XPR
11/8/12
Item No. 16B

AN ORDINANCE 2012-11-08-0885

AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER 11, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE INNER CITY TIRZ FOR THE STERLING BUILDING REDEVELOPMENT PROJECT IN DISTRICT 2 FOR UP TO $150,000.00.

* * * * * * *

WHEREAS, the Inner City TIRZ Board ("Board") issued a Request for Proposals on February 3, 2012 and received 22 project submissions from which the City's proposal to acquire the Sterling Building, perform due diligence and facilitate the investment of approximately $900,000.00 in additional funds for the Sterling Building Redevelopment Project was selected ("Project"); and

WHEREAS, the City of San Antonio ("City") and the Board desire to enter into an Agreement committing up to $150,000.00 in tax increment funds for the Project to promote local economic development, historic preservation, and to stimulate business and commercial activity, within the Inner City TIRZ; **NOW THEREFORE:**

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

SECTION 1. The City of San Antonio approves and authorizes the City Manager or her designee to execute the Agreement with the Board for up to $150,000.00, a copy, in substantially final form, is attached and incorporated into this Ordinance as **Exhibit 1**.

SECTION 2. Funding in the amount of $150,000.00 for this ordinance is available in Fund 29086007, Cost Center 0703290001 and General Ledger 5201040, as part of the Fiscal Year 2013 Budget.

SECTION 3. Payment in the amount up to $150,000.00 is authorized and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Fundamental Areas, SAP Fund Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

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

PASSED AND APPROVED on this 8th day of November, 2012.

M A Y O R
Julián Castro

ATTEST: _____
Leticia M. Vacek, City Clerk

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

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 16B

Name:	6A, 6B, 7, 9, 10, 11, 12, 13, 15, 16A, 16B, 16C
Date:	11/08/2012
Time:	10:08:44 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing execution of an Agreement for the Sterling Building Redevelopment Project in District 2 with the Inner City TIRZ Board for up to $150,000.00.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

EXHIBIT I

STATE OF TEXAS §
§ **FUNDING AGREEMENT**
COUNTY OF BEXAR §

This Agreement is entered into on the ___ of _____, 2012 by and between the City of San Antonio ("City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2012 and the Board of Directors for Tax Increment Reinvestment Zone Number 11, City of San Antonio, Texas, known as the Inner City TIRZ ("Board"), together referred to as the Parties.

BACKGROUND:

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

WHEREAS, on October 5, 2012, the Board selected the Sterling Building Redevelopment Project ("Project") from amongst the respondents to the Request for Proposals for the Inner City TIRZ; and

WHEREAS, City shall purchase the Sterling Property, which includes two commercial buildings and a house, located on .5122 acres at 1434 East Commerce and 323 Idaho, within the Inner City TIRZ, San Antonio, Texas for up to $150,000.00 including purchase price for the two tracts and structures, and due diligence and an environmental assessment in order to assist the City in engaging a Developer to invest approximately $900,000.00 in the Project; and

WHEREAS, the Board amended the Project Plan and Financing Plan (defined herein and referred to as "Project Plan" and "Financing Plan"), providing for development of the Project; and

WHEREAS, the City also approved the Final Project Plan and Final Financing Plan for the Inner City TIRZ and authorized the City Manager of the City of San Antonio or her designated representative to execute this Agreement on behalf of the City; and

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

WHEREAS, pursuant to said authority, the Board and the City agree to enter into a binding agreement for the Project as specified in the Project Plan, Financing Plan and this Agreement; and

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

I. TERM

1.01 The term of this Agreement shall commence on _____, 2012 ("Effective Date") and end on the earliest of the following dates: (i) the date the Developer receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated; or (iii) _____, provided all existing warranties and warranty bonds survive termination of this Agreement.

II. GENERAL RESPONSIBILITIES OF CITY

2.01 The funding provided under this Agreement is contingent upon the City purchasing the Sterling Property, which includes two commercial buildings and a house , located on .5122 acres at 323 Idaho and 1434 East Commerce, San Antonio, Texas. Provided City receives the funding described in this Agreement, City accepts full responsibility for the performance of all services and activities described in this Agreement and in **Exhibit A,** "Project Milestones", attached and incorporated herein for all purposes.

2.02 The Project, which City is responsible for, includes the purchase and redevelopment required for the Sterling Building Redevelopment Project ("Project"). City will complete a structural integrity study, a concept plan to identify the highest and best use for the Project property and an Environmental Phase I of the Project property as indicated in Exhibit A "Project Milestones", attached and incorporated herein for all purposes. City staff is responsible for expending and tracking the use of all funds including providing the Tax Increment Financing ("TIF") Staff with an accounting of all expenditures including supporting documentation evidencing the completion of tasks including contracts, agreements, final studies etc.

2.03 Current budget estimates of the Project are approximately $900,000 for redevelopment and $100,000 for the real estate purchase and $50,000 for due diligence, studies and plans, for a total of $1,050,000. City shall engage a developer to provide all necessary funding for the Project beyond the Board's commitment of $150,000. Board is not responsible for any cost over their stated commitment unless agreed to in writing in accordance with this Agreement.

