

AN ORDINANCE 2009-06-18-0508

AUTHORIZING AMENDMENTS TO THE DEVELOPMENT AGREEMENT BETWEEN BROOKS DEVELOPMENT AUTHORITY, THE BOARD OF DIRECTORS OF THE BROOKS CITY-BASE TAX INCREMENT REINVESTMENT ZONE NUMBER SIXTEEN, AND THE CITY OF SAN ANTONIO, TEXAS TO ACCOMMODATE THE DESIGN AND CONSTRUCTION BY BROOKS DEVELOPMENT AUTHORITY OF THE SOUTH NEW BRAUNFELS ROAD PROJECT LOCATED IN COUNCIL DISTRICT 3, CLARIFYING THE FLOW OF FUNDS; AND AUTHORIZING AN INITIAL CERTIFICATES OF OBLIGATION FUNDED ROAD PROJECT IN AN AMOUNT UP TO \$10,455,000.00.

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

WHEREAS, the City was instrumental in establishing the legislation to allow the creation of a Defense Base Development Authority; and

WHEREAS, on September 27, 2001, City Council created the Brooks Development Authority by passing Resolution 2001-36-39, for the purposes of accepting title to 1,300 acres of real property of the former Brooks Air Force Base and engaging in the redevelopment of the installation to transition it into a business and technology park; and

WHEREAS, on December 9, 2004, the City Council created Tax Increment Reinvestment Zone Number Sixteen, City of San Antonio, Texas, located in City Council District 3, by Ordinance Number 100073, in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, and the City's adopted Guidelines and Criteria for the use of TIF, to promote redevelopment of the property within the TIRZ through the use of tax increment financing; and

WHEREAS, this City-initiated TIRZ was designed to leverage ongoing area development in support of a special joint project between the U.S. Air Force and the City to successfully convert and redevelop the former Brooks Air Force Base; and

WHEREAS, the City has contributed \$10,736,000.00 to BDA for capital improvements, including \$2,210,000.00 and \$2,113,000.00 for the design, construction and construction management services of the South New Braunfels Road project, as authorized by Ordinance Numbers 2007-01-18-0082 and 2008-02-14-0113 respectively; and

WHEREAS, the City has generally supported BDA through City funds to cover certain operating expenses; and

WHEREAS, on May 2, 2008, the TIRZ Board approved and adopted the Final Project Plan, the Final Finance Plan, and a Development Agreement with BDA and the City; and

WHEREAS, the City also approved and adopted the Final Project Plan, the Final Finance Plan, and a Development Agreement with BDA and the TIRZ Board via Ordinance Number 2008-05-08-0367; and

WHEREAS, it is now necessary for the City Council to authorize the City Manager or her designee to execute an amendment to this Development Agreement with the TIRZ Board and BDA which:

- clarifies the flow of funds of City debt financing with Certificates of Obligations for BDA's design and construction of the South New Braunfels Road project;
- initially provides up to \$10,455,000.00 to BDA for the project;
- specifies that debt service on \$7,955,00.00 of the Certificates of Obligation will be paid by tax increment from the TIRZ;
- allows for City project administration by Capital Improvements Management Services of BDA's design and construction with City recovery of up to 4% of BDA's total project costs as a Capital Administrative Charge; and

WHEREAS, it is 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. The terms and conditions of the Amended Development Agreement are hereby approved. A copy of the amended Development Agreement in substantially final form is attached to this ordinance as Exhibit A. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

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

SECTION 3. The Director of Finance is authorized to make the necessary transfers when specific work orders are identified and assigned, in an initial amount not to exceed \$10,455,000.00 and to repay the debt, as necessary, on any Certificates of Obligation from the tax increment generated by the TIRZ.

SECTION 4. 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 5. The statements set out in the recitals of this Ordinance are true and correct and are incorporated as part of this Ordinance.

SECTION 6. 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 7. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

***PASSED AND APPROVED** this 18th day of June, 2009.*



M A Y O R
JULIÁN CASTRO

ATTEST: *Leticia M. Vaca*
City Clerk

APPROVED AS TO FORM: *Jim Zentuche*
for City Attorney

Agenda Item:	7						
Date:	06/18/2009						
Time:	10:48:30 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing amendments to the Development Agreement between the Brooks Development Authority, the Board of Directors of the Brooks City-Base Tax Increment Reinvestment Zone Number Sixteen and the City of San Antonio to accommodate the design and construction of the Brooks City-Base South New Braunfels Road Project located in Council District 3, and authorizing an initial Certificates of Obligation funded project in an amount up to \$10,455,000.00. [T.C. Broadnax, Assistant City Manager, David D. Garza, Director, Housing and Neighborhood Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julian Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				x
Elisa Chan	District 9		x				
John G. Clamp	District 10	x					

ACW
06/18/09
Item No. 7

Exhibit A
Brooks City-Base TIRZ
Amended Development Agreement

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS
BROOKS DEVELOPMENT AUTHORITY, and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER SIXTEEN,
CITY OF SAN ANTONIO, TEXAS
As Amended 6/18/2009**

This Development Agreement (“Agreement”), pursuant to Ordinance No. 2008-05-08-0357, passed and approved on the 8th day of May, 2008, and subsequently amended pursuant to Ordinance No. 2009-06-18-____, passed and approved on the 18th day of June, 2009 is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (“the City”); Brooks Development Authority, a Defense Base Development Authority, created under Chapter 379B of the Texas Local Government Code (“BDA”); and the Board of Directors for Reinvestment Zone Number Sixteen, 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, the City was instrumental in establishing the legislation to allow the creation of a Defense Base Development Authority; and

WHEREAS, on September 27, 2001, City Council created the Brooks Development Authority (“BDA”), by passing Resolution 2001-36-39, for the purposes of accepting title to 1,300 acres of real property of the former Brooks Air Force Base and engaging in the redevelopment of the installation to transition it into a business and technology park; and

WHEREAS, by Ordinance Number 100073, 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 Sixteen, City of San Antonio, Texas (“TIF Zone”) in accordance with the Act, to promote development and redevelopment of the Zone Property through the use of tax increment financing, in 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 TIF Zone; and

WHEREAS, this City-initiated TIF Zone was designed to leverage ongoing area development in support of a special joint project between the U.S. Air Force and the City to successfully convert and redevelop the former Brooks Air Force Base; and

WHEREAS, the City has contributed \$10,736,000 to BDA for capital improvements, via such ordinances as No. 2007-01-18-0082 and No. 2008-02-14-0113, and has generally supported BDA through City funds to cover certain operating expenses of BDA; and

WHEREAS, 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 reinvestment zone, plus other costs incidental to those expenditures and obligations, consistent with the Final 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 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 2nd day of May, 2008, the Board adopted and approved a Final Project Plan, a Final Financing Plan, and an Agreement providing for development of the Zone Property; and

WHEREAS, the City approved the Final Project Plan and Final Financing Plan for the TIF Zone by Ordinance Number 2008-05-08-0367 on the 8th day of May, 2008 and authorized the City Manager of the City of San Antonio or her designated representative to execute the original Agreement on behalf of the City, and to bind the City to the terms and conditions of this Agreement; and

WHEREAS, the City wishes to issue further Certificates of Obligation, the proceeds of which will be used by BDA to fund Public Infrastructure within the TIF Zone, some of which will be reimbursed by Tax Increment; and

WHEREAS, the City, BDA, and the Board need to clarify the additional responsibilities arising with the use of the Certificates of Obligation proceeds for the subsequent development of Public Improvements through an amendment of the original Agreement; and

WHEREAS, pursuant to the Act (as amended) and City of San Antonio Ordinance Number 100073, dated December 9, 2004, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Final Project Plan and Final Financing Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

WHEREAS, on the 5th day of June, 2009, the Board adopted and approved an amended Agreement and the BDA approved the amended Agreement on the 9th day of June, 2009; and

WHEREAS, the City approved the amended Agreement by Ordinance Number 2009-06-18-_____ on the 18th day of June, 2009 and authorized the City Manager of the City of San Antonio or her designated representative to execute the amended Agreement on behalf of the City, and to bind the City to the terms and conditions of the amended Agreement; and

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

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

I. DEFINITIONS

- 1.1 The "City," the "Board" and "BDA" shall have the meanings specified above.
- 1.2 "Act" means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as it may be amended from time to time.
- 1.3 "Administrative Costs" means reasonable costs directly incurred by the City related to its agreement to participate in the development of the TIF Zone, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the TIF Zone incurred prior to entering into this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective. The initial startup Administrative Costs for the City are seventy-five thousand dollars (\$75,000.00). The Parties also agree that the ongoing annual Administrative Costs during the life of the TIF Zone is limited to \$15,000.00 per fiscal year. The total Administrative Costs to be paid out of the TIF Fund are capped at four hundred twenty thousand dollars (\$420,000.00) for the life of the TIF Zone.
- 1.4 "Agreement" means this document by and among the City, the Board and BDA, which may be amended from time to time.
- 1.5 "Available Tax Increment Funds" means the Tax Increment contributed by the City to the fund established and maintained by the City for the purpose of implementing the projects of the TIF Zone less the City's Administrative Costs and any debt obligation of the City for debt dedicated to BDA's development of Public Improvements within the TIF Zone.
- 1.6 "BDA" means Brooks Development Authority.
- 1.7 "CIMS" means the City's Capital Improvements Management Services Department or any subsequent City department that will oversee the City's capital improvement projects.
- 1.8 "City Manager" means the City Manager of the City or her designee.
- 1.9 "City Code" means the City Code of the City of San Antonio, as amended.
- 1.10 "City Project Administration Costs" means the funds in the amount of up to 4% of the contract amount that may be withheld by the City to recoup its project management costs in overseeing the proper construction of Public Improvements with the proceeds of Certificates of Obligation. For example, the initial issuance of ten million four hundred fifty-five thousand dollars (\$10,455,000.00) in Certificates of Obligation for use by BDA would allow the City to recover up to four hundred eighteen thousand two hundred dollars (\$418,200.00) for its actual project management costs.
- 1.11 "Completion" means construction of a Public Improvement in the TIF Zone in accordance with the engineer's design, Final Project Plan, Final Financing Plan and this Agreement. In order for a Public Improvement to have achieved a state of "Completion", the improvement must:

- a. be inspected by a 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
- b. be approved by the City as evidenced by a letter of acceptance issued by an authorized official of the City; and
- c. 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.

1.12 "Construction Schedule" means the timetable for constructing the improvements specified in the Final Project Plan, Final 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.

1.13 "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 payment due BDA for work in accordance with the Public Improvements in the Final Project Plan and the timeline detailed in **Exhibit A**, Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.

1.14 "CPPR Approval" means a written acknowledgment from the City to BDA that the Contract Progress Payment Request was completed and submitted correctly, and that the Contract Progress Payment Request is ready for presentation to the Board for approval and consideration for payment to BDA.

1.15 "Effective Date" means the date that the last party signs this Agreement.

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

1.17 "Final 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 Council, which Plan is hereby incorporated by reference into this document as if set out in its entirety, for all purposes.

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

1.19 “Phase” means a portion of the Project that is being constructed by BDA, normally being a set number of units constructed or acres of the Zone Property being developed during a specific period.

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

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

1.22 “Project Status Report” means a report, prepared and submitted by BDA in accordance with the requirements of paragraph 5.5, paragraph 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.

1.23 “Public Improvements” include those improvements that provide a public benefit and that are listed in the Final Project Plan and the Final Financing Plan. When an improvement has both private and public benefits, only that portion which is dedicated to the public may be paid to BDA, such as, but not limited to, grading and environmental studies.

