintenance.**

a. The Developer shall, at its own cost and expense, maintain or cause to be maintained all Public Improvements not dedicated to the City upon completion. For all Public Improvements dedicated to the City upon completion, the Developer shall, at its own cost and expense, maintain or cause to be maintained all Public Improvements until acceptance by the City as evidenced by written acceptance required by subsection 1.9.(1) and for one year after Completion.

b. If applicable and upon acceptance of a street or drainage improvement for maintenance by the City, Developer shall deliver to the City a one-year extended

warranty bond, naming the City as the obligee, in conformity with Chapter 35 of the City's Unified Development Code. The cost of repair, replacement, reconstruction and maintenance for defects discovered during the first year after Completion shall be paid by the Developer or the bond company and shall not be paid out of the TIF Fund.

c. After the expiration of the one year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of the Public Improvements dedicated to the City shall be the City's responsibility. The City shall be reimbursed from the TIF Fund for those costs incurred, including, but not limited to: demolition, rebuilding, engineering, design, reconstruction or any other cost necessitated by the failure without regard to fault or degree ("failure") of Public Improvements, which is discovered within years two through ten after Completion of said Public Improvements.

d. Payment of the City under this Section shall take priority over reimbursement of the Developer.

e. The City's reimbursement from the TIF Fund shall not be considered an amendment of the Finance Plan and requires no action by the Board or the City Council to be effective.

f. The TIF Unit shall report any City reimbursement for the reconstruction or repair of any Public Improvements to the Board in a timely manner.

g. It shall be no defense to the City's reimbursement of itself out of the TIF Fund that the City or its agents have inspected, accepted or approved the Public Improvement. Approval or acceptance of a Public Improvement is not a waiver of claims. The City may attempt multiple repairs on the same infrastructure and reimburse itself for each attempt.

h. The Developer, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, the Developer shall use its best efforts to dedicate (or grant a public easement to) the Public Improvements where applicable to the appropriate taxing entity (as determined by the City), at no additional cost or expense to the City or any other Participating Taxing Entity within 60 days after completion and acceptance of the improvements.

i. Reimbursement of the Developer shall not be unreasonably denied provided the Public Improvement has reached Completion, and provided the City has no active claim for reimbursement.

j. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee or other official of the City or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a City employee or agent do not work as an estoppel against the City under this Agreement or the Unified Development Code.

5.14 **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.

5.15 **Universal Design and Determination of Tax Increment Portion.** If units in the Project are found not to be constructed in compliance with the Universal Design requirements, the City may exercise all its legal options, including but not limited to removing non-compliant parcels and their tax accounts from the boundaries of the Zone and the list of accounts generating revenue for the TIF Fund, which will then be reflected in an amended Finance Plan.

5.16 **Quarterly Status and Compliance Reports.** The Developer shall submit to the City and the Board written and signed Project Status Reports (see Sections 1.22 and 5.5 above) containing all required information, starting no later than 30 days following the beginning of construction of the Project, and on the 15th days of January, April, July and October thereafter 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 X.

5.17 **Duty to Comply.** The Developer shall comply and shall cause all contractors and subcontractors to comply with the City of San Antonio Unified Development Code, as amended, where applicable regarding the development of the Project.

ARTICLE VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 **No TIF Bonds**. Neither the City nor the Board shall sell or issue any bonds to pay or reimburse the Developer or any third party for any improvements to the Zone Property performed under the Project Plan, Finance Plan or this Agreement.

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, termination of the Zone, and any reimbursement to the City under Section 5.13, the City and the Board hereby pledge all Available Tax Increment Funds as reimbursement to the Developer for approved Project costs, up to the maximum total amount specified in Section 7.3 in this Agreement, excluding those taxes collected after September 30, 2025.

6.3 **Form of Reimbursement Requests.** The City and the Board agree that all reimbursement requests from the Developer shall be initiated by the submission of a CPPR form, attached as **Exhibit D**.

