ACW
1/15/09
Item No. 32

AN ORDINANCE 2009-01-15-0027

APPROVING THE FINAL PROJECT AND FINAL FINANCING PLANS FOR THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-FIVE, CITY OF SAN ANTONIO, TEXAS, KNOWN AS THE HUNTERS POND TIRZ; AND AUTHORIZING THE EXECUTION OF RELATED AGREEMENTS.

* * * * *

WHEREAS, tax increment financing is an economic development tool authorized by the Tax Increment Financing Act, Texas Tax Code, Chapter 311; and

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

WHEREAS, by Ordinance Number 96558, dated November 21, 2002, the City annexed, effective January 5, 2003, the Southside Initiative area #2 for limited purposes, including the Hunters Pond area, and zoned the whole area as "DR" (Development Reserve) in accordance with the City's land use plan developed for the Southside Initiative; and

WHEREAS, by Resolution Number 2002-44-45, dated December 12, 2002, the City added the Southside Initiative area #2, including the Hunters Pond area, to the 3-Year annexation plan for full purpose annexation; and

WHEREAS, by Ordinance Number 98495, dated December 4, 2003, the City rezoned the Hunters Pond area from "DR" (Development Reserve) to "R4" (Residential Single-Family); and

WHEREAS, by Ordinance Number 100045, dated December 9, 2004, the City rezoned the Hunters Pond area as "UD" (Urban Development); and

WHEREAS, by Ordinance Number 101601, dated December 1, 2005, effective December 11, 2005, the City provided for the full purpose, voluntary annexation of the Hunters Pond area and specifically maintained its zoning as "UD" under the full purpose annexation; and

WHEREAS, by Ordinance Number 2006-06-01-0633, dated June 1, 2006, the City created Reinvestment Zone Number Twenty-five in accordance with the Act, to promote development and redevelopment of the TIRZ, the Hunters Pond 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 TIRZ, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, since 1998, the City of San Antonio has developed and adopted the guidelines for the City's use of Tax Increment Financing in accordance with the requirements of the TIF Act.

The Hunters Pond TIRZ is governed by the guidelines in effect when it was designated, the 2004 *Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria*; and

WHEREAS, the Act authorizes the expenditure of funds derived within a reinvestment zone for costs incurred by a municipality establishing a reinvestment zone, for reimbursement of costs of public works or public improvements in the TIRZ, plus other costs incidental to those expenditures and obligations, consistent with the Project Plan of the TIRZ, which constitute Project Costs, as defined in the Act; and

WHEREAS, pursuant to the Act and City Ordinance Number 2006-06-01-0633, the TIRZ Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the TIRZ within the scope of those plans; and

WHEREAS, on the 10th day of December, 2008, the Board adopted and approved a Final Project Plan and a Final Financing Plan for development of the TIRZ, approved the Development Agreement in substantially final form between the City, Bexar County, the TIRZ Board, and the Developer, and approved the Interlocal Agreement in substantially final form between the City, Bexar County, and the TIRZ Board; and

WHEREAS, the City desires to approve the payment of 100% of available City incremental ad valorem taxes generated from new in the TIRZ less Cost of Services into the Fund, not to exceed a maximum potential reimbursement to the Developer of seven million dollars ($7,000,000); and

WHEREAS, the Developer, Hunters Pond, LP, recognizes that there is no guarantee that the value of property in the TIRZ will increase, that any increases in value are dependant upon many factors which are not within the City's control, and that there is no guarantee of any tax increment, as that term is defined in the TIF Act; and

WHEREAS, it is now necessary for the City Council to approve the Final Project Plan and the Final Financing Plan for the TIRZ, the Development Agreement with the TIRZ Board, Bexar County and Developer, and the Interlocal Agreement with the TIRZ Board and Bexar County all of which provide for development within the TIRZ; and

WHEREAS, the meeting at which this Ordinance was passed was open to the public and public notice of the time, place and purpose of said meeting was given all as required by Chapter 551, Texas Government Code; **NOW THEREFORE**:

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

SECTION 1. The Project Plan and Financing Plan for the TIRZ are feasible and in compliance with the City's Master Plan and the City's *2004 City of San Antonio, Texas Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria* by encouraging development, infrastructure improvements and housing within certain areas of the City which would not have occurred without tax increment financing.

SECTION 2. The City Council approves the proposed Final Project Plan and the Final Financing Plan, in substantially final format, as approved on December 10, 2008 by the TIRZ Board of Directors, and copies are attached as Exhibit 1 (Final Project Plan) and Exhibit 2 (Final Financing Plan) and incorporated into this Ordinance for all purposes. The City Manager or her designee is authorized to approve any final changes to the two plans, as deemed necessary by the City Attorney's Office, to fulfill the purpose and intent of this ordinance and to implement the goals of the Hunters Pond TIRZ.

SECTION 3. The City Council approves the draft Development Agreement and Interlocal Agreement, in substantially final format, as approved on December 10, 2008 by the TIRZ Board of Directors also in substantially final format, and attached as Exhibit 3 (Development Agreement) and Exhibit 4 (Interlocal Agreement) and incorporated into this Ordinance for all purposes. The City Manager or her designee is authorized to approve the final changes to the two draft agreements, as deemed necessary by the City Attorney's Office to reflect information in the final plans, to fulfill the purpose and intent of this ordinance and to implement the goals of the Hunters Pond TIRZ.

SECTION 4. Approval and execution of the attached Development Agreement does not have an immediate fiscal impact. To the extent that such funds are available, the City is authorized to pay the Developer up to a maximum of seven million dollars ($7,000,000.00) for public infrastructure improvements and financing costs as authorized by and in accordance with the Act.

SECTION 5. Payment of 100% of the City's incremental ad valorem taxes generated from the new improvements less Cost of Services is authorized to be paid into the Hunters Pond TIRZ Tax Increment Fund, established on June 1, 2006, Fund 29086020 entitled TIRZ Hunters Pond to record the collection of revenue recorded in internal order 207000000269 entitled TIRZ Hunters Pond and payments using cost center 070387001 entitled TIRZ Hunters Pond, in accordance with the plans and agreements.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, create, direct, and correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. The statements set out in the recitals of this Ordinance are true and correct and are incorporated as part of this Ordinance.

SECTION 8. If any provision of this Ordinance or the application of any provision of this Ordinance to any circumstance is held invalid, the remainder of this Ordinance and the application of the remainder of this Ordinance to other circumstances shall nevertheless be valid and this Ordinance would have been enacted without such invalid provision.

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SECTION 9. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise, it shall be effective ten (10) days after its passage.

PASSED AND APPROVED *this 15th day of January, 2009.*

M A Y O R

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
for City Attorney

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Exhibit 1
Hunters Pond TIRZ
Final Project Plan

CITY OF SAN ANTONIO, TEXAS
Housing and Neighborhood Services Department

TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY FIVE

Hunters Pond

FINAL PROJECT PLAN

1/15/2009

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Executive Summary

Hunters Pond

The City of San Antonio's Tax Increment Reinvestment Zone (TIRZ) Twenty-five will facilitate the construction of a residential neighborhood on about 88.1 acres of land.

The TIRZ is located in the Primary Target Area as defined in the City's 2004 TIF Guidelines, within which the City may participate by contributing up to 100% of its tax increment for up to 25 years. The TIRZ is located outside Loop 410 west of Zarzamora Road in City Council District 3, and in Southwest Independent School District. The developer of the property, Hunters Pond LP, is requesting City of San Antonio and Bexar County participation in the Tax Increment Reinvestment Zone.

The Hunters Pond TIRZ implements a new base zoning, UD (Urban Development) that creates a neighborhood with mixed housing types and a variety of park and open space amenities that enhance the long-term viability and attractiveness of the area.

The neighborhood will comprise 100% market-rate housing with 352 detached single family houses with an average price of $143,150; 24 Duplex Units with an average price of $124,400; 39 Garden Homes with an average price of $198,883; and 34 Townhome units with an average price of $124,984.

The cost of the public infrastructure improvements is estimated at $8,141,309. Financing costs are estimated at $2,637,760; administrative expenses at $764,862; and costs of services at $3,819,904, bringing the total estimated TIRZ costs to $15,364,692.

The life of the Tax Increment Reinvestment Zone (TIRZ) is projected to be 25 years with the TIRZ being in existence through fiscal year 2031.

The Board of Directors for Hunters Pond TIRZ 25 met on December 10, 2008 and approved the Final Project Plan and Final Financing Plans.

1. Policy and Program

The City of San Antonio is dedicated to the revitalization of inner-city neighborhoods and commercial districts, particularly in those areas located inside Loop 410 and south of Highway 90. A tiered system of incentive tools, including Tax Increment Financing (TIF), has been structured to meet the City's revitalization and reinvestment goals. Development projects supported by a Tax Increment Reinvestment Zone should act as economic stimuli to surrounding areas. By leveraging private investment for certain types of development within a targeted area, TIF can be used to assist in financing needed public improvements and enhancing infrastructure.

San Antonio's TIF Program strategy to support development and redevelopment is unique in the State. The TIF Program has evolved since 1998 to ensure that the incentive is used today to provide full support to the City's three primary revitalization mechanisms: Economic Development, Community Development and Urban Design Standards. TIF seeks to directly promote recommendations made in the City's Master Plan, CRAG Report, Neighborhood Plans, Community Plans, Corridor and Area Plans, and Housing Master Plan.

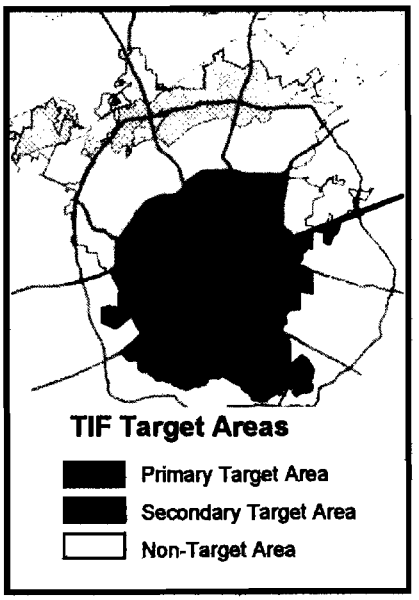
Tax Increment Reinvestment Zones Highlights:

- TIF is an incentive tool that local governments can use to finance public improvements and enhance infrastructure within a defined area, called a Tax Increment Reinvestment Zone (TIRZ)
- Tax Increment Financing is governed by the TIF Act found in Chapter 311 of the Texas Tax Code
- The TIF Act specifies that areas to be designated as a TIRZ must be economically distressed, unproductive, underdeveloped, or blighted, and impair the City's growth because of these factors
- Each taxing entity that collects taxes against the property within a TIRZ has an opportunity to contribute future tax revenues to a TIRZ fund to reimburse developers for the cost of public infrastructure improvements in the TIRZ

TIF GUIDELINES

The City of San Antonio (City) adopted amended Guidelines and Criteria for TIF by Ordinance No. 98663 on January 8, 2004. The original Guidelines were established by the City in 1998 by Ordinance No. 88196, and were amended by Ordinance No. 92552 in 2000 and Ordinance No. 92710 in 2002. The Guidelines serve as policy direction to City staff and interested parties regarding the Application for Redevelopment with Tax Increment Financing, which supports certain types of development in targeted areas of the city. Reinvestment Zones may be designated either through (1) a City-initiated project following a Request for Proposals and the submission of an Application for Redevelopment to the City pursuant to

these Guidelines, or (2) the independent submission of an Application for Redevelopment to the City pursuant to these Guidelines in conjunction with the petition of a property owner as detailed in Section 311.005 (a) (4) of the Texas Tax Code. All TIRZ are governed by the Guidelines in effect at the time of the TIRZ creation by City Council. Hunters Pond was designated following the submission of a petition from the property owner, and is governed by the 2004 Guidelines.



The Hunters Pond TIRZ is located outside SW Loop 410 and west of Zarzamora Rd, in City Council District 3, and in the Primary Target Area.

TARGETED ECONOMIC DEVELOPMENT

Implementation of the TIF incentive is tailored to the strengths and needs of specific areas of the City. The City has identified target areas where projects may be eligible for TIF with varying participation levels and terms.

Primary Target Areas (Highest Priority Area): City may participate up to 100% and for a term of up to 25 years

Secondary Target Areas: City may participate up to 90% and up to a term of 20 years

Non-Target Areas: City may participate up to 65% and up to a term of 20 years

The City may not designate any area as a Reinvestment Zone solely for the purpose of encouraging future development in that area, but may do so if development or redevelopment would not occur solely through private investment in the reasonably foreseeable future. In all petition-initiated TIRZ, the applicant must provide an independent market feasibility study that demonstrates demand, viability, and capacity for the project. This study (included in Section 5 of this Project Plan) should validate absorption rates, estimated values, adjacent property lease space and reference established and on-going neighborhood plans.

COMMUNITY DEVELOPMENT

TIF Applicants must demonstrate how the planned investment will contribute to revitalization activities in the community of which the TIRZ is a part. The Applicant must also indicate how the input of nearby neighborhood residents, businesses, and schools has influenced the project planning process. All proposals must communicate and

demonstrate how the project achieves objectives of the City's Master Plan, Southside Initiative and/or the Community Revitalization Action Group report.

DESIGN QUALITY

The design of the public and private elements of TIF-supported projects should be designed to ensure long-term value. Accordingly, public improvements must be built according to design principles that prioritize the safety and comfort of all users – whether they are walking, jogging, riding or driving. Similarly, private improvements must be built to provide livable environments for everyone, regardless of ability, age or size.

Urban Development Zoning

The TIF Program promotes land development strategies that reduce the number of times residents are forced to use their automobiles, by encouraging site designs that reduce vehicle miles traveled (VMT) through compactness, mixed uses, transit accessibility, pedestrian usability, and infill. The City's Unified Development Code (UDC) includes a variety of approaches that promote infill and walkable neighborhoods, including Article 2 Use Patterns and Article 3 Special Districts. The TIF Program only finances development that follows one of those development patterns.

The Hunters Pond TIRZ was rezoned to the Urban Development Zoning District (UDC 35-310.15), one of the development pattern options provided by the 2004 TIF Guidelines. This base zoning district encourages the development of compact neighborhoods and centralized commercial areas that are pedestrian and transit friendly.

Universal Design

Projects must also consider the long-term value of the private improvements supported by TIF. The City of San Antonio Master Plan calls for efforts to facilitate the provisions of choice in housing for special needs populations (Neighborhoods: Policy 4d). Efforts to meet this policy include ensuring homes are visitable or easily adaptable to disabled persons. Policy 4i requires the community to explore the full range of options to allow people to remain in their homes throughout their lives.

The City of San Antonio adopted a Universal Design Policy (Ord. No. 95641) on April 18, 2002, requiring that any person receiving financial assistance from city, state, or federal funds administered by the City of San Antonio for the construction of new single family homes, duplexes, or triplexes, shall construct the units in accordance with specific features including entrance with no steps, wider doorways (2' 8"), lever door handles, lever controls on kitchen and lavatory faucets, and light switches and electrical receptacles within reachable height.

The Hunters Pond TIRZ contribution to the payment of public infrastructure improvements requires the housing development to comply with the City's Universal Design requirements, located in the City Code, Chapter 6, Article XII. According to a compromise agreement ratified by City Council Ordinance 2006-06-01-0633, twenty (20) houses in Hunters Pond Phase 2 are exempted from this requirement. However, all other

homes must comply with the Universal Design Policy. (See Exhibit D: Universal Design Requirement)

ENVIRONMENTAL PROTECTION

The TIF Program supports the Master Plan's Natural Resources Goal 1: to preserve the unique, rare and significant features of San Antonio's natural environment.

Water Quality

The health of the Edwards Aquifer is of particular concern to San Antonio residents. In accordance with Natural Resources Policy 1b, "Develop and implement a management plan for land use activities which includes the best management practices, based on scientific study that will protect the recharge and drainage zones of the Edwards Aquifer from pollution," the TIF program has established specific policies that strictly limit the use of TIF over the Aquifer.

Specifically, the 2004 Guidelines do not allow applications for TIF where all or part of the proposed project falls over the Edwards Aquifer Recharge Zone. The Hunters Pond TIRZ is not located over any part of the Edwards Aquifer.

Air Quality

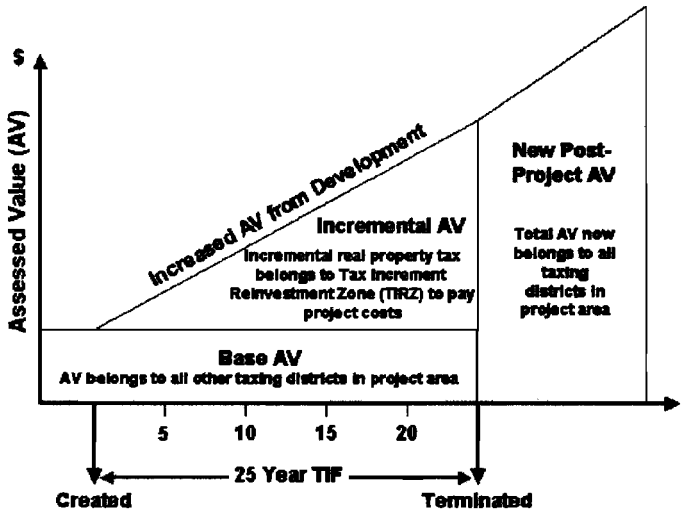
The TIF Program also takes a proactive stance regarding San Antonio's air quality issues, given that the area is currently designated by the EPA as non-attainment (deferred). In the future, EPA will revisit the non-attainment designation based on measurements of ground-level ozone. Since cars and trucks are major sources of the Nitrogen Oxides (NOX) and Volatile Organic Compounds (VOC) that make up ground-level ozone, one approach to reduce ozone is to develop land in a way that reduces the number of times that residents must use their automobiles. Infill development and the development of compact, walkable neighborhoods have been shown to reduce NOX and VOC emissions in studies and simulations throughout the country. The US EPA encourages land use strategies that reduce vehicle miles traveled (VMT) through compactness, mixed uses, transit accessibility, pedestrian usability, and infill. One of the best ways to protect air quality with TIF is to support such compact, walkable development. The City's Unified Development Code incorporates a variety of approaches that promote infill and walkable neighborhoods, and the TIF Program only finances development that follows one of those Development Patterns.

Hunters Pond TIRZ will support development in accordance with the Urban Development Zoning District, one of the development pattern options provided by the 2004 TIF Guidelines. This base zoning district encourages the development of compact neighborhoods and centralized commercial areas that are pedestrian and transit friendly.

2. Designation and Participation

The long-term success of any Tax Increment Reinvestment Zone is contingent on the participation of a number of taxing entities and the long-term commitment of the applicant. Accordingly, the TIF program implements the Master Plan's Neighborhoods Policy 4f, to maximize the leverage of private investment by lenders and builders or developers. In addition to the City of San Antonio, Bexar County is also participating in this TIRZ.

TIF MECHANISM



Base Value in a TIRZ continues to be collected by taxing entities – only the new value (the increment) is collected in the TIRZ Fund.

Once a TIRZ has been established, the increase in real property taxes resulting from new construction, public improvements, and redevelopment efforts (the increment) is deposited in a TIRZ Fund. The City of San Antonio enters into a written agreement with all participating taxing entities to specify: (1) the conditions for payment of the tax increment into a TIRZ Fund, (2) the portion of tax increment to be paid by each entity into the TIRZ Fund, and (3) term of the agreement. Participating taxing entities continue to collect taxes on the base value, while taxing entities that do not participate in the TIRZ, such as local school districts, collect taxes on both the base and the increment.

TIF PETITION/APPLICATION BACKGROUND

In September 2002, the City Clerk received a TIF application from Hunter's Pond, LP, which was put on hold during the "Guidelines and Criteria for the use of TIF" ("Guidelines") revision process instituted by the City Council. On January 8, 2004, the

City Council amended the Guidelines, and required the resubmission of the Hunters Pond TIF application. The application was resubmitted by Hunters Pond LP, and received by the City on June 30, 2004.

On September 23, 2004, the City Council approved a Resolution expressing the City of San Antonio's intent to consider the creation of a Tax Increment Reinvestment Zone to finance public infrastructure improvements for the purpose of supporting market rate housing, subject to the area first being annexed into the City limits. The City Council at that point authorized staff to make statutory presentations to the participating taxing entities and to initiate an in-depth review of the project.

Staff made the statutorily-required presentations of this TIF Application to the Southwest Independent School District on November 16, 2004, to Alamo Community College District on December 14, 2004, and to Bexar County on October 5, 2004.

The applicant submitted a petition for annexation, the first public hearing for which was held on September 20, 2005. Staff annexation analysis initially found that the area could be served with existing resources.

CITY OF SAN ANTONIO

The City of San Antonio will contribute 100% of its tax increment less Cost of Services to the Hunter's Pond TIRZ as outlined in the Finance Plan.

The City of San Antonio's Housing and Neighborhood Services Department TIF Unit is responsible for the administration of the TIF Program. The TIF Unit's responsibilities include the following:

- Pre-application consultation
- Application review and analysis
- Statutory presentations
- TIRZ Board administration
- TIRZ Fund administration and review of invoices for reimbursement
- Ongoing monitoring of construction and TIRZ performance

BEXAR COUNTY

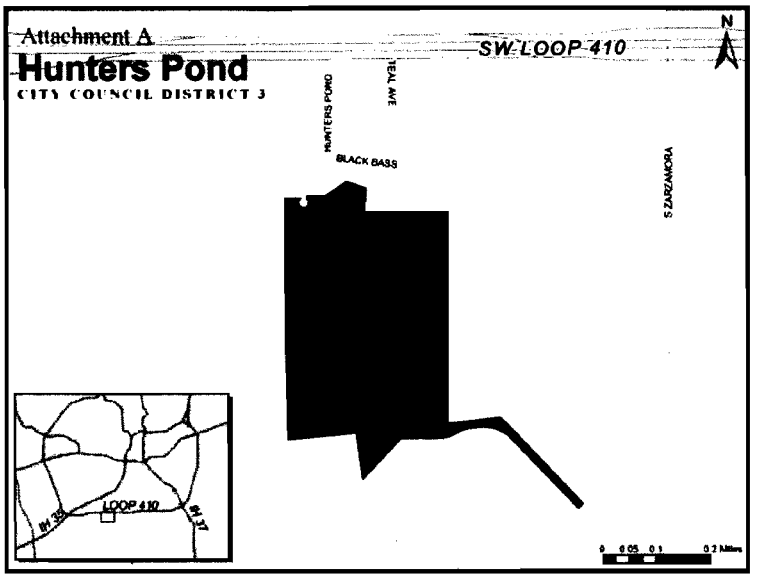
On May 12, 2004, Bexar County Commissioners Court approved TIF Guidelines and Criteria for TIRZ within Bexar County. In accordance with their Guidelines, the participation level for the County does not exceed 50% and the term of participation is capped at 25 years. The City of San Antonio made a statutorily-required presentation to Bexar County in October 2004 regarding the Hunters Pond TIRZ. The County set their participation level for this project at 70% of the Operations and Maintenance portion of the tax rate. County participation shall not extend beyond September 30, 2031.

DEVELOPER

Project Developer is Hunters Pond LP, formed over six years ago to develop residential products for the affordable housing market. The Project Manager is Harry Hausman. The limited partnership is owned by Harry Hausman and his family, which has completed four subdivisions over the past five years, including La Coste Heights, Legend Oaks, Hunters Lake, and Hunters Oak.

Developer's responsibilities include the provision of quarterly reports (project status reports) to the City's TIF Unit (due the 15th of October, January, April and July or the first business day thereafter). These quarterly reports are made up of copies of publicly bid documents for public improvements, detailed invoices related to project costs, disclosure of relevant changes in project, ownership, financial stability, or any anticipated assignment.

3. Existing Conditions



A. REGIONAL CONTEXT

Hunters Pond TIRZ is located in the southern sector of San Antonio, outside interstate highway SW Loop 410 and west of Zarzamora Road in City Council District 3.

During recent decades, the southern sector within which Hunters Pond TIRZ is located has seen limited growth and economic development. In contrast, San Antonio's northern and western sectors have experienced significant residential and commercial development. In 2002, the City of San Antonio initiated a large-scale planning effort to reposition the newly-christened City South as a regional asset. Hunters Pond TIRZ is one of the first efforts to implement the sustainable development vision put forth in the City South Community Plan, by developing a neighborhood in accordance with the Urban Development Zoning District.

The Hunters Pond TIRZ is situated immediately south of a small subdivision known as Hunters Pond Phase 1 that was developed by the TIRZ developer. For that reason, the first phase of the TIRZ is called "Phase 2". All other property in the immediate vicinity is vacant. One existing road, Hunters Pond Road, connects the TIRZ north to SW Loop 410, but no existing roads connect the TIRZ to Zarzamora Road to the east.

Schools and School Districts

The Hunters Pond TIRZ is located in the Southwest Independent School District. Bob Hope Elementary School is located nearly 1.5 miles west, and Palo Alto College is about one-half mile north. Both facilities are across SW Loop 410; walking to these destinations would be hazardous given the lack of pedestrian infrastructure along the highway.

Parks

A small pond ("Hunters Pond") is located just north of the TIRZ within walking distance. The area around the pond includes modest facilities and serves as a small neighborhood park.

Emergency Services

Staff annexation analysis found that the area can be served with existing resources:

Police: South Patrol Station, 711 W. Mayfield

Fire: Station #2, 602 Gillette Blvd.

EMS: Station #22, 1100 March Dr.

Other City Facilities

No existing libraries, hospitals or other public facilities are located within one mile of the TIRZ boundaries. The nearest library is located 1.5 miles from the proposed TIRZ; the nearest hospital 2.5 miles; and the nearest fire station nearly two miles.

Adopted City Plans

The Hunters Pond TIRZ is located in the City South Community Plan area. The product of extensive public input, the City South Community Plan proposes a vision for sustainable development on the Southside that preserves the area's natural resources while accommodating the demand for commercial, residential, and industrial uses stimulated in part by the location of a new Toyota manufacturing facility here.