1.24 “Public Infrastructure” includes any infrastructure owned and maintained by a public entity including but not limited to streets, street landscaping, utilities, drainage, street light, street signs etc.

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

1.26 “TIF” means Tax Increment Financing.

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

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

1.29 “TIF Zone” means Tax Increment Reinvestment Zone Number Sixteen, City of San Antonio, Texas.

1.30 “Zone Property” means the contiguous geographic area of the City that is included in the boundaries of the TIF Zone, which are more particularly described in the Final 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.

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex or neutral.

II. REPRESENTATIONS

2.1 **Financial Instruments.** The City, the Board and BDA represent that they understand and agree that the City may issue bonds, notes, certificates of obligation, or other financial instruments to cover any Project Costs directly or indirectly related to BDA's improvements in the TIF Zone under this Agreement. BDA and the Board will not be parties to the City's bonds, notes, certificates of obligation, or other financial instruments; however, TIF revenues will be used to cover any and all costs related to bonds, notes, certificates of obligation, or other financial instruments as necessary. The City will annually review the status of the TIF Fund, anticipated Tax Increment to be collected, and the Public Improvements to be constructed in the near term and may issue bonds, notes, certificates of obligation, or other financial instruments as necessary. Any issuance by the City of bonds, notes, certificates of obligation, or other financial instruments does not require amendment of the Final Financing Plan as long as the maximum total contribution by the City does not exceed fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00).

2.2 **City's Authority.** The City represents to BDA that as of the Effective Date 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 BDA that, as of the date of the Board's signature to this document, the TIF Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 100073, 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 **BDA's Authority and Ability to Perform.** BDA represents to the City and to the Board that BDA is a Defense Base Development Authority, created under Chapter 379B of the Texas Local Government Code; that BDA is a political subdivision in the State of Texas; that BDA has been authorized by its governing body to enter into this Agreement and to perform the requirements of this Agreement; that BDA's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; and that BDA shall have sufficient capital to perform all of its obligation under this Agreement whether from the City or other sources when it needs to have said capital or agrees to seek all available sources of funding in accordance with paragraph 5.19.

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

2.6 **Payments.** The City and BDA may rely upon the payments to be made to them out of the TIF Fund or City debt proceeds dedicated to BDA's development of Public Improvements within the TIF Zone as specified in this Agreement, but BDA's right to such payments is subject to the other limitations of this Agreement. The City shall issue a check or other form of payment made payable only to the BDA.

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

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

2.9 **No Interlocal Agreements.** The City, the Board and BDA represent each to the others that they understand and agree that the City is the only taxing entity contributing a percentage of its tax increment to the TIF Fund, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

2.10 **BDA Bears Risk.** BDA represents that it understands that any payment from City debt proceeds dedicated to BDA's development of Public Improvements within the TIF Zone shall not be, nor shall be construed to be, financial obligations of the Board. BDA shall bear all risks associated with payments from City, including, but not limited to: pre-development agreement costs, 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. BDA recognizes that any liability or obligation incurred in anticipation of payments from City debt proceeds without a Board approved Phase development plan will be BDA's responsibility.

2.11 **Not an Obligation of the General Fund.** BDA represents that it understands that any payments made to BDA from tax increments are never obligations of the general funds of the City, but only obligations of the TIF fund, and subject to limitations.

III. THE PROJECT

3.1 **The Project.** The Project is projected to include the following Public Improvements to be constructed by BDA: New Braunfels Infrastructure Project (Phases I through V) and other street and Public Infrastructure projects as more thoroughly set forth in the Final Project Plan and Final Financing Plan.

3.2 **Competitive Bidding.** Contracts for the construction of Public Improvements by or on behalf of BDA shall be competitively bid in compliance with Chapter 252 of the Local Government Code and be constructed, in compliance with all applicable law unless: (1) Debt proceeds provided by the City or Available Tax Increment Funds go toward financing 30 percent or less of the cost for a specific Public Improvement, in compliance with the Developer Participation Contract statutes

currently found in Subchapter C in Section 212 of the Local Government Code; and (2) such Public Improvement is not a building of any sort.

3.3 Financing. BDA may use any or part of the Zone Property that it owns or manages 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 may issue bonds, notes, certificates of obligation, or other financial instruments to cover any Project Costs directly or indirectly related to BDA's improvements in the TIF Zone under this Agreement. BDA acknowledges that any debt proceeds provided by the City may only be used to fund Public Improvements within the TIF Zone.

BDA acknowledges that the priority of payment within the Available Tax Increment Funds will be to the City for payment of the City's debt incurred and dedicated to the BDA's development of Public Improvements within the TIF Zone until such time as all such debt is no longer outstanding.

If there are not sufficient Available Tax Increment Funds on hand sixty (60) days prior to each semiannual debt service payment date to pay the City's debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone, BDA will be required to make up the shortfall within thirty (30) days upon notice by the City of such shortfall to the extent BDA has available funds. Should BDA have exhausted its resources and a shortfall remains, then BDA agrees in good faith to utilize all funding options available and permitted by law to cure such shortfall.

BDA has the ability to pay off any City's debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone at anytime, as long as the payment includes all costs for the City to defease such debt.

Should there be no current City debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone, the City and the Board pledge to use Available Tax Increment Funds to pay BDA for eligible Project Costs it has expended.

3.4 Payment. The total payment to BDA under this TIF Zone will not exceed fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00) and is not intended to cover all of BDA's costs incurred in connection with performing its obligations under this Agreement. The parties hereto agree that the priority of payment within the Available Tax Increment Funds will be to the City for payment of the City's debt incurred and dedicated to the BDA's development of Public Improvements within the TIF Zone until such time as all such debt is no longer outstanding.

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 BDA receives final payment for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or (iii) September 30, 2029, provided that all existing warranties on the Project shall survive termination of this Agreement.

V. DUTIES AND OBLIGATIONS OF BDA

5.1 **Compliance with Laws and Ordinances.** BDA shall comply with applicable provisions of the 2004 TIF 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, BDA agrees to complete, or cause to be completed, the Public Improvements described in the Final Project Plan, Final Financing Plan and in this Agreement. BDA agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. BDA 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 the Public Improvements in the Zone Property.

5.3 **Commencement of Construction.** From the Effective Date of this Agreement forward, BDA shall not commence any construction on any Phase of the Project until the plans and specifications for that Phase have been approved in writing by the appropriate department of the City and all federal and state law requirements have been met.

5.4 **Payment and Performance Bonds.** BDA must ensure that its contractors deliver original Chapter 2253 Performance and Payment Bonds and BDA must provide a copy of the Bonds to the City prior to construction in order for the Public Improvements to be eligible for payment. BDA agrees that Performance and Payment Bonds shall meet the minimum standards for these bonds set by the City's Risk Management Division. Failure to meet the City's minimum standards for these bonds prior to the commencement of construction will be considered a breach of contract. The bonds shall name both the City and BDA as beneficiaries or obligees 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.

BDA shall maintain and make available for inspection all original Payment and Performance Bonds with copies to CIMS and the TIF Unit. CIMS shall determine whether the bonds meet the minimum standards. Without limiting other material breaches, failure of BDA to ensure the compliance of its contractor with this paragraph or Chapter 2253 of the Texas Government Code is a material breach of this Agreement, and the City may exercise the full range of legal remedies available to the City, including but not limited to: terminating the TIF Zone and/or exercising its rights under Article X.

5.5 **Supervision of Construction.** BDA 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 2004 TIF Guidelines, the Final Project Plan, the Final 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 Board and the appropriate department of the City. BDA 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 BDA to comply with this paragraph is a material breach of this Agreement, and the City may terminate the TIF Zone and exercise the full range of legal remedies available to the City.

5.6 No Vesting of Rights. BDA agrees that the TIF program is a discretionary program and that the City has no obligation to extend TIF to BDA. In exchange for receiving TIF, BDA 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. BDA 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. BDA 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 BDA'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 BDA does not complete the Project substantially in accordance with the Construction Schedule, then the parties, in accordance with Section 22.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the TIF Zone. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if BDA 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. BDA acknowledges that it is aware that the City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicant, BDA, BDA's contractors, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, partnership, association, and any other legal entity. This TIRZ may not be terminated for violations of this policy which occur more than sixty (60) days prior to the execution of this Agreement.

5.10 Small, Minority or Women-owned Business Enterprises. With respect to Public Improvements, BDA 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 Final Project Plan, Final Financing Plan or this Agreement. This policy is contained in City Ordinance 2007-04-12-0396 and its subsequent amendments. BDA shall require all its applicable contractors to comply with City Ordinance 2007-04-12-0396 and its subsequent amendments or any other ordinance adopted to repeal and replace City Ordinance 2007-04-12-0396. BDA must use the language provided in **Exhibit F**, or any subsequent revision provided by the City, modified as necessary, in its subcontracts for any construction or project management of work required to be performed under the Final Project Plan, Final Financing Plan or this Agreement.

5.11 Tree Ordinance. In accordance with paragraphs 5.5 and 5.6 above, BDA 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 Duty to Maximize Tax Increment and Available Tax Increment Funds. BDA 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.

Further, BDA shall contractually require any hospital development to maintain a taxable entity status for ad valorem tax purposes for the life of the TIRZ or for as long as the City has issued bonds, notes, certificates of obligation, or other financial instruments to cover any Project Costs directly or indirectly related to BDA's Public Improvements in the TIF Zone under this Agreement. To maximize both Tax Increment and Available Tax Increment Funds, BDA will attempt to contractually require development by other developers, in the TIF Zone to maintain a taxable entity status for ad valorem tax purposes for the life of the TIRZ or for as long as the City has issued debt under this Agreement.

The City will notify BDA when it no longer intends to issue future bonds, notes, certificates of obligation, or other financial instruments. Only after such notice from the City and the City's retirement of all debt related to BDA's Public Improvements, may BDA remove the contractual requirement that a development maintain a taxable entity status for ad valorem tax purposes.

5.13 Infrastructure Maintenance.

- a. BDA 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 paragraph 1.11 and for one (1) year after Completion.
- b. Upon acceptance of a street or drainage improvement for maintenance by the City, BDA or its contractor 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 BDA, its contractor or the bond company and shall not be paid out of the TIF Fund.

- c. After the expiration of the one (1) year extended warranty bond, the cost of the repair, replacement and maintenance of the Public Infrastructure shall be the responsibility of the City; and, the City shall be reimbursed from the Available Tax Increment Funds for those costs it must incur, including, but not limited to: demolition, rebuilding, engineering, design, re-construction or any other cost necessitated by the failure without regard to fault or degree of any Public Infrastructure which is discovered within the second (2nd) through fifth (5th) years after Completion of said infrastructure. Future issuance of City debt may be hindered should the City have to divert Available Tax Increment Funds to make such repair, or replacement, or perform such maintenance.
- d. It shall be no defense to the City's reimbursement of itself out of the TIF Fund that the City or its agents have inspected, accepted or approved the Public Infrastructure. Approval or acceptance of Public Infrastructure is not a waiver of claims under this subparagraph. The City may attempt multiple repairs on the same infrastructure and reimburse itself for each attempt.
- e. BDA, 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, BDA shall use its best efforts to dedicate (or grant a public easement) to the Public Improvements where applicable to the appropriate public entity (as determined by the City), at no additional cost or expense to the City or any other public entity within sixty (60) days after Completion and acceptance of the improvements.
- f. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee or other official of the City or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a City employee or agent do not work an estoppel against the City under this Agreement or the Unified Development Code.