ARTICLE VII. COMPENSATION TO DEVELOPER

7.1 **CPPR Approval.** Upon completion of the Public Improvements in each Phase of the Project, the Developer shall submit to the Board within ninety (90) days a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in **Exhibit D** hereof. 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. Failure to timely submit CPPR's in accordance with this Section 7.1 shall result in disallowance of any such Developer requests for reimbursement of expenses.

7.2 **Corrections to CPPR.** Should there be discrepancies in the CPPR or if more information is required, Developer will have thirty (30) days upon notice by City to correct any discrepancies or submit additional information requested by City. Failure to timely submit the additional information requested by the City shall result in disallowance of the Developer's requested expense reimbursement.

7.3 **Maximum Reimbursement of Developer.** Following the Board's authorizations, the Developer shall receive, in accordance with this Agreement, total reimbursements for Public Improvements from the City of a maximum of Fifty Thousand Dollars **($50,000.00)** for public improvements on eligible project costs, as full reimbursement for designing and constructing the Public Improvements required under this Agreement.

7.4 **Processing of Payment Requests.** Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within forty-five (45) 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 the requirements of this Agreement.

7.5 **Available Tax Increment Funds.** The sole source of the funds to reimburse the Developer for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the Participating Taxing Entities participating in the Zone to the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project.

7.6 **Order or Priority of Payment.** The Parties agree that the City and the Board may use funds in the Tax Increment Fund to pay eligible expenditures in the following order or priority of payment: (i) to fully reimburse eligible startup Administrative Costs incurred by City; (ii) 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; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in this Development Agreement; (iv) to reimburse the City under any reclaim of funds pursuant to Article X; (v) to reimburse the Developer for Public Improvements, including financing costs, as provided in this Development Agreement and to the extent that funds in the TIF Fund are available for this purpose. The foregoing notwithstanding, 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.

7.7 **Partial Payments.** If Available Tax Increment Funds do not exist in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority above, and the remainder shall be paid as

Available Tax Increment Funds become available. No fees, costs, expenses or penalties shall be paid to any Party on any late payment.

7.8 **Repayment of Invalid Payments**. If any payment to the 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 and in that event it is the intention of the Parties that 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 that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained in this Agreement.

ARTICLE VIII. INSURANCE

8.1 **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 Public Improvements where Developer is seeking payment under this Agreement, unless specifically exempted in writing by the City.

8.2 **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 "**Inner City TIRZ, Blue Star Development**" 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 original 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 Section 8.5 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.

8.3 **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 coverage's 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.

8.4 **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 all Public Improvements required by the Project Plan and Finance Plan, 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), in the Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
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 Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

8.5 **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

8.6 **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 insured 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 thirty (30) calendar days advance written notice directly to City at the same addresses listed in Section 8.5 of this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

8.7 **Cancellation, Suspension, and Non-Renewal**. Within five (5) 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 Section 8.5 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 the City may exercise its remedies under Article X of this Agreement.

8.8 **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.

8.9 **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.

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

8.11 **Obligation of Developer**. Developer agrees to obtain all insurance coverage's with minimum limits of not less than those limits delineated in Section 8.4 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.

8.12 **"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.

ARTICLE IX. WORKERS COMPENSATION INSURANCE COVERAGE

9.1 **Applicability**. This Article is applicable only to construction of Public Improvements, the costs for which the Developer is seeking reimbursement from the City and the Board, and is not intended to apply to the private improvements made by the Developer.

9.2. **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 coverage 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 a Phase of the Project for the duration of the project.

b. Duration of the project - includes the time from the beginning of the work on the Phase of the Project until the Developer's/person's work on the project has been completed 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 and regardless of whether that person 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" 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.

9.3 The 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.

9.4 The Developer must provide a certificate of coverage to the City prior to proceeding under this Agreement.

9.5 If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the Phase 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.

9.6 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 Phase of 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.

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

9.8 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.