Existing Asset: Hunters Pond

Existing challenge: conditions on nearby properties

City South Community Plan Vision

B. SITE CONDITIONS

Topography and Hydrology

The site lies approximately 600 feet above mean sea level. The topography of the site slopes gently to the south and toward a tributary to Comanche Creek. In general, shallow ground water would flow to the east southeast. The site lies outside the influence of a 100-year flood plain as defined and shown on FEMA maps. (See Exhibit B: Boundary / Floodplain Map)

Geology

The surface geology on the site is of Houston Black Gravelly Clay with a directional determination of 1 to 3 and 3 to 5 percent slopes. The surface layer is black and is about 38 inches thick. The subsurface layer is gray, about 12 inches thick, and made up of clay or gravelly clay.

Environmental Assessment

The Phase I Environmental Site Assessment conducted by Seda Consulting Engineers found no significant environmental concerns to the public.

Historic Use and Existing Vegetation

Aerial photographs dating back to 1997, 1986, 1977, 1959, and 1938 show no evidence that the land was used for anything except farming. The site is covered with native trees and bushes.

C. DEMOGRAPHICS

Hunters Pond TIRZ is located within Census tract 152000.

Education

According to the 2000 U.S. Census (DP-2. Profile of Selected Social Characteristics. 2000 Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data), the percentage of San Antonio's population without a high school degree is 24.9%. A higher percentage (47.3%) of the population of tract 152000 does not have a high school degree.

Poverty

The 2000 Census (QT-P34. Poverty Status in 1999 of Individuals: 2000 Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data) describes San Antonio's percentage of population living below poverty level at 17.3%. Hunters Pond Census Tract's percentage of population living below poverty level is higher than the City average: 42.4%.

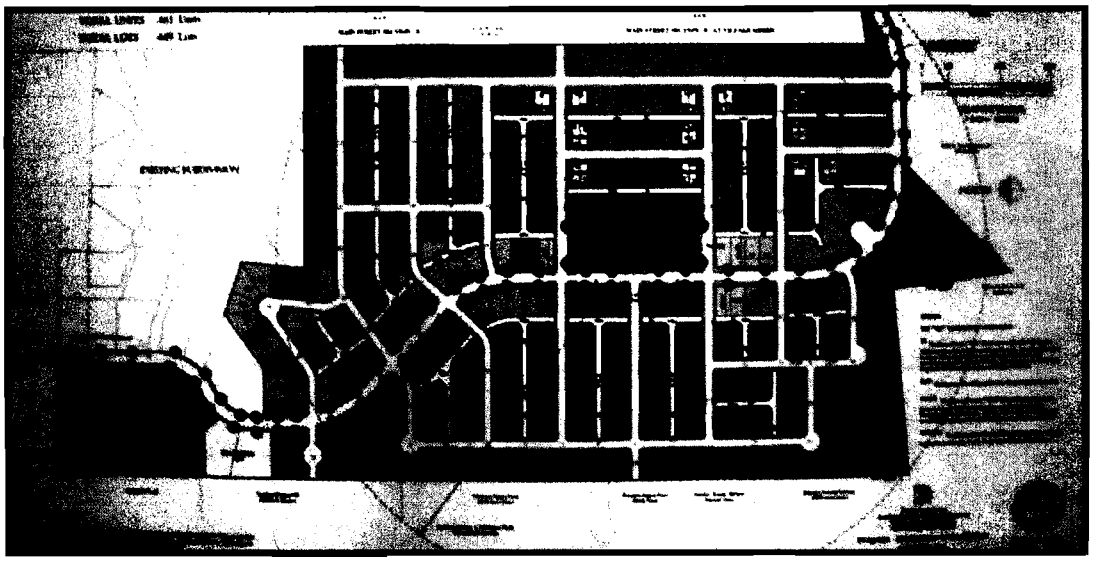
Health

The Metropolitan Health District publishes an annual listing of the County's unhealthy zip codes. These zip codes are chosen for high rates of teen births, drop-outs, sexually transmitted diseases, domestic violence cases, juvenile probation cases, stray animal calls, elevated blood lead levels, juvenile asthma cases, EMS calls, and infant deaths. Hunters Pond is in zip code 78224, which has not been identified as an unhealthy zip code.

Employment

The 2000 Census (QT-P24. Employment Status by Sex: 2000 Data Set: Census 2000 Summary File 3 (SF3) Sample Data) reports San Antonio's percentage of unemployed civilians at 6.2%. Hunters Pond Census Tract's unemployment percentage is better than the City average, at 0.0%.

4. Project Information



A. CONCEPT

Master Plan Neighborhood Goal 3: Provide safe, attractive, well-maintained neighborhoods for all adults and children.

Policy 3c: Consider new approaches including new ordinances and programs to enhance the viability and attractiveness of neighborhoods.

Master Plan Neighborhood Goal 4: Promote the provision of sound and affordable housing to all San Antonians.

Policy 4d: Facilitate the provision of choice in housing opportunities for all San Antonians, including special needs populations.

Policy 4i: Explore the full range of options to allow people to remain in their homes throughout their lives.

Master Plan Urban Design Goal 1: Preserve and enhance the city's urban design

Policy 1c: Encourage patterns of urban development that provide a full range of housing choices and promote a sense of community, urban vitality and the efficient provision of infrastructure.

The Hunters Pond TIRZ implements a new base zoning, UD (Urban Development) to construct a neighborhood with mixed housing types and a variety of park and open space amenities that enhance the long-term viability and attractiveness of the area. The Urban Development (UD) Flex District is one of the nine required Use Patterns / Special Districts offered in the 2004 TIF Guidelines.

The Master Development Plan (MDP 801) for the Hunters Pond TIRZ proposes a residential neighborhood with a mix of housing types centered on a 2-acre park and containing other park and open space amenities. The neighborhood center is fronted on two sides by townhouses. The MDP lays out the following:

a. 212 Detached Single Family units on 4,000 - 4,999 sq. ft. lots
b. 86 Detached Single Family units on 5,000 - 5,999 sq. ft. lots
c. 54 Detached Single Family units on 6,000 - 10,000 sq. ft. lots
d. 39 Garden Homes
e. 34 Townhomes
f. 24 Duplex units

The mix of housing types proposed in the Hunters Pond TIRZ provides increased choice in housing opportunities. The Universal Design standards make these choices available to special needs populations, and also provide people the option to remain in their homes throughout their lives.

The Detached Single Family houses have an average price of $143,150; the Duplex Units $124,400; the Garden Home units $198,883; and the Townhouses $124,984.

B. STREET SYSTEM

Master Plan Urban Design Goal 4: Plan, locate and maintain infrastructure and utilities to facilitate and maintain safe, healthy and sustainable environments for human activity

> *Policy 4c: Create streetscapes which emphasize both pedestrians and vehicles.*

The City of San Antonio discourages discontinuous street systems that provide inefficient service and channel traffic into relatively few points of the transportation network. A well-connected street system spreads traffic efficiently, provides greater opportunities for access by service and emergency vehicles, and furthers pedestrian mobility by increasing the number of destinations.

The development proposed for the Hunters Pond project depends on streets that are safe and comfortable to both pedestrians and drivers. A variety of Local and Main Street sections are proposed based on the UDC Traditional Street Design Standards (Table 506-4). These include 27' locals, 36' Main Streets, and 42' Main Streets along the Village Green. Sidewalks are 5' in width (wider than the minimum required) and set back from the carriageway by planters that range in width from 6' to 12'.

The street layout within the Hunters Pond TIRZ provides a high connectivity ratio (2.0) that will reduce congestion and provide residents and emergency vehicles with multiple circulation options. Street widths correspond to the UDC Traditional Street Design Standards (Table 506-4) and promote safe driving speeds and pedestrian safety and comfort. Alleys provide additional parking and accessibility.

The TIRZ developer secured exceptions from some of the Urban Development Zoning District requirements in the first phase of development (Phase 2). Specifically, the developer obtained exceptions on the design of Phase 2 local streets (Bigmouth Hook, Bigmouth Rod, and Catfish Lane):

a. Alternate pavement width of the local streets in Phase 2: 28' instead of 27'. See Exhibit E: map of Bigmouth Hook, Bigmouth Rod, and Catfish Lane, and alternate street section.

b. Alternate sidewalk placement on lots with frontage on Bigmouth Hook. There are 29 such lots. The ROW street section for this street would be, from the curb to the property line: 2' planting strip – 5' sidewalk – 4' ROW on the yard side of the sidewalk. See Exhibit F: map of Bigmouth Hook.

The developer has committed to reconfigure and rebuild the section of Hunter's Pond Road contained in Hunter's Pond Phase 2 according to the "Main Street Section A" section in the approved MDP: 36' of pavement, 12' planting strips, and 5' sidewalks (5'-12'-18'-18'-12'-5'). The developer has also relocated water meters in order for sidewalks and planting strips to be built in accordance with the MDP on all Phase 2 streets except for Bigmouth Hook. The applicant has also committed to constructing all Local streets in future phases to the approved MDP standards (27-feet pavement width, 6.5' planting strips and 5' sidewalk widths).

C. INFRASTRUCTURE

The TIRZ fund reimburses developers for specific public infrastructure costs. The public infrastructure and development improvements proposed for the Hunters Pond TIRZ include streets, approaches, drainage, sewer, water, street lights, landscaping, and electricity. The cost of the public infrastructure improvements is estimated at $8,141,309.

a. Approximately 22,000 linear feet of streets and alleys, at an average cost of $101 per linear foot

b. Approximately 48,700 linear feet of sidewalks and approaches, to be built by house builders (not in TIRZ Financing Plan)

c. Approximately 17,800 linear feet of sewer mains, at an average cost of $54 per linear foot

d. Approximately 17,000 linear feet of water approach and service mains, at an average cost of $43 per linear foot

e. Approximately 6.2 acres of detention pond at $14,400 per acre

f. Approximately 23000 linear feet of electric line extensions at $9 per linear foot

Infrastructure Maintenance Agreement

The Developer and the City have negotiated an extended 5 year warranty and maintenance agreement for streets and drainage. This extended warranty process is outlined below:

(a) 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 and for one (1) year after Completion.

(b) Upon acceptance of a streets or drainage improvements 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 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 TIF funds.

(c) After the expiration of the one (1) year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of the Public Improvements shall be the responsibility of the City; and the City shall be reimbursed from the TIF Fund for those costs it must incur, 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 the second (2nd) through fifth (5th) years after Completion of said Public Improvements.

(d) Payment of the City under this paragraph 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 Financing 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 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 under this subparagraph. 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 sixty (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 that 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 an estoppel against the City under the Development Agreement or the Unified Development Code.

D. PARKS

A variety of park and open space amenities enhance the proposed residential development. A 1.91-acre Village Green anchors the center of the development, and an additional 6.2 acres of detention areas double as open space.

The developer has committed $250,000 toward Park Improvements in the TIRZ.

E. FINANCIAL INFORMATION

FINAL REINVESTMENT ZONE FINANCING PLAN

The Final Financing Plan reflects Bexar County's participation at 70% of the Operation and Maintenance portion of their tax rate (0.175644) with projected tax increment of $2,747,727. The total projected combined tax increment collections for both taxing entities are $11,587,206. The developer's proposed contribution is estimated at $3,908,715. The term of the zone expires on or before September 30, 2031.

VOLUNTARY ANNEXATION

Since the creation of this Zone was considered concurrently with a request for voluntary annexation, the Final Financing Plan illustrates how TIRZ revenue can finance and support the provision of City services. The cost of City services is currently estimated to

total $3,319, 904 over the life of the Zone. Cost of services will be deducted from the City's annual tax increment before the distribution is made to the TIRZ fund.

The effective annexation date for this site was December 11, 2005.

COST BENEFIT ANALYSIS

The revenue analysis performed by the Budget Department indicates that the Hunters Pond TIRZ begins to go into the negative in FY 2011; however, cost of services collections will commence in FY 2026.

Prior to FY 2011 the City is in the black due to development revenues.

FISCAL IMPACT

The developer will privately finance the public improvements related to the project and public debt financing will not be required. The projected captured values of the TIRZ will be taxed to produce revenues to pay for the cost of public infrastructure improvements incurred by the developer and other costs allowed by the TIF Act over the life of the TIRZ. Any costs incurred by the developer of the project are not and shall not become general obligations or debt to the City or any Participating Governmental Entities.

5. Project Feasibility [1]

Market Conditions

San Antonio's economy is a mix of anchoring business services, including a growing medical and health delivery sector, various manufacturing facilities, convention and visitor industry, and the military.

The San Antonio area has seen significant growth during the last 30 years enjoying an average annual growth rate of 3.5%. Based on the Texas Comptroller's economic model of Texas, employment in the San Antonio region is projected to continue to grow at a 1.6% annual rate through 2005. During this time, the population, as well as per capita incomes of the San Antonio area, has also grown and is expected to continue. According to the Greater San Antonio Chamber of Commerce Economic Analysis Panel, local business activity has remained steady in the first quarter of 2002. In addition, San Antonio posted a 1,000-job net gain and a 4.5% unemployment rate, better than that of any other major cities in Texas.

The housing market in San Antonio offers variety in price and location. The average price for a pre-owned house in the San Antonio area in 1997 was $106,000, while the median price was approximately $86,000 according to the Real Estate Center at Texas A&M University. In 2003, those figure increased respectively to $138,300 and $113,800. The areas in San Antonio experiencing marked growth generally stretch northward toward Boeme and north/northeast along the United States 281 and I-35 corridor and include single and multifamily developments serving higher-income family households. New housing product in the other sectors of the City remains relatively limited with an even more limited number of newly constructed affordable housing products citywide.

Responding to the demand of the target market for additional housing units, the proposed Hunters Pond development should provide an affordable alternative to recent and ongoing market housing developments.

Target Market

The project is designed to serve the middle, moderate, and the low-income community and will contain affordable housing units set aside for households earning between 80%, and 120% of the area median gross income (AMGI), adjusted for family size. The sales price range for the single-family homes will be $85,000 to $129,000, with an average sales price of $102,000.

[1] Information in this section was provided to the City by applicant as part of TIF application.

The target market, defined for the purposes of this study, is an area .5 miles in diameter surrounding the subject site. This area consists primarily of households in the San Antonio area who earn at or below 80% of area median income, adjusted for family size. For a family of four, the 2002 median income for San Antonio is $46,200. The current median age for the residents in this area is 28.23 years, below the national median age of 36.2. The median household income for the target market is estimated to be $39,643 approximately 86% of the San Antonio median household income.

Effective Market Area

For the purposes of this analysis, the Primary Market Area (PMA) is a .5 mile diameter and the Secondary Market Area (SMA) is a 1.5 mile diameter around the proposed development. Major arteries for the Primary and Secondary Market Area include Loop 410, Hwy 16 South and South Zarzamora. The PMA and SMA were selected based on residential movement that is expected within the San Antonio area.

Population

The population growth in the San Antonio area has been consistently above national averages for the past ten years ranging from 1.6% to 2.3% since 1991. The Texas State Data Center projects that the population will increase from the Census estimate between 2000 and 2005 by an average gain of approximately 39,000 per year.

Demand for Housing

San Antonio experienced the formation of 108,925 households between 1990 and 2000 Censuses, equating to an annual average of approximately 10,900 households. This implies a correlation between population growth and household formation of about two people for every one marginal household. Applying this ratio suggests that over 8,500 households will be formed in 2002. Historically, demand for new single-family housing within Bexar County has averaged 6,311 units annually over the past five years, with an overall demand of 8,431 units in 2003. It is anticipated that actual totals will be higher as job creation recovers in the wake of the recent series of lay-offs by major San Antonio employers and the closure of Kelly Air Force Base.

The median home price was approximately $112,100 in the first quarter of 2004 with 58.28% of households living in owner-occupied housing, slightly below the national average of 64.2%. Due to the improving economy in 2004 a relatively low interest rate, and a steady supply of single-family housing, it is anticipated that the propensity to own will increase over this year and the next. Single-family absorption varies geographically in San Antonio, with areas north of US Highway 90 and outside Loop 410 capturing the largest share over the past five years.

New Single Family Absorption Chart, 1996-2000

Price Range	1996	1997	1998	1999	2000	1996-2000	1996-2000 (Avg)	Percent of Total
Less than $60,000	10	118	104	121	204	557	111	*47.8%*
$60,000 to $79,000	2	2	2	21	49	76	15	*6.6%*
S80,000 to $99,000	0	1	21	99	63	184	37	*16.1%*
$100,000 to $124,000	0	0	2	33	44	79	16	*6.9%*
$125,000 to $199,999	15	17	12	8	12	64	13	*5.6%*
$200,000 and over	29	24	27	51	53	184	37	*16.1%*
TOTAL	**56**	**162**	**168**	**333**	**425**	**1144**	**229**	**100.0%**
Numerical Change		106	6	165	92			
Percent Change		189.3%	3.7%	98.2%	27.6%			

Source: Housing Market Analysis City of San Antonio 2001

New Single Family Absorption Chart, Inner City, 2001-2005

Price Range	2001	2002	2003	2004	2005	2001-2005	2001-2005 (Avg)	Percent of Total
Less than $60,000	215	218	214	207	2019	1062	212	*48.7%*
$60,000 to $79,000	29	30	29	28	29	145	29	*6.6%*
$80,000 to $99,000	71	72	71	68	69	351	70	*16.1%*
$100,000 to $124,000	30	31	30	29	30	151	30	*6.9%*
$125,000 to $199,999	25	25	25	24	24	122	24	*5.6%*
$200,000 and over	71	72	71	68	69	351	70	*16.1%*
TOTAL	**441**	**447**	**439**	**425**	**429**	**2181**	**436**	**100.0%**
Numerical Change	16	6	-8	-14	4			
Percent Change	3.8%	1.4%	-1.8%	-3.2%	0.9%			

Source: Housing Market Analysis City of San Antonio 2001

Market Area Profile

According to Census Data, the current median household income for the Primary Market Area is estimated to be $39,643 and is projected to increase 14.0% over the next five years, from $39,643 to $45,193. The addition of a development the size of Hunters Pond into an area that is primarily rural in nature will dramatically raise the median family income for the census tract. The total population in the primary market area was 624 with an average family size of 3.66. The population in the primary market area declined by

3.26% between 1990 and 2000 and while the population in the secondary market increased by 2.10% it is projected to decline by .40% by 2009 from 14,437 to 14,275. The 458 housing units in Hunters Pond will raise the population in the primary market area to approximately 2,300, an increase of 72.8%.

The city of San Antonio has been experiencing consistent growth in population over the past 30 years as well as a significant increase since 1990. Further, the population is projected to increase by another 9.6% by the year 2008. The Primary Market Area has a projected population increase of 70% from 2001 to 2007, which is based upon the addition of the Hunters Pond Households

The area for the proposed Hunters Pond development has experienced a slight decrease in population due in part to the lack of available housing product. Recent investment in this area may act as a catalyst to encourage an increase in the population.

Data indicates that 61.86% of the population is between the ages of 18 and 64 years of age, eligible members of an active workforce with income earning potential. It is estimated that the median age for the Primary Market Area will decrease to 28 years by 2008, remaining slightly below the San Antonio median age.

The 2004 median household income for the Primary and Secondary Market Areas are well below the median income for the City of San Antonio. The 2004 estimated per capita income for the Primary Market Area is $12,289 and $11,579 for the Secondary Market Area.

Educational attainment is considered a direct factor in determining subsequent income potential. This is evidenced in the median household income for the area in 2004 being $39,643, which is well below the median income for the city of San Antonio for the same year. As a percent of average household income, 41% is typically dedicated to mortgages and related expenses. This would result in the average homebuyer in this area being able to afford $1,354 a month dedicated to housing.

Population

	1990	2000	Est. 2009
Primary Market Area	645	624	630
Secondary Market Area	14,140	14,437	14,275
City	935,933	1,144,646	1,266,854

Change in Population Percentages

	1990-2000	2000-2009
Primary Market Area	-3.26%	72.8%
Secondary Market Area	2.10%	-0.40%
City	18.2%	9.6%

Age

	Primary Market Area	Secondary Market Area
Median Age	28.23	31.16
Average Age	29.09	32.06
% 18 - 64	61.86 %	59.49 %

2004 Est. Median Household Income

	2004
Primary Market Area (0.5 miles)	$39,643
Secondary Market Area (1.5 miles)	$36,190
City	$48,163

Educational Attainment

	High School +
Primary Market Area (0.5 miles)	67.63%
Secondary Market Area (1.5 miles)	54.66%
City	75.51%

Employment

Education is the primary industry within the primary, secondary and area surrounding the proposed development. Primary area employers include; Harlandale ISD, 1,686 faculty and staff, South San Antonio ISD, 1,395 faculty and staff, Southwest ISD, 1,286 faculty and staff and Palo Alto College with 401 faculty and staff. A multi-purpose state of Texas office building at 2711 Palo Alto Road has approximately 80 persons employed on a year round basis. There are no large retail, office or commercial users within either the primary or secondary market areas.

The unemployment rate for San Antonio has been better than for the state over the past five years but has lagged behind the other Bexar County cities. The April unemployment rates, the latest reporting date from the Bureau of Labor Statistics are as follows.

Taxing Entity	Unemployment Rate	Unemployed
Texas	5.6%	610,969
San Antonio	5.3%	30,118
Alamo Heights	2.5%	112
Converse	3.4%	203
Kirby	5.6%	310
Leon Valley	3.1%	220
Live Oak	2.7%	190
Schertz	3.2%	271
Universal City	3.4%	285

The unemployment rate for San Antonio hit a low of 3% with only 15,479 persons unemployed in April 1999 and a high of 7.1% in June 2003 with 40,923 persons unemployed. With structural unemployment being about 4% for large metropolitan areas the San Antonio job market continues to very positive.

Current Housing Stock

The majority of housing units, 93.1 %, are single-family detached structures. In the Primary Market Area, it is estimated that 48.9% of the units were been built prior to 1969 while only 4% have been built since 1990. In 2004 the Claritas estimate is that of the 168 homes in the primary market area 77.38% or 130 were owner occupied and 22.62% or 38 were renter occupied. Claritas data also indicates that while there were only 4 Mobile Home or Trailers in the Primary market area this increased dramatically to 360 or 9.1 % of the housing units in the secondary market. In the primary market area the 2004 estimate of median value for owner occupied homes is $61,081 and $55,754 in the secondary market. The estimated median value for owner occupied homes in San Antonio is $75,431.

The proposed Hunters Pond development was initially planned to provide homes ranging in cost from $85,000 to $129,000 and would enhance the current housing stock and market activity, would promote the development of affordable and market rate

housing in the area, and would change the nature of the single-family housing stock from only or primarily single-family detached homes to an urban mix of town-homes, garden homes, duplexes and single-family homes.

YTD SALES CLOSED FOR CLOSEST MARKET AREA

	Average Sales Price	Sales Price per sq ft	New Listings	Active Listings	Pending Sales	Days on Market
2002	$ 49,750	$ 51.39	4	5	0	63
2003	$ 45,167	$ 49.33	1	3	0	84

According to resale activity obtained from the San Antonio Board of Realtors, there were 4 sales in 2002 and 3 Sales in 2003. Sales for 2004 through May were 1 pending sale. In 2002 and 2003 homes sold on average of 100% of the asking price. The average asking price for the 4 homes listed for sale is $62,497 and $58.61 per Sq. Ft. The projected increase in asking price of $9.28 per square foot indicates a sellers market for housing in the market area. Figures indicate that there is a potential demand for housing product in this location and price range as evidenced by the increase in asking price for homes and the price per square foot. The increased asking price also reflects seller's knowledge that the Toyota opening will increase demand for area housing.

A review of home sales data from the Real Estate Center at Texas A&M reveals the following statistics that indicate that housing in San Antonio is rapidly being priced out of the market of a typical San Antonio consumer. In 1993 45.1 % of the homes in San Antonio sold for $70,000 or less but by 2003 only 19.2% of the homes sold in that price range. In 1993 64.5% of the homes sold for $89,999 or less while only 34.8% did in 2003. This price inflation is a result of imbalances in the market whereby in order to live where they want to live consumers are bidding up the price of the existing housing stock.

Developments like Hunters Pond that provides housing in nontraditional neighborhoods will help to mitigate these price increases.

Mobility

The 1995 American Housing Survey of the San Antonio Metropolitan Area cites the following as primary reasons for relocating and choice of residence.

Respondents surveyed indicated that the primary reason for leaving a particular neighborhood and current residence is a new job or transfer. The second reason is to establish own household, contributing to the demand of additional housing stock. The third represents a shift in population and user group.

Respondents surveyed indicated that the primary reason for selecting a particular neighborhood for their current residence is convenience to job. This is followed closely by proximity to support groups defined as friends and relatives. Quality of schools did not rank as high, while convenience to leisure activities and public transportation was considered less important.

Mobility

Based on a referenced demographic and supportive data, there is a significant demand for the proposed Hunters Pond development. The subject site has an adequate absorption rate, based upon lack of comparable product and existing demand. As noted, the majority of the market available in the area is 30-year-old housing product. The location of the project provides new housing opportunities for area residents and for non-residents who have to commute to area employment centers. The project will help to mitigate the rapid price inflation that is being seen in the new home and resale markets.

Reasons for Leaving Previous Residence

	% Of Total Surveyed
New job or transfer	19%
To establish own household	15%
Needed larger house	13%
Other, family/ persons related	10%
Wanted better home	10%
Change from renter to owner	7%
Other	33%

Source: 1995 American Housing Survey of the San Antonio Metropolitan Area

Reasons for Selecting Current Residence

	% Of Total Surveyed
Convenient to job	25%
Convenient to friends/relatives	20%
Looks and design of neighborhood	19%
House was most important decision	18%
Good School	10%
Convenient to leisure activities	4%
Convenient to public transportation	3%
Other	1%

Source: 1995 American Housing Survey of the San Antonio Metropolitan Area

6. Departmental Review

A team of various departments analyzed the viability and feasibility of the project, evaluating the Application for Redevelopment submitted to the City expressing interest in TIF.

