

AN ORDINANCE

2007-03-29-0352

APPROVING THE FINAL PROJECT AND FINANCING PLANS FOR TAX INCREMENT REINVESTMENT ZONE (“TIRZ”) NUMBER SEVENTEEN, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE MISSION CREEK TIRZ IN CITY COUNCIL DISTRICT 3, AUTHORIZING THE PAYMENT OF ALL INCREMENTAL AD VALOREM TAXES INTO THE TIRZ TAX INCREMENT FUND AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, THE BOARD OF DIRECTORS FOR THE TIRZ (“BOARD”) AND BEXAR COUNTY, AND A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, HLH DEVELOPMENTS, L.P. AND THE BOARD.

* * * * *

WHEREAS, the City of San Antonio (“City”) recognizes the importance of its continued role in economic development; and

WHEREAS, on December 9, 2004, the City Council created Tax Increment Reinvestment Zone Number Seventeen, City of San Antonio, Texas (“Zone”) located in City Council District 3 by Ordinance Number 100074 in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (hereinafter called the “Act”) and the City’s adopted Guidelines and Criteria for the use of TIF to promote development and redevelopment of the Zone property through the use of tax increment financing, which development would not otherwise occur solely through private investment in the reasonably foreseeable future, established a Board of Directors for the Zone (the “Board”), described the boundaries of the Zone and authorized the creation of a tax increment fund entitled “Reinvestment Zone Number Seventeen, City of San Antonio, Texas, Tax Increment Fund” (the “Fund”), established at the depository bank of the City; and

WHEREAS, on February 23, 2007, the Board approved and adopted, a Final Project Plan (“Project Plan”), a Final Financing Plan (“Financing Plan”), a Development Agreement with HLH Developments, L.P., (“Developer”), and an Interlocal Agreement with the other participating tax entity in the Zone, providing for their participation in the Zone and contributions to the Fund; and

WHEREAS, the Act requires that the City Council approve the Project Plan and Financing Plan, as well as amendments thereto, after their adoption by the Board; and

WHEREAS, the Act authorizes the reimbursement of “Project Costs” which are the costs of public works or public improvements in the Zone, plus other costs incidental to those reimbursements and obligations that are consistent with the Project Plan; and

WHEREAS, money in the Fund may be disbursed from the Fund, invested, and paid as permitted by the Act or by any agreements entered into in accordance with the Act, or otherwise authorized by law; and

WHEREAS, a taxing unit is not required to pay into the Fund any of its tax increment provided from property located in the Zone designated by petition under the Act, unless the taxing unit enters into an Interlocal Agreement with the City, which includes conditions for payment into the Fund and specifies the portion and the years for which that tax increment is to be paid into the Fund; and

WHEREAS, the City desires to approve the payment of 100% of available City incremental ad valorem taxes generated from new improvements in the Zone into the Fund; and

WHEREAS, payment into the Fund shall consist of the tax increment generated from the 2004 tax year through the 2028 tax year, unless the Zone is terminated earlier as authorized or permitted by law; and

WHEREAS, in accordance with the Act and Ordinance Number 100074 dated December 9, 2004, the Board has authority to enter into agreements as the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property; and

WHEREAS, the City, the Board and the Developer have agreed to the terms and conditions for their performance and obligations for the development of the Zone property, including a maximum potential reimbursement to the Developer from the Fund for approved infrastructure improvements of \$5,358,759.00, and a maximum potential reimbursement for interest, if any, of \$2,370,853.00 as set out in Section VII of the Development Agreement, attached as Exhibit 3; and

WHEREAS, the Developer did not comply with the City's 2002 TIF Guidelines in regard to Payment and Performance Bonds and Prevailing Wages, and did not comply with the City Code regarding Universal Design requirements, and the City, the Board and the Developer have reached a compromise agreement to waive the pertinent 2002 Guideline requirements and provide for alternative security documents and a prevailing wage procedure, and to remove the value of a portion of the homes which do not meet Universal Design requirements; and

WHEREAS, the City, the Board, and Bexar County have agreed to the terms and conditions for their participation in the Zone and contributions to the Fund, as set out on the Interlocal Agreement attached as Exhibit 4 (Bexar County Interlocal Agreement); and

WHEREAS, it is now necessary for the City Council to approve the Project Plan and the Financing Plan for the Zone; to authorize the City Manager or her designee to enter into a Development Agreement with the Board and the Developer which provides for the development of the Zone property as specified in the Project Plan and Financing Plan, and to enter into an Interlocal Agreement; and

WHEREAS, it is hereby officially found and determined that 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. This TIRZ, which took effect on December 9, 2004, will continue until its termination date of September 30, 2029 (“Termination Date”), unless otherwise terminated earlier according to the terms of the development agreement, upon payment in full of all project costs, or as authorized or permitted by law.

SECTION 2. The Final Project Plan and the Final Financing Plan, as approved on February 23, 2007 by the Board of Directors of Tax Increment Reinvestment Zone Number Seventeen of the City of San Antonio, Texas, known as the Mission Creek TIRZ, are approved, and copies are attached as Exhibit 1 (Final Project Plan) and Exhibit 2 (Final Financing Plan) and incorporated into this Ordinance for all purposes.

SECTION 3. The City Manager or her designee is authorized to make payment of all available City incremental ad valorem taxes generated from the new improvements into Tax Increment Reinvestment Zone Number Seventeen, City of San Antonio, Texas, Tax Increment Fund, (“Fund”) beginning in the 2004 tax year and continuing through the 2028 tax year.

SECTION 4. The Project Plan and Financing Plan for the Zone are feasible and in compliance with the City’s Master Plan and the City’s adopted *2002 City of San Antonio, Texas Guidelines and Criteria for the Use of Tax Increment Financing (TIF) and Reinvestment Zones* by encouraging community revitalization, infrastructure improvements and housing within certain areas of the City which would not have occurred without tax increment financing.

SECTION 5. The City Manager, or her designee, are authorized to negotiate and execute the Development Agreement, including the compromise solutions reached regarding payment and performance bonds and prevailing wages with the Board and the Developer, the Interlocal Agreement with the Board and Bexar County substantially in accordance with the provisions set out above and in Exhibit 3 (Development Agreement) and Exhibit 4 (Bexar County Interlocal Agreement), attached and incorporated into this Ordinance for all purposes.

SECTION 6. 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 reimburse the Developer up to a maximum total payment of \$5,358,759.00 for public infrastructure improvements, and a maximum total payment of \$2,370,853.00 for interest as authorized by and in accordance with the Act.

SECTION 7. Fund 29086016 entitled Special Revenue, TIRZ Mission Creek is established to record the collection of revenue recorded in internal order 207000000265 and payments using cost center 0703730001 in accordance with the agreement.

SECTION 8. 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, 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 9. The statements set out in the recitals of this Ordinance are true and correct, and are incorporated as part of this Ordinance.