2.04 After issuing a Request for Proposals for the Project, City will engage a developer to initiate redevelopment work for the Project. City will work with a developer to formulate plans and specifications for the Project, including a construction schedule ("Plans"). City is responsible for reporting to the Board when Project Milestones are reached.

2.05 City will ensure that 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.

2.06 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. City shall cause its design or construction professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Upon request, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas and must conform to all applicable federal, state and local laws and regulations. City shall have developer submit said certification to the Board at the completion of the Project construction.

2.07 Quarterly Status and Compliance Reports. The City shall submit to the Tax Increment Financing ("TIF") Staff written and signed Project Status Reports containing all required information, by the 15th days of January, April, July and October of each year throughout the duration of the Project, or more often if requested by the City or Board, on the progress of the Project.

2.08 Unless written notification by City to the contrary is received, City's Center City Development Office shall be the designated department responsible for the management of this Project and shall be the point of contact for the Board on all matters regarding this Project.

2.09 City is responsible for ensuring that any developer contracted for the Project shall cooperate with the City and the Board in providing all necessary information to the City and the Board in order to assist the City and the Board in determining progress of the Project and compliance with this Agreement.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

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

3.02 In accordance with the TIF Act, City will also comply and have developer comply with the Project Plan and Financing Plan for the Inner City TIRZ, as approved and as amended from time to time and which are both incorporated herein for all purposes. Additionally, the Tax Increment Financing Guidelines, as passed and approved by the City Council and amended from time to time, will be adhered to by the Parties and those contracted on the Project.

IV. OWNERSHIP, USE OPERATIONS

4.01 City shall issue a Request for Proposals to find a developer for the Project and contract with a developer who will be responsible for the operation, maintenance and redevelopment of the Project property including all structures thereon and all associated costs. City may also sell the Project property. The Project improvements shall facilitate the renovation of the Sterling Property and structures in order to remove blight from the neighborhood and return the Project property to productive use(s).

V. FUNDING AND ASSISTANCE BY BOARD

5.01 Upon execution of this Agreement, the Board shall provide up to $150,000.00 in available tax increment funds from the Inner City TIRZ fund to the City in one lump sum for all eligible expenses incurred in connection with this Agreement.

5.02 Board shall not be obligated nor liable under this Agreement to any party, other than the City, for payment of any monies or provision of any goods or services.

5.03 Funding shall be provided to City for purchase of the real property and structures for approximately $100,000.00 and for due diligence, structural analysis, concept plan and an environmental study for approximately $50,000.00 in compliance with the allowable expenditures stated herein.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 City agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. The maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices.

6.02 City agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for the required retention period following termination of this Agreement. Records will be retained by City in an electronic format.

6.03 If the City is unable to purchase the property for any reason within the term of this Agreement then all unused funds including the approximately $100,000 intended for the purchase of the Project real property and structures will be promptly reimbursed to the Inner City TIRZ fund.

VII. ALLOWABLE EXPENDITURES

7.01 Costs shall be considered allowable only if so approved in the Project budget, and incurred directly and specifically in the performance of, in compliance with this Agreement, and with all city, state and federal laws; regulations and ordinances affecting operations. Only the following categories of costs shall be considered allowable:

- Purchase of Real Property and Structures for the Project
- Due Diligence
- Phase I Environmental Study
- Concept Plan for the Project
- Structural Analysis

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement, for the uses stated herein and in compliance with all applicable city, state and federal laws, regulations and/or ordinances. Upon completion of each Project Milestone as listed in Exhibit A, documentation validating the expenses and evidencing the completion of the tasks shall be provided to TIF Staff to include contracts, agreements, etc.

7.02 The following are not allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by City or developer or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, except for items of a capital nature which are being provided by a General Contractor and shown on the approved Plans and specifically approved by City
- Advertising
- Construction
- Environmental Remediation

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

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 City further represents and warrants that:

A. City will engage a developer who is financially stable and capable of completing the Project and will inform the Board as soon as possible if any adverse material change in the financial condition of developer that may materially and adversely effect completion of the Project.

B. City will not contract with a developer against whom litigation or proceedings are presently pending.

C. The City and the Board shall be allowed access to the Project property for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project. The contract with the developer shall include a right of entry onto the properties and inside structures in favor of the City and Board for the purpose of allowing the City, its staff and agents to conduct random non-destructive walk-through inspections and monitoring of the properties and structures.

IX. ACCESSIBILITY OF RECORDS & MONITORING

9.01 At any time and as often as City may deem necessary, upon three days written notice, the records pertaining to this Agreement will be available to any City department or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 City shall carry out reasonable monitoring and evaluation activities to ensure compliance by developer for the Project, revitalization of the Sterling Property and structures and the removal of blight from Project property.

X. TERMINATION

10.1 If the City determines that the Project property cannot be purchased for approximately $100,000.00, then the City may terminate this Agreement. City shall provide notice to the Board that the intent of the Agreement cannot be fulfilled and the Agreement will be terminated. All unused funds shall be returned to the Inner City TIRZ fund promptly.