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

5.15 Duty to Cooperate. BDA 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 determining BDA's compliance with this Agreement.

5.16 Universal Design and Determination of Tax Increment Portion. BDA shall comply and by contract shall cause contractors to comply with the City's Universal Design Policy as required by the City Code. The City and/or Board shall provide written notice to BDA of the noncompliance with Universal Design Policies. BDA has ninety (90) days from date of notice to address and cure noncompliance. If BDA fails to cure noncompliance issues within the ninety (90) day period, the

City may, in its sole discretion, and without Board action exercise its rights in accordance with Article X herein.

5.17 Quarterly Status and Compliance Reports. BDA shall submit to the City and the Board written and signed Project Status Reports (see paragraphs 1.22 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 day 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, BDA understands that no Available Tax Increment Funds will be paid to BDA and the City may exercise its rights in accordance with Article X herein.

5.18 Duty to Comply. BDA 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 Reconciliation. BDA will provide the City within ninety (90) days of the effective date of the amended Agreement an accounting of the capital improvements undertaken by BDA with any funds provided by the City or with funds to be reimbursed by certificates of obligation including supporting documentation of the accounting, such as invoices.

5.20 Proceeds from Certificates of Obligation. The City, as explained fully in paragraph 3.3, intends to issue a series of certificates of obligation, the proceeds of which will be used by BDA to make the planned Public Improvements within the TIF Zone. Initially, the City will make available ten million four hundred fifty-five thousand dollars (\$10,455,000.00) in certificates of obligation of which two million five hundred thousand dollars (\$2,500,000.00) will not be reimbursed via Tax Increment while the debt service on the remaining seven million nine hundred fifty-five thousand dollars (\$7,955,000.00) will be reimbursed via Tax Increment. Work done on Public Improvements by BDA with the proceeds of certificates of obligation will be overseen by the Director of CIMS or his designee per this paragraph and its subparagraphs both for the initial ten million four hundred fifty-five thousand dollar (\$10,455,000.00) funding with certificates of obligation as well as all such future funding with certificates of obligation. The total debt service on certificates of obligation authorized under this Agreement together with any reimbursable administrative expenses will not exceed fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00)

- a. CIMS shall contact BDA as designated in paragraph 17.1 should it have any questions or need clarification. BDA shall convey any reports required under this paragraph to CIMS at the following:

City of San Antonio
CIMS
P.O. Box 893366
San Antonio, Texas 78283-3966
FAX: (210) 207-7196
Email: anibal.gutierrez@sanantonio.gov

With a copy to:
City of San Antonio
Center City, TIF Unit
P.O. Box 839966
San Antonio, Texas 78283-3966
FAX: (210) 207-5416
Email: jonathan.lane@sanantonio.gov

- b. Before the certificates of obligation proceeds are released to BDA, BDA shall submit to CIMS a scope of work (the "CO Project") describing the Public Improvements and their construction schedule to be undertaken with the proceeds. BDA will also provide map(s) depicting the location of the planned Public Improvements within the CO Project.
- c. BDA shall provide to City their plans and specifications for any Public Improvements included in the Final Project Plan and part of the CO Project and such plans and specifications shall be subject to the review and approval of CIMS. After approval by City, BDA shall not make any substantial changes to the plans and specifications without prior written approval of CIMS. City agrees to provide approvals within thirty (30) days of receiving complete plans. The approvals given in this subparagraph do not relieve BDA of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions, including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).
- d. BDA or BDA's Chief Financial Officer, or his designee, shall obtain a City portal account to access the Project Management Portal ("Portal"). BDA shall give CIMS and the TIF Unit an acceptable project schedule in Primavera or MS Project. BDA will update the schedule to reflect actual progress and provide it to CIMS and the TIF Unit by the fifth day of the following month (i.e., July 5th for June update). An acceptable schedule will include but not be limited to overall project phases and associated design, advertisement and construction periods, significant design submittals and steps, major construction phases, and any other tasks or milestones that would assist in understanding the project.
- e. BDA shall submit all future changes in the CO Project, including any design enhancements, to the CIMS Director or his designee for review and approval to ensure compatibility with the previously approved plans and specifications.
- f. City shall have authority to inspect the CO Project throughout the construction process to ensure compliance with the approved plans and specifications. BDA shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the approved plans and specifications. BDA shall have submitted all said certification to the CIMS Director or his designee at the completion of the said CO Project. City shall have the right to withhold funding until such certifications are provided.
- g. Beginning on January 31, 2010, and on each succeeding January 31 while BDA is constructing or has commissioned construction of Public Infrastructure under this Agreement, BDA shall provide to City an annual report detailing BDA's compliance with the City's Small Business Economic Development Advocacy Program including a description of BDA's SBEDA Program and results of any scoring criteria generated under City Ordinance 2007-04-12-0396, any subsequent ordinance, or BDA's own program goals. City has the right to request supporting records to verify BDA's actual SBEDA achievement.

- h. BDA shall cause any contracting and bidding for the CO Project to separately identify allowable costs to ensure full compliance with the limitations placed on City's use of the bond funds. In particular, BDA shall only expend City's funds for the approved CO Project.
- i. Prior to any reimbursement or payment, City will have the right to inspect work completed on the CO Project to ensure conformance with the approved plans and specifications and to review invoices and payments for compliance with this Agreement.
- j. All BDA requests for reimbursement of a CO Project shall be submitted monthly through the City's Portal. BDA shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing the Portal sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on the Portal and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, BDA must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the Portal.
- k. City agrees to provide BDA written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide BDA thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to BDA and not spent by BDA strictly in accordance with the terms of this Agreement or not supported by adequate documentation to fully justify the expenditure.
- l. Unless City has questions concerning expenditure by BDA on a CO Project, City agrees to provide payment to BDA within thirty (30) working days of receipt of completed invoice as described above.
- m. Funds in the amount of up to four percent (4%) of the contract amount, four hundred eighteen thousand two hundred dollars (\$418,200.00) for the initial CO Project, may be withheld by the City for City Project Administration Costs. Actual City Project Administration Costs will be calculated using the most recent cost allocation plan and indirect cost proposal for the CIMS. Currently the cost allocation plan is designed for CIMS to recover costs from project work efforts based on the actual time spent on the project, plus markup of non-billable hours, plus the indirect cost rate. Actual City Project Administration Costs will be charged in this manner to the project work effort on a monthly basis until the 4% cap has been charged by the City. At the end of the CO Project, any funds remaining in the work effort in excess of the 4% cap for City Project Administration Costs will be provided to BDA if allowable expenses are submitted to the City and the City has determined that it would be in its best interest to pay said expenses. BDA may be reimbursed with Tax Increment for the City Project Administration Costs that it incurs.

- n. Upon BDA's preparation of a construction schedule and budget for the CO Project, BDA shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in BDA's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting BDA's operations hereunder. Only the costs for construction and design expenditures for the CO Project shall be considered allowable. The following shall not be considered allowable CO Project costs:
- Personnel costs, salaries or wages paid directly by BDA or other similarly affiliated organization,
 - Travel and travel-related expenses,
 - Costs or fees for consultant and/or professional services, except for those directly related to the CO Project,
 - Costs or fees associated with attendance at meetings, seminars, or conferences,
 - Costs or fees associated with regular maintenance and operation,
 - Fundraising,
 - Equipment and furnishings, unless part of BDA's approved plans and specifications,
 - Advertising, except for bid solicitation, and
 - Political activities.
- o. Written requests for prior approval shall be BDA's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to a CO Project shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

5.21 Preconstruction Meeting. BDA shall also convene a pre-construction meeting to be held with any contractors or subcontractors and to include the TIF Unit, CIMS, and Labor Compliance Office of the City before proceeding with construction on any Phase. One purpose of the meeting is to provide a review and explanation of the City reporting requirements under the Agreement.

5.22 Seeking Additional Capital Funding from the City. BDA acknowledges and agrees in good faith to seek all other available funding sources, including applying for grants, before seeking additional capital funding from the City through the City's Capital Budget process during the life of the TIF Zone. Upon request from BDA for additional capital funding, the City will review BDA's then current funding issues.

VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

6.1 No Bonds. Neither the Board nor BDA shall sell or issue any bonds using TIF revenues to pay or reimburse the BDA or any third party for any improvements to the Zone Property performed under the Final Project Plan, Final Financing Plan or this Agreement.

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, termination of the TIF Zone, and any reimbursement of the City under paragraph 5.13, the City and the Board hereby pledge City debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone and/or Available Tax Increment Funds to BDA, 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 TIF Unit, and that all notices for meetings of the Board shall be timely received and posted by City staff, in accordance with Chapter 2, Article IX, of the City Code.

6.4 **Collection Efforts.** The Board shall use reasonable efforts to cause the City to levy and collect its ad valorem taxes in the TIF Fund and to contribute its portion of the Available Tax Increment Funds towards first repaying any necessary debt obligation of the City for debt dedicated to BDA's development of Public Improvements within the TIF Zone and then any Administrative Costs before paying BDA for the construction of the Public Improvements required under the Final Project Plan, Final Financing Plan and this Agreement.

6.5 **Letter of Acceptance.** The City and the Board shall use reasonable efforts to issue, or cause to be issued a letter of acceptance for items satisfactorily brought to Completion by BDA in constructing this Project.

6.6 **Payment Requests.** The City and the Board hereby agree that all payment requests from BDA not submitted via the Portal as described in paragraph 5.20(j) shall be initiated by the submission of a CPPR form, attached hereto as **Exhibit D**. City payments to BDA for Public Improvements within the TIF Zone may only be made given prior approval by the Board of a Phase development plan under which such payments are authorized.

VII. COMPENSATION TO BDA

7.1 **Obligation Accrues as Increment is Collected.** The City's obligation to contribute its Tax Increment payments to the TIF Fund shall accrue as the City collects its Tax Increment. The City agrees to deposit its Tax Increment payments in the TIF Fund on or before April 15 and September 15 (or the first business day thereafter) of each year.

7.2 **CPPR Approval.** BDA 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 payment authorization only after the City review and approval, as evidenced by a written CPPR Approval issued by the City.

7.3 **Maximum Compensation to BDA.** Following the Board's authorizations, BDA shall receive, in accordance with the Final Financing Plan and the Final Project Plan, total payment for Public Improvements including financing cost of a maximum of fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00), as full payment for designing and

constructing the Public Improvements required under the Final Project Plan, Final Financing Plan and this Agreement.

7.4 Processing of Payment Requests. Board-authorized payment from City debt proceeds shall be made to BDA within thirty (30) days, if BDA is in compliance with laws, statutes, ordinances and the requirements of this Agreement. Board-authorized reimbursements of Available Tax Increment Funds shall be made to BDA within thirty (30) days after deposit of a Tax Increment payment to the TIF Fund, if BDA is in compliance with laws, statutes, ordinances and the requirements of this Agreement.