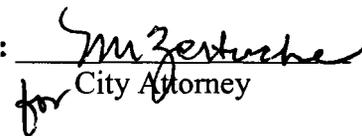
SECTION 10. If any provision of this Ordinance or the application of any provision of this ordinance to any circumstance is held invalid, the remainder of this Ordinance and the application of the remainder of this Ordinance to other circumstances shall nevertheless be valid, and this Ordinance would have been enacted without such invalid provision.

SECTION 11. This ordinance is effective immediately upon the receipt of eight (8) affirmative votes.

PASSED AND APPROVED this 29th day of March, 2007.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Voting Results

Name: Consent Agenda, except for 8, 14, 18, 41, 53, 57, 58C

Date: 03/29/07

Time: 02:10:52 PM

Vote Type: Multiple selection

Description:

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

SKS
03/29/07
Item No. 51

Exhibit 1
Mission Creek TIRZ
Final Project Plan

SKS
03/29/07
Item No. 51

Exhibit 2
Mission Creek TIRZ
Final Financing Plan

Exhibit 3
Mission Creek TIRZ
Development Agreement

SKS
03/29/07
Item No. 51

Exhibit 4
Mission Creek TIRZ
Bexar County Interlocal Agreement

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS
HLH DEVELOPMENTS, L.P. and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER SEVENTEEN,
CITY OF SAN ANTONIO, TEXAS**

This Development Agreement (“Agreement”), pursuant to Ordinance No. 2007-03-29-0352 passed and approved on the 29th day of March, 2007, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (“the City”); HLH Developments, L.P., a Texas limited partnership (“the Developer”), and the Board of Directors for Reinvestment Zone Number Seventeen, City of San Antonio, Texas, a tax increment reinvestment zone (the “Board”).

BACKGROUND:

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

WHEREAS, by Ordinance Number 100074, dated December 9, 2004, pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the “Act”), the City created Reinvestment Zone Number Seventeen (“Zone”) in accordance with the Act, to promote development and redevelopment of the Zone Property 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

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 23rd day of February, 2007, 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 approved the Final Project Plan and Final Financing Plan for the Zone by Ordinance Number 2007-03-29-0352 on the 29th day of March, 2007 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 100074, dated December 9, 2004, 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 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 Proposal, Project Plan, Financing Plan and this Agreement; and

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

I. DEFINITIONS

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

1.2 “Act” means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as it may be amended from time to time.

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

1.4 “Available Tax Increment Funds” for each Participating Taxing Entity means the “Tax Increment” contributed by each Participating Taxing Entity as defined in Section 311.012 (a) of the Act to the fund established and maintained by the City for the purposes of implementing the projects of the Zone, less the start-up administrative costs of each Participating Taxing Entity for organizing the Zone and the ongoing administrative costs of each Participating Tax Entity for managing the Zone, and those annual administrative fees, if any, of the Participating Tax Entities.

1.5 “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.

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

1.7 “City Code” means the City Code of the City of San Antonio, as amended.

1.8 “Completion” means construction of a public improvement in the Zone in accordance with the 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 of San Antonio as evidenced by a letter of

acceptance issued by an authorized official of the City of San Antonio; 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 Section 5.13 of this Agreement; or

b. In the case of 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 Section 5.13 of this Agreement.

1.9 "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 Section 1.8 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.

1.10 "CPPR Approval" means a written acknowledgement from the City to the Developer that the Contract Progress Payment Request, as defined herein, was completed and submitted correctly, and that the Contract Progress Payment Request is ready for presentation to the Board for approval and consideration for reimbursement to the Developer.

1.11 "Construction Schedule" means the timetable for constructing the improvements specified in the Project Plan, Financing Plan and this Agreement, which timetable is more particularly set forth in **Exhibit A**, attached hereto and incorporated herein for all purposes and which timetable may be

amended from time to time pursuant to the provisions of this Agreement.

1.12 “Developer” means HLH Developments, L.P.

1.13 “Effective Date” means the date that the last party signs this Agreement below, or the date of the last signature of the applicable Interlocal Agreements, whichever is later.

1.14 “Financing Plan” means the final 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.

1.15 “Guidelines” means the 2002 Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria as passed and approved by the City Council of the City of San Antonio.

1.16 “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.

1.17 “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.

1.18 “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.

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

1.20 “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 Plan is hereby incorporated by reference into this document as if set out in its entirety, for all purposes.

1.21 “Project Status Report” means a report, prepared and submitted by the Developer in accordance with the requirements of sections 5.5, section 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.

1.22 “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.

1.23 “TIF Unit” means the employees of the City’s Housing and Neighborhood Services Department responsible for the management of the City’s TIF Program.

1.24 “Zone” means Tax Increment Reinvestment Zone Number Seventeen, City of San Antonio, Texas.

1.25 “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 Board and the Developer represent that they understand and agree that neither the City nor the Board shall issue any bonds or notes to cover any costs directly or indirectly related to the Developer’s improvement of the Zone under this Agreement.

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

2.3 **Board’s Authority.** 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 100074, passed and approved on December 9, 2004, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 **Developer’s Authority and Ability to Perform.** The Developer represents to the City and to the Board that the Developer is a 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 for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only for 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 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, other than the execution of applicable Interlocal Agreements.

2.6 **Assignment of Payments and Payment of Only One Party.** The City, 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 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 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 Zone terminates. Such completion shall be at no additional cost to the City and/or the Board.

2.9 **Not Effective Until Execution of Interlocal agreements.** The City, 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 Project are executed between the City and the participating taxing entities. 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, but are only obligations of the TIF Fund, and are subject to limitations.

2.10 **Developer Bears Risk of Reimbursement.** The Developer represents that it understands that any contributions 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, another Participating Taxing Entity, 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 policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

III. THE PROJECT

3.1 **The Project.** The Project shall consist of approximately 448 single-family homes and the following public improvements to be constructed by the Developer: site work, storm water pollution prevention, streets and drainage, emergency street work, sewer, water, street light, street signs, secondary Access (70') Street, off-site utilities, CPS electric platting/zoning fees, tree survey, drainage fees, recreational park area, engineering surveying expenses, geo-technical, environmental, contingency, construction management, and formation fees for public improvements to be constructed by the Developer on an approximately 101.06 acre site known as the Mission Creek Subdivision, as more thoroughly set forth in the Project Plan and Financing Plan.

3.2 **Competitive Bidding.** Contracts for the construction of Public Improvements financed through Available Tax Increment Funds shall be competitively bid 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 Infrastructure 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 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 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 total reimbursement to the Developer for the construction of the Public Improvements.

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, 2029, 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. The Developer shall comply with applicable provisions of the 2002 Guidelines, the City Charter, the City Code, state and federal law, as they 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 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 improvements to the Zone Property.

5.3 Commencement of Construction. 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 this Development Agreement has been executed. For purposes of this Section, letters of certification or acceptance issued by the City shall constitute written approval of the City.