9.9 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.

9.10 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 applicable Phase 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 applicable Phase 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 applicable Phase of the Project;

e. retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;

f. notify the City in writing by certified mail or personal delivery, within ten (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 subsections a-g with the certificates of coverage to be provided to the person for whom they are providing services.

9.11 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.

9.12 The Developer's failure to comply with any of these provisions is a breach of this Agreement by the Developer, 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 ten (10) days after receipt of notice of breach from the City without necessity of the ninety (90) day cure period set forth in Article X.

ARTICLE X. DEFAULT AND TERMINATION

10.1 In the event that the Developer or Developer's contractors fail to commence construction of the Project, fail to complete construction of the Project, or fail to perform any other obligation pursuant to any term of this Agreement, the City and/or the Board may declare a material breach and notify the Developer by certified mail. The City or Board may terminate this Agreement if the Developer does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from the City and/or the Board requesting the failure be cured. In

the event of such default, and as one of the remedies of the City and/or the Board, the Developer shall return any payments under this Agreement for the construction of Public Improvements for any Phase within ninety (90) calendar days after receiving written notice from the City and/or the Board that the Developer has defaulted on this Agreement; EXCEPT that no refund is due if Developer, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes the Developer's obligations under this Agreement, pursuant to Article XVI (Assignment) herein.

10.2 After sending notice of failure under Section 10.1 above, the City and Board shall not distribute TIF funds to the Developer until the Developer's default is cured. If the default is not cured, the City and Board may retain all undistributed TIF funds, terminate this agreement, and unencumber the unpaid balance under the terms of this agreement without further Board or Council action.

10.3 Notwithstanding Section 10.1 above, in the event the Board and/or the Developer fails to furnish any documentation required in Article XIV (Examination of Records) herein within thirty (30) days following the written request for same, then the Board and/or the Developer shall be in default of this Agreement.

ARTICLE XI. INDEMNIFICATION

11.1 The DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the DEVELOPER'S activities under this AGREEMENT, including any acts or omissions of the DEVELOPER, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law. THE DEVELOPER SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY DEVELOPER OR DEVELOPER'S PREDECESSORS IN TITLE, OR THE FAILURE OF

DEVELOPER OR DEVELOPER'S PREDECESSORS IN TITLE, TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

THE INDEMNITY PROVIDED FOR IN THE FOREGOING SECTIONS SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, EXCEPT TO THE EXTENT PROVIDED BELOW.

IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

The DEVELOPER shall advise the CITY, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the DEVELOPER'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the DEVELOPER's cost to the extent required under the INDEMNITY in this Section

THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The CITY, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the DEVELOPER of any of its obligations.

11.2 DEVELOPER shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, and the BOARD and their respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever which are asserted by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. DEVELOPER'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Section 11.1 above, the provisions in Section 11.1 control over those set forth in this

Section. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY or the BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within 15 calendar days of receiving the notice.

ARTICLE XII. SITE INSPECTION AND RIGHT OF ENTRY

12.1 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. In each contract with a builder or lot purchaser, the Developer shall retain a right of entry into the properties and structures in favor of the City for the purpose of allowing the City, its staff and agents to conduct random non-destructive walk-through inspections and monitoring of the properties and structures.

ARTICLE XIII. RESPONSIBILITIES OF THE PARTIES

13.1 **Developer**. As between the City, the Developer, the Board, and any Participating Taxing Entity, the Developer shall be 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 to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of the Agreement.

13.2 **City and Board**. 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.

ARTICLE XIV. EXAMINATION OF RECORDS

14.1 **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.

14.2 **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 twelve (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 ten (10) business days following written request.

14.3 **Discrepancies**. Should the City discover errors in internal controls or in 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 sixty (60) days after discovery and notification by the City or the County 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.

14.4 **Overcharges**. If it is determined that the Board and/or the Developer has overcharged for the cost of the Public Improvements, 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 two percent (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.