7.5 Order or Priority of Payment. The parties agree that the City and the Board may use funds in the TIF Fund to pay eligible expenditures in the following order or priority of payment: (i) to repay any necessary debt obligation of the City for debt dedicated to BDA's development of Public Improvements within the TIF Zone; (ii) to reimburse eligible startup Administrative Costs incurred by the City in an amount not to exceed seventy five thousand dollars (\$75,000.00); (iii) to pay all other ongoing Administrative Costs to the City for administering the TIF Fund and/or the TIF Zone as defined and limited in Section 1.3; (iv) to reimburse the City for costs of the repair, replacement, and maintenance of Public Infrastructure and associated costs as described in this Agreement; (v) to reimburse the City under any reclaim of funds pursuant to Article X; and (vi) to pay BDA for Public Improvements, including financing costs, as provided in this Agreement and in the Final Project Plan to the extent that funds in the TIF Fund are available for this purpose and all outstanding certificates of obligation issued for CO Projects are paid and are no longer outstanding. The foregoing notwithstanding, no funds will be paid from the TIF Fund to any party of this Agreement for its financial or legal services in any dispute arising under this Agreement.

7.6 Partial Payments. If TIF 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 TIF Funds become available. No fees, costs, expenses or penalties shall be paid to any party on any late payment. However, if there are insufficient Available Tax Increment Funds to pay City's debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone when due, then BDA is required to pay the cost of debt due.

7.7 Payment of Debt Service on Certificates of Obligation Funded Improvements. City is automatically authorized to make transfers in approximate equal monthly installments, from the TIF Fund to the TIF Debt Service Fund as will be sufficient, together with any other funds on deposit therein and available for such purpose, to pay the interest and/or principal and interest scheduled to come due on all of the outstanding certificates of obligation utilized for CO Projects under the terms of the Agreement.

7.8 Repayment of Invalid Payments. If any payment to BDA 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 BDA to the City for deposit in the TIF Fund for purposes of implementing the Public Improvements of the

Project, and that the remainder of this Agreement shall be construed as if the invalid, illegal or unenforceable payment was never made.

VIII. INSURANCE

BDA will require that the Insurance requirements contained in this Article be included in all its contracts or agreements for Public Improvements where BDA is seeking payment under this Agreement, unless specifically exempted in writing by the City.

8.1 Prior to the commencement of any work under this Agreement, BDA shall furnish copies of all required endorsements and the original completed Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "**Brooks City Base TIRZ, Phase No. ____**" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the address listed in paragraph 8.4. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TIF Unit. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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. In no instance will the City allow modification whereupon the City may incur increased risk.

8.3 BDA's financial integrity is of interest to the City, therefore, subject to BDA's right to maintain reasonable deductibles in such amounts as are approved by the City, BDA or BDA's subcontractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Final Project Plan and Final Financing Plan, and any extension hereof, at BDA's or BDA's subcontractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Contractor's Pollution Liability*	\$1,000,000 per occurrence
6. Builder's Risk Policy*	100% of value of each Phase of Project
* if applicable	

8.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). BDA and/or BDA's subcontractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the addresses provided below within 10 days of the requested change. BDA and/or BDA's subcontractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Center City
TIF Unit
P.O. Box 839966
San Antonio, Texas 78283-3966

CIMS

with a copy to:
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

8.5 BDA agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the City and their respective officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- d. Provide thirty (30) calendar days advance written notice directly to City at the same address listed in paragraph 8.4 of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

8.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, BDA and/or BDA's subcontractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City at the address listed in paragraph 8.4. City shall have the option to suspend BDA's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.7 In addition to any other remedies the City may have upon BDA's and/or BDA's subcontractor'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 BDA to stop work hereunder, and/or withhold any payment(s) which become due to BDA hereunder until BDA and/or BDA's subcontractor demonstrates compliance with the requirements hereof.

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

8.9 It is agreed that BDA's and/or BDA's subcontractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

8.11 BDA agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in paragraph 8.3 from each subcontractor to BDA and provide a Certificate of Insurance and Endorsement that names BDA and the City as an additional insured.

IX. WORKERS COMPENSATION INSURANCE COVERAGE

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

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 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 BDA's/contractor'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 BDA has undertaken to perform on the Project, regardless of whether that person contracted directly with BDA and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

9.4 BDA must provide a certificate of coverage to the City prior to being beginning construction under this Agreement and prior to awarding any contract for construction of Public Improvements.

9.5 If the coverage period shown on BDA's current certificate of coverage ends during the duration of the project, BDA 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 BDA shall obtain from each person providing services on the Project, and shall provide to the City:

- a. a certificate of coverage, prior to that person beginning work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- b. no later than seven days after receipt by BDA or BDA's subcontractor, 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 project.

9.7 BDA shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

9.8 BDA shall notify the City in writing by certified mail or personal delivery, within 10 days after BDA 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 BDA 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 BDA shall contractually require each person with whom it contracts to provide services on the Project, to:

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

- e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f. notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. contractually require each person with whom it contracts with, to perform as required by subparagraphs a-g, 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, BDA is representing to the City that all employees of BDA who will provide services on the Project will be covered by workers' compensation coverage for the duration 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 BDA to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 BDA's failure to comply with any of these provisions is a breach of contract by BDA which entitles the City to declare the Agreement void if BDA does not remedy the breach within ten (10) days after receipt of notice of breach from the City without necessity of the ninety (90) day cure period as set forth in Article X.

X. DEFAULT AND TERMINATION

10.1 In the event that BDA or its contractors fail to commence construction of the Project, fail to complete construction of the Project, or fail to perform any other obligation pursuant to the Final Project Plan and Final Financing Plan, or any other term of this Agreement, the City and/or the Board may declare a material breach and notify BDA by certified mail. The City or Board may terminate this Agreement if BDA 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, BDA shall return any payments under this Agreement for the construction of Public Improvements for any Phase under development at the time of the default within ninety (90) calendar days after receiving written notice from the City and/or the Board that BDA has defaulted on this Agreement; EXCEPT that no refund is due if BDA, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes BDA's obligations under this Agreement, pursuant to Article XVI (Assignment) herein.

10.2 After sending notice of failure under paragraph 10.1 above, the City shall not distribute Certificates of Obligation to BDA until the BDA's default is cured. If the default is not cured, the City may retain all undistributed Certificates of Obligation for distribution to the City. Likewise, the City and Board shall not distribute TIF Funds to BDA until BDA's default is secured. If the default

is not cured the City and the Board may retain all undistributed TIF Fund money for distribution to the City.

10.3 Notwithstanding paragraph 10.1 above, in the event the Board and/or BDA 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 BDA shall be in default of this Agreement.

XI. INDEMNIFICATION

11.1 BDA and the CITY acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, § 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

11.2 No Joint Enterprise. There is no intention on the part of BDA or the CITY to create or otherwise form a joint enterprise under or pursuant to this Agreement. BDA and the CITY are undertaking a governmental function or service. BDA is engaging in redevelopment of base property and areas around the base property pursuant to Local Government Code Chapter 379B. The CITY also is promoting redevelopment of the same area through creation of the TIF Zone pursuant to the Act. BDA and the CITY do not have a pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not gain a profit. BDA and the CITY do not have equal right of control. BDA has a superior right to control the direction and management of the enterprise solely for liability purposes under this Agreement and/or solely by virtue of its responsibility for the day-to-day management and control of the premises.

11.3 BDA covenants and agrees to have each of its subcontractors FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, volunteers and representatives of the CITY) and the BOARD (and the officials, employees, officers, directors, volunteers and representatives of the BOARD), individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY and/or BOARD directly or indirectly arising out of, resulting from or related to BDA'S subcontractor's activities under this Agreement, including any acts or omissions of any agent, officer, director, representative, employee, consultant or subcontractor of BDA'S subcontractor and their respective officers, agents, employees, directors, and representatives while in the exercise or performance of the rights or duties under this Agreement.

The indemnity provided in the forgoing paragraph shall not apply to any liability resulting from the sole negligence of the CITY (and the elected officials, employees, officers, directors, volunteers and representatives of the CITY) or the BOARD (and the officials, employees,

officers, directors, volunteers and representatives of the BOARD), in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

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

BDA shall advise the CITY and the BOARD in writing within 24 hours of any claim or demand against the CITY, the BOARD, or BDA known to BDA related to or arising out of BDA'S subcontractor's activities under this Agreement. BDA's subcontractor shall see to the investigation and defense of any such claim or demand against BDA'S subcontractor, the CITY or the BOARD at BDA'S subcontractor's sole cost until the CITY or the BOARD is found to be negligent by a court of competent jurisdiction. The CITY and the BOARD shall have the right, at their option and at their own expense, to participate in such defense without relieving BDA'S subcontractor of any of its obligations under this paragraph.

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.

XII. SITE INSPECTION AND RIGHT OF ENTRY

12.1 BDA shall allow the City and/or the Board access to the Project property owned or controlled by BDA 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 BDA's compliance with this Agreement. BDA 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 employees and agents to conduct random non-destructive walk-throughs and monitoring of the properties and structures.

XIII. RESPONSIBILITY OF THE PARTIES

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

13.2 To the extent permitted by Texas law, no director, officer, employee or agent of the City or the Board 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 BDA of the books and records related to this Agreement with the City (including such items as contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or BDA'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 BDA's services, provided that such audits are related to those services performed by the Board and/or BDA for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or BDA.

14.2 All applicable records and accounts of the Board and/or BDA relating to this Agreement, together with all supporting documentation, shall be made available in Bexar County, Texas by the Board and/or BDA 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 BDA 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 BDA of such discrepancies. The Board and/or BDA 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 BDA 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 BDA for the year in which the discrepancy occurred, then the City is entitled to a refund as a result of such overcharges and BDA 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 BDA nor any failure or delay by the City, the Board or BDA 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 BDA 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 BDA. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send BDA written notice of such assignment within fifteen (15) days of such assignment.

16.3 BDA 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 BDA under this Agreement. This restriction on BDA'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 only be 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 BDA's subcontractors with this Agreement shall be the responsibility of BDA. Copies of those written contracts must be submitted with the CPPR in order to be considered eligible Project Costs.

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

16.6 Any restrictions herein on the transfer or assignment of BDA'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, BDA 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 BDA shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of BDA from further observance or performance by BDA 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 Sixteen
City of San Antonio, Texas
C/O Housing and Neighborhood Services Dept.
ATTN: David D. Garza, Director
City of San Antonio
1400 S. Flores
San Antonio, Texas 78204
FAX: (210) 207-7914

BROOKS DEVELOPMENT AUTHORITY

Mr. Bart Sanchez
Chief Financial Officer,
Brooks Development Authority,
1 B.D.A. Crossing, Suite 100
San Antonio, Texas 78235
FAX: (210) 678-3339

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 BDA 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 BDA each warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Board and BDA each further warrants and certifies that each member of the Board and that BDA has tendered to the City a **Discretionary Contracts Disclosure Statement**, provided as **Exhibit E**, 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 BDA at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or BDA respectively shall be independent contractors of the Board and/or BDA. 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 BDA 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, LICENSES AND PERMITS

20.1 To the extent required by law, BDA 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 BDA or upon the business conducted on the Zone Property or upon any of BDA's property used in connection therewith, including employment

taxes; and BDA shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by BDA.

20.2 BDA shall include in the CPPR submission evidence of payment or exemption of the taxes and fees above.

XXI. PREVAILING WAGES

21.1 The TIF program is a discretionary program, and the Board and BDA 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. 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. BDA is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the BDA calls for bids for construction of a given Phase. BDA is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with BDA's general contractor and all subcontractors for construction of each Phase. BDA 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 BDA or any subcontractor under BDA. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve BDA from its 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. BDA shall convene a pre-construction meeting to be held with any contractors and invite the Labor Compliance Office of the City to said meeting before proceeding with construction on any Phase.

XXII. CHANGES AND AMENDMENTS

22.1 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 BDA and evidenced by passage of a subsequent City ordinance, as to the City's approval.