To ensure that the criteria set forth in the City's Tax Increment Financing and Reinvestment Zone Guidelines & Criteria has been met along with other City policies, the respective departments review and coordinate with the developer and TIF coordinating department.

Coordination with the City Departments will continue through the end of construction. Upon final analysis, each participating department will submit a narrative review of the project.

7. Exhibits

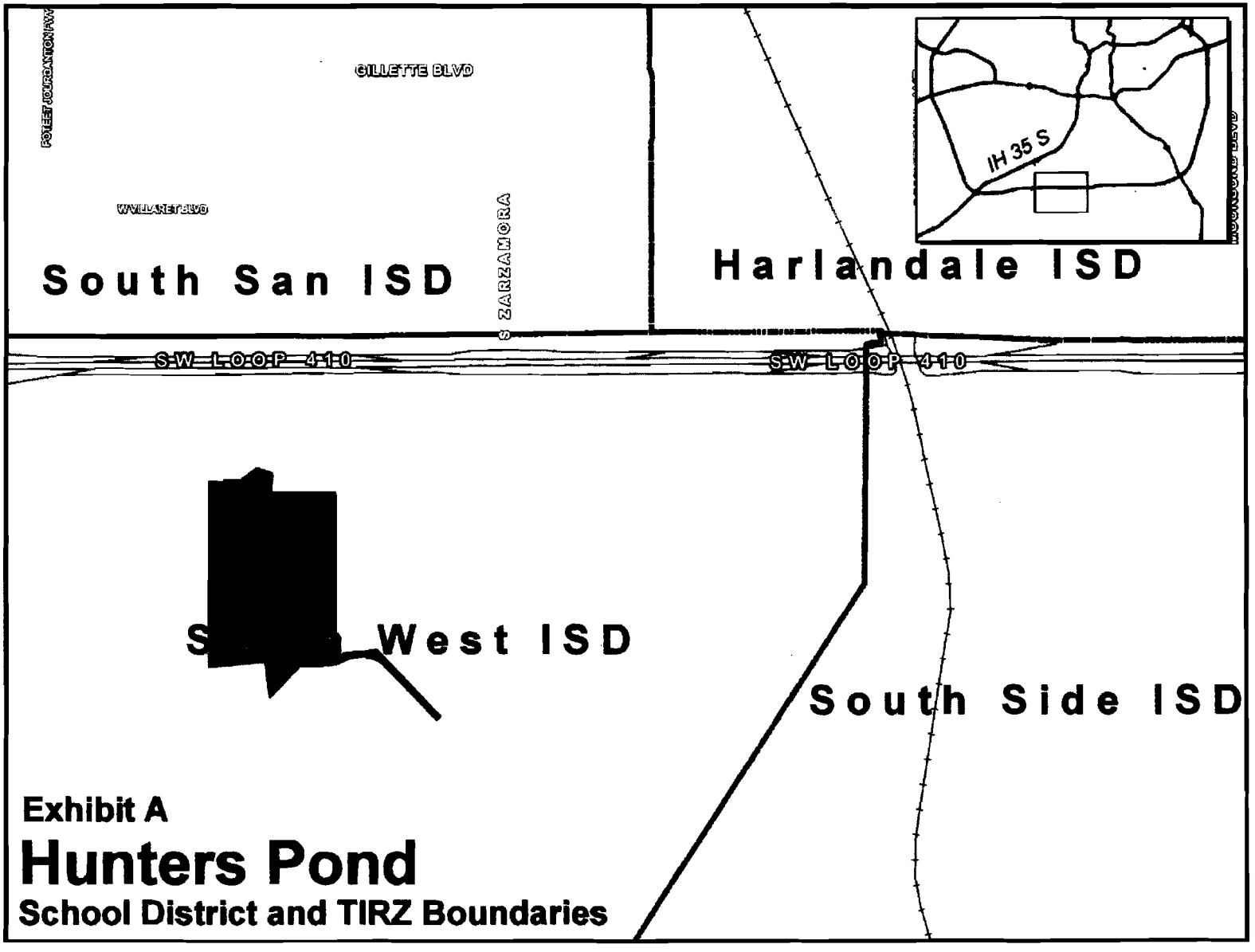
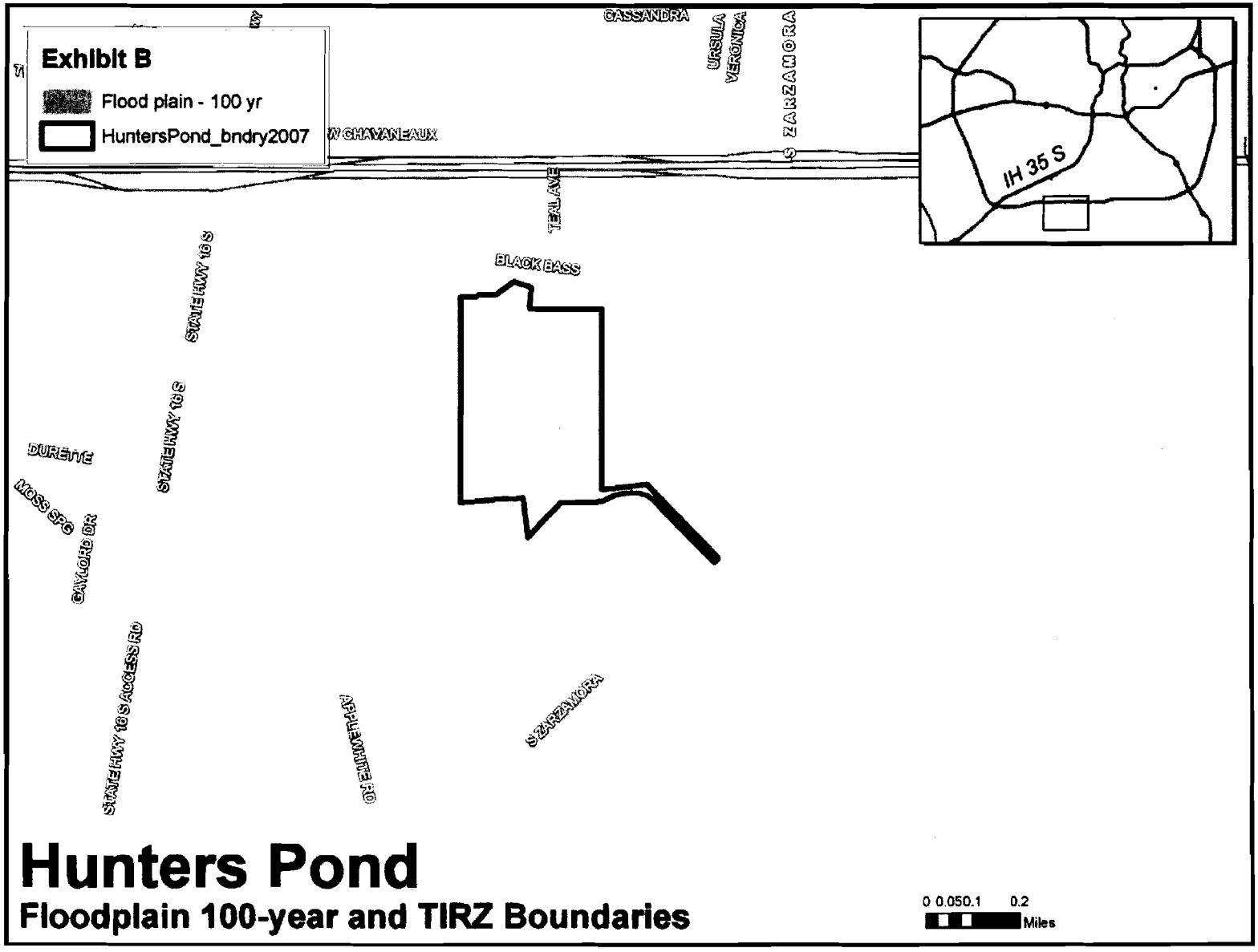


Exhibit A

Hunters Pond

School District and TIRZ Boundaries



Hunters Pond

Floodplain 100-year and TIRZ Boundaries

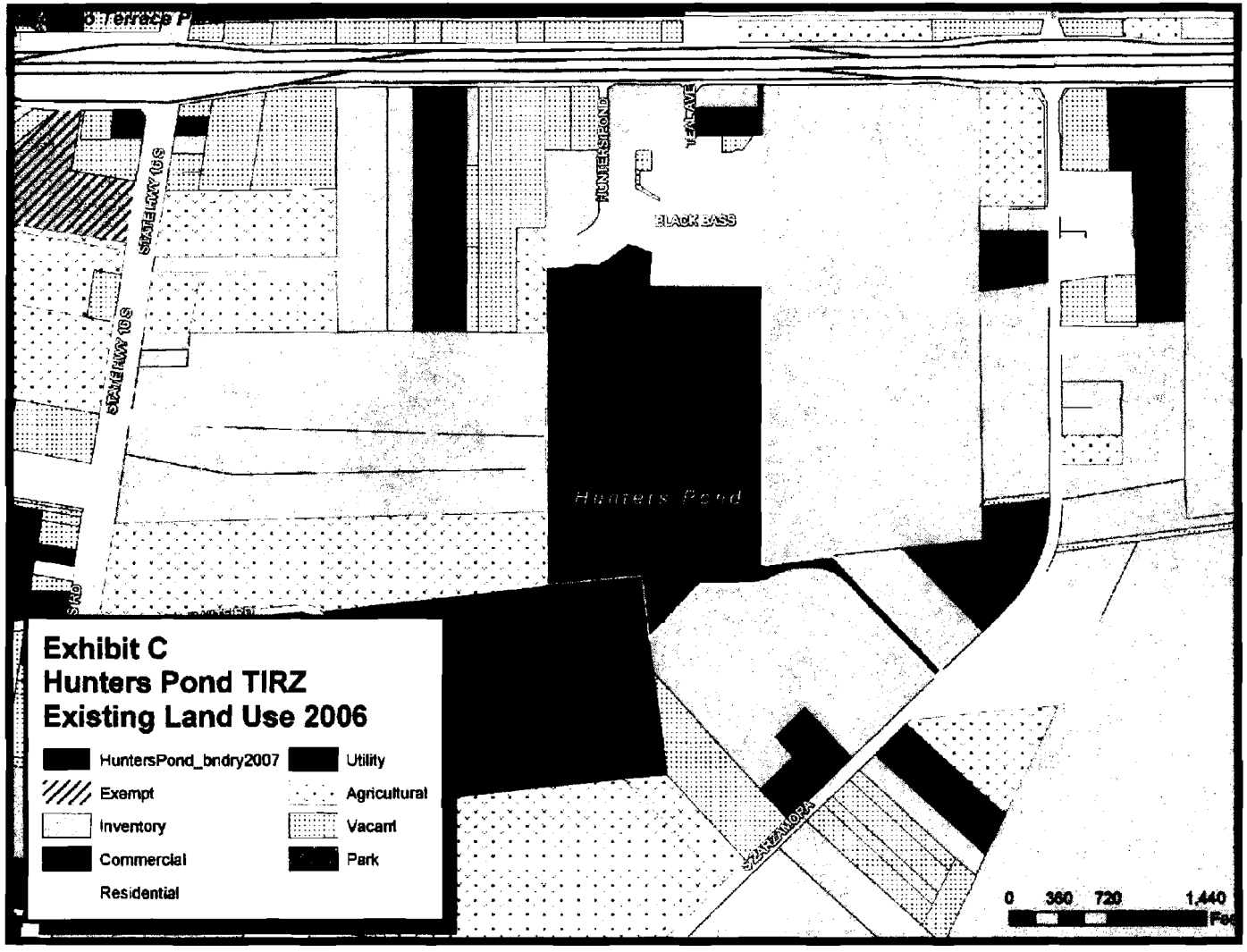


Exhibit C
Hunters Pond TIRZ
Existing Land Use 2006
HuntersPond_bndry2007
Exempt
Inventory
Commercial
Residential
Utility
Agricultural
Vacant
Park
SEATEXWAY 10S
HUNTERS POND
BLACK BASS
Hunters Pond
0 360 720 1,440

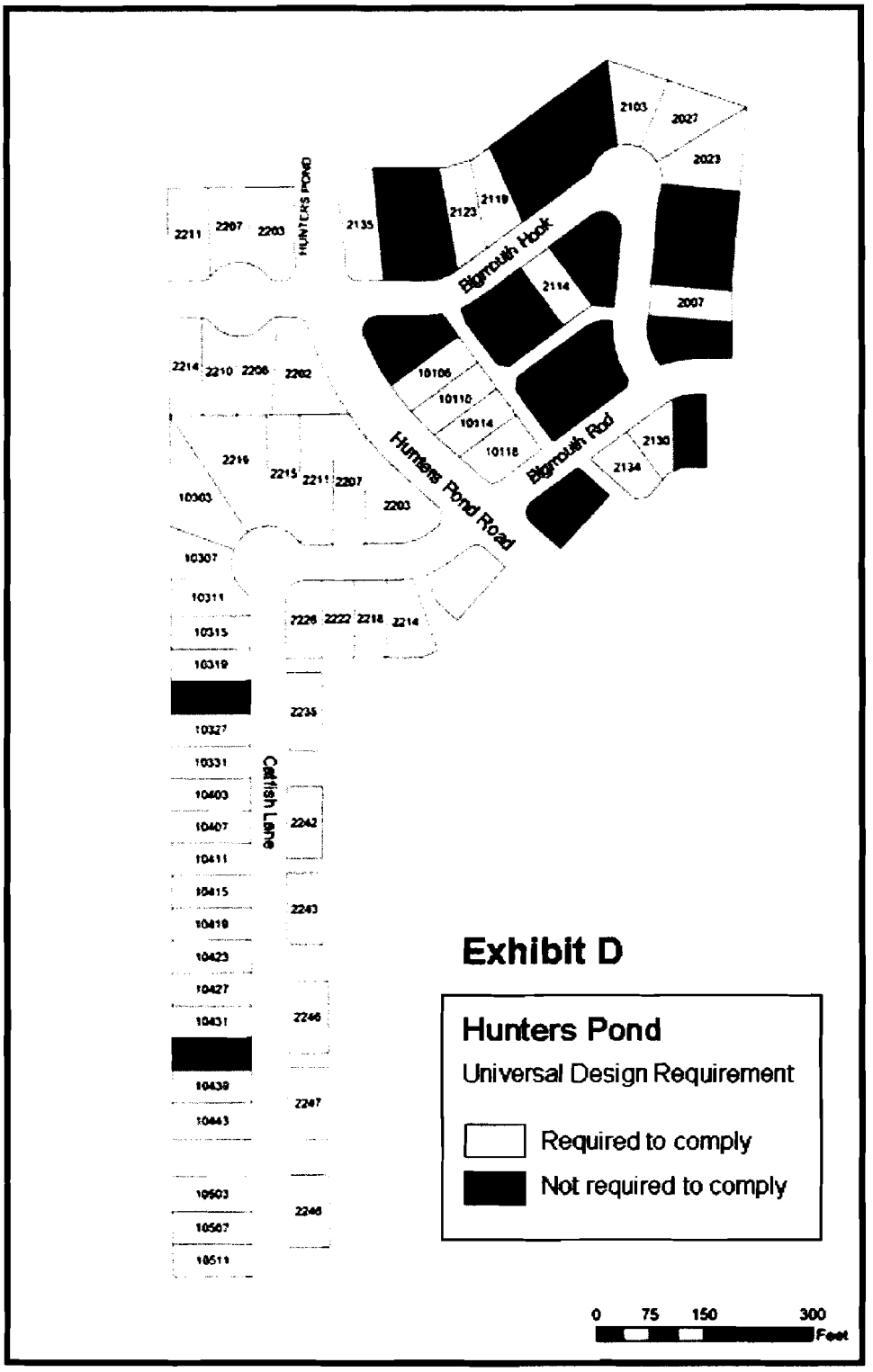


Exhibit D
Hunters Pond
Universal Design Requirement
Required to comply
Not required to comply
0 75 150 300
Feet
Bigmouth Hook
Bigmouth Rod
Hunters Pond Road
Catfish Lane
HUNTERS POND
2103
2027
2023
2119
2123
2135
2211
2207
2203
2114
2007
2214
2210
2206
2202
10106
10110
10114
10118
2130
2134
2219
2215
2211
2207
2203
10303
10307
10311
10315
10319
2226
2222
2218
2214
2235
10327
10331
10403
10407
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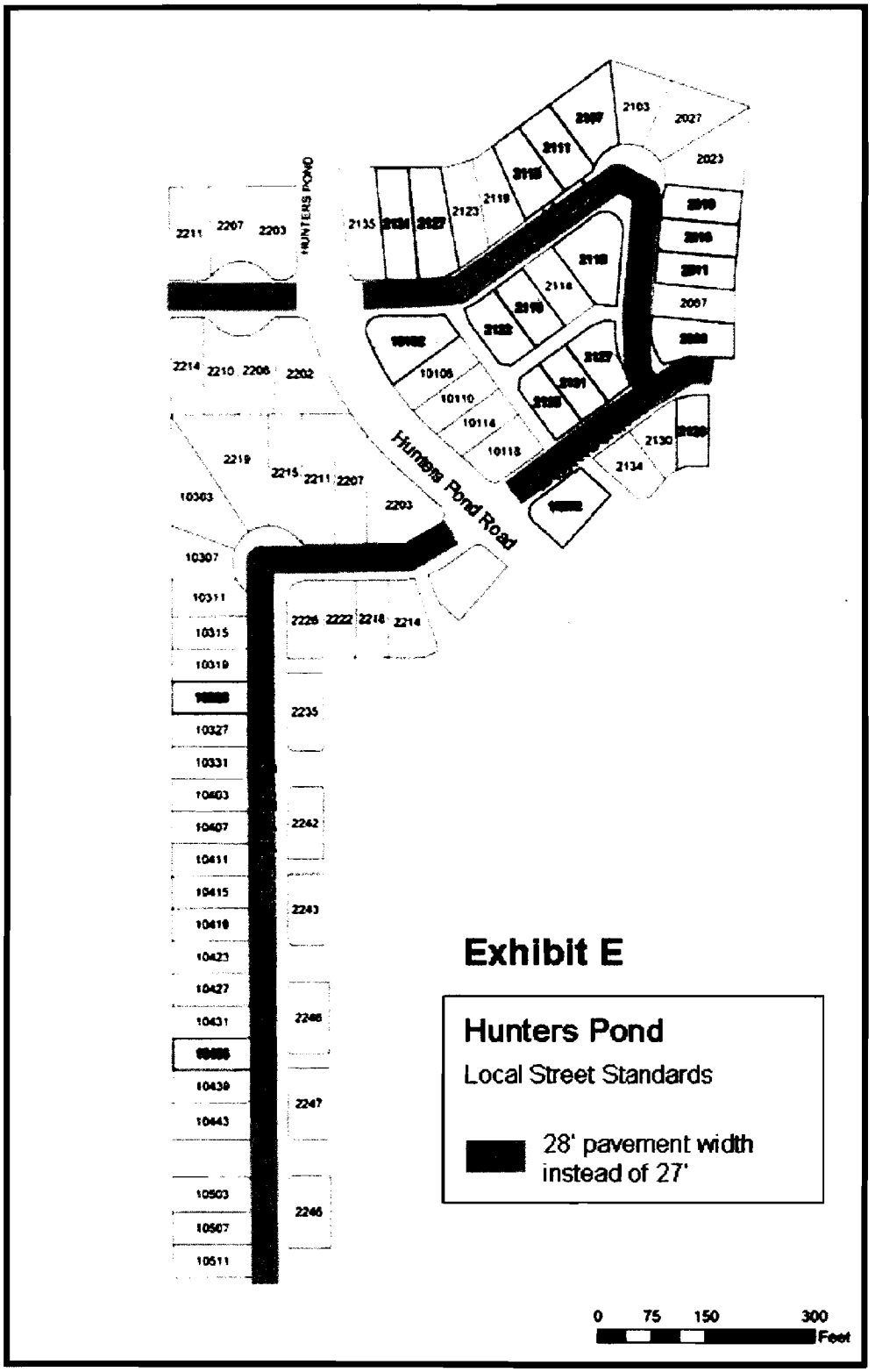
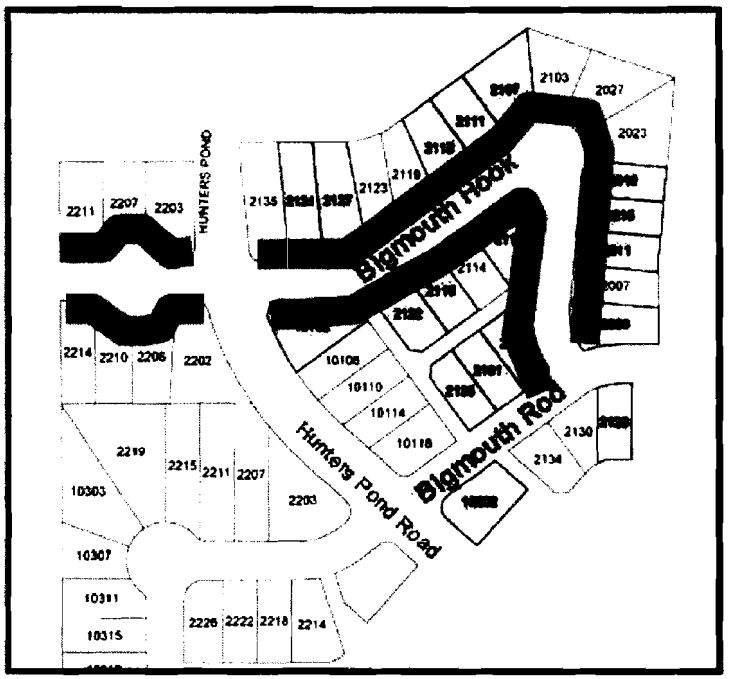

Hunters Pond Road
HUNTERS POND
Exhibit E
Hunters Pond
Local Street Standards
28' pavement width instead of 27'
0 75 150 300
Feet

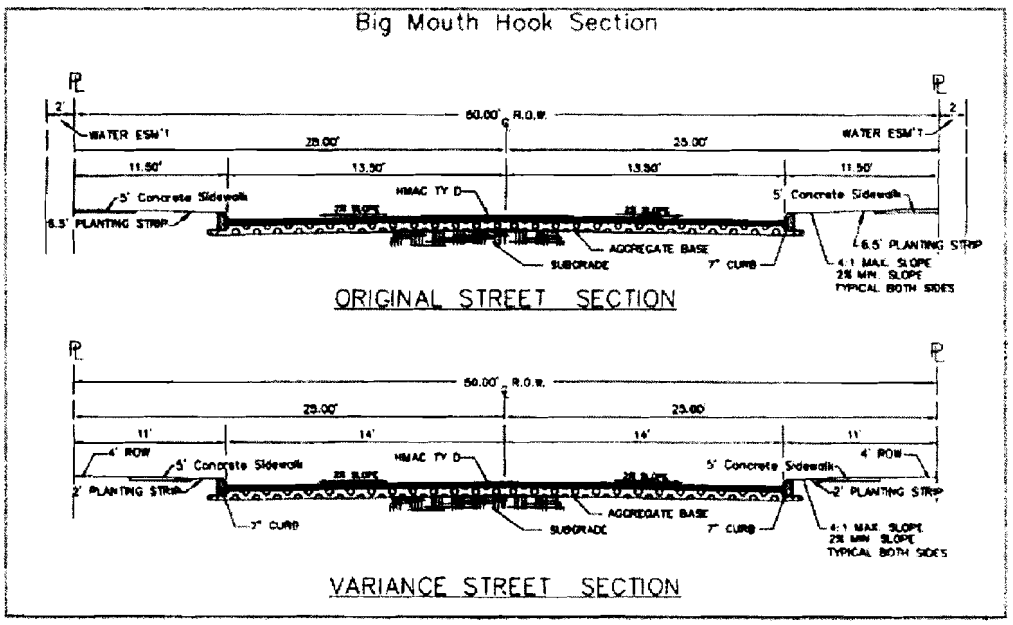
Exhibit F



Hunters Pond

Bigmouth Hook
Sidewalk Standards

2' planting strip instead of 6.5'



ACW
1/15/09
Item No. 32

Exhibit 2
Hunters Pond TIRZ
Final Financing Plan

CITY OF SAN ANTONIO, TEXAS
Housing and Neighborhood Services Department

Hunters Pond
Tax Increment Reinvestment Zone Twenty-five
Final Finance Plan

Participation Levels of City (100% Less Cost of Services) and Bexar County (70% of Operation and Maintenance)

January 15, 2009

Hunters Pond
Tax Increment Reinvestment Zone – Plan of Finance

Introduction

The Hunters Pond subdivision is located in the southern section of the City of San Antonio, outside SW Loop 410, west of Zarzamora Road. The development is in the South West Independent School District and encompasses approximately 88.100 acres. The tax year 2006 base value is $4,682,900 and the projected captured value is $107,341,010 for tax year 2030. The project includes 352 single-family detached homes, 34 town homes, 39 garden homes and 24 duplex units. The total public infrastructure capital cost is estimated at $8,141,309. The life of the Tax Increment Reinvestment Zone ("TIRZ") is projected to be 25.35 years with the TIRZ being in existence through fiscal year 2031.

Non-Compliance with Universal Design Requirements

Hunters Pond TIRZ creation and contribution to the payment of public infrastructure improvements requires the development to comply with the City's Universal Design ("UD") requirements, located in the City Code, Chapter 6, Article XII. According to a compromise agreement reached with the Developer, 20 units in Phases I and II do not comply with UD requirements, and will be deducted from the total taxable value, resulting in the reduction of the projected assessed value by $2,867,090. The tax collections attributable to the reduced captured value is estimated to be $20,764 annually, which will not be deposited to the Hunters Pond TIRZ fund but will instead be retained by the Participating Taxing Entities (the City and Bexar County). The remaining 429 units in Phases I-IX shall comply with the UD requirements. If it is discovered that any other units in Phases I-IX do not comply, those non-compliant units will also be deducted from the total taxable value.