ARTICLE XV. NON-WAIVER

15.1 **Actions or Inactions**. 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.

15.2 **Receipt of Services**. 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. No provision of this Agreement shall be deemed waived by the City unless such a waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVI. ASSIGNMENT

16.1 **Assignment by City**. The City and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City creates without prior consent of the Developer. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send the Developer written notice of such assignment within fifteen (15) days of such assignment.

16.2 **Assignment by Developer**. 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 obligations of the Developer under this Agreement. This restriction on the Developer's rights to sell or transfer is subject to the right to assign as provided in Section 16.5 below.

16.3 **Work or Services Subject to this Agreement**. Any work or services contracted 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, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by the Developer's contractors and/or subcontractors with this Agreement shall be the responsibility of the Developer. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible Project Cost reimbursement.

16.4 **No Third Party Obligation**. The 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 except as set forth in Section 16.6 of this Agreement.

16.5 **Lending Institutions**. Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement 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.

16.6 **Written Instrument**. Each transfer or assignment to which there has been consent, pursuant to Section 16.2 above, shall be by instrument in writing, in form reasonably satisfactory to the 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. In the event the City approves the assignment or transfer of this Agreement, the Developer shall be released from such duties and obligations.

16.7 **No Waiver**. Except as set forth in Section 16.3, 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. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

ARTICLE XVII. NOTICE

17.1 **Addresses**. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

CITY
Department of Planning and Community Development
Attn: TIF Unit
1400 S. Flores
San Antonio, TX 78204

BOARD
Board of Directors, Inner City Tax Increment Reinvestment Zone Number Eleven
City of San Antonio, Texas
C/O Planning and Community Development
ATTN: John Dugan, Director
1400 S. Flores
San Antonio, TX 78204

DEVELOPER

Contemporary Art for San Antonio
dba Blue Star Contemporary Art Museum
116 Blue Star
San Antonio, Texas 78204

17.2 **Change of Address**. Each Party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile shall be deemed delivered when receipt of such is during normal business hours or the next business day if receipt is 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. All notices, requests or consents under this Agreement shall be: (i) in writing, (ii) delivered to a principal officer or managing entity of the recipient in person, by courier, mail, facsimile, or similar transmission, and (iii) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required by applicable law or this Agreement, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each Party shall have the right to change its address by giving at least fifteen (15) days written notice to the other Parties.

ARTICLE XVIII. CONFLICT OF INTEREST

18.1 **Charter and Ethics Code Prohibitions**. 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 ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent 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.

18.2 **Warrant and Certification**. In accordance with Section 311.0091(h)(1) of the Act, and pursuant to Section 18.1 above, 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 Developer each further warrants and certifies that the Developer has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code using the form provided in **Exhibit E**.

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 **No Agency**. 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 respectively, under this Agreement unless any such claims are due to the fault of the City.

19.2 **No Authority**. The Parties further understand and agree that no Party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XX. TAXES

20.1 **Duty to Pay**. The Developer shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees which are now or may be levied upon the Zone Property, the Developer or upon the business conducted on the Zone Property or any of the Developer's property used in connection therewith, including employment taxes. Developer shall also maintain in current status all Federal, State, and local licenses and permits required for Developer's business operation.

20.2 **Evidence of Payment**. The Developer shall include in the CPPR submission evidence of payment or exemption of the taxes and fees above.

ARTICLE XXI. PREVAILING WAGES

21.1 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.

21.2 In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement is included as **Exhibit C**, and made a part of this Agreement. 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.

21.3 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 construction of each Phase. The Developer shall 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.

ARTICLE XXII. CHANGES AND AMENDMENTS

22.1 **Ordinance and Order Required**. 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.