XI. NONDISCRIMINATION

11.01 City covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises, which is prohibited.

XII. CONFLICT OF INTEREST

12.01 City covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. City further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

12.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of

being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

12.03 No member of City's governing body or its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

A. Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; nor

B. Have any direct or indirect interest in this Agreement or the proceeds thereof.

XIII. POLITICAL OR RELIGIOUS ACTIVITY

13.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

13.02 None of the performances rendered under this Agreement shall involve, and no portion of the funds received under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

XIV. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

14.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted for the Project, shall, upon receipt, become the property of City.

XV. CONTRACTING

15.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the City's responsibility. City is responsible to ensure that all local, state and federal permits and approvals required by or for this Agreement are obtained.

15.02 Neither City nor Board shall in any event be obligated to any third party, including any sub-contractor, for performance of or payment for work or services.

15.03 City certifies that no funds will be awarded under this Agreement to any party which it knows to be debarred, suspended or otherwise excluded from or ineligible for participation in programs with the City.

XVI. CHANGES AND AMENDMENTS

16.01 Unless this Agreement expressly provides otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Board under authority granted by formal action of the Parties' respective governing bodies.

16.02 Notwithstanding the above, the Project Milestones as detailed in **Exhibit A** may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the City Department responsible for overseeing the TIF Unit, (the "TIF Director") as long as the overall Final Project Plan and Final Financing Plans are not materially changed by such amendment. In the event an amendment to the Project Milestones 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 16.01 above. No change under this paragraph may result in an increase in the funds to be provided from the Inner City TIRZ Fund. The TIF Director will determine whether a change in the Project Milestones would result in a Material Change.

16.03 It is understood and agreed by the Parties that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the Term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVII. ASSIGNMENTS

17.01 Board shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising hereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XVIII. SEVERABILITY OF PROVISIONS

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

XIX. PARTIES' REPRESENTATIONS

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

XX. NON-WAIVER OF PERFORMANCE

20.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any covenants in this Agreement, or to exercise any option herein, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. No waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to effective unless expressed in writing and signed by the Party to be charged.

20.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

20.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

XXI. NOTICES

21.01 For purposes of this Funding Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses below:

CITY: Center City Development Office
100 W. Houston, Frost Bank Tower, Suite 1900
San Antonio, TX 78283

BOARD: Planning and Community Development Department
1400 S. Flores
San Antonio, TX 78204

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

XXII. FORCE MAJURE

22.01 If either Party is prevented from compliance and performance by an act of war, order of legal authority, act of God, terrorism, social unrest, strike, natural disaster, supply

shortage, or other unavoidable cause not attributed to the fault or negligence of the Party then either Party may grant temporary relief from any deadline for performance of any term of this Agreement upon receiving written notice.

XXIII. ENTIRE AGREEMENT

23.01 This Agreement, including Exhibit A, Project Milestones, constitutes the final and entire agreement between the Parties and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXIV. RELATIONSHIP OF PARTIES

24.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint ventures or any other similar such relationship between the Parties.

XXV. TEXAS LAW TO APPLY

25.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

XXVI. FORMAT

26.01 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

26.02 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVII. LEGAL AUTHORITY

27.01 Each Party represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities required.

27.02 The signer of this Agreement for each Party represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of their respective Party and to bind their Party to all terms, performances and provisions herein.

27.03 This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

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

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl Sculley
CITY MANAGER

ATTEST:

_____
Leticia Vacek
CITY CLERK

BOARD OF DIRECTORS
INNER CITY TIRZ #11

_____
Ivy Taylor
BOARD CHAIRWOMAN

ATTEST:

_____
Name:
Title:

APPROVED AS TO FORM: _____
CITY ATTORNEY

Exhibit A - Project Milestones

	Milestones	Time Period	Amount of Tax Increment Funds to be used
1	Parties will execute the Agreement following City Council approval	By or before November 30, 2012	Inner City TIRZ fund will provide City $150,000.00 lump sum payment
2	Complete property acquisition of 323 Idaho, San Antonio, Texas (Acct. #: 00598-003-0120) and 1434 E. Commerce St., San Antonio, TX (Acct. #: 00598-003-0081)	By or before April 1, 2013	Approximately $100,000.00
3	Complete the following for the Project Property: • Structural Integrity Study of all structures • Environmental Phase I • Concept Plan to establish highest and best use for the Project Property	After purchase of property	Approximately $50,000.00
4	Issuance of a Request for Proposals	After completion of Milestone 3	
5	Contract with Developer for the Project approved by City Council	TBD	0
6	Developer begins construction on Project	TBD	0
7	Developer completes construction on Project	TBD	0

Status Reports

City may report to the Board at regularly scheduled meeting upon completion of each milestone and/or to provide meaningful updates on the progress of the Project. Supporting documentation evidencing the completion of tasks may be provided as applicable, to include contracts, agreements, etc. though no further approval by the Board is required for the Project.