5.4 Payment and Performance Bonds.

Phase I and II: For Phase I and II only, the Developer failed to comply with the 2002 TIF Guidelines in that Developer failed to obtain payment and performance bonds before beginning construction. In lieu of a payment bond for Phase I and II, the Developer has provided or will provide the following: an affidavit of date of completion by the Developer, releases and waivers of lien from every subcontractor, a list of all known subcontractors, a copy of the Developer's contract with Developer's prime contractor(s), any evidence of payment bonds secured, and an indemnification and a right of set-off against any claimants who may claim against the City under Chapter 2253 of the Texas Government Code.

Phases II and III and IV: For Phases II and III and IV, the Developer has delivered original Chapter 2253 Performance and Payment Bonds.

Phases V and VI: For Phases V and VI, the Developer must deliver original Chapter 2253 Performance and Payment Bonds and wait for the City to approve the bonds prior to construction in order for the public improvements of Phases V and VI to be eligible for reimbursement. Failure to secure the City's approval of these bonds for Phases V and VI will be considered a breach of contract. In accordance with Chapter 2253 of the Texas Government Code, the Developer shall, prior to beginning construction on Phases V and VI, 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 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 the acceptability of the bonds. Without limiting other material breaches, failure of the Developer to comply with this section or Chapter 2253 of the Texas Government Code is a material breach of this contract, and the City may exercise the full range of legal remedies available to the City, including but not limited to: terminating the Zone and removing the value of phases and lots which are ineligible for reimbursement.

The City's Risk Management Department shall determine the acceptability of the bonds. Without limiting other material breaches, failure of the Developer to comply with this section or Chapter 2253 of the Texas Government Code is a material breach of this contract, and the City may exercise the full range of legal remedies available to the City, including but not limited to: terminating the Zone and removing the value of phases and lots which are ineligible for reimbursement.

5.5 Supervision of Construction. 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 project improvements to be performed, at a minimum, in accordance with federal, state and local laws and ordinances, including, but not limited to the 2002 TIF Guidelines, the Project Plan, the Financing Plan, the Unified Development Code, Universal Design, City Ordinance No. 71312, 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 and to the Board quarterly, or more often if requested by the City or the Board, using the form attached as **Exhibit B**, as it may be amended from time to time. Without limiting other material breaches, failure of the Developer to comply with this section is a material breach of this contract, and the City may terminate the Zone and exercise the full range of legal remedies available to the City.

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

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

5.8 Delays. The Developer agrees to commence and complete the Project in accordance with the Construction Schedule. 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 Section 23.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if the Developer continues to fail to complete the Project in accordance with the revised Construction Schedule, then the City may exercise its termination remedies under Article X of this Agreement.

5.9 Litigation against the city. 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 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 applicant, Developer, sponsor, development team member, or an employee, affiliate, agent, relative of the first degree of consanguinity or representative of the above. 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 payments to persons engaged in litigation 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 TIRZ may be terminated for a present or future violation of this policy.

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 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. 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 section 5.5 and 5.6 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 County 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 Section 1.8.a.(1), or 1.8.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 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 and maintenance of the public improvements shall be the responsibility of the City; however, the City shall be reimbursed from the Contingency Fund as listed in the Financing Plan (the "Contingency Fund") for those costs, including, but not limited to: demolition, rebuilding, engineering, design, new construction or any other cost necessitated by the failure without regard to fault or degree ("failure") of public infrastructure which is discovered within the second (2nd) through fifth (5th) years after completion of said infrastructure. (d) If no costs for the repair, replacement or maintenance of a public improvement as a result of a failure are claimed by or due to the City during any year within the second (2nd) through fifth (5th) years after completion of said infrastructure, the Developer shall receive the entire approved reimbursement amount available in that year. (e) In the event any costs for the repair, replacement or maintenance of a public improvement are claimed by the City due to a failure discovered within the second (2nd) through fifth (5th) years after completion of said infrastructure, the City shall be fully reimbursed those costs from the Contingency Fund. (f) In the event the Contingency Fund does not reflect an amount equal to the costs of the repair, replacement or maintenance of the public improvement, the Contingency Fund balance shall be increased by reallocating other costs within the Financing Plan and reducing the approved amount of reimbursement that would have been remitted to the Developer, until the City has been reimbursed

its costs in full.

(g) Payment of the City under this section shall take priority over reimbursement of the Developer.

(h) This reallocation of funds shall not be considered an amendment of the Financing Plan and requires no action by the Board or the City Council to be effective.

(i) It shall be no defense to the City's reimbursement of itself out of the TIRZ fund that the City or its agents have inspected, accepted or approved the public infrastructure. Approval or acceptance of public infrastructure is not a waiver of claims under this section. The City may attempt multiple repairs on the same infrastructure and reimburse itself for each attempt.

(j) 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 Participating 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.

(k) Reimbursement of the developer shall not be unreasonably denied provided the improvement has reached "Completion" under Subsection (a) or (b) above, and provided that the City has no active claim for reimbursement under this section.

(l) The requirements of this contract 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 contract 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. Projects within the Zone 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 The Developer shall cooperate with the City and the Board in providing all necessary information to the City and to the Board in order to assist the City and the Board in complying with this Agreement.

5.16 Universal Design and Determination of Tax Increment Portion. As of the effective date of this agreement, two hundred and thirty-seven (237) units in Phases I, II and III do not comply with the City's Universal Design policy, but according to a compromise agreement reached with the Developer, the value of only five (5) non-compliant units will be deducted from the captured appraised value of real property taxable by taxing units for each year ("captured appraised value"), resulting in a reduction of the projected captured appraised value six hundred three thousand, three hundred and sixty dollars (\$603,360.00) in tax years 2006 through 2028. The tax increment collection attributable to the reduction of captured appraised value is estimated to be four thousand, two hundred and forty-six dollars (\$4,246.00) annually, which will not be deposited to the Mission Creek TIRZ fund but will instead be proportionately retained by the City and Bexar County. Developer shall comply and cause builders and lot purchasers to comply with the City's Universal Design Policy as required by the City Code, Chapter 6 Article XII for the two hundred and eleven (211) units in Phases IV, V and VI. If it is discovered that any units in Phases IV, V and VI do not

comply, those non-compliant units will also be deducted from the captured appraised value in every year of their existence. The City and/or Board shall provide written notice to Developer of the noncompliance with Universal Design Policies. Developer has ninety (90) days from date of notice to address and cure noncompliance. If Developer fails to cure noncompliance issues within the ninety (90) day period, the City may, in its sole discretion, and without TIRZ Board action:

- a. terminate this TIRZ under the procedures set out in Chapter X; or
- b. adjust and reallocate the Financing Plan to reduce the portion of the captured appraised value attributable to individual non-compliant lots from the aggregate captured appraised value of the TIRZ. The City, and the County, may retain the collected taxes attributable to non-compliant lots. The non-compliant tax accounts will not be used in calculating the increment generated by the TIRZ, the TIRZ boundaries will not be amended, and the tax increment base will not be changed.