22.2 **Construction Schedule**. Notwithstanding the above, the Construction Schedule as detailed in **Exhibit A** may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the City Department responsible for overseeing the TIF Unit, (the "TIF Director") as long as the overall Amended Project Plan and Amended Finance Plans are not materially changed by such amendment. In the event an amendment to the Construction 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 Section 22.1 above. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. The Developer shall rely on the determination of the TIF Director whether a change in the Construction Schedule would result in a Material Change to the overall Project requirements.

22.3 **Automatic Incorporation of Laws**. Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's 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, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.

ARTICLE XXIII. SEVERABILITY

23.1 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. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable clause or provision, there be added to this Agreement 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.

ARTICLE XXIV. LITIGATION EXPENSES

24.1 Under no circumstances will the available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or any other public entity.

24.2 During the term of this Agreement, if the Board and/or the Developer files and/or pursues an adversarial proceeding against the City regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the City's option, all access to the funding provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account.

24.3 The Board and/or the Developer, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings regarding this Agreement against the City remains unresolved if it was initiated without first engaging in good faith mediation of the dispute.

24.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or the Developer against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XI above.

ARTICLE XXV. LEGAL AUTHORITY

25.1 **All Consents and Approvals Obtained.** Each person executing this Agreement on behalf of each Party, represents, warrants, assures and guarantees that he or she has full legal authority to (i) execute this Agreement on behalf of the City, the Board and/or the Developer, respectively and (ii) to bind the City, the Board and/or the Developer to all of the terms, conditions, provisions and obligations of this Agreement.

ARTICLE XXVI. VENUE AND GOVERNING LAW

26.1 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. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar, County Texas.

ARTICLE XXVII. PARTIES' REPRESENTATIONS

27.1 This Agreement has been jointly negotiated by the City, the Board and the Developer and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXVIII. CAPTIONS

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

ARTICLE XXIX. LICENSES/CERTIFICATIONS

29.1 Developer warrants and certifies that Developer and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXX. NONDISCRIMINATION AND SECTARIAN ACTIVITY

30.1 Developer shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with public funds. Further no portion of the funds received shall be used in support of any sectarian or religious activity.

ARTICLE XXXI. ENTIRE AGREEMENT

31.1 **No Contradictions**. 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.

31.2 **Incorporation of Exhibits**. The **Exhibits A through E** 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.

IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of the each signature below. This Agreement will become effective on the date of the last signature below:

CITY OF SAN ANTONIO

_____
Sheryl Sculley
City Manager
Date: _____

Contemporary Art of San Antonio d/b/a Blue Star Contemporary Art Museum

_____
By:
Date:_____

BOARD OF DIRECTORS
INNER CITY TIRZ

_____
Name: _____
Chairman, Board of Directors
Date: _____

ATTEST/SEAL:

_____
Name: _____
Secretary, Board of Directors
Date: _____

APPROVED AS TO FORM:

_____
Martha G. Sepeda
Acting City Attorney
Date: _____

EXHIBIT A

Construction Schedule

BLUE STAR DEVELOPMENT

BLUE contemporary

EXTERIOR SCOPE
TIRZ SOCIAL CAPITAL GRANT

PROJECT NAME	PROJECT DETAIL	PROJECT MANAGER	ESTIMATED DATE OF COMPLETION	ESTIMATED TOTAL COST	ESTIMATED TIRZ	ESTIMATED BLUE STAR
Public entrance	Wheelchair accessible approach, automatic door, glass entrance, signage, remodel awning coverings, paint	Poteet Architects	Sept 2015	$23,457.00	$23,457.00	$ -
Railing	Replace metal railing, paint	Poteet Architects	Sept 2015	$10,747.00	$10,747.00	$ -
Staircase	Redesign, refabricate front staircase	Poteet Architects	Sept 2015	$9,053.00	$9,053.00	$ -
Lighting	Landscape lighting, accessible nighttime lighting	Poteet Architects/DADO Group	Sept 2015	$5,000.00	$5,000.00	$ -
Concept/Planning	Architectural drawings and schematics	Poteet Architects	April 2015	$7,538.55	$ -	$7,538.55
Contingency				$2,000.00	$1,743.00	$257.00
Facility Expense	Facility Use (May - September)	Berltex Real Estate Holdings	April-Sept 2015			$60,000.00
			TOTAL	**$57,795.55**	**$50,000.00**	**$67,795.55**