Public Infrastructure and Related Eligible Expenses

The public infrastructure improvements and related capital costs include site work, storm water pollution prevention, streets and drainage, alleys, sewer, water, street lights/signs, detention ponds, offsite sewer, street extension to Zarzamora, offsite water/sewer street extension, platting, zoning, permits, ROW landscaping, CPS electric, park improvements, village green improvements, street trees, geo-technical, engineering-surveying, contingency, construction management, legal and formation fees. The Developer's capital cost is estimated at $8,141,309.

Plan of Finance

The tax year 2006 base value of the TIRZ is $4,682,900. Projected captured values that would be taxed to produce revenues to pay for the capital costs of the public infrastructure improvements commence in tax year 2007 with collections commencing in tax year 2007

(fiscal year 2008). Captured values grow from $6,968,690 in tax year 2007 to $107,341,010 in tax year 2030.

The taxing jurisdictions and tax rate per $100 valuation utilized in the analysis include: City of San Antonio at $0.567140; and Bexar County at $0.175644. This produces annual revenues of $28,142 in fiscal year 2008 and $591,461 in fiscal year 2031. A 3% growth in values is assumed.

The cost of the public infrastructure improvements is incurred by the Developer and reimbursed over time from revenues produced by the TIRZ. In addition to the capital costs, other costs to be paid from TIRZ revenues include increased services due to annexation beginning in fiscal year 2020. The City shall withhold its portion of the cost of services annually. These amounts will not be deposited into the TIRZ Fund.

Revenues derived from the TIRZ will be used to pay costs in the following order of priority of payment: (i) to reimburse eligible startup Administrative Costs incurred by each Participating Taxing Entity; (ii) to pay all other ongoing Administrative Costs to the City and County 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 and County, then the ongoing Administrative Costs of the City and County shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in the Development Agreement; (iv) to reimburse the City and/or the County under any reclaim of funds pursuant to the Development Agreement; and (v) to reimburse the Developer for Public Improvements, including financing costs (if any), as provided in the Development Agreement, the Financing Plan and in the Project Plan to the extent that funds in the TIF Fund are available for this purpose.

The Developer's capital cost incurred for public infrastructure improvements is estimated at $8,141,309. Revenues from the TIRZ are used to pay this amount plus financing costs if any, at a rate of 4.32%. In order to be eligible for reimbursement on financing costs, the Developer must submit evidence of actual financing costs incurred on debt including loan documents and bank statements. It is projected that the Developer would not receive any payments until fiscal year 2009. The earliest projected payoff of the capital cost would occur in fiscal year 2031 and includes an estimated Developer contribution of $4,136,555.

The TIRZ collections for this project shall not extend beyond September 30, 2031 and may be terminated earlier once each taxing entity has deposited its respective amount described in the table below.

TABLE – TIRZ Contributions		
Participating Taxing Entities	Maximum Contribution to Developer	Max. Length of Contribution
City of San Antonio	$ 7,000,000	September 30, 2031
Bexar County	$ 2,213,369	September 30, 2031
Maximum Reimbursable Amt.	**$ 9,213,369**	

Bexar County's contribution does not include any contribution towards the City's Cost of Services. Bexar County's Participation is 70% of their O & M portion of the total tax rate and their increment excludes any contribution to City services.
Bexar County will contribute an additional $158,136 to cover start up costs and administrative expenses.
The City will contribute an additional $4,427,487 to cover the City's administrative expenses and the Cost of Services.
Cost of Services will be deducted from the City's annual tax increment before the distribution is made to the TIRZ fund.

Limited Obligation of the City or Participating Governmental Entities

The City and Participating Governmental Entities shall have a limited obligation to impose, collect taxes, and deposit such tax receipts into a TIRZ fund so long as the project is viable and capital costs incurred by the Developer have not been fully paid. The TIRZ collections for this project shall not extend beyond September 30, 2031, and may be terminated prior to September 30, 2031, upon payment of the maximum Developer reimbursement of $9,213,369 or the failure of the Developer to perform. The City may elect to terminate the TIRZ if 50% of the housing and/or commercial construction projected for years 1, 2, and 3 from the date the TIRZ is created is not complete. Only housing and/or commercial components count towards completion of the construction schedule, infrastructure construction does not. Furthermore, any default of the terms contained in the Interlocal and/or Development Agreements that is not cured within the timeframe contained in the Interlocal and/or Development Agreements may also result in TIRZ Termination.

Any costs incurred by the Developer are not and shall never in any event become general obligations or debt of the City or any of the Participating Governmental Entities. The public improvement infrastructure costs incurred by the Developer shall be paid solely from the TIRZ revenues and shall never constitute a debt, indebtedness or a pledge of the faith and credit or taxing power of the State, the City, the Participating Governmental Entities, any political corporation, subdivision, or agency of the State.

Developer's Risk

All financing, developmental costs, construction costs, improvements, damages, or other costs incurred with respect to this project are at the sole risk of the developer. Neither the City nor any Participating Governmental Entity shall incur any risk whatsoever associated with the development, construction, completion or failure of the project. In the event that the project fails, is abandoned by the Developer or for any reason is not completed, the City shall have the right to terminate the TIRZ and any funds remaining in the TIRZ account shall

be distributed to the City and Participating Governmental Entities on a pro rata basis in accordance with each entity's participation level.

Compliance

The Developer shall comply with all federal, state and local laws, rules and regulations including the 2004 TIF Guidelines. Staff continues to review and monitor for compliance with Section III criteria of the 2004 TIF guidelines, including the UD Policy. It is understood that 20 homes will not comply with this policy; however, all other homes constructed must comply with the UD Policy. If it is discovered that homes beyond the initial 20 are not constructed in accordance with the UD Policy, the project will be terminated.

Reporting

The Developer shall submit a project status report and a financial report on a quarterly basis (January 15th, April 15th, July 15th and October 15th) to the City beginning on January 15, 2009.

Inspection

The City, Participating Governmental Entities, or Administrator shall have the right to inspect the project site or sites and the premises of the Developer without notice.

City of San Antonio
Hunters Pond - TIF Reinvestment Zone
Summary Fact Sheet
January 15, 2009

Final Finance Plan

Plan of Finance:	Site Area		88.100	Acres
	Base Value (2006) In City	$	4,682,900	
	*Average Single Family Detached Homes	$	143,150	
	**Average Duplex Unit Price	$	124,400	
	**Average Garden Home Price	$	198,883	
	**Average Townhome Price	$	124,984	
	Project Year:			
	Phase I (2 A & B)	2006	23	Single Family Detached Homes
	Phase II (3)	2007	35	Single Family Detached Homes
	Phase III-IV (4 A & B - 5A & B)	2008-2009	44	Single Family Detached Homes
			4	Duplex Units
			10	Townhomes
	Phase V (6 A & B)	2010	18	Single Family Detached Homes
			10	Duplex Units
			9	Garden Homes
			6	Townhomes
	Phase VI	2011	41	Single Family Detached Homes
			10	Duplex Units
			5	Garden Homes
			4	Townhomes
	Phase VII	2012	61	Single Family Detached Homes
			5	Garden Homes
			4	Townhomes
	Phase VIII	2013	66	Single Family Detached Homes
			10	Garden Homes
			4	Townhomes
	Phase IX	2014	64	Single Family Detached Homes
			10	Garden Homes
			6	Townhomes
			352	Total Single Family Detached Homes
			34	Total Townhomes
			39	Total Garden Homes
			24	Total Duplex Units
		Grand Total	449	

Performance Bonds:	Per Texas Government Code Chapter 2253	
Payment Bonds:	Per Texas Government Code Chapter 2253	

Assumptions:	Projected Captured Value	$	107,341,010	
	Assessed Value Growth Factor		3.00%	
	Collection Rate		97.50%	
	Estimated Total TIF Revenues	$	11,228,137	
	Estimated TIF Life (6/01/2006 to 9/30/2031)		25.35	Years

*Price based on current Bexar Appraisal District average on existing units within zone.
**Price based on San Antonio Board of Realtors MLS average price (October 2008).

Hunters Pond - Tax Increment Reinvestment Zone

Sources and Uses

Sources of Funds	
TIF Revenues	$ 11,228,137
Developer Contribution	$ 4,136,555
Total Sources of Funds	$ 15,364,692

Uses of Funds

	Phase I 2006	Phase II 2007	Phase III-IV 2008-2009	Phase V-IX 2010-2014	Total
Begin Construction					
Single Family /Duplex/Garden/Townhomes	23	35	58	333	449
Public Improvements					
Hard Cost					
Site Work	$ 24,679	$ 9,759	$ 54,966	$ 69,292	$ 158,696
Storm Water Pollution Prevention	$ 4,791	$ 1,895	$ 10,672	$ 13,453	$ 30,811
Streets and Drainage	$ 398,854	$ 154,258	$ 790,656	$ 969,526	$ 2,313,294
Alleys	$ 161,700	$ 60,900	$ 321,300	$ 394,800	$ 938,700
Sewer	$ 166,856	$ 64,862	$ 331,134	$ 405,764	$ 968,616
Water	$ 127,355	$ 49,985	$ 252,120	$ 308,795	$ 738,255
Street Lights/Signs	$ 10,010	$ 3,959	$ 22,295	$ 28,106	$ 64,370
Detention Ponds	$ 28,000	$ 29,400	$ 16,100	$ 16,100	$ 89,600
Off Site Sewer	$ 89,000	$ -	$ -	$ -	$ 89,000
Street Extension to Zarzamora	$ -	$ 200,000	$ -	$ -	$ 200,000
Offsite Water/Sewer Street Extension	$ -	$ 100,000	$ -	$ -	$ 100,000
Platting, Zoning, Permits and ROW landscaping	$ 20,000	$ 13,700	$ 19,950	$ 19,650	$ 73,300
CPS Electric	$ 31,570	$ 12,485	$ 70,315	$ 88,642	$ 203,012
Park Improvements	$ -	$ -	$ -	$ 250,000	$ 250,000
Village Green Improvements	$ -	$ -	$ 62,500	$ 62,500	$ 125,000
Street Trees	$ 16,000	$ 20,000	$ 34,000	$ 38,000	$ 108,000
Hard Cost Total	$ 1,078,815	$ 721,203	$ 1,986,008	$ 2,664,628	$ 6,450,654
Soft Cost					
Engineering-Surveying	$ 118,670	$ 79,332	$ 218,461	$ 293,110	$ 709,573
Geo-Technical	$ 3,600	$ 3,710	$ 5,785	$ 5,895	$ 18,990
Contingency	$ 97,093	$ 64,908	$ 178,741	$ 239,816	$ 580,558
Construction Management	$ 53,941	$ 36,060	$ 99,301	$ 133,232	$ 322,534
Legal and Formation Fees	$ 59,000	$ -	$ -	$ -	$ 59,000
Soft Cost Total	$ 332,304	$ 184,010	$ 502,288	$ 672,053	$ 1,690,655
Total Public Improvements	$ 1,411,119	$ 905,213	$ 2,488,296	$ 3,336,681	$ 8,141,309

Total Infrastructure	$ 8,141,309
Financing Cost @ 4.32%	$ 2,637,760
Total Developer Costs	$ 10,779,069
Total Admin. Expenses	$ 765,719
Cost of Services *	$ 3,819,904
Grand Total	$ 15,364,692
Project Financing Surplus (Shortage)	$ -

* Cost of Services will be deducted from the City's annual tax increment before the distribution is made to the TIRZ fund.

Hunters Pond - TIF Reinvestment Zone

Projected Tax Increment Revenue

	Tax Increment Zone						City of San Antonio			Bexar County				
Tax Year	Beginning Assessed Value	Annual Value of New Development	Growth	Adjustment to Captured Value	Projected Year-End Taxable Value	Projected Captured Value	Captured Taxable Value	Tax Rate Contribution	Tax Increment	Captured Taxable Value	Tax Rate Contribution	Tax Increment	Combined Tax Increment	Fiscal Year Ending
2006	4,682,900	-			4,682,900	-	-	0.578540	-	-	0.200411	-	-	2007
2007	4,682,900	9,835,780		(2,867,090)	14,518,680	6,968,690	3,797,520	0.572300	21,190	3,835,021	0.185916	6,952	$ 28,142	2008
2008	14,518,680	8,046,040		(2,867,090)	22,564,720	15,014,730	15,014,730	0.567140	83,026	15,014,730	0.175644	25,713	$ 108,739	2009
2009	22,564,720	-		(2,867,090)	22,564,720	15,014,730	15,014,730	0.565140	82,733	15,014,730	0.175644	25,713	$ 108,446	2010
2010	22,564,720	6,360,551		(2,867,090)	28,925,271	21,375,281	21,375,281	0.565140	117,780	21,375,281	0.175644	36,606	$ 154,386	2011
2011	28,925,271	8,607,501		(2,867,090)	37,532,772	29,982,782	29,982,782	0.565140	165,209	29,982,782	0.175644	51,346	$ 216,555	2012
2012	37,532,772	10,226,501		(2,867,090)	47,759,273	40,209,283	40,209,283	0.565140	221,558	40,209,283	0.175644	68,860	$ 290,418	2013
2013	47,759,273	11,936,666		(2,867,090)	59,695,939	52,145,949	52,145,949	0.565140	287,330	52,145,949	0.175644	89,301	$ 376,631	2014
2014	59,695,939	11,900,334		(2,867,090)	71,596,273	64,046,283	64,046,283	0.565140	352,902	64,046,283	0.175644	109,681	$ 462,583	2015
2015	71,596,273	-	2,147,888	(2,867,090)	73,744,161	66,194,171	66,194,171	0.565140	364,737	66,194,171	0.175644	113,359	$ 478,096	2016
2016	73,744,161	-	2,212,325	(2,867,090)	75,956,486	68,406,496	68,406,496	0.565140	376,928	68,406,496	0.175644	117,148	$ 494,076	2017
2017	75,956,486	-	2,278,695	(2,867,090)	78,235,181	70,685,191	70,685,191	0.565140	389,484	70,685,191	0.175644	121,050	$ 510,534	2018
2018	78,235,181		2,347,055	(2,867,090)	80,582,236	73,032,246	73,032,246	0.565140	402,416	73,032,246	0.175644	125,070	$ 527,486	2019
2019	80,582,236		2,417,467	(2,867,090)	82,999,703	75,449,713	75,449,713	0.565140	415,737	75,449,713	0.175644	129,210	$ 544,947	2020
2020	82,999,703		2,489,991	(2,867,090)	85,489,694	77,939,704	77,939,704	0.565140	429,457	77,939,704	0.175644	133,474	$ 562,931	2021
2021	85,489,694		2,564,691	(2,867,090)	88,054,385	80,504,395	80,504,395	0.565140	443,588	80,504,395	0.175644	137,866	$ 581,454	2022
2022	88,054,385		2,641,632	(2,867,090)	90,696,017	83,146,027	83,146,027	0.565140	458,144	83,146,027	0.175644	142,390	$ 600,534	2023
2023	90,696,017		2,720,880	(2,867,090)	93,416,897	85,866,907	85,866,907	0.565140	473,137	85,866,907	0.175644	147,050	$ 620,187	2024
2024	93,416,897		2,802,507	(2,867,090)	96,219,404	88,669,414	88,669,414	0.565140	488,579	88,669,414	0.175644	151,849	$ 640,428	2025
2025	96,219,404		2,886,582	(2,867,090)	99,105,986	91,555,996	91,555,996	0.565140	504,484	91,555,996	0.175644	156,792	$ 661,276	2026
2026	99,105,986		2,973,180	(2,867,090)	102,079,166	94,529,176	94,529,176	0.565140	520,867	94,529,176	0.175644	161,884	$ 682,751	2027
2027	102,079,166		3,062,375	(2,867,090)	105,141,541	97,591,551	97,591,551	0.565140	537,741	97,591,551	0.175644	167,128	$ 704,869	2028
2028	105,141,541		3,154,246	(2,867,090)	108,295,787	100,745,797	100,745,797	0.565140	555,121	100,745,797	0.175644	153,063	$ 708,184	2029
2029	108,295,787		3,248,874	(2,867,090)	111,544,660	103,994,670	103,994,670	0.565140	573,023	103,994,670	0.175644	-	$ 573,023	2030
2030	111,544,660		3,346,340	(2,867,090)	114,891,000	107,341,010	107,341,010	0.565140	591,461	107,341,010	0.175644	-	$ 591,461	2031
		$ 66,913,373							$ 8,856,632			$ 2,371,505	$ 11,228,137	

Existing Annual Value Growth Faetors					
Years	0.00%	Participation Level	100%	Participation Level	70%
Thereafter	0.00%	Tax Rate Growth Factor	0.00%	Tax Rate Growth Factor	0.00%
Combined Compound Growth Rate	3.00%	Tax Rate Collection Factor	97.50%	Tax Rate Collection Factor	97.50%

Note:
-Bexar County is participating at 70% of their Operation and Maintenance tax rate not the total tax rate.

Hunters Pond - Tax Increment Reinvestment Zone

Reimbursement for Public Improvements

Fiscal Year Ending 09/30	TIF Revenue	Cumulative TIF Revenues	Expenses for Pub. Imp. Infrastructure	Admin. Exp.*	Cost of Services**	TIF Fund Balance
2006	$ -	$ -	$ 13,165			$ (13,165)
2007	-	-	38,966	$ 75,000		(127,132)
2008	28,142	28,142	105,365	6,795		(211,149)
2009	108,739	136,881	159,127	10,825		(272,363)
2010	108,446	245,327	159,127	10,810		(333,854)
2011	154,386	399,713	167,127	13,107		(359,702)
2012	216,555	616,268	188,782	16,216		(348,145)
2013	290,418	906,686	219,486	19,909		(297,121)
2014	376,631	1,283,317	254,807	24,220		(199,517)
2015	462,583	1,745,900	290,487	28,517		(55,939)
2016	478,096	2,223,996	292,439	29,293		100,425
2017	494,076	2,718,072	296,046	30,092		268,364
2018	510,534	3,228,606	298,220	30,915		449,763
2019	527,486	3,756,092	300,006	31,762		645,481
2020	544,947	4,301,039	303,402	32,635	$ 348,725	505,666
2021	562,931	4,863,970	305,324	33,535	353,400	376,338
2022	581,454	5,445,424	306,814	34,461	358,237	258,280
2023	600,534	6,045,958	309,871	35,415	363,194	150,334
2024	620,187	6,666,145	309,410	36,397	368,260	56,453
2025	640,428	7,306,573	324,428	37,409	273,414	61,630
2026	661,276	7,967,849	346,103	38,452	278,679	59,672
2027	682,751	8,650,600	351,396	39,526	284,049	67,452
2028	704,869	9,355,469	377,954	40,631	289,517	64,219
2029	708,184	10,063,653	359,828	40,797	295,087	76,691
2030	573,023	10,636,676	269,874	34,039	300,764	45,036
2031	591,461	11,228,137	294,704	34,961	306,578	254
	$ 11,228,137		$ 6,642,260	$ 765,719	$ 3,819,904	

*Annual Administrative Expenses from FY 2008-FY 2031 includes $5,388 annual adminstrative expenses for Bexar County and the City of San Antonio at 5% of the projected annual revenue.

* Bexar County start up costs are $28,824 and are part of the $75,000 outlined in FY 2007.

* *Cost of Services will be deducted from the City's annual tax increment before the distribution is made to the TIRZ fund.

Hunters Pond - TIF Reinvestment Zone Combined

Participation

Entity	Tax Rate	Level of Participation	Tax Rate Based on Participation	% of Project	TIF Revenues	TIF Expenses
City of San Antonio	0.567140	100.00%	0.567140	82.81%	$ 8,856,632	$ 11,427,487
Bexar County *	0.250920	70.00%	0.175644	17.19%	$ 2,371,505	$ 2,371,505
Total	0.818060		0.742784	100.00%	$ 11,228,137	$ 13,798,992

Note: The City's contribution to the Developer costs is limited to $7,000,000; the remaining $4,427,487 will go to pay for administrative expenses and costs of services.

* Bexar County's Participation is 70% of their O & M portion of the total tax rate and their tax increment revenue excludes any contribution to the City's cost of services.

*Bexar County's maximum contribution to the Developer is $2,213,369; the remaining $158,136 will go to pay for adminstrative expenses and startup costs.

Hunters Pond - TIF Reinvenstment Zone
Projected New Revenue of Development

Tax Year	Single Family **Phase II** 2007	Single Family **Phases III-IV** 2008	Duplex 2009	Townhomes 2009	Single Family **Phase V** 2010	Duplex 2010	Garden Homes 2010	Townhomes 2010	Single Family **Phase VI** 2011	Duplex 2011	Garden Homes 2011	Townhomes 2011	Single Family **Phase VII** 2012	Garden Homes 2012	Townhomes 2012	Single Family **Phase VIII** 2013
2007	$ 9,835,780															
2008		$ 6,298,600	497,600.00	$ 1,249,840												
2009																
2010					$ 2,576,700	$ 1,244,000	$ 1,789,947	$ 749,904								
2011									$ 5,869,150	$ 1,244,000	$ 994,415	$ 499,936				
2012													$ 8,732,150	$ 994,415	$ 499,936	
2013																$ 9,447,900
2014																
2015																
2016																
2017																
2018																
2019																
2020																
2021																
2022																
2023																
2024																
	$ 9,835,780	$ 6,298,600	$ 497,600	$ 1,249,840	$ 2,576,700	$ 1,244,000	$ 1,789,947	$ 749,904	$ 5,869,150	$ 1,244,000	$ 994,415	$ 499,936	$ 8,732,150	$ 994,415	$ 499,936	$ 9,447,900

$	4,249,456	Townhomes New Value
$	2,985,600	Duplex Unit New Value
$	51,921,880	Single Family New Value
$	7,756,437	Garden Homes New Value
$	66,913,373	Total Value of New Development

Hunters Pond - TIF Reinvenstment Zone
Projected New Revenue of Development

Tax Year	Garden Homes 2013	Townhomes 2013	Single Family Phase IX 2014	Garden Homes 2014	Townhomes 2014	Total	Cumulative Total Total	Fiscal Year
2007						$ 9,835,780	$ 9,835,780	2008
2008						$ 8,046,040	$ 17,881,820	2009
2009						$ -	$ 17,881,820	2010
2010						$ 6,360,551	$ 24,242,371	2011
2011						$ 8,607,501	$ 32,849,872	2012
2012						$ 10,226,501	$ 43,076,373	2013
2013	$ 1,988,830	$ 499,936				$ 11,936,666	$ 55,013,039	2014
2014			$ 9,161,600	$ 1,988,830	$ 749,904	$ 11,900,334	$ 66,913,373	2015
2015						$ -	$ 66,913,373	2016
2016						$ -	$ 66,913,373	2017
2017						$ -	$ 66,913,373	2018
2018						$ -	$ 66,913,373	2019
2019						$ -	$ 66,913,373	2020
2020						$ -	$ 66,913,373	2021
2021						$ -	$ 66,913,373	2022
2022						$ -	$ 66,913,373	2023
2023						$ -	$ 66,913,373	2024
2024						$ -	$ 66,913,373	2025
	$ 1,988,830	$ 499,936	$ 9,161,600	$ 1,988,830	$ 749,904	$ 66,913,373		

Hunters Pond - TIF Reinvestment Zone

Projected Uses of Tax Increment
Construction Completed Cost

Tax Year	Phase I 2006	Phase II 2007	Phase III-IV 2008-2009	Phase V-IX 2010-2014	Total
2006	$ 1,411,119				$ 1,411,119
2007		$ 905,213			$ 905,213
2008			$ 2,488,296		$ 2,488,296
2009					$ -
2010				$ 3,336,681	$ 3,336,681
	$ 1,411,119	$ 905,213	$ 2,488,296	$ 3,336,681	$ 8,141,309

Hunters Pond - TIF Reinvestment Zone

Projected Tax Increment Revenue

Principal and Interest Requirements

Date	Principal	Interest Rate	Interest	Semi-annual Debt Service	Annual Debt Service
03/01/06	$ -		$ -	$ -	
09/01/06	-	4.32%	13,165	13,165	$ 13,165
03/01/07	-		13,165	13,165	
09/01/07	-	4.32%	25,801	25,801	38,966
03/01/08	-		25,801	25,801	
09/01/08	-	4.32%	79,564	79,564	105,365
03/01/09	-		79,564	79,564	
09/01/09	-	4.32%	79,564	79,564	159,127
03/01/10	-		79,564	79,564	
09/01/10	-	4.32%	79,564	79,564	159,127
03/01/11	-		79,564	79,564	
09/01/11	8,000	4.32%	79,564	87,564	167,127
03/01/12	-		79,391	79,391	
09/01/12	30,000	4.32%	79,391	109,391	188,782
03/01/13	-		78,743	78,743	
09/01/13	62,000	4.32%	78,743	140,743	219,486
03/01/14	-		77,404	77,404	
09/01/14	100,000	4.32%	77,404	177,404	254,807
03/01/15	-		75,244	75,244	
09/01/15	140,000	4.32%	75,244	215,244	290,487
03/01/16	-		72,220	72,220	
09/01/16	148,000	4.32%	72,220	220,220	292,439
03/01/17	-		69,023	69,023	
09/01/17	158,000	4.32%	69,023	227,023	296,046
03/01/18	-		65,610	65,610	
09/01/18	167,000	4.32%	65,610	232,610	298,220
03/01/19	-		62,003	62,003	
09/01/19	176,000	4.32%	62,003	238,003	300,006
03/01/20	-		58,201	58,201	
09/01/20	187,000	4.32%	58,201	245,201	303,402
03/01/21	-		54,162	54,162	
09/01/21	197,000	4.32%	54,162	251,162	305,324
03/01/22	-		49,907	49,907	
09/01/22	207,000	4.32%	49,907	256,907	306,814
03/01/23	-		45,436	45,436	
09/01/23	219,000	4.32%	45,436	264,436	309,871
03/01/24	-		40,705	40,705	
09/01/24	228,000	4.32%	40,705	268,705	309,410
03/01/25	-		42,714	42,714	
09/01/25	239,000	4.32%	42,714	281,714	324,428
03/01/26	-		37,552	37,552	
09/01/26	271,000	4.32%	37,552	308,552	346,103
03/01/27	-		31,698	31,698	
09/01/27	288,000	4.32%	31,698	319,698	351,396
03/01/28	-		25,477	25,477	
09/01/28	327,000	4.32%	25,477	352,477	377,954
03/01/29	-		18,414	18,414	
09/01/29	323,000	4.32%	18,414	341,414	359,828
03/01/30	-		11,437	11,437	
09/01/30	247,000	4.32%	11,437	258,437	269,874
03/01/31	-		6,102	6,102	
09/01/31	282,500	4.32%	6,102	288,602	294,704
	$ 4,004,500		$ 2,637,760	$ 6,642,260	$ 6,642,260

Hunters Pond - TIF Reinvestment Zone

List of Universal Design Non-compliant Accounts

	Account Number
1	042862030030
2	042862030020
3	042862030100
4	042862020140
5	042862020130
6	042862020020
7	042862020060
8	042862060090
9	042862060120
10	042862020160
11	042862030080
12	042862030090
13	042862020120
14	042862020070
15	042862020080
16	042862030010
17	042862030120
18	042862040260
19	042862040150
20	042862020030

ACW
1/15/09
Item No. 32

Exhibit 3
Hunters Pond TIRZ
Development Agreement

DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS, BEXAR COUNTY, HUNTERS POND, L.P. AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER TWENTY-FIVE, CITY OF SAN ANTONIO, TEXAS

This Development Agreement ("Agreement"), pursuant to Ordinance No. 2009-01-15-0027 passed and approved on the 15th day of January, 2009, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas ("the City"); Hunters Pond, L.P., a Texas limited partnership ("the Developer"), the Board of Directors for Reinvestment Zone Number Twenty-Five, City of San Antonio, Texas, a tax increment reinvestment zone (the "Board") and Bexar County, a political subdivision of the State of Texas ("the County"), acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on the __th day of _____, 2009.