5.17 **Quarterly Status and Compliance Reports.** The Developer shall submit to the City and the Board written and signed Project Status Reports (see sections 1.21 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.

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.

5.20 In accordance with the Developer's approved plans, the Developer shall, within 30 days of the execution of the Development Agreement, convey to the City by General Warranty Deed all right and title to that parcel of real estate described as approximately 1.88 acres bounded by South Presa Street (Spur 122) more particularly described as NCB 10920, Block 0, Lot 5, approximately 1.88 acres as reflected on the MDP 736-B approved on August 29, 2006. If the City does not utilize the property within ten (10) years of the conveyance date, the City shall deed the property back to the Developer.

VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

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

6.2 **Pledge of Funds.** Subject to the terms and conditions of this contract, and subject to termination of the TIRZ and the removal of the value of non-compliant buildings and lots under section 5.16 above, and subject to any reimbursement of the City under section 5.13, the City 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, 2029.

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 department of the City responsible for managing the TIF Program, 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 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 Fund towards reimbursing the Developer for the construction of the Public Improvements required under the Project Plan, Financing Plan and this Agreement.

6.5 Certificate of Completion. The City and the Board shall use reasonable efforts to issue, or cause to be issued a Certificate of Completion for items satisfactorily brought to Completion by the Developer in constructing this Project.

6.6 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 Obligation Accrues as Increment is Collected. The City's obligation to contribute its Tax Increment Payment to the Tax Increment Fund 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.

7.2 CPPR Approval. Upon completion of the Public Improvements in each phase of the Project, the Developer shall submit to the City 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.

7.3 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 of a maximum of five million, three hundred fifty-eight thousand, seven hundred and fifty-nine dollars (\$5,358,759.00) for public improvements, plus interest, if any, at a maximum of two million, three hundred seventy thousand, eight hundred and fifty-three dollars (\$2,370,853.00) on eligible project costs, as full reimbursement for designing and constructing the Public Improvements required under the Project Plan, Financing Plan and this Agreement.

7.4 Processing of Payment Requests. Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within thirty (30) days after the deposit

of its Tax Increment Payment to the Tax Increment Fund, if the Developer is in compliance with laws, statutes, ordinances and the requirements of this agreement.

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

7.6 Order or Priority of Payment. The parties agree that the City and the Board may use funds in the Tax Increment Fund to pay eligible expenditures in the following order or priority of payment: (i) to 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 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 for its financial or legal services in any dispute arising under this Agreement with another Participating Taxing Entity or Participating Taxing Entities.

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

7.8 Repayment of Invalid Payments. If any payment to the Developer is held invalid, ineligible, illegal or unenforceable under 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 fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained herein.

VIII. INSURANCE

8.1 The Developer shall, prior to the commencement of work on the Public Improvements of any Phase under this Agreement, furnish an original insurance policy or endorsement, and a completed certificate of insurance for inspection and copying to the City's Housing and Neighborhood Services Department, which shall both be clearly labeled "**Mission Creek TIRZ, Phase No. ____.**" The insurance policy or endorsement and the original certificate(s) shall be

completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original insurance policy or endorsement and the certificate(s) or forms must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed directly from the agent or agency to the City. The City shall have no duty to pay or perform under this Agreement until such insurance policy or endorsement and certificate shall have been delivered to the City's Housing and Neighborhood Services Department, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

8.2 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, but in no instance will the City allow modification whereupon the City may incur increased risk.

8.3 The Developer's financial integrity is of interest to the City, therefore, subject to the Developer's right to maintain reasonable deductibles in such amounts as are approved by the City, the Developer or the Developer's Contractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Project Plan and Financing Plan, and any extension hereof, at the Developer 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 rated A - or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

Type	Amount
(1) Worker's Compensation & Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
(2) Comprehensive General Liability (Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Combined limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(3) Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$1,000,000 combined single limit per occurrence

8.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for 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). Upon such request by the City, the Developer or the Developer's contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

8.5 The Developer agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance shall contain the following required provisions:

- a. Name the City and its officers, employees, and elected representatives as additional insured as respects operations and activities of, or on behalf of, the named insured performed under agreement with the City, with the exception of the Workers' compensation policy;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policy shall provide a waiver of subrogation in favor of the City.

8.6 The Developer shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

8.7 If the Developer fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements during the construction of the Public Improvements, the City may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have and is not the exclusive remedy for failure of the Developer to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon the Developer'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 the Developer to stop work hereunder, and/or to withhold any payment(s) that become due to the Developer hereunder until the Developer demonstrates compliance with the requirements hereof.

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

8.9 THE DEVELOPER SHALL ALSO INDEMNIFY THE CITY, ALL OTHER PARTICIPATING TAXING ENTITIES AND THE BOARD AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THE DEVELOPER'S AND THE DEVELOPER'S GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS.

8.10 The Developer shall also require its general contractor or general contractors working on the Public Improvements in this Project to indemnify the City, all other Participating Taxing Entities, and the Board and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.

IX. WORKERS COMPENSATION INSURANCE COVERAGE

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

9.2. Definitions:

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

9.3 The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the Project, for the duration of the Project.

9.4 The Developer must provide a certificate of coverage to the City prior to being awarded the contract.

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

the duration of the Phase of the Project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

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

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

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

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

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

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

- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable Phase of the Project;
- b. provide to the Developer, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the applicable Phase of the Project;
- c. provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- d. obtain from each other person with whom it contracts, and provide to the Developer:
 - (1) a certificate of coverage, prior to the other person beginning work on the Project;and

- (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- e. retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;
- f. notify the City in writing by certified mail or personal delivery, within 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. contractually require each person with whom it contracts, to perform as required by paragraphs a-g with the certificates of coverage to be provided to the person for whom they are providing services.

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

9.12 The Developer's failure to comply with any of these provisions is a breach of contract by the Developer which entitles the City to declare the Agreement void if the Developer does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

X. DEFAULT AND TERMINATION

10.1 In the event that the Developer fails to commence construction of the Project, fails to complete construction of the Project, or fails to perform any other obligation pursuant to the Final Project and Financing Plan, or any other term of this Agreement, the City and/or the Board may declare a material breach and notify the Developer by certified mail. The City or Board may terminate this Agreement if the Developer does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from the City and/or the Board requesting the failure be cured. In the event of such default, and as one of the remedies of the City and/or the Board, the Developer shall return any payments under this Agreement for the construction of Public Infrastructure Improvements for any Phase under development at the time of the default within sixty (60) calendar days after receiving written notice from the City and/or the Board that the Developer has defaulted on this Agreement; EXCEPT that no refund is due if Developer, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes the Developer's obligations under this Agreement, pursuant to Article XVI (Assignment) herein.