EXHIBIT B

Project Status Report

Status Report TIRZ Funded Project

Project Name:	Blue Star Contemporary-Façade Improvement	TIRZ Name & #:	Inner City TIRZ #11	Report Date:	
Progress Report #:		Scheduled Start Date:		Actual Start Date:	
Reporting Period:		Scheduled Completetion Date:		Actual Completion Date:	

Task Name	Task Detail	Estimated Completion Date	Actual Completion Date	% Completed this Reporting Period	% Completed to Date	Description of Work Completed This Reporting Period
Public Entrance	Wheelchair accessible approach, automatic door, glass entrance, signage, remodel awning coverings, paint					
Railing	Replace metal railing, paint					
Staircase	Redesign, refabricate front staircase					
Lighting	Landscape lighting, accessible nighttime lighting					
Concept/Planning	Architectural drawings and schematics					

Comments: (Please describe any project milestones, accomplishments or setbacks that have occurred during this reporting period)

Certification:

I certify that to the best of my knowledge and belief, the data above is correct and accurately reflects the status of the project to date.

Signature of Certifying Individual: _____ Date: _____

Type or _____ Telephone _____

EXHIBIT C

Prevailing Wage Rates

General Decision Number: TX150016 01/02/2015 TX16

Superseded General Decision Number: TX20140016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of $10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures)	$ 12.56	
ELECTRICIAN	$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb	$ 12.94	
Structures	$ 12.87	
LABORER		
Asphalt Raker	$ 12.12	
Flagger	$ 9.45	
Laborer, Common	$ 10.50	
Laborer, Utility	$ 12.27	
Pipelayer	$ 12.79	
Work Zone Barricade Servicer	$ 11.85	
PAINTER (Structures)	$ 18.34	
POWER EQUIPMENT OPERATOR:		
Agricultural Tractor	$ 12.69	
Asphalt Distributor	$ 15.55	
Asphalt Paving Machine	$ 14.36	
Boom Truck	$ 18.36	
Broom or Sweeper	$ 11.04	
Concrete Pavement Finishing Machine	$ 15.48	
Crane, Hydraulic 80 tons or less	$ 18.36	
Crane, Lattice Boom 80 tons or less	$ 15.87	
Crane, Lattice Boom over 80 tons	$ 19.38	
Crawler Tractor	$ 15.67	
Directional Drilling Locator	$ 11.67	
Directional Drilling Operator	$ 17.24	
Excavator 50,000 lbs or Less	$ 12.88	
Excavator over 50,000 lbs	$ 17.71	
Foundation Drill, Truck Mounted	$ 16.93	
Front End Loader, 3 CY or Less	$ 13.04	
Front End Loader, Over 3 CY	$ 13.21	
Loader/Backhoe	$ 14.12	
Mechanic	$ 17.10	
Milling Machine	$ 14.18	
Motor Grader, Fine Grade	$ 18.51	
Motor Grader, Rough	$ 14.63	
Pavement Marking Machine	$ 19.17	

Reclaimer/Pulverizer.....$ 12.88
Roller, Asphalt.....$ 12.78
Roller, Other.....$ 10.50
Scraper.....$ 12.27
Spreader Box.....$ 14.04
Trenching Machine, Heavy....$ 18.48

Servicer.....$ 14.51

Steel Worker
Reinforcing.....$ 14.00
Structural.....$ 19.29

TRAFFIC SIGNAL INSTALLER
Traffic Signal/Light Pole
Worker.....$ 16.00

TRUCK DRIVER
Lowboy-Float.....$ 15.66
Off Road Hauler.....$ 11.88
Single Axle.....$ 11.79
Single or Tandem Axle Dump
Truck.....$ 11.68
Tandem Axle Tractor w/Semi
Trailer.....$ 12.81

WELDER.....$ 15.97

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or

"UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

EXHIBIT D

Contract Progress Payment Request Form & Requirements

CITY OF SAN ANTONIO
Contract Progress Payment Request (CPPR)
Form and Requirements

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- **All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections**
- **Copies of the payment and performance bond in accordance with executed Development Agreement**
- **Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to: Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.)***
- **Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes**.