BACKGROUND:

WHEREAS, both the City and the County recognize the importance of their 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 96558, dated November 21, 2002, the City annexed, effective January 5, 2003, the Southside Initiative area #2 for limited purposes, including the Hunters Pond area, and zoned the whole area as "DR" (Development Reserve) in accordance with the City's land use plan developed for the Southside Initiative; and

WHEREAS, by Resolution Number 2002-44-45, dated December 12, 2002, the City added the Southside Initiative area #2, including the Hunters Pond area, to the 3-Year annexation plan for full purpose annexation; and

WHEREAS, by Ordinance Number 98495, dated December 4, 2003, the City rezoned the Hunters Pond area from "DR" (Development Reserve) to "R4" (Residential Single-Family); and

WHEREAS, by Ordinance Number 100045, dated December 9, 2004, the City rezoned the Hunters Pond area as "UD" (Urban Development); and

WHEREAS, by Ordinance Number 101601, dated December 1, 2005, effective December 11, 2005, the City provided for the full purpose, voluntary annexation of the Hunters Pond area and specifically maintained its zoning as "UD" (Urban Development) under the full purpose annexation; and

WHEREAS, by Ordinance Number 2006-06-01-0633, dated June 1, 2006, the City created Reinvestment Zone Number Twenty-Five in accordance with the Act, to promote development and redevelopment of the Zone Property, the Hunters Pond 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, Section 311.002 (1) of the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality establishing a reinvestment zone, for costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in Section 311.002 (1) of the Act ("Project Costs"); and

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (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 10th day of December, 2008, the Board adopted and approved a final Project Plan and a final Financing Plan defined hereunder and referred to herein as "Project Plan" and "Financing Plan" providing for development of the Zone Property; and

WHEREAS, the City also approved the Final Project Plan and Final Financing Plan for the Zone by Ordinance Number 2009-01-15-0027 on the 15th day of January, 2009 and authorized the City Manager of the City of San Antonio or her designated representative to execute this Agreement on behalf of the City, and to bind the City to the terms and conditions of this Agreement; and

WHEREAS, pursuant to the Act (as amended) and City of San Antonio Ordinance Number 2006-06-01-0633, dated June 1, 2006, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

WHEREAS, pursuant to said authority above, the Board, the City, the County and the Developer each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as specified in the Project Plan, Financing Plan and this Agreement; and

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

I. DEFINITIONS

1.1 The "City," the "County," 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 it may be 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. The total Administrative Costs for the Participating Taxing Entities are estimated to be seven hundred sixty-five thousand seven hundred nineteen dollars ($765,719.00).

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

1.5 "Available Tax Increment Funds" for each Participating Taxing Entity means the "Tax Increment" contributed by each Participating Taxing Entity to the TIF Fund, as paid out in accordance with the priority of payment listed in paragraph 7.5 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, Financing 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, the improvement must:

a. In the case of Public Improvements constructed prior to the Effective Date of this Agreement:

(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 of San Antonio or appropriate entity; and

(2) for streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and

(3) for all Public Improvements, including streets and drainage improvements, be subject to ongoing repair, replacement and maintenance funded from the Financing Plan pursuant to paragraph 5.13 of this Agreement; or

b. In the case of Public Improvements constructed after the Effective Date of this Agreement:

(1) be inspected by the design engineer, and be the subject of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the public improvements were designed in such a manner as to endure without need for maintenance, repair or replacement for five (5) years, taking into consideration the site and traffic conditions, present and future, at or near the improvements, and certifying that the public improvements were constructed according to the specifications required by the engineer's design for each improvement; and

(2) be approved and accepted by the City of San Antonio as evidenced by a letter of acceptance issued by an authorized official of the City of San Antonio; and

(3) for streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and

(4) for all Public Improvements, including streets and drainage improvements, be subject to ongoing repair, replacement and maintenance funded from the Financing Plan pursuant to paragraph 5.13 of this Agreement.

1.10 "Construction Schedule" means the timetable for constructing the Public Improvements specified in the Project Plan, Financing Plan, and this Agreement, which timetable is more particularly set forth in **Exhibit A**, attached and incorporated in this Agreement for all purposes and which timetable may be amended by the parties from time to time pursuant to paragraph 23.2.

1.11 "Contract Progress Payment Request" ("CPPR") means a request, prepared in accordance with the requirements of **Exhibit D**, attached hereto and incorporated herein for all purposes, for reimbursement due to the Developer for work completed in accordance with the definition of "Completion" above on a specific improvement in the Zone in accordance with the public improvements in the Project Plan and the timeline detailed in **Exhibit A**, the Public Improvements and Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.

1.12 "Cost of Services" is the cost of increased services incurred by the City due to the build out of the Project which will be deducted from the City's annual Tax Increment before the distribution is made into the TIF Fund. The initial annual recovery of Cost of Services by the City is anticipated to be three hundred forty-eight thousand seven hundred twenty-five dollars ($348,725.00) starting in fiscal year 2020, and generally escalating each year thereafter. The

total Cost of Services to be withheld from the Tax Increment deposited by the City into the TIF Fund is estimated to be three million eight hundred nineteen thousand nine hundred four dollars ($3,819,904.00) in the aggregate for the life of the Zone.

1.13 "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 for reimbursement to the Developer.

1.14 "Developer" means Hunters Pond, L.P., a Texas limited partnership.

1.15 "Effective Date" means the date that the last party signs this Agreement below, or the date of the last signature of the applicable interlocal agreement, whichever is later.

1.16 "Financing Plan" means the final 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 document by reference for all purposes, as if set out in its entirety.

1.17 "Guidelines" means the 2004 Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria as passed and approved by the City Council of the City of San Antonio.

1.18 "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.

1.19 "Phase" means a portion of the Project that is being constructed by the Developer, normally being a set number of units and acres of the Zone Property being constructed together during a specific timeline.

1.20 "Project" has the meaning specified in paragraph 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from time to time.

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

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

1.23 "Project Status Report" means a report, prepared and submitted by the Developer in accordance with the requirements of paragraphs 5.5 and 5.17, and **Exhibit B** attached hereto and incorporated herein for all purposes, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.24 "Public Improvements" include those improvements that provide a public benefit and that are listed in the Project Plan and the Financing Plan. When an improvement has both private

and public benefits, only that portion which is dedicated to the public may be reimbursed to the Developer, such as, but not limited to, grading and environmental studies.

1.25 "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.

1.26 "TIF" means Tax Increment Financing.

1.27 "TIF Fund" means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled "Reinvestment Zone Number Twenty-Five (25), City of San Antonio, Texas Tax Increment Fund."

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

1.29 "TIRZ" means Tax Increment Reinvestment Zone.

1.30 "Zone" means Tax Increment Reinvestment Zone Number Twenty-Five, City of San Antonio, Texas.

1.31 "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 Financing Plans.

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

II. REPRESENTATIONS

2.1 **No Tax Increment Bonds or Notes**: The City, the County, the Board and the Developer represent that they understand and agree that neither the City, the County 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 and County Authority.** The City represents to the Developer that as of the date of the execution of this document, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement. The County represents to the Developer that as of the date of the execution of this document, the County, a political subdivision of the State of Texas, has the authority to carry out the obligations contemplated by this Agreement.

2.3 **Board's Authority**. The Board represents to the Developer that as of the date of the Board's signature to this document the Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 2006-06-01-0633, passed and approved on June 1, 2006, 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, the County and to the Board that the Developer is a limited partnership duly formed in the State of Texas; 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; that the Developer's performance under this Agreement shall not result in the creation of any claim against the City or the County for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City, the County 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 **All Consents and Approvals Obtained.** The City, the County, 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.

2.6 **Assignment of Payments and Payment of Only One Party.** The City, the County, the Board and the Developer may rely upon the payments to be made to them out of the Available Tax Increment Funds 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.

2.7 **Reasonable Efforts of All Parties.** The City, the County, 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.

2.8 **Developer's Continuing Duty to Complete Improvements.** The City, the County, 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, the County and/or the Board.

2.9 **Not Effective until Execution of Interlocal Agreements.** The City, the County, the Board and the Developer represent each to the others that they understand and agree that this Agreement shall have no force or effect unless and until all applicable interlocal agreements for the Zone are executed between the City, the Board and the Participating Taxing Entities.

2.10 **Developer Bears Risk of Reimbursement.** The Developer represents that it understands 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, the County, or the Board. 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 state 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 or County policy, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

2.11 **Not an Obligation of the General Fund.** The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from tax increments shall never be obligations of the general funds of the City or the County, but are only obligations of the TIF Fund, and are subject to limitations.

III. THE PROJECT

3.1 **The Project**. The Project shall consist of approximately 449 residential units comprised of: 352 detached single-family homes; 24 duplex units; 39 garden homes; and 34 town homes; and includes the following Public Improvements and related capital costs provided by Developer: site work, storm water pollution prevention, street and drainage, alleys, sewer, water, street lights and signs, detention ponds, street extension to Zarzamora, platting, zoning, permits, right-of-way landscaping, electrical service, park improvements, village green improvements, street trees, geo-technical, engineering-surveying, contingency, construction management, and legal and formation fees on an approximately 88.1 acre site known as the Hunters Pond Subdivision, as more thoroughly set forth in the Project Plan and Financing Plan.

3.2 **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 percent 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 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 set forth in Chapters 252 and 212 of the Local Government Code. Partial reimbursements to the Developer in that event shall not exceed thirty percent (30%) of the Project Costs that would otherwise have been eligible for total reimbursements had they been competitively bid.

3.3 **Private Financing**. The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded through the use of the Developer's own capital or through commercial or private construction loans/lines of credit secured solely by the Developer. The Developer may use 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, the County 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.

3.4 **Reimbursement**. The parties hereto agree that neither the City, the County nor the Board can guarantee that those Available Tax Increment Funds shall completely reimburse the Developer, but that 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.

IV. TERM

4.1 The term of this Agreement shall commence on the Effective Date and end on the date which is the earlier to occur of the following: (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; (iii) as provided in the Financing Plan; or (iv) September 30, 2031, provided that all existing warranties on the Project shall survive termination of this Agreement.

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 to comply with all applicable provisions of the Act, the 2004 Guidelines, the City Charter, the City Code (including the Unified Development Code such as Universal Design and Construction requirements as provided in paragraph 5.16), all City ordinances, state, federal and local law, as may be amended from time to time.

5.2 **Duty to Complete.** Subject to Article VII, "Compensation to the Developer," the Developer agrees to complete, or cause to be completed, the Public Improvements described in the Project Plan, Financing Plan and in 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 department of the City and the requirements of all federal, state and local laws have been met. For purposes of this paragraph, letters of certification or acceptance issued by the City shall constitute written approval of the City.

5.4 **Payment and Performance Bonds. Phase 2:** The Developer failed to comply with the Guidelines in that Developer failed to obtain payment and performance bonds before beginning construction. Under Ordinance Number 2006-06-01-0633, dated June 1, 2006, an exception was granted to the payment and performance bond requirements of the Guidelines for Phase 2 only,

such that City-approved alternative documents and security will be acceptable, including an affidavit of completion by the Developer, lien waivers and releases from subcontractors, a list of all known subcontractors, a copy of the Developer's contract with Developer's general contractor(s), an indemnification of the City and County by Developer, and a right of set off against Developer's reimbursements from the TIF Fund by any claimants who may claim against the City under Chapter 2253 of the Texas Government Code. Also Developer will provide the City any evidence of payment bonds secured for Phase 2.

All Other Phases: For all other Phases, the Developer shall in accordance with Chapter 2253 of the Texas Government Code, the Developer shall cause its general contractor or general contractors to obtain such 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. Without limiting other breaches, failure of the Developer to comply with this paragraph or Chapter 2253 of the Texas Government Code is a breach of this Agreement, and the City or the County may exercise the full range of legal remedies available: (1) to the City, including but not limited to: terminating the Zone, exercising its rights under Article X, and/or removing the value of Phases and lots which are ineligible for reimbursement; (2) to the County, terminating its participation in the Zone and exercising its rights under Article X, paragraph 10.2.

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 2004 TIF Guidelines, the Project Plan, the Financing Plan, the Unified Development Code, Universal Design, City Ordinance No. 2008-11-20-1045, 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 of such construction and of compliance with such laws, ordinances, and contractual requirements to the City, the County and to the Board quarterly, or more often if requested by the City, the County or the Board, using the form attached as **Exhibit B**, as it may be amended from time to time. Without limiting other breaches, failure of the Developer to comply with this paragraph is a breach of this Agreement, and the City may terminate the Zone and exercise the full range of legal remedies available to the City, including Article X below, and/or the County may terminate its participation in the Zone and exercise its rights under Article X, paragraph 10.2.

5.6 **Discretionary Program.** The Developer agrees that the TIF program is a discretionary program and that the City and the County have no obligation to extend TIF to the Developer

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. If completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, 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 accordance with paragraph 23.2 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 either the City and/or the County may exercise its remedies under Article X of this Agreement.

5.9 **Litigation against the City or the County.** Developer acknowledges that it is aware that the 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 contracts or 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. This Zone may not be terminated for violations of this policy which occur more than 60 days prior to the execution of this document. Developer also acknowledges that if a principal or participant, as defined herein, initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the County, the County may terminate its participation in the Zone.

5.10 **Small, Minority or Women-owned Business Enterprises.** With respect to Public Improvements, the Developer shall make a good faith effort to comply with the City's and the County's policy regarding the participation of business enterprises eligible as Small, Minority or Women-owned Business Enterprises in subcontracting any of the construction work required to be performed under the Project Plan, Financing Plan or this Agreement. A list of those business enterprises certified by the City as eligible Small, Minority or Women-owned Business Enterprises is available from the City. A list of those business enterprises certified by the County as eligible Small, Minority or Women-owned Business Enterprises is available from the County. The Developer shall maintain records showing (i) its contracts, supply agreements, and

services agreements with and to business enterprises that are Small, Minority or Women-owned Business Enterprises, (ii) specify its efforts to identify and award contracts to business enterprises that are Small, Minority or Women-owned Business Enterprises, and (iii) provide reports of its efforts under this paragraph to the City, in a form and manner the City may reasonably prescribe, at least annually during construction of the Project and upon completion of the Project.

5.11 **Tree Ordinance.** In accordance with paragraphs 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, as it may be amended from time to time.

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, until acceptance by the City as evidenced by written acceptance required by subparagraphs 1.9.a.(1) or 1.9.b.(2) and for one (1) year after Completion.
(b) 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 (1) year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of the Public Improvements shall be the responsibility of the City; and the City shall be reimbursed from the TIF Fund for those costs it must incur, 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 the second (2nd) through fifth (5th) years after Completion of said Public Improvements.
(d) Payment of the City under this paragraph 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 Financing 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 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 under this subparagraph. 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 sixty (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 that 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 an estoppel against the City under this Agreement or the Unified Development Code.

5.14 **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.

5.15 **Duty to Cooperate.** The Developer shall cooperate with the City, the County and the Board in providing all necessary information to the City, the County and the Board in order to assist the City, the County and the Board in determining Developer's compliance with this Agreement.

5.16 **Universal Design and Determination of Tax Increment Portion.** As of the Effective Date of this Agreement, twenty (20) units in Phase 2 do not comply with the City's Universal Design policy. However, under Ordinance Number 2006-06-01-0633, dated June 1, 2006, an exception was granted to the City Code and the City's Guidelines such that the City's Universal Design requirements will not apply to the twenty (20) units in Phase 2 only. If other 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 terminating the Zone, and removing the other 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 Financing Plan and/or the County may exercise its remedies under Article X of this Agreement.

5.17 **Quarterly Status and Compliance Reports.** The Developer shall submit to the City, the County and the Board written and signed Project Status Reports (see paragraphs 1.23 and 5.5 above) containing all the information requested, starting no later than thirty (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, on its construction progress and construction expenses, 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 and/or the County may exercise their rights in accordance with Article X herein.

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

5.19 The Developer understands that no Available Tax Increment Funds will be paid to the Developer until a master drainage plan of the Project has been received and approved by the City.

VI. DUTIES AND OBLIGATIONS OF CITY, COUNTY AND BOARD

6.1 **No TIF Bonds**. Neither the City, the County, 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, Financing 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 of the City under paragraph 5.13, the City, the County and the Board hereby pledge all Available Tax Increment Funds as reimbursement to the Developer, up to the maximum total amount specified in this Agreement, excluding those taxes collected after September 30, 2031.

6.3 **Co-ordination of Board Meetings**. The City and the Board hereby agree that all meetings of the Board shall be coordinated through and facilitated by the TIF Unit, and that all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with Chapter 2, Article IX, of the City Code.

6.4 **Obligation Accrues as Increment is Collected.** The City's and the County's obligation to contribute its Tax Increment payment to the Tax Increment Fund shall accrue as the City and County collect their respective Tax Increment. The City agrees to deposit its Tax Increment payment to the TIF Fund on or before April 15 and September 15 (or the first business day thereafter) of each year. No Participating Taxing Entity is required to continue participation in the TIRZ once it has reached its maximum contribution as set forth in this Agreement and related interlocal agreements.

6.5 **Collection Efforts.** The City and the Board shall use reasonable efforts to cause each Participating Taxing Entity which levies real property taxes in the Zone to levy and collect their ad valorem taxes due on the Zone Property and to contribute their portion of the Available Tax Increment Funds towards reimbursing the Developer for the construction of the Public Improvements required under the Project Plan, Financing Plan and this Agreement.

In the event there is a conflict between the parties to this Agreement regarding the amount of the Tax Increment owed by a Participating Taxing Entity, the parties to this Agreement agree that each Participating Taxing Entity will make a reasonable determination as to the amount of any Tax Increment it may owe under this Agreement, and its respective interlocal agreement, and

each Participating Taxing Entity will be responsible for reasonably determining which tax collections will be apportioned for purposes of determining its respective Tax Increment. The annual total appraised value of all real property taxable by each Participating Taxing Entity located in the Zone shall be determined through an independent third-party verification obtained from the Bexar Appraisal District. For the County, the Bexar County Tax Office will verify taxes levied and collected in regards to the property contained within the Zone. For the City, the City's Tax Assessor will verify taxes levied and collected in regards to the Zone Property.

6.6 **Letters of Acceptance**. The City, County, and the Board, where applicable, shall use reasonable efforts to issue, or cause to be issued a field letter of acceptance and a final letter of acceptance for Public Improvements satisfactorily brought to Completion by the Developer in constructing this Project.

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

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 City and the County 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.

7.2 **Maximum Reimbursement of Developer.** Following the Board's authorizations, the Developer shall receive, in accordance with the Financing Plan and the Project Plan, total reimbursements for Public Improvements from the City of a maximum of seven million dollars ($7,000,000.00) for public improvements on eligible project costs, as full reimbursement for designing and constructing the Public Improvements required under the Project Plan, Financing Plan and this Agreement. The County's maximum contribution to the Developer over the life of the Zone shall be two million two hundred thirteen thousand three hundred sixty-nine dollars ($2,213,369.00) all in accordance with the interlocal agreement executed of even date herewith.

7.3 **Processing of Payment Requests.** Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within thirty (30) days after the deposit of the City and County's Tax Increment Payment to the TIF Fund, if the Developer is in compliance with laws, statutes, ordinances and the requirements of this Agreement.

7.4 **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.

7.5 **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 each Participating Taxing Entity; (ii) to pay all other ongoing Administrative Costs to the City and County 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 and County, then the ongoing Administrative Costs of the City and County shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in the Development Agreement; (iv) to reimburse the City and/or the County under any reclaim of funds pursuant to Article X; (v) to reimburse the Developer for Public Improvements, including financing costs, as provided in the Development Agreement and in the Project Plan 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.

7.6 **Partial Payments.** If Available Tax Increment Funds do not exist in an amount sufficient to make payments in full when the payments are due 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.

7.7 **Repayment of Invalid Payments**. If any payment to the Developer is held invalid, ineligible, illegal or unenforceable under present or future 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 hereto 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.

7.8 Environmental Remediation. In the event any environmental remediation costs are incurred by the Developer, the Developer shall not seek reimbursement of those costs from the TIF Fund or from any Participating Taxing Entity.

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 and the County's Community and Development Programs Department, which shall be clearly labeled "**Hunters Pond TIRZ, Phase No. ____**" 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. Neither the City nor the County will 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 and the County at the same addresses listed in paragraph 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. The County shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the County's Community and Development Programs Department. No officer or employee, other than the County's Risk Manager, shall have authority to waive this requirement for the County.

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 coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City or County allow modification whereupon the City or County may incur increased risk.

8.4 **Required Types and Amounts**. The Developer's financial integrity is of interest to the City and the County, 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 Financing 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	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
5. Builders Risk * if applicable	replacement cost basis, insuring one hundred percent (100%) of the insurable value of construction improvements. (see section 8.12)
6. Contractor's Pollution Liability * if applicable	$1,000,000 per occurrence

8.5 **Requests for Changes**. The City and the County 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 or County 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 hereto 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 and County at the addresses provided below within ten (10) 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 and the County at the respective following addresses:

City of San Antonio
Housing and Neighborhood Services Department
TIF Unit
P.O. Box 839966
San Antonio, Texas 78283-3966

Bexar County
Bexar County Department of Community Investment
Attn: Executive Director
233 N. Pecos Suite 590
San Antonio, Texas 78207

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 the County and their respective officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability polices;

b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio or the County where the City or County 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 the County; and

d. Provide thirty (30) calendar days advance written notice directly to City and the County at the same addresses listed in paragraph 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 and County at the same addresses listed in paragraph 8.5 of this Article. City shall have the option to suspend Developer's and/or Developer's contractor performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and either the City and/or the County may exercise its remedies under Article X of this Agreement.

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

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 and non-contributory with respect to any insurance or self insurance carried by the City or the County for liability arising out of operations under this Agreement.

8.11 **Obligation of Developer**. Developer agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in paragraph 8.4 from each subcontractor to Developer and provide a Certificate of Insurance and Endorsement that names the Developer, the City, and the County as an additional insured. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement. Developer and any subcontractors are responsible for all damages to their own equipment and/or property.

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 one hundred percent (100%) of the insurable value of construction improvements.

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 age agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on 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 and the County 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 and the County 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 and the County:

a. a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the City and the County 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 and the County 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 and the County in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

g. perform as required by subparagraphs a-g with the certificates of coverage to be provided to the person for whom they are providing services.

9.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Developer is representing to the City and to the County 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 or the County to terminate its participation in the Zone and exercise its right to reimbursement under Article X, paragraph 10.2 if the Developer does not remedy the breach within ten (10) days after receipt of notice of breach from the City and/or the County without necessity of the ninety (90) day cure period as set forth in Article X.