10.2 After sending notice of failure under 10.1 above, the City and Board shall not distribute TIF Fund money to the Developer until the Developer's default is cured. If the default is not cured, the

City and Board may retain all undistributed TIF Fund money for distribution to the Participating Tax Entities based on their contributions.

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

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) and the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), and all PARTICIPATING TAXING ENTITIES (and the elected officials, employees, officers, directors, and representatives of these ENTITIES), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, BOARD, and/or upon any of the PARTICIPATING TAXING ENTITIES directly or indirectly arising out of, resulting from or related to the DEVELOPER'S negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of the DEVELOPER, any agent, officer, 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 BOARD, or the PARTICIPATING TAXING ENTITIES under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION 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 DEVELOPER shall promptly advise the CITY, the BOARD, and the PARTICIPATING TAXING ENTITIES in writing of any claim or demand against the CITY, the BOARD, any PARTICIPATING TAXING ENTITIES 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 CITY, the BOARD, and/or any PARTICIPATING TAXING ENTITIES 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 It is the express intent of the parties to this agreement, that the INDEMNITY provided for in this paragraph, to the extent permitted by law, is an INDEMNITY extended by the DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY, the BOARD, and the PARTICIPATING TAXING ENTITIES from the consequences of the CITY's own negligence, the BOARD's own negligence, or negligence of the other PARTICIPATING TAXING ENTITIES provided however, that the INDEMNITY provided for in this paragraph shall apply only when the negligent act of the CITY, the BOARD, or a PARTICIPATING TAXING ENTITY is a contributory cause of the resultant injury, death, or damage, and shall

have no application when the negligent act of the CITY, the BOARD, or of a PARTICIPATING TAXING ENTITY is the sole cause of the resultant injury, death, or damage. The DEVELOPER further agrees to defend, at DEVELOPER's expense, the CITY (on behalf of the CITY and in the name of the CITY), the BOARD (on behalf of the BOARD and in the name of the BOARD), and any PARTICIPATING TAXING ENTITIES, (on behalf of the PARTICIPATING TAXING ENTITIES and in the names of the PARTICIPATING TAXING ENTITIES), against any claim or litigation brought against the CITY (and its elected officials, employees, officers, directors and representatives), the BOARD (and its officials, employees, officers, directors and representatives), or any PARTICIPATING TAXING ENTITIES (and their officials, employees, officers, directors and representatives), in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 WHEREAS, as further consideration for this Development Agreement, DEVELOPER is providing this additional INDEMNIFICATION agreement in lieu of producing the above-referenced PAYMENT BOND for PHASE I and II. THIS INDEMNIFICATION IN LIEU OF THE PAYMENT BOND SHALL BE EFFECTIVE UNTIL THE DATE WHICH IS FIFTEEN (15) MONTHS AFTER THE COMPLETION OF PHASE I and II OF THE PROJECT. THE HOUSING and NEIGHBORHOOD SERVICES DEPARTMENT OF THE CITY OF SAN ANTONIO SHALL, IN ITS SOLE DISCRETION, DETERMINE THE COMPLETION DATE OF EACH PHASE. HLH DEVELOPMENTS, L.P., SHALL, AND DOES HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY OF SAN ANTONIO AND THE TIRZ 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 EACH PHASE BY ANY PERSON OR ENTITY FOR UNPAID SUMS DUE ANY CLAIMANT FOR LABOR OR MATERIALS FURNISHED FOR THE IMPROVEMENT OF PHASE I and II OF THE PROJECT. HLH DEVELOPMENTS, L.P.'s OBLIGATIONS UNDER THIS INDEMNIFICATION AGREEMENT SHALL BE FURTHER SECURED BY ITS INTEREST IN THE PROPERTY TAX INCREMENT COLLECTED BY THE CITY OF SAN ANTONIO ON ALL PHASES OF THE PROJECT PURSUANT TO TAX INCREMENT FINANCING, AND HLH DEVELOPMENTS, L.P. HEREBY AUTHORIZES THE CITY OF SAN ANTONIO TO RETAIN FROM SAID TAX INCREMENT A SUM EQUAL TO THAT ASSERTED BY ANY CLAIMANT TO SATISFY ANY VALID CLAIM SHOULD HLH DEVELOPMENTS, L.P. FAIL OR OTHERWISE REFUSE TO SATISFY SAME. HLH DEVELOPMENTS, L.P.'s INDEMNITY OBLIGATIONS TO THE CITY OF SAN ANTONIO 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 I and II OF THE PROJECT. TO THE EXTENT THAT THIS INDEMNIFICATION IN LIEU OF PAYMENT BOND

CONFLICTS WITH THE INDEMNIFICATION PROVISIONS IN PARAGRAPHS 11.1 AND 11.2 ABOVE, THE PROVISIONS IN 11.1 AND 11.2 CONTROL OVER THOSE SET FORTH IN THIS PARAGRAPH. PRIOR TO EXPENDING ANY MONEY THAT DEVELOPER WOULD BE OBLIGATED TO INDEMNIFY, CITY OF SAN ANTONIO OR THE TIRZ 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. This INDEMNIFICATION in lieu of the PAYMENT BOND shall be effective until the date which is fifteen (15) months after the completion of PHASE I of the project. The Housing and Neighborhood Services Department of the CITY of SAN ANTONIO shall, in its sole discretion, determine the completion date of each phase. HLH DEVELOPMENTS, L.P., shall, and does hereby agree to INDEMNIFY and HOLD HARMLESS the CITY of SAN ANTONIO and the TIRZ 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 each phase by any person or entity for unpaid sums due any claimant for labor or materials furnished for the improvement of PHASE I of the project. HLH DEVELOPMENTS, L.P.'s obligations under this INDEMNIFICATION agreement shall be further secured by its interest in the property tax increment collected by the CITY of SAN ANTONIO on all phases of the project pursuant to tax increment financing, and HLH DEVELOPMENTS, L.P. hereby authorizes the CITY of SAN ANTONIO to retain from said tax increment a sum equal to that asserted by any claimant to satisfy any valid claim should HLH DEVELOPMENTS, L.P. fail or otherwise refuse to satisfy same. HLH DEVELOPMENTS, L.P.'s INDEMNITY obligations to the CITY of SAN ANTONIO 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 I of the project. To the extent that this INDEMNIFICATION in lieu of PAYMENT BOND conflicts with the INDEMNIFICATION provisions in paragraphs 11.1 and 11.2 above, the provisions in 11.1 and 11.2 control over those set forth in this paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, CITY of SAN ANTONIO or the TIRZ 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.