22.2 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 by such amendment. In the event an amendment to the phasing of the Construction Schedule will result in a material change to the overall Final Project Plan or Final Financing Plan, then such amendment shall comply with the requirements of paragraph 22.1, above. No change under this section may result in an increase in the maximum contribution of the City. BDA 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.

22.3 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 BDA'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.

XXIII. SEVERABILITY

23.1 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.

XXIV. LITIGATION EXPENSES

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

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

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

24.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or BDA 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.

XXV. LEGAL AUTHORITY

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

XXVI. VENUE AND GOVERNING LAW

26.1 This Contract shall be governed by the laws of the State of Texas.

26.2 Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

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

XXVII. PARTIES' REPRESENTATIONS

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

XXVIII. CAPTIONS

28.1 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.

XXIX. ENTIRE AGREEMENT

29.1 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.

29.2 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 1.15 above, this Agreement will become effective on the date of the last signature:

CITY OF SAN ANTONIO

BROOKS DEVELOPMENT AUTHORITY

SHERYL SCULLEY
City Manager
City of San Antonio
Date: _____

BROOKS DEVELOPMENT AUTHORITY,
a Defense Base Development Authority
By: Donald E. Jakeway, President and CEO
Date: _____

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

CITY CLERK

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

Leticia M. Vacek
City Clerk
Date: _____

Approved as form: _____
City Attorney

Date: _____

EXHIBIT A

Construction Schedule

EXHIBIT B
Project Status Report

EXHIBIT C
Prevailing Wage Rates

EXHIBIT D

Form and Requirements of Contract Progress Payment Request

EXHIBIT E

City of San Antonio's Discretionary Contracts Disclosure Form

EXHIBIT F
SBEDA Contract Provisions

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS
BROOKS DEVELOPMENT AUTHORITY, and
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER SIXTEEN,
CITY OF SAN ANTONIO, TEXAS
As Amended 6/18/2009**

This Development Agreement ("Agreement"), pursuant to Ordinance No. 2008-05-08-0357, passed and approved on the 8th day of May, 2008, and subsequently amended pursuant to Ordinance No. 2009-06-18-____, passed and approved on the 18th day of June, 2009 is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas ("the City"); Brooks Development Authority, a Defense Base Development Authority, created under Chapter 379B of the Texas Local Government Code ("BDA"); and the Board of Directors for Reinvestment Zone Number Sixteen, 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, the City was instrumental in establishing the legislation to allow the creation of a Defense Base Development Authority; and

WHEREAS, on September 27, 2001, City Council created the Brooks Development Authority ("BDA"), by passing Resolution 2001-36-39, for the purposes of accepting title to 1,300 acres of real property of the former Brooks Air Force Base and engaging in the redevelopment of the installation to transition it into a business and technology park; and

WHEREAS, by Ordinance Number 100073, 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 Sixteen, City of San Antonio, Texas ("TIF Zone") in accordance with the Act, to promote development and redevelopment of the Zone Property through the use of tax increment financing, in 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 TIF Zone; and

WHEREAS, this City-initiated TIF Zone was designed to leverage ongoing area development in support of a special joint project between the U.S. Air Force and the City to successfully convert and redevelop the former Brooks Air Force Base; and

WHEREAS, the City has contributed \$10,736,000 to BDA for capital improvements, via such ordinances as No. 2007-01-18-0082 and No. 2008-02-14-0113, and has generally supported BDA through City funds to cover certain operating expenses of BDA; and

WHEREAS, 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 reinvestment zone, plus other costs incidental to those expenditures and obligations, consistent with the Final 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 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 2nd day of May, 2008, the Board adopted and approved a Final Project Plan, a Final Financing Plan, and an Agreement providing for development of the Zone Property; and

WHEREAS, the City approved the Final Project Plan and Final Financing Plan for the TIF Zone by Ordinance Number 2008-05-08-0367 on the 8th day of May, 2008 and authorized the City Manager of the City of San Antonio or her designated representative to execute the original Agreement on behalf of the City, and to bind the City to the terms and conditions of this Agreement; and

WHEREAS, the City wishes to issue further Certificates of Obligation, the proceeds of which will be used by BDA to fund Public Infrastructure within the TIF Zone, some of which will be reimbursed by Tax Increment; and

WHEREAS, the City, BDA, and the Board need to clarify the additional responsibilities arising with the use of the Certificates of Obligation proceeds for the subsequent development of Public Improvements through an amendment of the original Agreement; and

WHEREAS, pursuant to the Act (as amended) and City of San Antonio Ordinance Number 100073, dated December 9, 2004, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Final Project Plan and Final Financing Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

WHEREAS, on the 5th day of June, 2009, the Board adopted and approved an amended Agreement and the BDA approved the amended Agreement on the 9th day of June, 2009; and

WHEREAS, the City approved the amended Agreement by Ordinance Number 2009-06-18-_____ on the 18th day of June, 2009 and authorized the City Manager of the City of San Antonio or her designated representative to execute the amended Agreement on behalf of the City, and to bind the City to the terms and conditions of the amended Agreement; and

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

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

I. DEFINITIONS

- 1.1 The "City," the "Board" and "BDA" shall have the meanings specified above.
- 1.2 "Act" means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as it may be amended from time to time.
- 1.3 "Administrative Costs" means reasonable costs directly incurred by the City related to its agreement to participate in the development of the TIF Zone, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the TIF Zone incurred prior to entering into this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective. The initial startup Administrative Costs for the City are seventy-five thousand dollars (\$75,000.00). The Parties also agree that the ongoing annual Administrative Costs during the life of the TIF Zone is limited to \$15,000.00 per fiscal year. The total Administrative Costs to be paid out of the TIF Fund are capped at four hundred twenty thousand dollars (\$420,000.00) for the life of the TIF Zone.
- 1.4 "Agreement" means this document by and among the City, the Board and BDA, which may be amended from time to time.
- 1.5 "Available Tax Increment Funds" means the Tax Increment contributed by the City to the fund established and maintained by the City for the purpose of implementing the projects of the TIF Zone less the City's Administrative Costs and any debt obligation of the City for debt dedicated to BDA's development of Public Improvements within the TIF Zone.
- 1.6 "BDA" means Brooks Development Authority.
- 1.7 "CIMS" means the City's Capital Improvements Management Services Department or any subsequent City department that will oversee the City's capital improvement projects.
- 1.8 "City Manager" means the City Manager of the City or her designee.
- 1.9 "City Code" means the City Code of the City of San Antonio, as amended.
- 1.10 "City Project Administration Costs" means the funds in the amount of up to 4% of the contract amount that may be withheld by the City to recoup its project management costs in overseeing the proper construction of Public Improvements with the proceeds of Certificates of Obligation. For example, the initial issuance of ten million four hundred fifty-five thousand dollars (\$10,455,000.00) in Certificates of Obligation for use by BDA would allow the City to recover up to four hundred eighteen thousand two hundred dollars (\$418,200.00) for its actual project management costs.
- 1.11 "Completion" means construction of a Public Improvement in the TIF Zone in accordance with the engineer's design, Final Project Plan, Final Financing Plan and this Agreement. In order for a Public Improvement to have achieved a state of "Completion", the improvement must:

- a. be inspected by a 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
- b. be approved by the City as evidenced by a letter of acceptance issued by an authorized official of the City; and
- c. 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.

1.12 "Construction Schedule" means the timetable for constructing the improvements specified in the Final Project Plan, Final 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.

1.13 "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 payment due BDA for work in accordance with the Public Improvements in the Final Project Plan and the timeline detailed in **Exhibit A**, Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.

1.14 "CPPR Approval" means a written acknowledgment from the City to BDA that the Contract Progress Payment Request was completed and submitted correctly, and that the Contract Progress Payment Request is ready for presentation to the Board for approval and consideration for payment to BDA.

1.15 "Effective Date" means the date that the last party signs this Agreement.

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

1.17 "Final 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 Council, which Plan is hereby incorporated by reference into this document as if set out in its entirety, for all purposes.

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

1.19 "Phase" means a portion of the Project that is being constructed by BDA, normally being a set number of units constructed or acres of the Zone Property being developed during a specific period.

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

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

1.22 "Project Status Report" means a report, prepared and submitted by BDA in accordance with the requirements of paragraph 5.5, paragraph 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.

1.23 "Public Improvements" include those improvements that provide a public benefit and that are listed in the Final Project Plan and the Final Financing Plan. When an improvement has both private and public benefits, only that portion which is dedicated to the public may be paid to BDA, such as, but not limited to, grading and environmental studies.

1.24 "Public Infrastructure" includes any infrastructure owned and maintained by a public entity including but not limited to streets, street landscaping, utilities, drainage, street light, street signs etc.

1.25 "Tax Increment" has the meaning assigned by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the TIF Zone.

1.26 "TIF" means Tax Increment Financing.

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

1.28 "TIF Unit" means the employees of the City's Housing and Neighborhood Services Department responsible for the management of the City's TIF Program.

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

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

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex or neutral.

II. REPRESENTATIONS

2.1 Financial Instruments. The City, the Board and BDA represent that they understand and agree that the City may issue bonds, notes, certificates of obligation, or other financial instruments to cover any Project Costs directly or indirectly related to BDA's improvements in the TIF Zone under this Agreement. BDA and the Board will not be parties to the City's bonds, notes, certificates of obligation, or other financial instruments; however, TIF revenues will be used to cover any and all costs related to bonds, notes, certificates of obligation, or other financial instruments as necessary. The City will annually review the status of the TIF Fund, anticipated Tax Increment to be collected, and the Public Improvements to be constructed in the near term and may issue bonds, notes, certificates of obligation, or other financial instruments as necessary. Any issuance by the City of bonds, notes, certificates of obligation, or other financial instruments does not require amendment of the Final Financing Plan as long as the maximum total contribution by the City does not exceed fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00).

2.2 City's Authority. The City represents to BDA that as of the Effective Date 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 BDA that, as of the date of the Board's signature to this document, the TIF Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 100073, 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 BDA's Authority and Ability to Perform. BDA represents to the City and to the Board that BDA is a Defense Base Development Authority, created under Chapter 379B of the Texas Local Government Code; that BDA is a political subdivision in the State of Texas; that BDA has been authorized by its governing body to enter into this Agreement and to perform the requirements of this Agreement; that BDA's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; and that BDA shall have sufficient capital to perform all of its obligation under this Agreement whether from the City or other sources when it needs to have said capital or agrees to seek all available sources of funding in accordance with paragraph 5.19.

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

2.6 Payments. The City and BDA may rely upon the payments to be made to them out of the TIF Fund or City debt proceeds dedicated to BDA's development of Public Improvements within the TIF Zone as specified in this Agreement, but BDA's right to such payments is subject to the other limitations of this Agreement. The City shall issue a check or other form of payment made payable only to the BDA.

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

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

2.9 **No Interlocal Agreements.** The City, the Board and BDA represent each to the others that they understand and agree that the City is the only taxing entity contributing a percentage of its tax increment to the TIF Fund, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

2.10 **BDA Bears Risk.** BDA represents that it understands that any payment from City debt proceeds dedicated to BDA's development of Public Improvements within the TIF Zone shall not be, nor shall be construed to be, financial obligations of the Board. BDA shall bear all risks associated with payments from City, including, but not limited to: pre-development agreement costs, 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. BDA recognizes that any liability or obligation incurred in anticipation of payments from City debt proceeds without a Board approved Phase development plan will be BDA's responsibility.

2.11 **Not an Obligation of the General Fund.** BDA represents that it understands that any payments made to BDA from tax increments are never obligations of the general funds of the City, but only obligations of the TIF fund, and subject to limitations.