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

*** All invoice Payments must be accompanied by:**

- **Receipt or Cancelled Check**
- **Must Reference the Project**

*** Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.**

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice#: **One (1)**	**Phase(s) covered by this invoice:** **Phases 1, 2, & 3**

	A	B	C	D	E
Section	**Activity**	**Maximum Allowable from Final Finance Plan**	**Invoices Amount**	**Prior Requests**	****Balance**
1	Construction Management	44,200	40,624	0	3,576
2	Contingency	192,500	199,215	0	-6,715
3	Driveway Approach	20,000	22,972	0	-2,972
4	Engineering Survey	50,050	50,000	0	50
5	Formation Fees	150,150	200,000	0	-49,850
6	Gas	144,375	100,000	0	44,375
7	Green Belt/Green Space	26,950	21,000	0	5,950
8	Infrastructure Cost	61,600	60,000	0	1,600
9	Legal Fees	10,000	11,500	0	-1,500
10	Organizational Cost	20,800	35,000	0	-14,200
11	Official Traffic Control Device	15,000	10,000	0	5,000
12	Parking Facilities	30,000	28,250	0	1,750
13	Project Cost	86,163	86,100	0	63
14	Public Schools	10,000	11,000	0	-1,000
15	Recreational Park Area	105,942	105,940	0	2
16	Regional Storm Water Improvements	73,344	73,444	0	-100
17	Relocation Cost	40,747	55,474	0	-14,727
18	Sanitary Sewer	35,000	65,000	0	-30,000
19	Sidewalks	47,500	67,587	0	-20,087
20	Streetscape Planting	20,000	20,000	0	0
21	Street Lights	25,000	25,105	0	-105
22	Water	19,500	19,500	0	0
	TOTAL	1,286,321	1,365,211	0	-78,890

Financing Cost does not accrue interest
**The Balance Column is used for Tracking purposes only
All Invoice Payments must be accompanied by:
Receipt or Cancelled Check
Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION:

I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.

Signature of Certifying Financial Official	**Signature of Certifying Engineer**
Typed or printed Name and Title	**Typed or printed Name & Title**
John Doe, CPA	John Smith, Engineer
DATE:	**DATE:**

Reimbursement for TIRZ Expenses					
Project Name:		**Period covered by this invoice:**			
Invoice#:		**Phase(s) covered by this invoice:**			
	A	B	C	D	E
Section	**Activity**	**Maximum Allowable from Final Finance Plan**	**Invoices Amount**	**Prior Requests**	****Balance**
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
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20					
21					
22					
	TOTAL				

Financing Cost does not accrue interest
**The Balance Column is used for Tracking purposes only
All Invoice Payments must be accompanied by:
Receipt or Cancelled Check
Must Reference the Project

The City of San Antonio recommends having a CPA and the Project Engineer certify invoices submitted by developers.

CERTIFICATION:

I certify, that to the best of my knowledge and belief, the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.