11.4 WHEREAS, as further consideration for this development agreement, DEVELOPER is providing this additional INDEMNIFICATION agreement in lieu of producing the required PREVAILING WAGE payroll evidence for phases commenced before the 1st day of November, 2006. this INDEMNIFICATION in lieu of full compliance with CITY ordinance No. 71312 shall be effective until the date which is two (2) years after the completion of all phases of the project. The Director of the Housing and Neighborhood Services Department of the CITY of SAN ANTONIO, or his successor, shall, in his sole discretion, determine the completion date of each phase. HLH DEVELOPMENTS, L.P., shall, and does hereby agree to INDEMNIFY and HOLD HARMLESS the CITY of SAN ANTONIO and the TIRZ 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 all phases by any person or entity for penalties or sums due any worker or agency for labor furnished for the improvement of all phases of the project. HLH DEVELOPMENTS, L.P.'s obligations under this indemnification agreement shall be further secured by its interest in the property tax increment collected by the CITY of SAN ANTONIO on all phases of the project pursuant to tax increment financing, and HLH DEVELOPMENTS, L.P. hereby authorizes the CITY of SAN ANTONIO to retain from said tax increment a sum equal to that asserted by any worker or agency to satisfy any valid claim or penalty should HLH DEVELOPMENTS, L.P. fail or otherwise refuse to satisfy same. HLH DEVELOPMENTS, L.P.'s INDEMNITY obligations to the CITY of SAN ANTONIO 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 all phases of the project. to the extent that this INDEMNIFICATION in lieu compliance with CITY ordinance no. 71312 conflicts with the INDEMNIFICATION provisions in paragraphs 11.1 and 11.2 above, the provisions in 11.1 and 11.2 control over those set forth in this paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY of SAN ANTONIO or the TIRZ 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 and/or the Board access to the Project Property owned or controlled by the Developer for inspections during and upon completion of construction of the Project, and to documents and records considered necessary by the City and/or the Board 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 Housing and Neighborhood Services Department's employees and agents to conduct random non-destructive walk-throughs and monitoring of the properties and structures.

XIII. LIABILITY

13.1 As between the City, the Developer, the Board, and any Participating Taxing Entity, the Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of the Developer's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity as a result of the Agreement.

13.2 To the extent permitted by Texas law, no director, officer, employee or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability

arising under or growing out of this Agreement.

XIV. EXAMINATION OF RECORDS

14.1 The City reserves 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 (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Board and/or the Developer's services hereunder) no matter where the books and records are located. The City also reserves the right to perform any and all additional audits relating to the Board's and/or the Developer's services, provided that such audits are related to those services performed by the Board and/or the Developer for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or the Developer.

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

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

14.4 If it is determined as a result of such audit that the Board and/or the Developer has overcharged the City for the cost of the Public Improvements, then such overcharges shall be immediately returned to the City 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 City 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 No course of dealing on the part of the City, the Board, or the Developer nor any failure or delay by the City, the Board, or the Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

XVI. ASSIGNMENT

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

16.3 The Developer may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City, as evidenced by an ordinance passed and approved by the City Council, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement. This restriction on the Developer's rights to sell or transfer is subject to the right to assign as provided in Paragraph 16.6 below.

16.4 Any work or services contracted herein shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by the Developer's contractors and/or subcontractors with this Agreement shall be the responsibility of the Developer. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible project cost reimbursement.

16.5 The City shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of the Developer, for performance of work or services under this Agreement except as set forth in Section 16.7 of the Agreement.

16.6 Any restrictions herein 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 be obligated in any way to the aforementioned financial institution or other provider of capital.

16.7 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 shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City and the Board to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to the City. Failure to first obtain, in writing, the City's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective.

16.8 In the event the City approves the assignment or transfer of this Agreement, as provided in paragraph 16.6 above, the Developer shall be released from such duties and obligations.

16.9 Except as set forth in paragraph 16.3, the receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further observance or performance by the Developer of the covenants contained in this Agreement. No provision of this Agreement

shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

XVII. NOTICE

17.1 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

BOARD

Board of Directors, Tax Increment
Reinvestment Zone Number Seventeen
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

DEVELOPER

Harry Hausman
HLH Developments, L.P.
ACROPOLIS BUILDING
13409 N.W. MILITARY HWY., SUITE 302
SAN ANTONIO, TX 78231
FAX: (210) 493-6772

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

XIX. INDEPENDENT CONTRACTORS

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

19.2 The parties hereto 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 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 hereafter 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 The Developer shall include in the CPPR submission evidence of payment 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 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.

21.2 **Remedies for Material Deficiencies.** The Developer agrees that if material deficiencies in any aspect of its Small Business Economic Development Advocacy utilization plan are found as a result of a review or investigation conducted by the City's Department of Economic Development, the Developer will be required to submit a written report to the City's Department of Economic Development. The Developer will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If the City's Department of Economic Development denies a GFEP based on reasonable and published criteria, said denial will constitute failure to satisfactorily resolve any deficiencies by the Developer. Within ninety (90) days following receipt of notice from the City's Department of Economic Development, the Developer's failure to obtain an approved GFEP that includes the specific criteria not previously met shall constitute a default and result in a penalty on the Developer of \$1,000 per day as liquidated damages for the default until all deficiencies are resolved. The Developer's failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by the Developer and which can, at the option of the Director of the Department of Economic Development, result in termination of this Agreement.

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. 71312. If, after making every effort, the Developer is unable to produce sufficient evidence of the payment of prevailing wages as required by City 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, the Developer will require subcontractors to comply with City Ordinance No. 71312, and the City shall not accept affidavits as set out above.

In accordance with the provisions of Chapter 2258 and Ordinance No. 71312, 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. The Developer, in the execution of this Agreement, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin.

XXIII. CHANGES AND AMENDMENTS

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

23.2 Notwithstanding the above, the phasing of 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 of the Department of the City responsible for the management of the TIF Program, as long as the overall Final Project Plan and Final Financing Plans are not materially changed (more than seven (7) percent) by such amendment. In the event an amendment to the phasing of the Construction Schedule will result in a material change (more than seven (7) percent) to the overall Final Project Plan or Final Financing Plan, then such amendment shall comply with the requirements

of Section 23.1, above. No change under this section may result in an increase in the maximum contribution of the City or any other participating taxing entity. The Developer may rely on the determination of the Director of the Department of the City responsible for the management of the TIF Programs 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 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services hereunder 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.

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 hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intent of the parties hereto 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 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or any other public entity.

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

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

25.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or the Developer against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.

XXVI. LEGAL AUTHORITY

26.1 Each person executing this Agreement on behalf of the City, 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 Board and/or the Developer, respectively and (ii) to bind the City, the Board and/or the Developer to all of the terms, conditions, provisions and obligations herein contained.