III. THE PROJECT

3.1 **The Project.** The Project is projected to include the following Public Improvements to be constructed by BDA: New Braunfels Infrastructure Project (Phases I through V) and other street and Public Infrastructure projects as more thoroughly set forth in the Final Project Plan and Final Financing Plan.

3.2 **Competitive Bidding.** Contracts for the construction of Public Improvements by or on behalf of BDA shall be competitively bid in compliance with Chapter 252 of the Local Government Code and be constructed, in compliance with all applicable law unless: (1) Debt proceeds provided by the City or Available Tax Increment Funds go toward financing 30 percent or less of the cost for a specific Public Improvement, in compliance with the Developer Participation Contract statutes

currently found in Subchapter C in Section 212 of the Local Government Code; and (2) such Public Improvement is not a building of any sort.

3.3 Financing. BDA may use any or part of the Zone Property that it owns or manages 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 may issue bonds, notes, certificates of obligation, or other financial instruments to cover any Project Costs directly or indirectly related to BDA's improvements in the TIF Zone under this Agreement. BDA acknowledges that any debt proceeds provided by the City may only be used to fund Public Improvements within the TIF Zone.

BDA acknowledges that the priority of payment within the Available Tax Increment Funds will be to the City for payment of the City's debt incurred and dedicated to the BDA's development of Public Improvements within the TIF Zone until such time as all such debt is no longer outstanding.

If there are not sufficient Available Tax Increment Funds on hand sixty (60) days prior to each semiannual debt service payment date to pay the City's debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone, BDA will be required to make up the shortfall within thirty (30) days upon notice by the City of such shortfall to the extent BDA has available funds. Should BDA have exhausted its resources and a shortfall remains, then BDA agrees in good faith to utilize all funding options available and permitted by law to cure such shortfall.

BDA has the ability to pay off any City's debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone at anytime, as long as the payment includes all costs for the City to defease such debt.

Should there be no current City debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone, the City and the Board pledge to use Available Tax Increment Funds to pay BDA for eligible Project Costs it has expended.

3.4 Payment. The total payment to BDA under this TIF Zone will not exceed fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00) and is not intended to cover all of BDA's costs incurred in connection with performing its obligations under this Agreement. The parties hereto agree that the priority of payment within the Available Tax Increment Funds will be to the City for payment of the City's debt incurred and dedicated to the BDA's development of Public Improvements within the TIF Zone until such time as all such debt is no longer outstanding.

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 BDA receives final payment for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or (iii) September 30, 2029, provided that all existing warranties on the Project shall survive termination of this Agreement.

V. DUTIES AND OBLIGATIONS OF BDA

5.1 **Compliance with Laws and Ordinances.** BDA shall comply with applicable provisions of the 2004 TIF 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, BDA agrees to complete, or cause to be completed, the Public Improvements described in the Final Project Plan, Final Financing Plan and in this Agreement. BDA agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. BDA 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 the Public Improvements in the Zone Property.

5.3 **Commencement of Construction.** From the Effective Date of this Agreement forward, BDA shall not commence any construction on any Phase of the Project until the plans and specifications for that Phase have been approved in writing by the appropriate department of the City and all federal and state law requirements have been met.

5.4 **Payment and Performance Bonds.** BDA must ensure that its contractors deliver original Chapter 2253 Performance and Payment Bonds and BDA must provide a copy of the Bonds to the City prior to construction in order for the Public Improvements to be eligible for payment. BDA agrees that Performance and Payment Bonds shall meet the minimum standards for these bonds set by the City's Risk Management Division. Failure to meet the City's minimum standards for these bonds prior to the commencement of construction will be considered a breach of contract. The bonds shall name both the City and BDA as beneficiaries or obligees 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.

BDA shall maintain and make available for inspection all original Payment and Performance Bonds with copies to CIMS and the TIF Unit. CIMS shall determine whether the bonds meet the minimum standards. Without limiting other material breaches, failure of BDA to ensure the compliance of its contractor with this paragraph or Chapter 2253 of the Texas Government Code is a material breach of this Agreement, and the City may exercise the full range of legal remedies available to the City, including but not limited to: terminating the TIF Zone and/or exercising its rights under Article X.

5.5 **Supervision of Construction.** BDA 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 2004 TIF Guidelines, the Final Project Plan, the Final 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 Board and the appropriate department of the City. BDA 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 BDA to comply with this paragraph is a material breach of this Agreement, and the City may terminate the TIF Zone and exercise the full range of legal remedies available to the City.

5.6 No Vesting of Rights. BDA agrees that the TIF program is a discretionary program and that the City has no obligation to extend TIF to BDA. In exchange for receiving TIF, BDA 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. BDA 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. BDA 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 BDA'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 BDA does not complete the Project substantially in accordance with the Construction Schedule, then the parties, in accordance with Section 22.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the TIF Zone. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if BDA 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. BDA acknowledges that it is aware that the City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicant, BDA, BDA's contractors, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, partnership, association, and any other legal entity. This TIRZ may not be terminated for violations of this policy which occur more than sixty (60) days prior to the execution of this Agreement.

5.10 Small, Minority or Women-owned Business Enterprises. With respect to Public Improvements, BDA 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 Final Project Plan, Final Financing Plan or this Agreement. This policy is contained in City Ordinance 2007-04-12-0396 and its subsequent amendments. BDA shall require all its applicable contractors to comply with City Ordinance 2007-04-12-0396 and its subsequent amendments or any other ordinance adopted to repeal and replace City Ordinance 2007-04-12-0396. BDA must use the language provided in Exhibit F, or any subsequent revision provided by the City, modified as necessary, in its subcontracts for any construction or project management of work required to be performed under the Final Project Plan, Final Financing Plan or this Agreement.

5.11 Tree Ordinance. In accordance with paragraphs 5.5 and 5.6 above, BDA 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 Duty to Maximize Tax Increment and Available Tax Increment Funds. BDA 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.

Further, BDA shall contractually require any hospital development to maintain a taxable entity status for ad valorem tax purposes for the life of the TIRZ or for as long as the City has issued bonds, notes, certificates of obligation, or other financial instruments to cover any Project Costs directly or indirectly related to BDA's Public Improvements in the TIF Zone under this Agreement. To maximize both Tax Increment and Available Tax Increment Funds, BDA will attempt to contractually require development by other developers, in the TIF Zone to maintain a taxable entity status for ad valorem tax purposes for the life of the TIRZ or for as long as the City has issued debt under this Agreement.

The City will notify BDA when it no longer intends to issue future bonds, notes, certificates of obligation, or other financial instruments. Only after such notice from the City and the City's retirement of all debt related to BDA's Public Improvements, may BDA remove the contractual requirement that a development maintain a taxable entity status for ad valorem tax purposes.

5.13 Infrastructure Maintenance.

- a. BDA 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 paragraph 1.11 and for one (1) year after Completion.
- b. Upon acceptance of a street or drainage improvement for maintenance by the City, BDA or its contractor 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 BDA, its contractor or the bond company and shall not be paid out of the TIF Fund.

- c. After the expiration of the one (1) year extended warranty bond, the cost of the repair, replacement and maintenance of the Public Infrastructure shall be the responsibility of the City; and, the City shall be reimbursed from the Available Tax Increment Funds for those costs it must incur, including, but not limited to: demolition, rebuilding, engineering, design, re-construction or any other cost necessitated by the failure without regard to fault or degree of any Public Infrastructure which is discovered within the second (2nd) through fifth (5th) years after Completion of said infrastructure. Future issuance of City debt may be hindered should the City have to divert Available Tax Increment Funds to make such repair, or replacement, or perform such maintenance.
- d. It shall be no defense to the City's reimbursement of itself out of the TIF Fund that the City or its agents have inspected, accepted or approved the Public Infrastructure. Approval or acceptance of Public Infrastructure is not a waiver of claims under this subparagraph. The City may attempt multiple repairs on the same infrastructure and reimburse itself for each attempt.
- e. BDA, 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, BDA shall use its best efforts to dedicate (or grant a public easement) to the Public Improvements where applicable to the appropriate public entity (as determined by the City), at no additional cost or expense to the City or any other public entity within sixty (60) days after Completion and acceptance of the improvements.
- f. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee or other official of the City or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a City employee or agent do not work an estoppel against the City under this Agreement or the Unified Development Code.

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

5.15 Duty to Cooperate. BDA 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 determining BDA's compliance with this Agreement.

5.16 Universal Design and Determination of Tax Increment Portion. BDA shall comply and by contract shall cause contractors to comply with the City's Universal Design Policy as required by the City Code. The City and/or Board shall provide written notice to BDA of the noncompliance with Universal Design Policies. BDA has ninety (90) days from date of notice to address and cure noncompliance. If BDA fails to cure noncompliance issues within the ninety (90) day period, the

City may, in its sole discretion, and without Board action exercise its rights in accordance with Article X herein.

5.17 Quarterly Status and Compliance Reports. BDA shall submit to the City and the Board written and signed Project Status Reports (see paragraphs 1.22 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 day 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, BDA understands that no Available Tax Increment Funds will be paid to BDA and the City may exercise its rights in accordance with Article X herein.

5.18 Duty to Comply. BDA 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 Reconciliation. BDA will provide the City within ninety (90) days of the effective date of the amended Agreement an accounting of the capital improvements undertaken by BDA with any funds provided by the City or with funds to be reimbursed by certificates of obligation including supporting documentation of the accounting, such as invoices.

5.20 Proceeds from Certificates of Obligation. The City, as explained fully in paragraph 3.3, intends to issue a series of certificates of obligation, the proceeds of which will be used by BDA to make the planned Public Improvements within the TIF Zone. Initially, the City will make available ten million four hundred fifty-five thousand dollars (\$10,455,000.00) in certificates of obligation of which two million five hundred thousand dollars (\$2,500,000.00) will not be reimbursed via Tax Increment while the debt service on the remaining seven million nine hundred fifty-five thousand dollars (\$7,955,000.00) will be reimbursed via Tax Increment. Work done on Public Improvements by BDA with the proceeds of certificates of obligation will be overseen by the Director of CIMS or his designee per this paragraph and its subparagraphs both for the initial ten million four hundred fifty-five thousand dollar (\$10,455,000.00) funding with certificates of obligation as well as all such future funding with certificates of obligation. The total debt service on certificates of obligation authorized under this Agreement together with any reimbursable administrative expenses will not exceed fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00)

- a. CIMS shall contact BDA as designated in paragraph 17.1 should it have any questions or need clarification. BDA shall convey any reports required under this paragraph to CIMS at the following:

City of San Antonio
CIMS
P.O. Box 893366
San Antonio, Texas 78283-3966
FAX: (210) 207-7196
Email: anibal.gutierrez@sanantonio.gov

With a copy to:
City of San Antonio
Center City, TIF Unit
P.O. Box 839966
San Antonio, Texas 78283-3966
FAX: (210) 207-5416
Email: jonathan.lane@sanantonio.gov

- b. Before the certificates of obligation proceeds are released to BDA, BDA shall submit to CIMS a scope of work (the "CO Project") describing the Public Improvements and their construction schedule to be undertaken with the proceeds. BDA will also provide map(s) depicting the location of the planned Public Improvements within the CO Project.
- c. BDA shall provide to City their plans and specifications for any Public Improvements included in the Final Project Plan and part of the CO Project and such plans and specifications shall be subject to the review and approval of CIMS. After approval by City, BDA shall not make any substantial changes to the plans and specifications without prior written approval of CIMS. City agrees to provide approvals within thirty (30) days of receiving complete plans. The approvals given in this subparagraph do not relieve BDA of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions, including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).
- d. BDA or BDA's Chief Financial Officer, or his designee, shall obtain a City portal account to access the Project Management Portal ("Portal"). BDA shall give CIMS and the TIF Unit an acceptable project schedule in Primavera or MS Project. BDA will update the schedule to reflect actual progress and provide it to CIMS and the TIF Unit by the fifth day of the following month (i.e., July 5th for June update). An acceptable schedule will include but not be limited to overall project phases and associated design, advertisement and construction periods, significant design submittals and steps, major construction phases, and any other tasks or milestones that would assist in understanding the project.
- e. BDA shall submit all future changes in the CO Project, including any design enhancements, to the CIMS Director or his designee for review and approval to ensure compatibility with the previously approved plans and specifications.
- f. City shall have authority to inspect the CO Project throughout the construction process to ensure compliance with the approved plans and specifications. BDA shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the approved plans and specifications. BDA shall have submitted all said certification to the CIMS Director or his designee at the completion of the said CO Project. City shall have the right to withhold funding until such certifications are provided.
- g. Beginning on January 31, 2010, and on each succeeding January 31 while BDA is constructing or has commissioned construction of Public Infrastructure under this Agreement, BDA shall provide to City an annual report detailing BDA's compliance with the City's Small Business Economic Development Advocacy Program including a description of BDA's SBEDA Program and results of any scoring criteria generated under City Ordinance 2007-04-12-0396, any subsequent ordinance, or BDA's own program goals. City has the right to request supporting records to verify BDA's actual SBEDA achievement.