X. DEFAULT AND TERMINATION

10.1 **City's Right to Terminate.**

a. If the County sends notice of breach as provided for herein OR the City determines that Developer has failed to commence construction of the Project, failed to complete construction of the Project, or failed to perform any other obligation pursuant to the Project Plan and Financing Plan or any other term of this Agreement OR Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the City, the City may terminate its participation in the Zone.

b. Prior to terminating its participation in the Zone, the City shall provide written notice to Developer, the County and the Board stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s).

c. If the objection and/or concern as set out in the notice is not resolved within ninety (90) calendar days from the date of such notice, the City's participation in the Zone shall automatically terminate effective as of the date such notice is sent and the City shall send the Developer a second notice stating that payment is due pursuant to this paragraph 10.1. The City may extend the ninety-day cure period under this Agreement in its own discretion.

d. If the City terminates its participation in the Zone under this Article X, the City shall hold all money in the TIF Fund, and the Developer shall repay to the City, for deposit into the TIF Fund the following amounts, all of which shall be redistributed on a pro-rata basis between the Participating Taxing Entities (not to include the County if the County elects to pursue its rights under paragraph 10.2):

(1) if the breach occurs during the construction of a Phase, the Developer shall repay City an amount equal to the funds paid to the Developer for Public Improvements constructed during that specific Phase, if any, and shall not be eligible for reimbursement of costs incurred for construction of Public Improvements of any portion of said Phase; or

(2) if the breach occurs after all construction of each Phase is completed, the Developer shall repay to the City an amount equal to the funds the City contributed to the TIF Fund and paid to the Developer out of the TIF Fund during the twelve months preceding the date notice of breach is sent pursuant to this Article X.

e. Funds which become due and owing under this provision shall be paid to the City within ninety (90) calendar days after Developer receives the second notice from the City under this paragraph 10.1. The City shall look only to the Developer and the TIF Fund for any reimbursement, contractual claim, damages, or payment of any type.

10.2 **County's Right to Terminate.**

a. If the City sends notice as provided for herein OR the County determines that Developer has failed to commence construction of the Project, failed to complete construction of the Project, or failed to perform any other obligation pursuant to the Final Project and Financing Plan or any other term of this Agreement OR Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the County, the County may terminate its participation in the Zone.

b. Prior to terminating its participation in the Zone, the County shall provide written notice to Developer, the City and the Board stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s).

c. If the objection and/or concern as set out in the notice is not resolved within ninety (90) calendar days from the date of such notice, the County's participation in the Zone shall automatically terminate effective as of the date such notice is sent and the County shall send the Developer a second notice stating that payment is due pursuant to this paragraph 10.2. The County may extend the ninety-day cure period under this Agreement in its own discretion.

d. If the County terminates its participation in the Zone under this Article X, Developer shall repay to the County the following amounts:

(1) if the breach occurs during the construction of a Phase, the Developer shall repay County an amount equal to the County TIF funds utilized to reimburse Developer during that specific Phase, if any, and Developer shall not be eligible for further reimbursement utilizing any portion of TIF funds contributed by the County which remain in the TIF Fund; or

(2) if the breach occurs after all construction of each Phase is completed, the Developer shall repay to the County an amount equal to funds the County contributed to the TIF Fund which were paid to the Developer out of the TIF Fund during the twelve months preceding the date notice of breach is sent pursuant to this Article X, and any funds contributed by the County and remaining in the TIF Fund but not paid to Developer shall be returned to the County.

e. Funds which become due and owing under this provision shall be paid to the County within ninety (90) calendar days after Developer receives the second notice from the County under this paragraph 10.2. The County shall look only to the Developer and the TIF Fund for any reimbursement, contractual claim, damages, or payment of any type.

10.3 Upon either the City or the County sending notice in accordance with paragraphs 10.1 or 10.2 above, neither the City nor the County shall make further payments to the TIF Fund. In addition, the City shall not distribute any TIF Fund money to the Developer until the Developer's breach is cured to the satisfaction of the City and/or the County. If the Developer's breach is not cured within the period provided for herein, either the City or the County or both may exercise their rights under this Article X or extend the cure period, in their sole discretion. If both the City and the County elect to terminate their participation in the Zone, the City shall then distribute the remaining TIF Fund money to the County and the City, without Board approval, and in accordance with all related interlocal agreements.

10.4 Notwithstanding paragraph 10.1 or 10.2 above, in the event the Developer fails to furnish any documentation required in Article XIV (Examination of Records) or Article V, Paragraph 5.17, (Quarterly Status and Compliance Reports) within thirty days following the written request for same, then the Developer shall be in breach of this Agreement without necessity of the ninety-day cure period as set forth in this Agreement.

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), the COUNTY (and the elected officials, employees, officers, directors, and representatives of the County) 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, the COUNTY, 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 subconsultants 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 COUNTY, 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 paragraphs 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 TEAXS, FEDERAL, OR INTERNATIONAL LAW.

The DEVELOPER shall advise the CITY, the COUNTY, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the CITY, the COUNTY, 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 paragraph.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

The CITY, the COUNTY, 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 under this paragraph.

11.2 WHEREAS, as further consideration for this Agreement, DEVELOPER is providing this additional INDEMNIFICATION agreement in lieu of producing the above-referenced PAYMENT BOND for PHASE 2. This INDEMNIFICATION in lieu of the payment bond shall be effective until the date which is fifteen (15) months after the completion of PHASE 2 of the PROJECT. The Housing and Neighborhood Services Department of the CITY shall, in its sole discretion, determine the completion date of each Phase. DEVELOPER shall, and does hereby agree to INDEMNIFY and HOLD HARMLESS the CITY, the COUNTY 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 within fifteen (15) months of the completion date of PHASE 2 of the PROJECT by any person or entity for unpaid sums due any claimant for labor or materials furnished for the improvement of PHASE 2 of the PROJECT. DEVELOPER'S obligations under this INDEMNIFICATION agreement shall be further

secured by its interest in the property tax increment collected by the CITY and the COUNTY on all Phases of the Project pursuant to tax increment financing, and DEVELOPER hereby authorizes the CITY and the COUNTY to retain from the TIF FUND said tax increment a sum equal to that asserted by any claimant to satisfy any valid claim should DEVELOPER fail or otherwise refuse to satisfy same. DEVELOPER'S INDEMNITY obligations to the CITY and the COUNTY 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 unpaid sums due any claimant for labor or materials furnished for the improvement of PHASE 2 of the PROJECT. To the extent that this INDEMNIFICATION in lieu of payment bond conflicts with the INDEMNIFICATION provisions in paragraphs 11.1 above, the provisions in 11.1 control over those set forth in this paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY, the COUNTY, or the BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within fifteen (15) calendar days of receiving the notice.

11.3 WHEREAS, as further consideration for this Agreement, DEVELOPER is providing this additional INDEMNIFICATION agreement in lieu of producing the required PREVAILING WAGE payroll evidence for PHASE 2 of the PROJECT.. This INDEMNIFICATION in lieu of full compliance with CITY Ordinance No. 2008-11-20-1045 shall be effective until the date which is two (2) years after the completion of PHASE 2 of the PROJECT. The Director of the Housing and Neighborhood Services Department of the CITY, or his successor, shall, in his sole discretion, determine the completion date of each Phase. DEVELOPER shall, and does hereby agree to INDEMNIFY and HOLD HARMLESS the CITY, the COUNTY 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 within two (2) years of the completion date of PHASE 2 of the PROJECT by any person or entity for penalties or sums due any worker or agency for labor furnished for the improvement of PHASE 2 of the PROJECT. DEVELOPER'S obligations under this indemnification agreement shall be further secured by its interest in the property tax increment collected by the CITY and the COUNTY on all Phases of the Project pursuant to tax increment financing, and DEVELOPER hereby authorizes the CITY and the COUNTY to retain from the TIF FUND a sum equal to that asserted by any worker or agency to satisfy any valid claim or penalty should DEVELOPER fail or otherwise refuse to satisfy same. DEVELOPER'S INDEMNITY obligations to the CITY and the COUNTY 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 improvement of PHASE 2 of the PROJECT. To the extent that this INDEMNIFICATION in lieu of

compliance with CITY Ordinance No. 2008-11-20-1045 conflicts with the INDEMNIFICATION provisions in paragraphs 11.1 above, the provisions in 11.1 control over those set forth in this paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY, the COUNTY, or the BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within fifteen (15) calendar days of receiving the notice.

XII. SITE INSPECTION AND RIGHT OF ENTRY

12.1 The Developer shall allow the City, the Board, and/or the County 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, the Board and/or the County to assess the Developer's compliance with this Agreement. The Developer shall, in each contract with a builder or lot purchaser, 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 as well as County employees to conduct random non-destructive walk-through inspections and monitoring of the properties and structures.

XIII. RESPONSIBILITIES OF THE PARTIES

13.1 **Developer**. As between the City, the County, 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 County, the Board, or any Participating Taxing Entity as a result of the Agreement.

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

XIV. EXAMINATION OF RECORDS

14.1 **Right to Review**. The City and the County each reserve the right to conduct, at its own expense, examinations, during regular business hours and following notice to the Board and the Developer of the books and records related to this Agreement with the City and the County (including such items as 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 and the County also reserve 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 and the County 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 or the County, at its own expense, may require that any or all of such records and accounts be submitted for audit to the City or the County or to a Certified Public Accountant selected by either the City or the County within ten (10) business days following written request for same.

14.3 **Discrepancies**. Should the City or the County 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 and the County in writing of the action taken to correct such audit discrepancies.

14.4 **Overcharges**. If it is determined as a result of such audit 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 as a result of such overcharges, then the Developer shall pay the cost of such audit.

XV. NON-WAIVER

15.1 **Actions or Inactions**. No course of dealing on the part of the City, the County, the Board, or the Developer nor any failure or delay by the City, the County, 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**. Except as set forth in paragraph 16.3 below, 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 and approved by the Bexar County Commissioners Court in the form of a duly adopted resolution or order.

XVI. ASSIGNMENT

16.1 **Binding Agreement**. All covenants and agreements contained herein by the City, the County and/or the Board shall bind their successors and assigns and shall inure to the benefit of the Developer and their successors and assigns.

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

16.3 **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 and the County, as evidenced by an ordinance passed and approved by the City Council and a resolution or order adopted by the Bexar County Commissioners Court, 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 paragraph 16.6 below.

16.4 **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 or the County 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.

16.5 **No Third Party Obligation**. The City and the County 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 paragraph 16.7 of the Agreement.

16.6 **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. In no event, however, shall the City or the County be obligated in any way to the said financial institution or other provider of capital.

16.7 **Written Instrument**. Each transfer or assignment to which there has been consent, pursuant to paragraph 16.3 above, shall be by instrument in writing, in form reasonably satisfactory to the City and the County, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City, the County and the Board to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to the City and one (1) executed copy of such written instrument shall be delivered to the County. Failure to first obtain, in writing, the City or County's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective. In the event the City and the County approve the assignment or transfer of this Agreement, as provided in paragraph 16.6 above, the Developer shall be released from such duties and obligations.

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
City of San Antonio
City Manager's Office
P.O. Box 893366
San Antonio, Texas 78283-3966
FAX: (210) 207-7032
Re: Hunters Pond TIRZ

BOARD
Board of Directors, Tax Increment
Reinvestment Zone Number Twenty-Five
City of San Antonio, Texas
C/O Housing and Neighborhood Services
Dept.
ATTN: David D. Garza, Director
City of San Antonio
1400 S. Flores
FAX: (210) 207-7914

THE COUNTY
Honorable Nelson W. Wolff
County Judge
Bexar County Courthouse
100 Dolorosa Street
San Antonio, Texas 78205
Re: Hunters Pond TIRZ

With copies to:
Aurora M. Sanchez
Executive Director
Bexar County
Department of Community Investment
233 N. Pecos Suite 590
San Antonio, Texas 78207
Re: Hunters Pond TIRZ

Bexar County Criminal District
Attorney's Office-Civil Section
Criminal Justice Center
300 Dolorosa Street
San Antonio, Texas 78205
Re: Hunters Pond TIRZ

DEVELOPER
A.J. Hausman
Hunters Pond, L.P.
ACROPOLIS BUILDING
13409 N.W. MILITARY HWY., SUITE 302
SAN ANTONIO, TX 78231
FAX: (210) 493-6772

17.2 **Change of Address**. Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business

hours or the next business day if such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when receipted for or 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 or mail or by facsimile, telegram, telex, cablegram 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 to be given by applicable law or this Agreement, a written waiver thereof, 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 from time to time and at any time to change its address by giving at least fifteen (15) days written notice to the other party.

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 paragraph 18.1 above, the Board and the Developer each warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or the County. The Board and the Developer each further warrants and certifies that each member of the Board and that the Developer has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code using the form provided in **Exhibit E**.

XIX. INDEPENDENT CONTRACTORS

19.1 **No Agency**. It is expressly understood and agreed by all parties to this Agreement that in performing their services under this Agreement, the Board and the Developer at no time shall be acting as agents of the City or the County 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 parties to this Agreement understand and agree that neither the City nor the County shall 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 and/or the County, respectively.

19.2 **No Authority**. The parties to this Agreement 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.

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 or upon the Developer or upon the business conducted on the Zone Property or upon any of the Developer's property used in connection therewith, including employment taxes; and the Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developer.

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

XXI. COMPLIANCE WITH SBEDA AND EEO POLICIES

21.1 **Agreement to Not Discriminate**. The Board and the Developer are each hereby advised that it is the policy of the City that business enterprises eligible as Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Except for those Public Improvements commenced prior to the creation of the Zone, the Board and the Developer each agrees for itself that the Board and the Developer will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. The Developer further agrees that with respect to the remaining Public Improvements undertaken after the Effective Date of this Agreement, the Developer will make a good faith effort to comply with the applicable terms and provisions of the City's Non-Discrimination Policy, the City's Small, Minority or Woman-owned Business Advocacy Policy and the City's Equal Opportunity Affirmative Action Policy, these policies being available in the City's Department of Economic Development, Division of Internal Review and the City's Office of the City Clerk.

XXII. PREVAILING WAGES

22.1 The TIF program is a discretionary program, and the Board and the Developer are each hereby advised that 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. For those public improvements constructed under construction contracts executed prior to the **1st day of November, 2006**, the Developer will make every effort to seek and produce all evidence of its compliance and its subcontractors' compliance with City Ordinance No. 2008-11-20-1045 and its predecessor Ordinance No. 71312. If, after making every effort

including requesting certified payroll records from its subcontractors, the Developer is unable to produce sufficient evidence of the payment of prevailing wages as required by City Ordinance No. 2008-11-20-1045 and its predecessor Ordinance No. 71312, the Developer may provide a detailed affidavit setting out its efforts to obtain the required records, and the reasons for the failure to do so. The Developer may attach to its own evidence of compliance the affidavits of subcontractors regarding the payment of all sums paid those working for the subcontractor and such evidence and affidavit should be sufficient to establish compliance for the purpose of approving reimbursements unless and until the contrary has been determined by the Director of Public Works or his designee. The subcontractors' affidavits should contain the name and occupation of each worker employed by the subcontractor in the construction of the public improvement, and the actual per diem wages paid to each worker, or contain a statement that the information is not available, that the subcontractor used best efforts to obtain that information, and that the subcontractor believes that he paid prevailing wage rates to his workers in compliance with Chapter 2258 of the Texas Government Code. The Director of Public Works or his designee shall in his sole discretion determine the adequacy of such affidavits, in number, content and form. For those public improvements constructed under construction contracts executed by the Developer after the **1st day of November, 2006**, 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 shall not accept affidavits as set out above.

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. 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 sixty dollars ($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.

XXIII. CHANGES AND AMENDMENTS

23.1 **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 County, the Board and the Developer and evidenced by passage of a subsequent City ordinance, as to the City's approval, and an order of the Bexar County Commissioners Court, as to the County's approval.

23.2 **Construction Schedule**. Notwithstanding the above, the phasing of 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 Department of the City responsible for overseeing the TIF Unit, (the "TIF Director") as long as the overall Final Project Plan and Final Financing Plans are not materially changed by such amendment. For amendments to the Construction Schedule which impact the Final Project Plan and/or Final Financing Plan but do not constitute a Material Change as defined herein, the County shall be provided ten (10) days written notice during which period the County may raise any objections and/or concerns. In the event an amendment to the phasing of 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 paragraph 23.1, above. No change under this paragraph may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. The Developer may rely on the determination of the TIF Director whether a change in the phasing of the Construction Schedule would result in a Material Change to the overall Final Project Plan and Final Financing Plans.

23.3 **Automatic Incorporation of Laws**. It is understood and agreed by the parties to this Agreement that 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 that 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.

XXIV. SEVERABILITY

24.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, code, or ordinances of the City, then and in that event it is the intent of the parties to the Agreement that such invalidity, illegality or unenforceability shall not affect any other clause or provision of this Agreement and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained this Agreement. It is also the intent of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of 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.

XXV. LITIGATION EXPENSES

25.1 **Attorney Fees**. 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 litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ regarding this Agreement against the City, the County, or any other public entity. Each party to this Agreement shall bear its own costs, including, but not limited to, attorneys' fees, for any action at law or in equity brought to enforce or interpret any provision of this Agreement. Nothing contained in this paragraph shall effect or otherwise affect the indemnity provisions contained in Article XI above.

XXVI. LEGAL AUTHORITY

26.1 Each person executing this Agreement on behalf of the City, the County, the Board or the Developer, represents, warrants, assures and guarantees that he has have full legal authority to (i) execute this Agreement on behalf of the City, the County, the Board and/or the Developer, respectively and (ii) to bind the City, the County, the Board and/or the Developer to all of the terms, conditions, provisions and obligations contained in this Agreement..

XXVII. VENUE AND GOVERNING LAW

27.1 **State.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

27.2 **County**. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

XXVIII. PARTIES' REPRESENTATIONS

28.1 This Agreement has been jointly negotiated by the City, the County, 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.

XXIX. CAPTIONS

29.1 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.

XXX. ENTIRE AGREEMENT

30.1 **No Contradictions**. This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

30.2 **Incorporation of Exhibits**. The **Exhibits** attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, 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 hereto have caused this instrument to be signed on the date of the each signature below. In accordance with paragraph 1.15 above, this Agreement will become effective on the date of the last signature below or on the date of the last signature of the applicable interlocal agreements, whichever is later:

CITY OF SAN ANTONIO

_____
Sheryl Sculley
City Manager
Date: _____
ATTEST/SEAL:

_____
Leticia M. Vacek
City Clerk
Date: _____

BEXAR COUNTY

_____
Nelson W. Wolff
County Judge
Date: _____
ATTEST/SEAL:

_____
Gerard Rickhoff
County Clerk
Date: _____

APPROVED AS TO FINANCIAL CONTENT BY BEXAR COUNTY:

_____
David Smith, Budget Officer and
Executive Director of Planning and
Resource Management
Date: _____

_____
Tommy Tompkins,
County Auditor

Date: _____

APPROVED AS TO FORM:

_____
Michael D. Bernard
City Attorney
Date: _____

APPROVED AS TO FORM:

SUSAN D. REED, Criminal
District Attorney

By: _____
Larry Roberson
Assistant Criminal District Attorney
Civil Section
Date: _____

BOARD OF DIRECTORS
Hunters Pond TIRZ

_____
Name: _____
Presiding Officer, Board of Directors

Date: _____

ATTEST/SEAL:

_____
Name: _____
Assistant Presiding Officer, Board of
Directors
Date: _____

DEVELOPER

_____
Hunters Pond, L.P.
By: A.J. Hausman
Date: _____

EXHIBIT A

Construction Schedule

HUNTERS POND DEVELOPMENT

Site Area	88.1 Acres
Residential Development	88.1 Acres

Phase	Year	Number of Units	Type of Construction
I (2 A & B)	2006	23	Single-family detached
II (3)	2007	35	Single-family detached
III-IV (4 A & B – 5 A& B)	2008-2009	44	Single-family detached
		4	Duplex Units
		10	Townhomes
V (6 A & B)	2010	18	Single-family detached
		6	Townhomes
		9	Garden homes
		10	Duplex units
VI	2011	41	Single-family detached
		4	Town homes
		5	Garden homes
		10	Duplex units
VII	2012	61	Single-family detached
		4	Town homes
		5	Garden homes
VIII	2013	66	Single-family detached
		4	Town homes
		10	Garden homes
IX	2014	64	Single-family detached
		6	Town homes
		10	Garden homes
Total Residential		449	

EXHIBIT B

Project Status Report

CITY OF SAN ANTONIO
TAX INCREMENT REINVESTMENT ZONE
Project Status Report

Pursuant to the Development Agreement, the DEVELOPER has agreed to provide periodic reports of construction to the CITY upon reasonable request. The City requests that the Developer submit a TIRZ project status report every quarter every year until the project is complete, due by:

January 15th, for the first quarter,
April 15th, for the second quarter,
July 15th, for the third quarter and
October 15th, for the fourth quarter.

At the completion of the project, the DEVELOPER shall submit a comprehensive final report.

Each quarterly report must include the following information:

- The number of Private Improvements completed (single-family and/or multi-family and commercial when applicable) and year in which they were completed
- The Public Improvements completed and costs incurred to date by year in which improvements were completed
- Indicate whether the construction is on track with the approved Final Project and Finance Plan
- If the project timeline has slipped, the Developer is to submit an updated project timeline
- The sale prices of the single-family homes completed (Please obtain and provide sales data for original sales price of every home sold.)
- Photos of: housing and commercial developments; before, during and after construction

In addition, for the City to monitor compliance with Sections 7.3 and 7.4 of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

- the City and its officers, employees and elected representatives are additional insureds as respects the operations and activities of, or on behalf of, the named insured contracting with the City, with the exception of the workers' compensation policy;
- the endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City of San Antonio is an additional insured shown on the policy;
- the Workers' Compensation and employers' liability policy provides a waiver of subrogation in favor of the City of San Antonio; and
- Notification to the City of any cancellation, non-renewal or material change in coverage was given not less than thirty (30) days prior to the change or ten (10) days prior to the cancellation due to non-payment of premiums, accompanied by a replacement Certificate of Insurance.

Attached is a form you may use to fulfill this reporting requirement.

TIRZ Project Progress Report (Construction)

Name of Project:	**TIRZ #:**
Progress Report #:	**TIRZ Term:** **From:** **To:**
Period Covered by this Report: **From:** **To:**	

The number of Private Improvements (single-family and/or multi-family and commercial if applicable) completed and year in which they were done

			Private Improvements							
Phases (year)			Single-Family Units		Multi-family Units		Commercial Acres and Square feet		Other Improvements (example: day care centers)	
	start date	*end date*	*Proposed*	*Completed*	*Proposed*	*Completed*	*Proposed*	*Completed*	*Proposed*	*Completed*
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

The Public Improvements completed and costs incurred to date by year (phase) in which improvements occurred

			Public Improvements										
Phases (year)			Sidewalks and Approaches	Streets	Drainage	Water	Sewer	Electrical (Line Extension)	Gas	Street Lights	Traffic Signal Light	Landscaping	Other
	start date	*end date*	*Linear Feet*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Li.Ft.*	*Number*	*Number/Location*	*Li.Ft.*	
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
TOTALS													

- Is Construction on track with the approved Final Project and Finance Plan? If not, please submit an updated timeline with the actual construction and the projected buildout.

	Original Project Plan			Actual/Projected		
Year	Single-Family	Multi -Family	Other	Single -Family	Multi -Family	Other
1999						
2000						
2001						
2002						
2003						
2004						
2005						
2006						
2007						
2008						

Certification: I certify, that to the best of my knowledge and belief, the data above is correct and that all outlays were made in accordance with the terms of the Development Agreement.	Signature of Certifying Individual:	Date:
	Type or printed Name and Title:	Telephone #:

EXHIBIT C

Prevailing Wage Rates

FLM:GG [11/20/08]
Item No. 33.

AN ORDINANCE 2008-11-20-1045

AMENDING ORDINANCE 71312 CONCERNING WAGE AND HOUR LABOR STANDARD PROVISIONS FOR CITY OF SAN ANTONIO CONSTRUCTION PROJECTS.

* * * * *

WHEREAS, federal and state laws require that all companies working on publicly funded construction projects must pay prevailing wage rates to its contractor and subcontractor employees, as determined by the U.S. Department of Labor; and

WHEREAS, governing procedures were established to ensure the City's compliance with various state laws through Ordinance No. 71312 approved on March 29, 1990 which provided for the Wage and Labor Standard Provision for locally funded City construction projects; and

WHEREAS, there have been changes in state law, as well as, organizational and process changes within the City that necessitate an amendment to Ordinance No. 71312; and

WHEREAS, this Ordinance amends Ordinance No. 71312 to a) reflect the changes in the Texas Government Code, Section 2258, Prevailing Wages, (superseding Article 5159a, Revised Civil Statutes), b) incorporate changes in the City's organizational structure renaming the Wage and Hour Office of the Public Works Department to the Labor Compliance Office, Capital Improvements Management Services Department, c) reflect changes in the City processes and the implementation of an electronic compliance program, and d) clarify language and eliminate ambiguities in the Ordinance, including the processes used by contractors for the restitution of underpayment of wages to workers whose contact information or current address is unknown; and

WHEREAS, approval of this Amendment will accurately reflect current laws, City organizational structure and current processes; **NOW THEREFORE,**

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

SECTION 1. Ordinance No. 71312 concerning Wage and Hour Labor Standard Provisions for City of San Antonio construction projects are hereby amended and the amended Wage and Labor Standard Provisions are attached hereto and incorporated by reference herein as Attachment I.

SECTION 2. This Ordinance shall take effect ten days after passage.

PASSED AND APPROVED this **20th** day of **November, 2008.**

M A Y O R
PHIL HARDBERGER

ATTEST: Leticia M. Vacek
City Clerk

APPROVED AS TO FORM: [illegible]
City Attorney

WAGE AND LABOR STANDARD PROVISIONS

CITY OF SAN ANTONIO FUNDED CONSTRUCTION

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20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

22. CONTRACTOR'S RESPONSIBILITY

1. GENERAL STATEMENT

For all City of San Antonio funded public works construction contracts, the City of San Antonio, in accordance with Texas Government Code Section 2258, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance Nos. 60110 and 71312 as amended and passed by the City Council of the City of San Antonio.

Any deviation from Wage and Labor Standard Provisions compliance shall be cause for City's withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. LABOR COMPLIANCE OFFICE RESPONSIBILITIES

Labor Compliance Office, Capital Improvements Management Services Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Capital Improvements Management Services Department that:

a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.

b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.

c. Applicable Wage Determination Decisions, including any applicable modifications, and related statements must be posted at the work-site by the contractor and that proper job classification and commensurate minimum hourly base and fringe wage rates are paid.

d. Employees are periodically interviewed (at random) to assure proper work classification and wage rates.

e. The Labor Compliance Office will investigate all allegations that no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

f. That any and all periodic administrative directives to the Labor Compliance Office from the Director of Capital Improvements Management Services are being implemented. For purpose of these Wage and Labor Standard Provisions, the Director of Capital Improvements Management Services means the Director, his successor, or his designee.