XXVII. VENUE AND GOVERNING LAW

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

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

XXVIII. PARTIES' REPRESENTATIONS

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

XXIX. CAPTIONS

29.1 All captions used herein 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 hereto.

XXX. ENTIRE AGREEMENT

30.1 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 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 Section 1.13 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

[Handwritten signature]

SHERYL SCULLEY

City Manager
City of San Antonio

Date: 4/24/07

DEVELOPER

[Handwritten signature]

HLH DEVELOPMENTS, L.P.

a Texas Limited Partnership

By: Harry L. Hausman

Date: 2/23/07

ATTEST: *Leticia M. Vasek*, City Clerk

BOARD OF DIRECTORS,
TAX INCREMENT REINVESTMENT
ZONE NUMBER SEVENTEEN,
CITY OF SAN ANTONIO, TEXAS

[Handwritten signature]

Name: Grant Gaines

Title: Chairman, Board of Directors

Address: 111 Soledad, Suite 1111

Date: 2/23/07



Approved as form: *[Handwritten signature]*
For City Attorney

Date: 3-17-07

EXHIBIT A
Construction Schedule

EXHIBIT A

Mission Creek DEVELOPMENT TARGETS

Site Area

101.06 Acres

Phase	Year	Number of Units	Type of Construction
1	2003-2005	28	Single-family
2	2006	117	Single-family
3	2007	91	Single-family
4	2008	81	Single-family
5	2009	83	Single-family
6	2010	48	Single-family
	Total	448	

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

Phase (Year)	start date	end date	Private Improvements								
			Single Family Units		Multi-family Units		Commercial Acres and Square Feet		Other Improvements (example: day care centers)		
			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

Phases (year)	start date	end date	Public Improvements												
			Sidewalks and Approaches	Streets	Drainage	Water	Sewer	Electrical (Line Extension)	Gas	Street Lights	Traffic Signal Light	Landscaping	Other		
			Linear Feet	Li.Ft.	Li.Ft.	Li.Ft.	Li.Ft.	Li.Ft.	Li.Ft.	Li.Ft.	Number	Number/Locati on	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.

Year	Original Project Plan			Actual/Projected		
	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

DA – Mission Creek

SKS

AN ORDINANCE 71312

AMENDING ORDINANCE NO. 60110, DATED JANUARY 17, 1985, SO AS TO ADOPT A NEW "GENERAL CONDITIONS" SECTION IN 100% LOCAL FUNDED CITY PUBLIC WORKS CONSTRUCTION CONTRACTS AS SET OUT IN THE REVISED CITY WAGE AND LABOR STANDARD PROVISIONS.

WHEREAS, the City Council wishes to establish the general prevailing rate of per diem wages in the form of a sum certain for each of two distinct categories of wages described as "minimum hourly base pay" and "minimum hourly fringe benefit contribution" for all 100% Locally Funded city construction contracts; and

WHEREAS, there is a new United States Department of Labor Wage Determination Decision for Bexar County, Texas, published in the Federal Register, that applies to such 100% Locally Funded contracts; and

WHEREAS, any 100% Locally Funded City Public Works Construction Contractor/Subcontractor is strictly prohibited from paying the various classification of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" by the accounting process of adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to net a combined total of the two categories of the wage; and

WHEREAS, it is the intent of the City Council to allow various classification of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan; and

WHEREAS, the city staff has prepared new "General Conditions", governing wages and labor standards and practices, which are set forth in Attachment I and incorporated herein by reference for all purposes, and which are to be made part of all future 100% Locally Funded City Public Works Construction Contracts; NOW THEREFORE

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

SECTION 1. Ordinance No. 60110, pass on January 17, 1985, is hereby amended to replace the 100 % Locally Funded City Public Works Construction Contract "General Conditions" document attached thereto with the new updated "General Conditions" document attached hereto and labled "Attachment I".

PASSED AND APPROVED THIS 29th day of March 1990.

Lula Cockrell
M A Y O R

ATTEST:

James D. Leigoy
City clerk

APPROVED AS TO FORM:

Tom Kuntay
City Attorney

AN ORDINANCE 60110

REPEALING ORDINANCE NO. 49318 OF APRIL 27, 1978
AND REPLACING SAME WITH THIS ORDINANCE, AND
AUTHORIZING THE CITY MANAGER TO INSTRUCT THE
DIRECTOR OF PUBLIC WORKS TO INSERT NEW GENERAL
CONDITIONS GOVERNING WAGE AND LABOR STANDARDS AND
PRACTICES IN ALL FUTURE 100% LOCALLY FUNDED CITY
PUBLIC WORKS CONSTRUCTION CONTRACTS.

* * * * *

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

SECTION 1. Ordinance No. 49318 of April 27, 1978 is hereby formally repealed.

SECTION 2. In accordance with Article 5159a, Revised Civil Statutes of Texas, as amended, the City Council hereby adopts the most current United States Department of Labor Wage Determination Decisions for Bexar County, Texas (wage determination decision in effect ten (10) days prior to bid opening) as periodically published in the Federal Register as the local general prevailing rate of per diem wages to be paid to various classifications of laborers, workmen, and mechanics employed in either building construction trades or heavy/highway construction trades in constructing 100% Locally Funded City Public Works Construction projects.

Furthermore, it is hereby the expressed intent of the City Council of the City of San Antonio to clearly establish the general prevailing rate of per diem wages to be a sum certain, in dollars and cents, for each of two distinct categories of wage being, "minimum hourly base pay" and "minimum hourly fringe benefit contribution." The contractor/subcontractor is strictly prohibited from paying the various classifications of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" and then adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to "net" a combined total of the two intended, distinct categories of the wage in 100% Locally Funded City Public Works Construction contracts.

It is recognized by the City Council that certain job classifications are not entitled to receive any "minimum hourly fringe benefits" by virtue of adopting the United States Department of Labor Wage Determination Decisions for Bexar County, Texas and that result is the express intent of the City Council.

It is also the intent of the City Council to allow the contractor/subcontractor to pay various classifications of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan.

SECTION 3. The City Manager is hereby directed to instruct the Director of Public Works to insert into all future 100% Locally Funded City Public Works construction contracts, new "General Conditions" (as set forth in Attachment I, which is incorporated herein by reference for all purposes) governing wage and labor standards and practices.

The City Manager, in consultation with the Director of Public Works, is hereby authorized by City Council to periodically amend such "General Conditions" administratively to reflect needed improvements in the document as required, ~~except that~~ only the City Council shall be authorized to amend legislative matters specifically addressing the prevailing rate of minimum per diem wages, holiday pay, etc.

PASSED AND APPROVED this 17th day of January, 1985.