- h. BDA shall cause any contracting and bidding for the CO Project to separately identify allowable costs to ensure full compliance with the limitations placed on City's use of the bond funds. In particular, BDA shall only expend City's funds for the approved CO Project.
- i. Prior to any reimbursement or payment, City will have the right to inspect work completed on the CO Project to ensure conformance with the approved plans and specifications and to review invoices and payments for compliance with this Agreement.
- j. All BDA requests for reimbursement of a CO Project shall be submitted monthly through the City's Portal. BDA shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing the Portal sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on the Portal and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, BDA must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the Portal.
- k. City agrees to provide BDA written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide BDA thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to BDA and not spent by BDA strictly in accordance with the terms of this Agreement or not supported by adequate documentation to fully justify the expenditure.
- l. Unless City has questions concerning expenditure by BDA on a CO Project, City agrees to provide payment to BDA within thirty (30) working days of receipt of completed invoice as described above.
- m. Funds in the amount of up to four percent (4%) of the contract amount, four hundred eighteen thousand two hundred dollars (\$418,200.00) for the initial CO Project, may be withheld by the City for City Project Administration Costs. Actual City Project Administration Costs will be calculated using the most recent cost allocation plan and indirect cost proposal for the CIMS. Currently the cost allocation plan is designed for CIMS to recover costs from project work efforts based on the actual time spent on the project, plus markup of non-billable hours, plus the indirect cost rate. Actual City Project Administration Costs will be charged in this manner to the project work effort on a monthly basis until the 4% cap has been charged by the City. At the end of the CO Project, any funds remaining in the work effort in excess of the 4% cap for City Project Administration Costs will be provided to BDA if allowable expenses are submitted to the City and the City has determined that it would be in its best interest to pay said expenses. BDA may be reimbursed with Tax Increment for the City Project Administration Costs that it incurs.

- n. Upon BDA's preparation of a construction schedule and budget for the CO Project, BDA shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in BDA's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting BDA's operations hereunder. Only the costs for construction and design expenditures for the CO Project shall be considered allowable. The following shall not be considered allowable CO Project costs:
- Personnel costs, salaries or wages paid directly by BDA or other similarly affiliated organization,
 - Travel and travel-related expenses,
 - Costs or fees for consultant and/or professional services, except for those directly related to the CO Project,
 - Costs or fees associated with attendance at meetings, seminars, or conferences,
 - Costs or fees associated with regular maintenance and operation,
 - Fundraising,
 - Equipment and furnishings, unless part of BDA's approved plans and specifications,
 - Advertising, except for bid solicitation, and
 - Political activities.
- o. Written requests for prior approval shall be BDA's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to a CO Project shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

5.21 **Preconstruction Meeting.** BDA shall also convene a pre-construction meeting to be held with any contractors or subcontractors and to include the TIF Unit, CIMS, and Labor Compliance Office of the City before proceeding with construction on any Phase. One purpose of the meeting is to provide a review and explanation of the City reporting requirements under the Agreement.

5.22 **Seeking Additional Capital Funding from the City.** BDA acknowledges and agrees in good faith to seek all other available funding sources, including applying for grants, before seeking additional capital funding from the City through the City's Capital Budget process during the life of the TIF Zone. Upon request from BDA for additional capital funding, the City will review BDA's then current funding issues.

VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD

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

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, termination of the TIF Zone, and any reimbursement of the City under paragraph 5.13, the City and the Board hereby pledge City debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone and/or Available Tax Increment Funds to BDA, 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 TIF Unit, and that all notices for meetings of the Board shall be timely received and posted by City staff, in accordance with Chapter 2, Article IX, of the City Code.

6.4 **Collection Efforts.** The Board shall use reasonable efforts to cause the City to levy and collect its ad valorem taxes in the TIF Fund and to contribute its portion of the Available Tax Increment Funds towards first repaying any necessary debt obligation of the City for debt dedicated to BDA's development of Public Improvements within the TIF Zone and then any Administrative Costs before paying BDA for the construction of the Public Improvements required under the Final Project Plan, Final Financing Plan and this Agreement.

6.5 **Letter of Acceptance.** The City and the Board shall use reasonable efforts to issue, or cause to be issued a letter of acceptance for items satisfactorily brought to Completion by BDA in constructing this Project.

6.6 **Payment Requests.** The City and the Board hereby agree that all payment requests from BDA not submitted via the Portal as described in paragraph 5.20(j) shall be initiated by the submission of a CPPR form, attached hereto as **Exhibit D**. City payments to BDA for Public Improvements within the TIF Zone may only be made given prior approval by the Board of a Phase development plan under which such payments are authorized.

VII. COMPENSATION TO BDA

7.1 **Obligation Accrues as Increment is Collected.** The City's obligation to contribute its Tax Increment payments to the TIF Fund shall accrue as the City collects its Tax Increment. The City agrees to deposit its Tax Increment payments in the TIF Fund on or before April 15 and September 15 (or the first business day thereafter) of each year.

7.2 **CPPR Approval.** BDA 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 payment authorization only after the City review and approval, as evidenced by a written CPPR Approval issued by the City.

7.3 **Maximum Compensation to BDA.** Following the Board's authorizations, BDA shall receive, in accordance with the Final Financing Plan and the Final Project Plan, total payment for Public Improvements including financing cost of a maximum of fifty-five million four hundred sixty-four thousand twenty-seven dollars (\$55,464,027.00), as full payment for designing and

constructing the Public Improvements required under the Final Project Plan, Final Financing Plan and this Agreement.

7.4 Processing of Payment Requests. Board-authorized payment from City debt proceeds shall be made to BDA within thirty (30) days, if BDA is in compliance with laws, statutes, ordinances and the requirements of this Agreement. Board-authorized reimbursements of Available Tax Increment Funds shall be made to BDA within thirty (30) days after deposit of a Tax Increment payment to the TIF Fund, if BDA is in compliance with laws, statutes, ordinances and the requirements of this Agreement.

7.5 Order or Priority of Payment. The parties agree that the City and the Board may use funds in the TIF Fund to pay eligible expenditures in the following order or priority of payment: (i) to repay any necessary debt obligation of the City for debt dedicated to BDA's development of Public Improvements within the TIF Zone; (ii) to reimburse eligible startup Administrative Costs incurred by the City in an amount not to exceed seventy five thousand dollars (\$75,000.00); (iii) to pay all other ongoing Administrative Costs to the City for administering the TIF Fund and/or the TIF Zone as defined and limited in Section 1.3; (iv) to reimburse the City for costs of the repair, replacement, and maintenance of Public Infrastructure and associated costs as described in this Agreement; (v) to reimburse the City under any reclaim of funds pursuant to Article X; and (vi) to pay BDA for Public Improvements, including financing costs, as provided in this Agreement and in the Final Project Plan to the extent that funds in the TIF Fund are available for this purpose and all outstanding certificates of obligation issued for CO Projects are paid and are no longer outstanding. The foregoing notwithstanding, no funds will be paid from the TIF Fund to any party of this Agreement for its financial or legal services in any dispute arising under this Agreement.

7.6 Partial Payments. If TIF 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 TIF Funds become available. No fees, costs, expenses or penalties shall be paid to any party on any late payment. However, if there are insufficient Available Tax Increment Funds to pay City's debt incurred and dedicated to BDA's development of Public Improvements within the TIF Zone when due, then BDA is required to pay the cost of debt due.

7.7 Payment of Debt Service on Certificates of Obligation Funded Improvements. City is automatically authorized to make transfers in approximate equal monthly installments, from the TIF Fund to the TIF Debt Service Fund as will be sufficient, together with any other funds on deposit therein and available for such purpose, to pay the interest and/or principal and interest scheduled to come due on all of the outstanding certificates of obligation utilized for CO Projects under the terms of the Agreement.

7.8 Repayment of Invalid Payments. If any payment to BDA 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 BDA to the City for deposit in the TIF Fund for purposes of implementing the Public Improvements of the

Project, and that the remainder of this Agreement shall be construed as if the invalid, illegal or unenforceable payment was never made.

VIII. INSURANCE

BDA will require that the Insurance requirements contained in this Article be included in all its contracts or agreements for Public Improvements where BDA is seeking payment under this Agreement, unless specifically exempted in writing by the City.

8.1 Prior to the commencement of any work under this Agreement, BDA shall furnish copies of all required endorsements and the original completed Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "**Brooks City Base TIRZ, Phase No. ____**" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the address listed in paragraph 8.4. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's TIF Unit. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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. In no instance will the City allow modification whereupon the City may incur increased risk.

8.3 BDA's financial integrity is of interest to the City, therefore, subject to BDA's right to maintain reasonable deductibles in such amounts as are approved by the City, BDA or BDA's subcontractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Final Project Plan and Final Financing Plan, and any extension hereof, at BDA's or BDA's subcontractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Contractor's Pollution Liability*	\$1,000,000 per occurrence
6. Builder's Risk Policy*	100% of value of each Phase of Project
* if applicable	

8.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). BDA and/or BDA's subcontractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the addresses provided below within 10 days of the requested change. BDA and/or BDA's subcontractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Center City
TIF Unit
P.O. Box 839966
San Antonio, Texas 78283-3966

CIMS

with a copy to:
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

8.5 BDA agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the City and their respective officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
- d. Provide thirty (30) calendar days advance written notice directly to City at the same address listed in paragraph 8.4 of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

8.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, BDA and/or BDA's subcontractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City at the address listed in paragraph 8.4. City shall have the option to suspend BDA's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.7 In addition to any other remedies the City may have upon BDA's and/or BDA's subcontractor'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 BDA to stop work hereunder, and/or withhold any payment(s) which become due to BDA hereunder until BDA and/or BDA's subcontractor demonstrates compliance with the requirements hereof.