3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed regarding the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Labor Compliance Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Labor Compliance Office in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's contract rights against the contractor on behalf of the employee. Waiver by the employee of this City intervention shall not constitute waiver by the City to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

4. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The City of San Antonio reserves the right to terminate a contract for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future City of San Antonio contracts for lack of responsibility, as determined by the City of San Antonio. Recurrent violations, whether remedied or not, will be considered by the Director of Capital Improvements Management Services Department when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Project Management Office projects. The general remedies stated in this paragraph 4. above, are not exhaustive and not cumulative for the City reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable City of San Antonio ordinances, state and federal statutes.

5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determinations decision contained in the original contract

documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Labor Compliance Office identifying that class of laborer/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgement and information resources available to him at the time, and any similar prior decisions, the Director of Capital Improvements Management Services Department, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor, which shall be enforced by the Labor Compliance Office.

6. MINIMUM WAGE

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the wage determination decision included in this contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/ subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous U.S. Department of Labor (DOL) decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City contract execution and provisions thereof disclosed to the Labor Compliance Office, City of San Antonio, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period(e.g. monthly or quarterly, etc.) shall be prorated by the contractor/subcontractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the City of San Antonio funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/ mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he or she is employed on such work to work in excess of 40 hours in such work period unless said laborer/ mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits

must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the wage determination decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6 above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the jobsite on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King, Jr. Day, or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 1/2) times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

a. When a "full investigation" (as called for in and as construed under Texas Government Code Section 2258) establishes underpayment of wages by contractor/subcontractor to laborers/mechanics employed upon the work covered by a contract with the City of San Antonio, the City shall withhold an amount from the contractor, out of any payments (Interim progress and/or final) due the contractor, the City of San Antonio may also consider it necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages plus possible penalty (see b. below). The amount withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.

b. Texas Government Code Section 2258, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars ($60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar ($60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to

any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.

c. If unpaid or underpaid workers cannot be located by the Contractor or the City after diligent efforts to accomplish same, the contractor shall report the wages as "unclaimed property" in accordance to Texas State law.

The City of San Antonio requires that the prime contractor send to the Labor Compliance Office a copy of the supporting documentation for the unclaimed property submitted to the State.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/ subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision:

NOTICE TO LABORERS/MECHANICS

Both the City of San Antonio and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this jobsite and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on the following holidays: New Year's Day, Memorial Day, Fourth of July; Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training program registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Labor Compliance Office, Capital Improvements Management Services Department, P.O. Box 839966, San Antonio, Texas 78283-3966. It

is mandatory that the worker promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Labor Compliance Office within the sixty (60) calendar day period so that they do not waive your potential right of recovery under the provisions of the City of San Antonio Project Management Office contract that governs this project.

Both the City of San Antonio and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

12. PAYROLLS & BASIC PAYROLL RECORDS

a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Labor Compliance Office of the City of San Antonio. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Labor Compliance Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Labor Compliance Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Capital Improvements Management Services, Labor Compliance Office, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

b. All City of San Antonio construction contracts are subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any stated and/or requested contract compliance-related data electronically in the Labor Compliance Electronic Certified Payrolls System. The prime contractor and all subcontractors are required to respond not later than the stated response date or due date to any instructions or request for information from the Labor Compliance Office. All prime contractors and subcontractors shall periodically review the City of San Antonio Labor Compliance Electronic Certified Payrolls System to manage contact information and contract records. The prime contractor shall ensure that all subcontractors have completed all requested forms and that all contact information is accurate and up-to-date. The City of San Antonio Labor Compliance Office may require additional information related to the contract to be provided through the San Antonio Labor Compliance Electronic Certified

Payrolls System at any time before, during, or after contract award.

c. A designated point of contact for contractor access to the San Antonio Labor Compliance Electronic Certified Payrolls System shall be provided for each prime contractor upon award of the contract.

d. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U.S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

e. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of San Antonio at reasonable times and locations for purposes of monitoring compliance with this contract.

f. All certified payrolls submitted to the Labor Compliance Office are deemed true and accurate. If upon review of the certified payrolls, wage underpayment violations are identified and noted, restitution will be calculated and penalties will be issued to the prime contractor of the project. In order to refute a wage violation, the contractor/subcontractor must provide supporting documentation to the Labor Compliance Office for review and consideration.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Project Management Office or designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor, or any other contractor/subcontractor work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; and any other measures that may

be appropriately utilized to mitigate or eliminate the jobsite and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such preceding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious jobsite entry of City of San Antonio Labor Compliance representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Labor Compliance representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Labor Compliance representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any City of San Antonio public work shall be induced, by any means, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION PROVISION"

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate its contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEES

a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Labor Compliance Office of the City of San Antonio, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.

b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee is first listed on, to the Labor Compliance Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

c. Paragraphs above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This sub-paragraph shall not apply to those portions of a project deemed to be building construction.

d. The Ratio to Apprentice to Journeyman for this project shall be the same as the ratio permitted under the plan approved by the Employment and Training, Administration, Bureau of Apprenticeship and Training, U.S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When a "full investigation" (as called for in, and as construed under, Texas Government Code Section 2258) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/subcontractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of its contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars ($75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/ Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. JOBSITE CONDITIONS

Contractors/subcontractors shall not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by the Texas Child Labor Law, Chapter 51 of the Texas Labor Code "Child Labor"and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling' law on this subject. The contractor/subcontractor should seek clarification

from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.

b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Capital Improvements Management Services is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.

c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the City of San Antonio may exercise over the contractor.

22. CONTRACTOR'S RESPONSIBILITY

The prime contractor shall be responsible for ensuring that its subcontractors comply with the Wage and Labor Standards Provisions.

GENERAL DECISION: TX20080041 02/08/2008 TX41

Date: February 8, 2008
General Decision Number: TX20080041 02/08/2008

Superseded General Decision Number: TX20070043

State: Texas

Construction Types: Heavy and Highway

Counties: Bell, Bexar, Brazos, Comal, Coryell, Guadalupe, Hays, McLennan, Travis and Williamson Counties in Texas.

Heavy (excluding tunnels and dams) and Highway Construction Projects (does not include building structures in rest area projects). *NOT TO BE USED FOR WORK ON SEWAGE OR WATER TREATMENT PLANTS OR LIFT/PUMP STATIONS IN BELL, CORYELL, McLENNAN AND WILLIAMSON COUNTIES.

Modification Number	Publication Date
0	02/08/2008

SUTX2005-001 01/03/2005

	Rates	Fringes
Air Tool Operator	$ 16.00	0.00
Asphalt Distributor Operator	$ 12.09	0.00
Asphalt paving machine operator	$ 11.82	0.00
Asphalt Raker	$ 9.96	0.00
Asphalt Shoveler	$ 10.56	0.00
Broom or Sweeper Operator	$ 9.74	0.00
Bulldozer operator	$ 11.04	0.00
Carpenter	$ 12.25	0.00
Concrete Finisher, Paving	$ 10.53	0.00
Concrete Finisher, Structures	$ 10.95	0.00
Concrete Paving Curbing Machine Operator	$ 14.00	0.00
Concrete Paving Finishing Machine Operator	$ 12.00	0.00
Concrete Rubber	$ 10.88	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator	$ 13.66	0.00
Electrician	$ 24.11	0.00
Flagger	$ 9.49	0.00
Form Builder/Setter, Structures	$ 10.88	0.00
Form Setter, Paving & Curb	$ 9.89	0.00
Foundation Drill Operator, Truck Mounted	$ 15.00	0.00
Front End Loader Operator	$ 11.36	0.00
Laborer, common	$ 9.34	0.00
Laborer, Utility	$ 10.12	0.00
Mechanic	$ 14.74	0.00
Mixer operator, Concrete Paving	$ 15.25	0.00
Mixer operator	$ 10.83	0.00
Motor Grader Operator, Fine Grade	$ 15.26	0.00

Motor Grader Operator, Rough	$ 12.96	0.00
Oiler	$ 14.71	0.00
Painter, Structures	$ 11.00	0.00
Pavement Marking Machine Operator	$ 11.52	0.00
Pipelayer	$ 10.49	0.00
Planer Operator	$ 17.45	0.00
Reinforcing Steel Setter, Paving	$ 15.50	0.00
Reinforcing Steel Setter, Structure	$ 14.00	0.00
Roller Operator, Pneumatic, Self-Propelled	$ 9.34	0.00
Roller Operator, Steel Wheel, Flat Wheel/Tamping	$ 9.60	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement	$ 10.24	0.00
Scraper Operator	$ 9.93	0.00
Servicer	$ 11.41	0.00
Sign Installer (PGM)	$ 14.85	0.00
Slip Form Machine Operator	$ 15.17	0.00
Spreader Box operator	$ 10.39	0.00
Structural Steel Worker	$ 13.41	0.00
Tractor operator, Crawler Type	$ 11.10	0.00
Traveling Mixer Operator	$ 10.04	0.00
Trenching machine operator, Heavy	$ 14.22	0.00
Truck Driver Tandem Axle Semi-Trailer	$ 10.95	0.00
Truck driver, lowboy-Float	$ 15.30	0.00
Truck driver, Single Axle, Heavy	$ 11.88	0.00
Truck driver, Single Axle, Light	$ 9.98	0.00
Wagon Drill, Boring Machine, Post Hole Driller Operator	$ 14.65	0.00
Welder	$ 14.26	0.00
Work Zone Barricade Servicer	$ 11.15	0.00

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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)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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

Form and Requirements of Contract Progress Payment Request

CITY OF SAN ANTONIO
CPPR Form and Instructions

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:	Signature of Certifying Financial Official	Signature of Certifying Engineer
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.	Typed or printed Name and Title John Doe, CPA DATE:	Typed or printed Name & Title John Smith, Engineer 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					
18					
19					
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	[redacted]	1520	10,000	[redacted]	Ck# 2140
Dirt Movers Inc.	145246	[redacted]	1555	22,000	[redacted]	Ck# 2141
Dirt Movers Inc.	783581	[redacted]	1600	2,500	[redacted]	Ck# 2142
Dirt Movers Inc.	891771	[redacted]	1680	1,124	[redacted]	Ck# 2142
Dirt Movers Inc.	157863146	[redacted]	1685	5,000	[redacted]	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**
		[redacted]			[redacted]	
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 Section 2-43 of the City Code (Ethics Code) ("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.

ACW
1/15/09
Item No. 32

Exhibit 4
Hunters Pond TIRZ
Interlocal Agreement

THE STATE OF TEXAS	§	**HUNTERS POND TIRZ**
	§	
COUNTY OF BEXAR	§	**BEXAR COUNTY**

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement") is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "City"), a Texas Municipal Corporation, acting through its City Manager pursuant to Ordinance No. 2009-01-15-0027 passed and approved by the City Council on the 15th day of January, 2009, **BEXAR COUNTY** (hereafter referred to as the "County"), a political subdivision of the State of Texas, acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on the ___day of _____, 2009, and by approval on the 10th day of December, 2008 by the **BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-FIVE, CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "the Board"), a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (hereafter referred to as "the Act"). The City, the County, and the Board may be referred to singularly as a "Party" or collectively as "Parties." This Agreement is made pursuant to Chapter 311, Texas Tax Code for the participation of the City and the County in the Hunters Pond Project (the "Project").

RECITALS:

WHEREAS, a tax increment reinvestment zone ("TIRZ") 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 96558, dated November 21, 2002, the City annexed, effective January 5, 2003, the Southside Initiative area #2 for limited purposes, including the Hunters Pond area, and zoned the whole area as "DR" (Development Reserve) in accordance with the City's land use plan developed for the Southside Initiative; and

WHEREAS, by Resolution Number 2002-44-45, dated December 12, 2002, the City added the Southside Initiative area #2, including the Hunters Pond area, to the 3-Year annexation plan for full purpose annexation; and

WHEREAS, by Ordinance Number 98495, dated December 4, 2003, the City rezoned the Hunters Pond area from "DR" (Development Reserve) to "R4" (Residential Single-Family); and

WHEREAS, by Ordinance Number 100045, dated December 9, 2004, the City rezoned the Hunters Pond area as "UD" (Urban Development); and

WHEREAS, by Ordinance Number 101601, dated December 1, 2005, effective December 11, 2005, the City provided for the full purpose, voluntary annexation of the Hunters Pond area and specifically maintained its zoning as "UD" Urban Development under the full purpose annexation; and

WHEREAS, by Ordinance Number 2006-06-01-0633, dated June 1, 2006, the City created Reinvestment Zone Number Twenty-five ("Zone") in accordance with the Act, to promote development and redevelopment of the Zone Property, the Hunters Pond area, through the use of tax increment financing ("TIF"), 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, the Board and the County support the City in development activities for the Hunters Pond Project, and the County intends to participate in the Zone Project by contributing seventy percent (70%) of the maintenance and operation portion of the County's general fund tax on the Captured Appraised Value for tax years 2007-2031, not to exceed two million three hundred seventy-one thousand five hundred five dollars ($2,371,505.00), including County Administrative Costs (hereinafter "County Maximum Contribution"); and

WHEREAS, pursuant to said authority above, the Board, the City and the County each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as specified in the Project Plan, Financing Plan and the Development Agreement; and

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

I. CONTENTS

A. Table

This Agreement consists of the following sections:

Section	Description	Page
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B. Parts Incorporated

The following documents are hereby incorporated into this Agreement by this reference for all purposes:

1. City of San Antonio Ordinance No. 2006-06-01-0633, dated June 1, 2006, which designated the Zone;

2. Project and Financing Plans for the Zone as adopted by the City on the 15th day of January, 2009, by Ordinance No. 2009-01-15-0027; and

3. The Development Agreement between the City, the County, the Developer and the Board, approved by Ordinance No. 2009-01-15-0027 and executed on the 15th day of January, 2009.

II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

1. "Administrative Costs" means reasonable costs directly incurred by a Participating Taxing Entity (as hereinafter defined) related to its agreement to participate in the development 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 this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective. The initial startup Administrative Costs for all Participating Taxing Entities is seventy-five thousand dollars ($75,000.00), of which the County shall receive twenty-eight thousand eight hundred twenty-four dollars ($28,824.00), and the City shall receive forty-six thousand one hundred seventy-six dollars ($46,176.00). The Parties also agree that the ongoing annual Administrative Costs during the life of the Zone are anticipated to be as follows:

   A. The City $561,407.00 (varies annually)

   B. The County $129,312.00 ($5,388.00/year).

   The total Administrative Costs to be paid out of the Tax Increment Fund are estimated to be seven hundred sixty-five thousand seven hundred ninteen dollars ($765,719.00) in the aggregate for the life of the Zone.

2. The "Board" means the Board of Directors of the Zone established to manage, and/or operate the Zone pursuant to Sections 311.0091 and 311.010 of the Act, as well as implement the Project, as described in City of San Antonio Ordinance No. 2006-06-01-0633, dated June 1, 2006.

3. "Captured Appraised Value" means the captured appraised value of the Zone, as defined by Section 311.012(b), Texas Tax Code (and as said Code may be amended from time to time).

4. "Construction Schedule" means the schedule contained in the attached Exhibit A and in the Project Plan both of which are incorporated into this Agreement by reference in their entirety, for the construction of all public improvements related to the Project, which may be amended

from time to time by the Developer, the County, the Board and City in accordance with the terms of the Development Agreement.

5. "Cost of Services" is the cost of increased services incurred by the City due to the build out of the Project which will be deducted from the City's annual Tax Increment before the distribution is made to the Tax Incrment Fund. The Parties also agree that the initial annual recovery of Cost of Services by the City is anticipated to be three hundred forty-eight thousand seven hundred twenty-five dollars ($348,725.00) starting in fiscal year 2020, and generally escalating each year thereafter. The total Cost of Services to be withheld from the Tax Increment deposited by the City is estimated to be three million eight hundred nineteen thousand nine hundred four dollars ($3,819,904.00) in the aggregate for the life of the Zone.

6. The "Developer" means Hunters Pond, L.P.

7. "Development Agreement" means the agreement entered into between the City, the County, the Developer and the Board which was approved by the Board on the 10th day of December, 2008, by the City Council on the 15th day of January, 2009, and by the County on the __th day of _____, 2009.

8. "Financing Plan" means the Final Reinvestment Zone Financing Plan for the Zone as adopted by the Board on the 10th day of December, 2008, by the City Council on the 15th day of January, 2009, and by the County on the __th day of _____, 2009.

9. "Material Change" means any change in the phasing of the Construction Schedule which would result in an increase of the City's Maximum Contribution, as defined herein, or any other Participating Taxing Entity or any change deemed a Material Change by the director of the City department overseeing the TIRZ ("Director").

10. "Participating Taxing Entity" or "Participating Taxing Entities" means, singularly, a taxing unit participating in the Zone, and collectively, all taxing units participating in the Zone, and shall include the City and the County.

11. "Project Costs" means the items set forth and described in Section 311.002(1) of the Act (which may be amended from time to time), which are included in the Project Plan for the Project. The Project Costs include public infrastructure improvements and related capital costs including: site work, storm water pollution prevention, street and drainage, alleys, sewer, water, street lights and signs, detention ponds, street extension to Zarzamora, platting, zoning, permits, right-of-way landscaping, electrical service, park improvements, village green improvements, street trees, geo-technical, engineering-surveying, contingency, construction management, and legal and formation fees for public improvements to be constructed by the Developer on an approximately 88.1 acre site known as the Hunters Pond Subdivision. The Project Costs for public improvements are estimated at eight million one hundred forty-one thousand, three hundred nine dollars ($8,141,309.00) for the life of the Zone, plus a maximum of two million six hundred thirty-seven thousand seven hundred sixty dollars ($2,637,760.00) in interest on eligible project costs.

12. "Project Plan" means the Final Reinvestment Zone Project Plan for the Zone as adopted by the Board on the 10th day of December, 2008, by the City Council on the 15th day of January, 2009, and by the County on the __th day of _____, 2009.

13. "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. The Parties also acknowledge and agree that this Agreement is entered into subject to the rights of the holders of any outstanding bonds of the County, and the County is not obligating any portion of the County's ad valorem taxes which are dedicated to any outstanding bond indebtedness or are otherwise excluded pursuant to the terms of this Agreement.

14. "Tax Increment Base" has the meaning assigned by section 311.012 of the Texas Tax Code, and means the total appraised value of all real property taxable by a Participating Taxing Entity and located in the Zone as of January 1, 2006, the year in which the Zone was designated.

15. "Tax Increment Fund" means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled "Reinvestment Zone Number Twenty-Five (25), City of San Antonio, Texas Tax Increment Fund."

16. "Tax Increment Payment" means the amount of the Tax Increment that a Participating Taxing Entity agrees to deposit annually into the Tax Increment Fund in accordance with this Agreement, the Project Plan and the Finance Plan.

17. "Zone" means Reinvestment Zone Number Twenty-Five (25), City of San Antonio, Texas, created by the City on June 1, 2006, by Ordinance No. 2006-06-01-0633.

III. BACKGROUND

A. City Action

Resolution of Intent No. 2004-34-30, passed and approved by the City Council of the City on September 23, 2004, expressed the City's intent to create a tax increment reinvestment zone in accordance with Chapter 311, Texas Tax Code, to support revitalization activities for the Zone, and the development of the Project. On June 1, 2006, the City Council of the City passed and approved Ordinance No. 2006-06-01-0633, which created the Zone.

B. Project Location

The Project is located in the southern sector of the City of San Antonio, outside interstate highway SW Loop 410, west of Zarzamora Road, and immediately south of a small subdivision known as Hunters Pond Phase I. The Project is in the Southwest Independent School District and encompasses approximately 88.1 acres.

C. Project Value

The Tax Increment Base for the Zone as determined by the Bexar Appraisal District is four million six hundred eighty-two thousand nine hundred dollars ($4,682,900.00) and the projected Captured Appraised Value of all the taxable real property in the Zone at the end of the Agreement term is estimated to be one hundred fourteen million eight hundred nintey-one thousand dollars ($114,891,000.00). The Project does not include the issuance of public debt, including but not limited to TIF bonds or certificates of obligation.

D. Project Phasing and Duration

The Project includes the construction of approximately 352 single-family detached homes with an average sales price of $143,150; 34 town homes with an average sales price of $124,984; 39 garden homes with an average sales price of $198,883; and 24 duplexes units with an average sales price of $124,400. Construction will be carried out in nine phases as specified in the Development Agreement. The Zone is projected to terminate on September 30, 2031, unless earlier termination occurs under this Agreement (the "term of the Zone").

E. Mutual Agreement

The City and the County agree to participate in the Zone, and to deposit their respective Tax Increment Payments to the Tax Increment Fund, in accordance with the terms, and in consideration of the agreements set forth herein. The County hereby acknowledges receipt of notice of the initial creation of the Zone. The Parties hereto agree that, except as provided herein, no tax-supported public debt instrument will be issued by a Participating Taxing Entity or the Board to finance any costs or improvements on the Project.

IV. RIGHTS AND OBLIGATIONS OF THE COUNTY

A. Tax Increment Participation by the County

1. Subject to the limitations set out in this Agreement, the County agrees to participate in the Zone by contributing to the Tax Increment Fund seventy percent (70%) of the maintenance and operation portion of the County's general fund tax on the Captured Appraised Value for each tax year, beginning with the 2007 tax year, and ending with the 2031 tax year. The County specifically excludes from its Tax Increment any other tax, including Bexar County Hospital District taxes, Flood Control District taxes and the debt service portion of taxes collected by County.

2. The Parties agree that the County's contribution to the Tax Increment Fund shall be used to fund public improvements to support the development and revitalization efforts in the Zone, limited to eligible Project Costs. The County's contributions to the Tax Increment Fund shall end when it has contributed the maximum total contribution provided for herein, on the Zone termination date of September 30, 2031, or upon termination of this

Agreement or the Development Agreement by any party, whichever occurs first. County's maximum contribution to the Tax Increment Fund shall not exceed two million three hundred seventy-one thousand five hundred five dollars ($2,371,505.00), including Administrative Costs. Of the County's maximum contribution to the Tax Increment Fund, two million two hundred thirteen thousand three hundred sixty-nine dollars ($2,213,369.00) is available for reimbursement to the Developer and one hundred fifty-eight thousand one hundred thirty-six dollars ($158,136.00) is available for reimbursement to the County for its Administrative Costs.

B. <u>Tax Increment Payment</u>

1. The County's obligation to contribute its Tax Increment Payment to the Tax Increment Fund, as provided in Article IV, Paragraph A.1 of this Agreement, shall accrue as the County collects its Tax Increment. The Parties hereto agree that all real property taxes collected each year by the County that are attributable to real property in the Zone, shall first constitute taxes on the Tax Increment Base and after the total amount of taxes on the Tax Increment Base have been collected, shall then, except as may be excepted herein, constitute the Tax Increment. The County agrees to deposit its Tax Increment Payments to the Tax Increment Fund on or before April 15 and September 15 (or the first business day thereafter) of each year. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received from January 1, 2007 through January 31, 2009. The amount of each subsequent Tax Increment Payment shall be based on the Tax Increments that were received by the County, and not previously deposited, during the semi-annual periods preceding each deposit date (For example, the deposit on September 15, 2009 shall be for Tax Increments received, and not previously deposited, through June 30, 2009.)

2. One month prior to a payment required under Article IV, paragraph B.1 of this Agreement, the City shall provide to the County an updated fact sheet that includes detail as to what portion of the Project has been completed to date, a schedule of what portion of the Project is to be completed in the following year and a current roster of the Zone's board members, including the term of each board member, the entity that appointed the board member and the date for the annual meeting. The update shall also include a summary of requests for reimbursements that have been submitted to the City by the Developer, and a report showing Board or City approved expenses. Also prior to the County's payment, the City shall provide a statement of Tax Increment Fund activity, including a tally of requests for reimbursement, City and Board approved payments, payments not approved by the City and the Board, outstanding balance due to the Developer, or if the maximum contribution of either Party has been reached, the pro-rata balance due to each Participating Taxing Entity.

3. In the event there is a conflict between the Parties in regards to the amount of the Tax Increment owed by the County, the Parties agree that the County will make a reasonable determination as to the amount of any Tax Increment owed by the County under this Agreement and the County will be responsible for reasonably determining which tax

collections will be apportioned for purposes of determining the County Tax Increment. The annual total appraised value of all real property taxable by the County located in the Zone shall be determined through an independent third-party verification obtained from the Bexar Appraisal District. For the City, the City Tax Assessor will verify taxes levied and collected in regards to the property contained with the Zone.

4. The Parties agree that payment for the performance of governmental functions or services under this Agreement shall only be made from current revenues available to the paying Party. In other words, a Party is not obligated to perform said services or functions if said Party lacks current revenues to pay for said services or functions.

5. The Parties expressly agree that the County shall not owe any penalty or interest on Tax Increments that have been levied, but not received by the County. In addition, the County shall not be obligated to contribute its Tax Increment Payments from any non-Tax Increment revenue source. Furthermore, the County shall have no further obligation to contribute its Tax Increment Payment to the Tax Increment Fund in the event a Participating Taxing Entity, other than the County, discontinues its required contribution (except as otherwise agreed to in this Agreement) or fails to fully contribute its entire contribution to the Tax Increment Fund during the term of this Agreement unless the discontinuance is in compliance with and authorized by a written amendment to this Agreement.