Henry Cisneros
M A Y O R

ATTEST: *Norma J. Rodriguez*
City Clerk

APPROVED AS TO FORM: *Tom Finkley*
City Attorney

85-04

GENERAL CONDITIONS

WAGE AND LABOR STANDARD PROVISIONS-100% LOCALLY FUNDED CONSTRUCTION

Contents

1. GENERAL STATEMENT
2. WAGE & HOUR OFFICE, PUBLIC WORKS DEPT. RESPONSIBILITIES
3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES
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5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION
6. MINIMUM WAGE
7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS
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9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS
10. UNDERPAYMENT OF WAGES OR SALARIES
11. POSTING WAGE DETERMINATION DECISION/STATEMENT AND "NOTICE TO EMPLOYEES"
12. PAYROLLS & BASIC PAYROLL RECORDS
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16. "ANTI-KICKBACK" PROVISION
17. "FALSE INFORMATION" PROVISION
18. EMPLOYMENT OF APPRENTICES/TRAINEEES
19. JOBSITE CONDITIONS
20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

1. GENERAL STATEMENT

This is a 100% locally funded Public Works Contract and Article 5159a, Revised Civil Statutes of Texas, as amended, 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 No. 60110 as amended and passed by the City Council of the City of San Antonio. Copies of both the current Ordinance as amended and the wage rates are contained in the Special Conditions, and are included instruments of this contract and full compliance with same shall be required.

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

2. WAGE & HOUR OFFICE, PUBLIC WORKS, RESPONSIBILITIES

The Wage & Hour Office, Public Works 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 Public Works 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 are posted at the work-site by the contractor and that proper job classifications and commensurate minimum hourly base and fringe wage rates are paid.
- d. Employees are periodically interviewed (at random) on each project as required.
- e. 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 Wage & Hour Office from the Director of Public Works are being implemented.

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 upon 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 Wage & Hour Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Wage & Hour 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 this 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 Public Works when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Public Works 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 determination decision contained in the original contract documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Wage and Hour Office identifying that class of laborers/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 judgment and information resources available to him at the time, and any similar prior decisions, the Director of Public Works, 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 Wage and Hour 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 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 Wage and Hour 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/sub-contractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the non-federally 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, 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 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, 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 Article 5159a, Sec. 2 and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects," as may be amended) evidences underpayment of wages by contractor/sub-contractor to laborers/mechanics employed upon the work covered by 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 this contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, so much thereof as the City of San Antonio may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages required by this contract plus possible penalty (See b. below). The amount so 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. Article 5159a, Revised Civil Statutes of Texas, as amended, 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, unpaid or underpaid wages shall be reserved by the City in a special "unfound worker's account" established by the City of San Antonio, for such

employees. If after one (1) year from the final acceptance of the project by the City, workers still cannot be located, in order that the City can make effective interim re-use of the money, such wages and any associated liquidated damages may be used to defray actual costs incurred by the City in attempting to locate said workers and any remaining monies may then revert back to the City's original funding source for the project. However, unpaid or underpaid workers for which money was originally reserved are eligible to claim recovery from the City for a period of not-to-exceed three (3) years from the final acceptance of the project by the City. Recovery after expiration of the three year period is prohibited.

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 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 programs 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 Wage & Hour Office, Public Works Division, P.O. Box 839966, San Antonio, Texas 78283-3966. It is mandatory that you

promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Wage & Hour Office within the sixty (60) calendar day period so that you do not waive your potential right of recovery under the provisions of the City of San Antonio Public Works 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 Wage & Hour 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 Wage & Hour 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 Wage & Hour Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Public Works, Wage & Hour Office, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283-3966.
- b. 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.

c. 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.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Director of Public Works or his designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor's, or any other contractor's/subcontractor's 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 proceeding 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 Wage & Hour representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Wage & Hour 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 Wage & Hour 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 this contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEEES

- 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 Wage & Hour 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 Wage & Hour 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 15.a. and b. 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 15.c. shall not apply to those portions of a project deemed to be building construction.

d. RATIOS, APPRENTICE TO JOURNEYMAN:

The Ratio of 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, Article 5159a, Sec. 2, and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects", as may be amended) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/sub-contractor 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 this contract (especially paragraph 10 underpayment of wages), 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 will 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 Vernon's Annotated Texas Statutes, especially Article 5181.1 "Child Labor" (as may be amended), 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 Public Works 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.

GENERAL DECISION: **TX20030022** TX22

Date: June 13, 2003

General Decision Number: **TX20030022**

Superseded General Decision No. TX020022

State: TEXAS

Construction Type:
RESIDENTIAL

County(ies):

BEXAR

COMAL

GUADALUPE

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories.)

Modification Number
0

Publication Date
06/13/2003

COUNTY(ies):

BEXAR

COMAL

GUADALUPE

SUTX4027A 05/01/1983

	Rates	Fringes
AIR CONDITIONING MECHANICS	6.60	
CARPENTERS	6.99	
CEMENT MASONS	7.46	
DRYWALL HANGERS	8.73	
ELECTRICIANS	9.66	
IRON WORKERS	5.67	
LABORERS	5.15	
PAINTERS (Including Drywall taping)	8.16	
PLUMBERS	7.70	
ROOFERS	5.74	

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 (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under that 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, D. C. 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, D. C. 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, D. C. 20210

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

END OF GENERAL DECISION

GENERAL DECISION: **TX20030043** 02/25/2005 TX43

Date: February 25, 2005

General Decision Number: **TX20030043** 02/25/2005

Superseded General Decision Number: TX020043

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	06/13/2003
1	01/14/2005
2	02/18/2005
3	02/25/2005

Effective date March 10, 2005

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

 =====
 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:

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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:

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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.

=====

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

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments:

Must Be Accompanied by Receipt or Cancelled Check

Must Reference the Project

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

CERTIFICATION: I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.	Signature of Certifying Financial Official	Signature of Certifying Engineer
	_____ Typed or printed Name and Title	_____ Typed or printed Name & Title
	John Doe, CPA	John Smith, Engineer
	DATE: _____	DATE: _____

Reimbursement for TIRZ Expenses

Project Name:		Period covered by this invoice:			
Invoice#:		Phase(s) covered by this invoice:			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **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.

<p>CERTIFICATION:</p> <p>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.</p>	<p style="text-align: center;">Signature of Certifying Financial Official</p> <p>_____</p> <p>Typed or printed Name and Title:</p> <p>_____</p> <p>Signature: _____</p> <p>DATE: _____</p>	<p style="text-align: center;">Signature of Certifying Engineer</p> <p>_____</p> <p>Typed or printed Name & Title:</p> <p>_____</p> <p>Signature: _____</p> <p>DATE: _____</p>
---	--	--

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

Reimbursement for TIRZ Expenses

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

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

MEETING OF THE CITY COUNCIL

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 51
 DATE: MAR 29 2007
 MOTION: _____
 ORDINANCE NUMBER: _____
 RESOLUTION NUMBER: 2007-03-29-0352
 ZONING CASE NUMBER: _____
 TRAVEL AUTHORIZATION: _____

ROGER B. BROWN District 1			
SHEILA B. MICHELL District 2			
ROLAND O. VILLALBA District 3			
RICHARD PEREZ District 4			
PATTY WADDE District 5			
DELICIA HERRERA District 6			
ELENA GUAYARINI District 7			
ART A. HALL District 8			
KEVIN A. WOLEY District 9			
CHRISTOPHER "CHIP" HAASS District 10			
PHIL HARDENBERG Mayor			

CONSENT AGENDA