Signature of Certifying Financial Official _____

Typed or printed Name and Title: _____

Signature: _____

DATE: _____

Signature of Certifying Engineer _____

Typed or printed Name & Title: _____

Signature: _____

DATE: _____

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 1 **Site Work**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Dirt Movers Inc.	00451364		1520	10,000		Ck# 2140
Dirt Movers Inc.	145246		1555	22,000		Ck# 2141
Dirt Movers Inc.	783581		1600	2,500		Ck# 2142
Dirt Movers Inc.	891771		1680	1,124		Ck# 2142
Dirt Movers Inc.	157863146		1685	5,000		Ck# 2144
Total		**44,200**		**40,624**	**3,576**	

Reimbursement for TIRZ Expenses

Project Name:	**Period covered by this invoice:**
Invoice #:	**Phase covered by this invoice:**

Section 1 **Site Work**	**Plat and/or MDP #**	**Maximum Allowable from Final Finance Plan**	**Invoice #(s)**	**Invoice Amount(s)**	**Balance**	**Method of Payment**
Total						

(SAMPLE) Reimbursement for TIRZ Expenses	
Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
NAD Contractors	00451364		2020	$165,000		Ck# 2523
Total		**$192,500**		**$165,000**	**$27,500**	

Reimbursement for TIRZ Expenses	
Project Name:	**Period covered by this invoice:**
Invoice #:	**Phase covered by this invoice:**

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

(SAMPLE) Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Fast City Contractors	3574216		123	$10,000		Ck# 8989
			456	$4,500		Ck# 8989
			789	$5,500		Ck# 8989
Total		**$20,000**		**$20,000**	**$0.00**	

Reimbursement for TIRZ Expenses

Project Name: **NAD Residential TIRZ**	**Period covered by this invoice:** **12/02---8/03**
Invoice #: **One (1)**	**Phase covered by this invoice:** **Phases 1,2, & 3**

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						

EXHIBIT E

City of San Antonio's Discretionary Contracts Disclosure Form

City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity[1] that is a **party** to the discretionary contract:

(2) Identify any individual or business entity which is a ***partner***, ***parent*** or ***subsidiary*** business entity, of any individual or business entity identified above in Box (1):
☐ **No partner, parent or subsidiary; *or***   **List partner, parent or subsidiary of each party to the contract and identify the corresponding party:**

(3) Identify any individual or business entity that would be a ***subcontractor*** on the discretionary contract.
☐ **No subcontractor(s); *or***   **List subcontractors:**

(4) Identify any ***lobbyist*** or ***public relations firm*** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.
☐ **No lobbyist or public relations firm employed; *or***   **List lobbyists or public relations firms:**

[1] A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions
List all political contributions totaling one hundred dollars ($100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☐ **No contributions made; If contributions made, list below:**

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals
Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question[2] as to whether any city official or employee would violate , ("conflicts of interest") by participating in official action relating to the discretionary contract.

☐ **Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or**

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:	Title: Company or D/B/A:	Date:

[2] For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

EXHIBIT F

Project Scope

BLUE contemporary

EXTERIOR SCOPE
TIRZ SOCIAL CAPITAL GRANT

PROJECT NAME	PROJECT DETAIL	PROJECT MANAGER	ESTIMATED DATE OF COMPLETION	ESTIMATED TOTAL COST	ESTIMATED TIRZ	ESTIMATED BLUE STAR
Public entrance	Wheelchair accessible approach, automatic door, glass entrance, signage, remodel awning coverings, paint	Poteet Architects	Sept 2015	$23,457.00	$23,457.00	$ -
Railing	Replace metal railing, paint	Poteet Architects	Sept 2015	$10,747.00	$10,747.00	$ -
Staircase	Redesign, refabricate front staircase	Poteet Architects	Sept 2015	$9,053.00	$9,053.00	$ -
Lighting	Landscape lighting, accessible nighttime lighting	Poteet Architects/DADO Group	Sept 2015	$5,000.00	$5,000.00	$ -
Concept/Planning	Architectural drawings and schematics	Poteet Architects	April 2015	$7,538.55	$ -	$7,538.55
Contingency				$2,000.00	$1,743.00	$257.00
Facility Expense	Facility Use (May - September)	Berltex Real Estate Holdings	April-Sept 2015			$60,000.00
			TOTAL	**$57,795.55**	**$50,000.00**	**$67,795.55**