6. The City and the Board agree to the extent permitted by law to comply with the Project Plan and any development agreements. The City and the Board agree to provide prior written notice to all Participating Taxing Entities of any proposed change to the Construction Schedule ("Notice") and such Notice shall indicate whether a proposed change constitutes a Material Change as defined herein. The Participating Taxing Entities shall have a period of thirty (30) calendar days from the date of receipt of Notice to provide comment(s) and objection(s) to the proposed change and:

   (a) for <u>non-Material Changes</u>, the Parties will attempt to address any written objections or comments raised during the thirty (30) calendar day review period. At the conclusion of the thirty (30) calendar day review period, the Construction Schedule may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director.

   (b) for <u>Material Changes</u>, if there are no written objections or comments during the thirty (30) calendar day review period from any Participating Taxing Entity, the Construction Schedule may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director. If a Participating Taxing Entity provides written notice to the City that it objects to the proposed material change and the objection, as set out in the notice, is not resolved within forty-five (45) business days from the date of such notice and the City approves such Material Change, then the Participating Taxing Entity

providing the objection may thereafter discontinue its Tax Increment Payments and terminate its participation in the Zone.

The absence of written objections or comments by a Participating Taxing Entity to the City shall constitute approval of the proposed change by that Participating Taxing Entity.

7. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the County shall not have any obligation or responsibility for any costs or expenses associated with the development of the Zone or the implementation of the Project Plan, including, without limitation, any obligation to pay or repay any debt issued by another Participating Taxing Entity, the Zone, or Board relating to the Zone or any costs associated with the operation of the Zone, the Project, or any other projects relating thereto.

C. School District Provisions

The County understands that the Project is located in the Southwest Independent School District. The County further understands that the Southwest Independent School District is not participating in the Zone.

D. Management of the Zone

1. The City is the only Participating Taxing Entity with any responsibility for managing or administering the Zone. The Participating Taxing Entities, during the term of this Agreement, may inspect the Project site and review Project plans and drawings upon reasonable notice.

2. The Board shall be composed of eleven (11) members, as provided by Section 311.0091(c) of the Texas Tax Code. Accordingly, the County shall have the right to appoint three (3) members to the Board.

E. Expansion of the Zone

The obligation of the County to participate in the Zone is limited to the description of the Zone contained in the Project and Financing Plans. The County's participation shall not extend to the Tax Increment on any additional property added to the Zone by the City unless the County approves in writing such participation.

V. RIGHTS AND OBLIGATIONS OF CITY AND BOARD

A. Tax Increment Participation by City

1. Subject to the limitations set out in this Agreement, the City agrees to participate in the Zone by contributing to the Tax Increment Fund one hundred percent (100%) of the

City's Tax Increment less Costs of Services for each tax year beginning with the 2007 tax year and ending with the 2031 tax year.

2. The Parties agree that the City's contribution to the Tax Increment Fund shall be used to fund public improvements to support the development and revitalization efforts in the Zone, limited to eligible Project Costs. The City's contributions to the Tax Increment Fund shall end when the City has contributed the maximum total contribution provided for herein, on the Zone termination date of September 30, 2031, or upon termination of this Agreement or the Development Agreement by any party, whichever occurs first. Notwithstanding anything herein to the contrary, the City's maximum contribution to the Tax Increment Fund shall not exceed seven million six hundred seven thousand five hundred eighty-three dollars ($7,607,583.00), including Administrative Costs ("City's Maximum Contribution"). Of the City's maximum contribution to the Tax Increment Fund, seven million dollars ($7,000,000.00) is available for reimbursement to the Developer and six hundred seven thousand five hundred eighty-three dollars ($607,583.00) is available for reimbursement to the City for its Administrative Costs

B. <u>Tax Increment Payment</u>

1. The City's obligation to contribute its Tax Increment Payment to the Tax Increment Fund as provided above in Article V, paragraph A.1 of this Agreement shall accrue as the City collects its Tax Increment. The City agrees to deposit its Tax Increment Payment to the Tax Increment Fund on or before April 15 and September 15 (or the first business day thereafter) of each year. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received from January 1, 2007 through January 31, 2009. The amount of each subsequent Tax Increment Payment shall be based on Tax Increments that were received by the City, and not previously deposited, during the semi-annual periods preceding each deposit date. (For example, the deposit on September 15, 2009 shall be for Tax Increments received, and not previously deposited, through June 30, 2009.) .

2. The Parties expressly agree that the City shall not owe any penalty or interest on Tax Increments that have been levied, but not received by the City. In addition, the City shall not be obligated to contribute its Tax Increment Payments from any non-Tax Increment revenue sources.

3. The Parties agree that payment for the performance of governmental functions or services under this Agreement shall only be made from current revenues available to the paying Party. In other words, a Party is not obligated to perform said services or functions if said Party lacks current revenues to pay for said services or functions.

4. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the City shall not have any obligation or responsibility for any costs or expenses associated with the development of the Zone or the implementation of the Project Plan, including, without limitation, any obligation to pay or repay any debt

issued by another Participating Taxing Entity, the Zone, or Board relating to the Zone or any costs associated with the operation of the Zone, the Project, or any other projects relating thereto.

C. Financing of Project Costs

Each Participating Taxing Entity shall participate in the payment of Project Costs only to the extent described herein. The City and the Board shall be entitled to enter into any other agreements to pay Project Costs and other reasonable expenses from the Tax Increments paid into the Tax Increment Fund by the City without the consent of any other Participating Taxing Entity, but will provide written notice of such agreement(s) when entered into (and upon written request, will provide copies of such agreement(s) and all applicable exhibits) to each Participating Taxing Entity. Neither the Board nor the City shall ever use any Tax Increment Payments contributed by a Participating Taxing Entity, other than that contributed by the City to make payments on any public debt, including but not limited to, bonds, certificates of obligations, or other similar debt interests without the prior written authorization by and consent of all Participating Taxing Entities.

D. Disbursement of Funds in the Tax Increment Fund

1. Each Participating Taxing Entity agrees that the City shall administer the Tax Increment Fund on behalf of the Board, pursuant to Ordinance No. 94468, passed and approved by the City Council on August 30, 2001. No funds shall be disbursed from the Tax Increment Fund without the prior written approval of the Board and the City; EXCEPT if the City or County is entitled to reclaim funds pursuant to Article X of the Development Agreement, then no approval is necessary.

2. The County agrees that the City and the Board may, to the extent funds are available in the Tax Increment Fund and to the extent allowed by law, use such funds to reimburse the City and the County for their Administrative Costs, if the City and the County provide an invoice for Administrative Costs with their requests to the Board for reimbursement. If it is determined during the term of this Agreement that reimbursement of Administrative Costs is not allowed under law, the Parties agree that the Board shall set the amount which the City and the County may withhold as Administrative Costs from their respective Tax Increment Payment based on the best evidence available to the Board to make such projections, including but not limited to invoices reflecting Administrative Costs incurred by the City and the County. The Parties agree and understand that under no circumstances shall Administrative Costs, in the aggregate, exceed the amount set out and described in Article II, paragraph 1 of this Agreement.

3. The County further agrees that the City and the Board may disburse funds in the Tax Increment Fund to pay expenditures in the following order or priority of payment:

   (i) to fully reimburse eligible startup Administrative Costs incurred by the City and the County;

(ii) to pay all other ongoing Administrative Costs to the City and County 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 and County, then the ongoing Administrative Costs of the City and County shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone;

(iii) to reimburse the City for costs of repair, replacement, or re-construction of public infrastructure and associated costs as described in Paragraph 5.13 of the Development Agreement;

(iv) to reimburse a Participating Taxing Entity under any reclaim of funds pursuant to Article X of the Development Agreement; and

(v) to reimburse the Developer for public improvements, including financing costs, as provided in the Development Agreement and in the Project Plan to the extent that funds in the Tax Increment Fund are available for this purpose.

The foregoing notwithstanding, no funds will be paid from the Tax Increment Fund to a Participating Taxing Entity or the Developer for its financial or legal services in any dispute arising under this Agreement or the Development Agreement between the Developer and a Participating Taxing Entity or between Participating Taxing Entities.

VI. TERM AND TERMINATION

A. Agreement Term and Termination

This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect until September 30, 2031, unless earlier terminated as provided herein. Subject to the terms of this Agreement, the County agrees to participate under this Agreement, beginning with the 2007 tax year and ending in accordance with the terms provided herein. The Parties agree and understand that the City's and the County's Tax Increment Payments will not be made after September 30, 2031, as set out in Article IV, paragraph A.2 and Article V, paragraph A.2 of this Agreement.

B. Early Termination

1. The City may terminate the Zone for any reasons listed in the Development Agreement. The termination of the Development Agreement also terminates this Agreement. The City and the County shall not be required to remit a Tax Increment Payment into the Tax Increment Fund of the Zone unless the conditions of Section 311.013(d) of the Act are met. Either party may terminate this Agreement for a breach of this Agreement or the Development Agreement by any party.

2. After giving any required notice, with subsequent failure to cure as provided for below, the County may terminate its participation in the Zone and shall not be required to deposit any further Tax Increment Payment into the Tax Increment Fund as required by this Agreement if: (i) a Party breaches a term, covenant, condition or representation contained in this Agreement; (ii) the County determines that a breach of a term, covenant, condition or representation contained in the Development Agreement has occurred; (iii) the City and/or Zone Board declares that a breach of a term, covenant, condition or representation contained in the Development Agreement has occurred; (iv) pursuant to Article IV, paragraph B.5 of this Agreement; or (v) a party to this Agreement or the Development Agreement initiates, pursues or otherwise engages in litigation or any type of adversarial proceeding related to the Zone and against or involving the County.

3. Prior to terminating its participation in the Zone, the County shall provide written notice to Developer, the Board, and any other Participating Taxing Entity still contributing Tax Increment Payments, stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s). If the objection and/or concern as set out in the County's notice is not resolved within ninety (90) business days from the date of such notice, then the County may terminate its participation in the Zone.

4. All Parties acknowledge that the County may seek repayment from the Developer for Tax Increment contributed by the County pursuant to Article X of the Development Agreement, and in the amounts set forth therein, in the event of an uncured Developer breach or, to the extent any County Tax Increment remains in the Tax Increment Fund, from the Tax Increment Fund.

C. Disposition of Tax Increments

Upon expiration or termination of the Zone, any money remaining in the Tax Increment Fund shall be paid to the Participating Taxing Entities on a pro rata basis in accordance with Section 311.014(d) of the Act, in the order of priority described above. In addition, any payments returned to the City by Developer pursuant to Article X of the Development Agreement shall also be distributed to Participating Taxing Entities on a pro rata basis.

VII. MISCELLANEOUS

A. Understanding

Any and all costs incurred by the Developer are not, and shall never become general obligations or debts of any Participating Taxing Entity. The eligible public improvement infrastructure costs incurred by Developer shall be payable solely from the Tax Increment Fund in the manner and priority provided in this Agreement and only to the extent that tax increment funds become available. The Parties agree and understand that under no circumstance shall the eligible costs exceed the maximum specified in the Project Plan nor shall the County ever be required to contribute Tax Increment in excess of the County's Maximum Contribution, as set forth in this Agreement. No Participating Taxing Entity shall

be obligated above and beyond what is actually collected as tax increment funds. The City and the Board each represent and the Developer and the County understand and agree that the Project Plan does not forecast sufficient tax revenues in the Tax Increment Fund to reimburse the Developer for all its estimated contributions or costs.

B. Severability

1. In the event any term, covenant, or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition herein contained, provided that such invalidity does not prejudice any Party hereto in its respective rights and obligations contained in the valid terms, covenants, or conditions hereof.

2. In the event any term, covenant, or condition shall be held invalid and said invalidity substantially impairs a right of a Participating Taxing Entity or Board, then this Agreement shall be void as to that Participating Taxing Entity and that Participating Taxing Entity shall have no further obligation to contribute any future Tax Increment Payments to the Tax Increment Fund. In such a situation, the Parties hereto agree that the Tax Increment Fund shall not refund any prior Tax Increment Payments under this provision of this Agreement.

C. Entire Agreement

This Agreement, which shall include the Project Plan, Financing Plan, and the Development Agreement as incorporated hereinabove, merges the prior negotiations and understandings of the Parties hereto and embodies the entire agreement of the Parties. There are no other agreements, assurances, conditions, covenants (express or implied), or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

D. Written Amendment

This Agreement may be changed or amended only by a written instrument duly executed on behalf of each Party. All Parties to this Agreement understand and recognize that only City Council of the City and only the Commissioners Court of the County have authority to approve a change or amendment to this Agreement on behalf of the City or the County, respectively.

E. Notices

1. The initial addresses of the Parties are listed below. Each Party may designate a different address by giving the other Parties ten (10) days' prior written notice.

CITY
Sheryl Sculley
City Manager
City of San Antonio
100 Military Plaza
San Antonio, Texas 78205
Re: Hunters Pond TIRZ

THE COUNTY
Honorable Nelson W. Wolff
County Judge
Bexar County Courthouse
100 Dolorosa Street
San Antonio, Texas 78205
Re: Hunters Pond TIRZ

With copies to:
David G. Garza
Director
Housing and Neighborhood Services
and Development Programs
1400 So. Flores St.
San Antonio, Texas 78204
Re: Hunters Pond TIRZ

Aurora M. Sanchez
Executive Director, Bexar County Department
of Community Investment
233 N. Pecos Suite 590
San Antonio, Texas 78207
Re: Hunters Pond TIRZ

Bexar County Criminal District
Attorney's Office - Civil Section
Criminal Justice Center
300 Dolorosa Street
San Antonio, Texas 78205
Re: Hunters Pond TIRZ

And BOARD
Presiding Officer/Chairperson
"Reinvestment Zone Number Twenty-Five,
City of San Antonio, Texas"
c/o Housing and Neighborhood Services Department
1400 So. Flores St.
San Antonio, Texas 78204

2. All notices required or permitted hereunder shall be in writing and shall be deemed delivered the earlier of (i) when actually received by personal delivery or facsimile if received during normal business hours and on the next business day if received after normal business hours; or (ii) on the third business day following deposit in a United States Postal Service post office or receptacle with proper postage affixed or on the date of receipt if mailed by certified mail, return receipt requested, addressed to the respective other Party at the address prescribed in Article VII, paragraph E.1 of this Agreement, or at such other address as the receiving Party may have theretofore prescribed by notice to the sending Party.

F. Non-Waiver

Failure of any Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon breach or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future breach or failure of performance.

G. Assignment

Except for the City's right to assign and delegate this Agreement and the performance of obligations to the Board, no Party shall assign this Agreement at law or otherwise without the prior written consent of the other Parties and no Party shall delegate any portion of its performance under this Agreement without the written consent of the other Parties. All Parties to this Agreement understand and recognize that only the City Council of the City and only the Commissioners Court of the County have authority to approve a delegation or assignment (of any kind) of this Agreement on behalf of the City or the County, respectively.

H. Successors

This Agreement shall bind and benefit the Parties and their legal successors. This Agreement does not by itself create any personal liability on the part of any trustee, officer, employee, elected official, or agent of a Party to this Agreement.

I. Project Plan

The County acknowledges that it was permitted to review and comment upon the Project Plan before it was submitted to the Board and the City Council for approval. The Parties agree an amendment to the Project Plan shall not apply to the County unless the County approves the amendment as provided herein if such amendment to the Project Plan (i) has the effect of directly or indirectly increasing the percentage or amount of Tax Increment to be contributed by the County to the Tax Increment Fund; or (ii) increases or reduces the geographical area of the Zone set forth in the Project Plan.

J. No Waiver of Immunity

No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance or non-performance of the covenants contained herein.

K. Access to Financial Information

The Board agrees to conduct or to cause to be conducted, at a minimum, an annual audit, a copy of which will be provided to the County. Furthermore, each Party to this Agreement shall have reasonable access to financial information and audit reports regarding the

operation of the Zone, contribution of Tax Increment Payments to the Tax Increment Fund, and expenditures from the Tax Increment Fund for Project Costs. In addition, the City agrees, during the term of this Agreement, to prepare and deliver an annual report to the County in accordance with Section 311.016, Texas Tax Code.

L. Development Agreement

1. The City, the County and the Board have entered into a written Development Agreement with the Developer related to the Project and the development of the Zone. The City hereby represents that it will enforce the provisions of the Development Agreement, as required, including, to the extent contained in the Development Agreement, the Developer's compliance with (i) applicable building codes and ordinances, including but not limited to flood, subdivision, building, electrical, plumbing, fire, and life safety codes and ordinances, as amended; all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, orders, and codes, as amended; and rules and codes that govern development over the Edwards Aquifer Recharge Zone (if applicable); (ii) the TIF Guidelines and Criteria in effect on the date the Zone was designated by City and the Construction Schedule, as may be amended; and, (iii) competitive bidding processes, (iv) payment of prevailing wages, (v) payment and performance bonding procedures, and (vi) use of minority/small businesses on the Project. The City and the Board agree to provide the County with a copy of any notice that is delivered or sent to any party under this Agreement or the Development Agreement as soon as reasonably practical.

2. For any City-controlled construction contracts for new development or public improvements in the Zone advertised for bid after the effective date of this Agreement, the City agrees that, to the extent allowed by law, it will include in the bid specifications for said construction contracts a statement encouraging both general contractors and subcontractors to provide access to some form of affordable basic health insurance for permanent fulltime employees and their dependents.

M. Zone Designation

The City represents that its designation of the Zone meets the criteria of Section 311.005(a), Texas Tax Code, and that said designation also complies with Texas Attorney General Opinion No. JC-0152 issued December 8, 1999.

IN WITNESS HEREOF, THE CITY OF SAN ANTONIO; BEXAR COUNTY; AND REINVESTMENT ZONE NUMBER TWENTY-FIVE (25), CITY OF SAN ANTONIO, TEXAS have made and executed this Agreement in triplicate originals on the date of the last signature below.

CITY OF SAN ANTONIO

_____
Sheryl Sculley
City Manager
Date: _____

ATTEST/SEAL:

_____
Leticia M. Vacek
City Clerk
Date: _____

BEXAR COUNTY

_____
Nelson W. Wolff
County Judge
Date: _____

ATTEST/SEAL:

_____
Gerard Rickhoff
County Clerk
Date: _____

APPROVED AS TO FINANCIAL CONTENT BY BEXAR COUNTY:

_____
David Smith, Budget Officer and
Executive Director of Planning and
Resource Management
Date: _____

_____
Tommy Tompkins,
County Auditor

Date: _____

APPROVED AS TO FORM:

_____
Michael D. Bernard
City Attorney
Date: _____

APPROVED AS TO FORM:

SUSAN D. REED, Criminal
District Attorney

By: _____
Larry Roberson
Assistant Criminal District Attorney
Civil Section
Date: _____

BOARD OF DIRECTORS
Hunters Pond TIRZ

_____
Name: _____
Presiding Officer, Board of Directors
Date: _____

ATTEST/SEAL:

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

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EXHIBIT A

HUNTERS POND DEVELOPMENT TARGETS

Site Area	88.1 Acres
Residential Development	88.1 Acres

Phase	Year	Number of Units	Type of Construction
I (2 A & B)	2006	23	Single-family detached
II (3)	2007	35	Single-family detached
III-IV (4 A & B – 5 A& B)	2008-2009	44	Single-family detached
		4	Duplex Units
		10	Townhomes
V (6 A & B)	2010	18	Single-family detached
		6	Townhomes
		9	Garden homes
		10	Duplex units
VI	2011	41	Single-family detached
		4	Town homes
		5	Garden homes
		10	Duplex units
VII	2012	61	Single-family detached
		4	Town homes
		5	Garden homes
VIII	2013	66	Single-family detached
		4	Town homes
		10	Garden homes
IX	2014	64	Single-family detached
		6	Town homes
		10	Garden homes
Total Residential		449	

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AN ORDINANCE 2009-01-15-0027

APPROVING THE FINAL PROJECT AND FINAL FINANCING PLANS FOR THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-FIVE, CITY OF SAN ANTONIO, TEXAS, KNOWN AS THE HUNTERS POND TIRZ; AND AUTHORIZING THE EXECUTION OF RELATED AGREEMENTS.

* * * * *

WHEREAS, tax increment financing is an economic development tool authorized by the Tax Increment Financing Act, Texas Tax Code, Chapter 311; and

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

WHEREAS, by Ordinance Number 96558, dated November 21, 2002, the City annexed, effective January 5, 2003, the Southside Initiative area #2 for limited purposes, including the Hunters Pond area, and zoned the whole area as "DR" (Development Reserve) in accordance with the City's land use plan developed for the Southside Initiative; and

WHEREAS, by Resolution Number 2002-44-45, dated December 12, 2002, the City added the Southside Initiative area #2, including the Hunters Pond area, to the 3-Year annexation plan for full purpose annexation; and

WHEREAS, by Ordinance Number 98495, dated December 4, 2003, the City rezoned the Hunters Pond area from "DR" (Development Reserve) to "R4" (Residential Single-Family); and

WHEREAS, by Ordinance Number 100045, dated December 9, 2004, the City rezoned the Hunters Pond area as "UD" (Urban Development); and

WHEREAS, by Ordinance Number 101601, dated December 1, 2005, effective December 11, 2005, the City provided for the full purpose, voluntary annexation of the Hunters Pond area and specifically maintained its zoning as "UD" under the full purpose annexation; and

WHEREAS, by Ordinance Number 2006-06-01-0633, dated June 1, 2006, the City created Reinvestment Zone Number Twenty-five in accordance with the Act, to promote development and redevelopment of the TIRZ, the Hunters Pond 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 TIRZ, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, since 1998, the City of San Antonio has developed and adopted the guidelines for the City's use of Tax Increment Financing in accordance with the requirements of the TIF Act.

The Hunters Pond TIRZ is governed by the guidelines in effect when it was designated, the 2004 *Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria*; and

WHEREAS, the Act authorizes the expenditure of funds derived within a reinvestment zone for costs incurred by a municipality establishing a reinvestment zone, for reimbursement of costs of public works or public improvements in the TIRZ, plus other costs incidental to those expenditures and obligations, consistent with the Project Plan of the TIRZ, which constitute Project Costs, as defined in the Act; and

WHEREAS, pursuant to the Act and City Ordinance Number 2006-06-01-0633, the TIRZ Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the TIRZ within the scope of those plans; and

WHEREAS, on the 10th day of December, 2008, the Board adopted and approved a Final Project Plan and a Final Financing Plan for development of the TIRZ, approved the Development Agreement in substantially final form between the City, Bexar County, the TIRZ Board, and the Developer, and approved the Interlocal Agreement in substantially final form between the City, Bexar County, and the TIRZ Board; and

WHEREAS, the City desires to approve the payment of 100% of available City incremental ad valorem taxes generated from new in the TIRZ less Cost of Services into the Fund, not to exceed a maximum potential reimbursement to the Developer of seven million dollars ($7,000,000); and

WHEREAS, the Developer, Hunters Pond, LP, recognizes that there is no guarantee that the value of property in the TIRZ will increase, that any increases in value are dependant upon many factors which are not within the City's control, and that there is no guarantee of any tax increment, as that term is defined in the TIF Act; and

WHEREAS, it is now necessary for the City Council to approve the Final Project Plan and the Final Financing Plan for the TIRZ, the Development Agreement with the TIRZ Board, Bexar County and Developer, and the Interlocal Agreement with the TIRZ Board and Bexar County all of which provide for development within the TIRZ; and

WHEREAS, the meeting at which this Ordinance was passed was open to the public and public notice of the time, place and purpose of said meeting was given all as required by Chapter 551, Texas Government Code; **NOW THEREFORE**:

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

SECTION 1. The Project Plan and Financing Plan for the TIRZ are feasible and in compliance with the City's Master Plan and the City's *2004 City of San Antonio, Texas Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria* by encouraging development, infrastructure improvements and housing within certain areas of the City which would not have occurred without tax increment financing.

SECTION 2. The City Council approves the proposed Final Project Plan and the Final Financing Plan, in substantially final format, as approved on December 10, 2008 by the TIRZ Board of Directors, and copies are attached as Exhibit 1 (Final Project Plan) and Exhibit 2 (Final Financing Plan) and incorporated into this Ordinance for all purposes. The City Manager or her designee is authorized to approve any final changes to the two plans, as deemed necessary by the City Attorney's Office, to fulfill the purpose and intent of this ordinance and to implement the goals of the Hunters Pond TIRZ.

SECTION 3. The City Council approves the draft Development Agreement and Interlocal Agreement, in substantially final format, as approved on December 10, 2008 by the TIRZ Board of Directors also in substantially final format, and attached as Exhibit 3 (Development Agreement) and Exhibit 4 (Interlocal Agreement) and incorporated into this Ordinance for all purposes. The City Manager or her designee is authorized to approve the final changes to the two draft agreements, as deemed necessary by the City Attorney's Office to reflect information in the final plans, to fulfill the purpose and intent of this ordinance and to implement the goals of the Hunters Pond TIRZ.

SECTION 4. Approval and execution of the attached Development Agreement does not have an immediate fiscal impact. To the extent that such funds are available, the City is authorized to pay the Developer up to a maximum of seven million dollars ($7,000,000.00) for public infrastructure improvements and financing costs as authorized by and in accordance with the Act.

SECTION 5. Payment of 100% of the City's incremental ad valorem taxes generated from the new improvements less Cost of Services is authorized to be paid into the Hunters Pond TIRZ Tax Increment Fund, established on June 1, 2006, Fund 29086020 entitled TIRZ Hunters Pond to record the collection of revenue recorded in internal order 207000000269 entitled TIRZ Hunters Pond and payments using cost center 070387001 entitled TIRZ Hunters Pond, in accordance with the plans and agreements.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, create, direct, and correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. The statements set out in the recitals of this Ordinance are true and correct and are incorporated as part of this Ordinance.

SECTION 8. If any provision of this Ordinance or the application of any provision of this Ordinance to any circumstance is held invalid, the remainder of this Ordinance and the application of the remainder of this Ordinance to other circumstances shall nevertheless be valid and this Ordinance would have been enacted without such invalid provision.

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SECTION 9. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise, it shall be effective ten (10) days after its passage.

PASSED AND APPROVED *this 15th day of January, 2009.*

M A Y O R

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
for City Attorney