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

8.9 It is agreed that BDA's and/or BDA's subcontractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

8.11 BDA agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in paragraph 8.3 from each subcontractor to BDA and provide a Certificate of Insurance and Endorsement that names BDA and the City as an additional insured.

IX. WORKERS COMPENSATION INSURANCE COVERAGE

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

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 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 BDA's/contractor'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 BDA has undertaken to perform on the Project, regardless of whether that person contracted directly with BDA and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

9.4 BDA must provide a certificate of coverage to the City prior to being beginning construction under this Agreement and prior to awarding any contract for construction of Public Improvements.

9.5 If the coverage period shown on BDA's current certificate of coverage ends during the duration of the project, BDA 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 BDA shall obtain from each person providing services on the Project, and shall provide to the City:

- a. a certificate of coverage, prior to that person beginning work on the Project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- b. no later than seven days after receipt by BDA or BDA's subcontractor, 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 project.

9.7 BDA shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

9.8 BDA shall notify the City in writing by certified mail or personal delivery, within 10 days after BDA 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 BDA 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 BDA shall contractually require each person with whom it contracts to provide services on the Project, to:

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

- e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f. notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. contractually require each person with whom it contracts with, to perform as required by subparagraphs a-g, 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, BDA is representing to the City that all employees of BDA who will provide services on the Project will be covered by workers' compensation coverage for the duration 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 BDA to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 BDA's failure to comply with any of these provisions is a breach of contract by BDA which entitles the City to declare the Agreement void if BDA does not remedy the breach within ten (10) days after receipt of notice of breach from the City without necessity of the ninety (90) day cure period as set forth in Article X.

X. DEFAULT AND TERMINATION

10.1 In the event that BDA or its contractors fail to commence construction of the Project, fail to complete construction of the Project, or fail to perform any other obligation pursuant to the Final Project Plan and Final Financing Plan, or any other term of this Agreement, the City and/or the Board may declare a material breach and notify BDA by certified mail. The City or Board may terminate this Agreement if BDA 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, BDA shall return any payments under this Agreement for the construction of Public Improvements for any Phase under development at the time of the default within ninety (90) calendar days after receiving written notice from the City and/or the Board that BDA has defaulted on this Agreement; EXCEPT that no refund is due if BDA, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes BDA's obligations under this Agreement, pursuant to Article XVI (Assignment) herein.

10.2 After sending notice of failure under paragraph 10.1 above, the City shall not distribute Certificates of Obligation to BDA until the BDA's default is cured. If the default is not cured, the City may retain all undistributed Certificates of Obligation for distribution to the City. Likewise, the City and Board shall not distribute TIF Funds to BDA until BDA's default is secured. If the default

is not cured the City and the Board may retain all undistributed TIF Fund money for distribution to the City.

10.3 Notwithstanding paragraph 10.1 above, in the event the Board and/or BDA 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 BDA shall be in default of this Agreement.

XI. INDEMNIFICATION

11.1 BDA and the CITY acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, § 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

11.2 No Joint Enterprise. There is no intention on the part of BDA or the CITY to create or otherwise form a joint enterprise under or pursuant to this Agreement. BDA and the CITY are undertaking a governmental function or service. BDA is engaging in redevelopment of base property and areas around the base property pursuant to Local Government Code Chapter 379B. The CITY also is promoting redevelopment of the same area through creation of the TIF Zone pursuant to the Act. BDA and the CITY do not have a pecuniary purpose, let alone a common one. The purpose of this Agreement is to further the public good, not gain a profit. BDA and the CITY do not have equal right of control. BDA has a superior right to control the direction and management of the enterprise solely for liability purposes under this Agreement and/or solely by virtue of its responsibility for the day-to-day management and control of the premises.

11.3 BDA covenants and agrees to have each of its subcontractors FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, volunteers and representatives of the CITY) and the BOARD (and the officials, employees, officers, directors, volunteers and representatives of the BOARD), individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY and/or BOARD directly or indirectly arising out of, resulting from or related to BDA'S subcontractor's activities under this Agreement, including any acts or omissions of any agent, officer, director, representative, employee, consultant or subcontractor of BDA'S subcontractor and their respective officers, agents, employees, directors, and representatives while in the exercise or performance of the rights or duties under this Agreement.

The indemnity provided in the forgoing paragraph shall not apply to any liability resulting from the sole negligence of the CITY (and the elected officials, employees, officers, directors, volunteers and representatives of the CITY) or the BOARD (and the officials, employees,

officers, directors, volunteers and representatives of the BOARD), in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

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

BDA shall advise the CITY and the BOARD in writing within 24 hours of any claim or demand against the CITY, the BOARD, or BDA known to BDA related to or arising out of BDA'S subcontractor's activities under this Agreement. BDA's subcontractor shall see to the investigation and defense of any such claim or demand against BDA'S subcontractor, the CITY or the BOARD at BDA'S subcontractor's sole cost until the CITY or the BOARD is found to be negligent by a court of competent jurisdiction. The CITY and the BOARD shall have the right, at their option and at their own expense, to participate in such defense without relieving BDA'S subcontractor of any of its obligations under this paragraph.

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.

XII. SITE INSPECTION AND RIGHT OF ENTRY

12.1 BDA shall allow the City and/or the Board access to the Project property owned or controlled by BDA 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 BDA's compliance with this Agreement. BDA 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 employees and agents to conduct random non-destructive walk-throughs and monitoring of the properties and structures.

XIII. RESPONSIBILITY OF THE PARTIES

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

13.2 To the extent permitted by Texas law, no director, officer, employee or agent of the City or the Board 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 BDA of the books and records related to this Agreement with the City (including such items as contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or BDA'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 BDA's services, provided that such audits are related to those services performed by the Board and/or BDA for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or BDA.

14.2 All applicable records and accounts of the Board and/or BDA relating to this Agreement, together with all supporting documentation, shall be made available in Bexar County, Texas by the Board and/or BDA 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 BDA 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 BDA of such discrepancies. The Board and/or BDA 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 BDA 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 BDA for the year in which the discrepancy occurred, then the City is entitled to a refund as a result of such overcharges and BDA 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 BDA nor any failure or delay by the City, the Board or BDA 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 BDA 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 BDA. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send BDA written notice of such assignment within fifteen (15) days of such assignment.

16.3 BDA 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 BDA under this Agreement. This restriction on BDA'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 only be 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 BDA's subcontractors with this Agreement shall be the responsibility of BDA. Copies of those written contracts must be submitted with the CPPR in order to be considered eligible Project Costs.

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

16.6 Any restrictions herein on the transfer or assignment of BDA'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, BDA 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 BDA shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of BDA from further observance or performance by BDA 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 Sixteen
City of San Antonio, Texas
C/O Housing and Neighborhood Services Dept.
ATTN: David D. Garza, Director
City of San Antonio
1400 S. Flores
San Antonio, Texas 78204
FAX: (210) 207-7914

BROOKS DEVELOPMENT AUTHORITY

Mr. Bart Sanchez
Chief Financial Officer,
Brooks Development Authority,
1 B.D.A. Crossing, Suite 100
San Antonio, Texas 78235
FAX: (210) 678-3339

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 BDA 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 BDA each warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Board and BDA each further warrants and certifies that each member of the Board and that BDA has tendered to the City a **Discretionary Contracts Disclosure Statement**, provided as **Exhibit E**, 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 BDA at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or BDA respectively shall be independent contractors of the Board and/or BDA. 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 BDA 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, LICENSES AND PERMITS

20.1 To the extent required by law, BDA 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 BDA or upon the business conducted on the Zone Property or upon any of BDA's property used in connection therewith, including employment

taxes; and BDA shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by BDA.

20.2 BDA shall include in the CPPR submission evidence of payment or exemption of the taxes and fees above.

XXI. PREVAILING WAGES

21.1 The TIF program is a discretionary program, and the Board and BDA 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. 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. BDA is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the BDA calls for bids for construction of a given Phase. BDA is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with BDA's general contractor and all subcontractors for construction of each Phase. BDA 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 BDA or any subcontractor under BDA. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve BDA from its 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. BDA shall convene a pre-construction meeting to be held with any contractors and invite the Labor Compliance Office of the City to said meeting before proceeding with construction on any Phase.

XXII. CHANGES AND AMENDMENTS

22.1 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 BDA and evidenced by passage of a subsequent City ordinance, as to the City's approval.

22.2 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 by such amendment. In the event an amendment to the phasing of the Construction Schedule will result in a material change to the overall Final Project Plan or Final Financing Plan, then such amendment shall comply with the requirements of paragraph 22.1, above. No change under this section may result in an increase in the maximum contribution of the City. BDA 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.

22.3 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 BDA'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.

XXIII. SEVERABILITY

23.1 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.

XXIV. LITIGATION EXPENSES

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

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

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

24.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or BDA 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.

XXV. LEGAL AUTHORITY

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

XXVI. VENUE AND GOVERNING LAW

26.1 This Contract shall be governed by the laws of the State of Texas.

26.2 Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

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

XXVII. PARTIES' REPRESENTATIONS

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

XXVIII. CAPTIONS

28.1 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.

XXIX. ENTIRE AGREEMENT

29.1 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.

29.2 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 1.15 above, this Agreement will become effective on the date of the last signature:

CITY OF SAN ANTONIO

BROOKS DEVELOPMENT AUTHORITY

SHERYL SCULLEY
City Manager
City of San Antonio
Date: _____

Donald E. Jakeway

BROOKS DEVELOPMENT AUTHORITY,
a Defense Base Development Authority
By: Donald E. Jakeway, President and CEO
Date: 6-9-09

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

CITY CLERK

Kirklan W. King

Name: Kirklan W. King
Title: Presiding Officer, Board of Directors
Address: 9830 Colonnade Suite 600 78230
Date: 6/5/09

Leticia M. Vacek
City Clerk
Date: _____

Approved as form: _____
City Attorney
Date: _____

Exhibit A

Brooks City-Base Construction Schedule

Phase	Year	Projects	Cost of Project
1	2005	Runway Demolition	649,812
	2005	Research Plaza Blvd.	176,878
	2005	City Base Landing Rd.	507,813
	2005	Drainage & Detention	27,579
2	2006	Demolition of Buildings	232,800
	2006	Sewer Outfall	1,300,000
	2006	Boyle Rd./Research Plaza Sewer	398,400
	2006	Lyster Rd.	1,041,498
	2006	Research Plaza Blvd.	98,843
	2006	City Base Landing Rd.	2,769,229
	2006	Drainage & Detention	1,139,476
3	2007	Boyle Rd./Research Plaza Sewer	454,400
	2007	Lyster Rd.	926,806
	2007	Sidney Brooks Rd.	360,000
	2007	Research Plaza Blvd.	473,000
	2007	City Base Landing Rd.	145,331
	2007	Drainage & Detention	1,213,491
	2007	Street Landscape & Enhancements	247,000
	2007	* SE Military to Sidney Brooks	1,329,597
4	2008	* SE Military to Sidney Brooks	5,533,256
	2008	* Sidney Brooks to Research Blvd.	1,518,000
5	2009	* SE Military to Sidney Brooks	1,755,268
	2009	* Sidney Brooks to Research Blvd.	4,743,200
6	2010	* Sidney Brooks to Research Blvd.	6,181,450
	2010	* Research Blvd. to Lyster Rd.	817,025
7	2011	* Research Blvd. to Lyster Rd.	5,468,100
8	2012	* Research Blvd. to Lyster Rd.	793,155
	2012	* Lyster Rd. to South Property Line	1,501,885
	2012	* South Property Line to Loop 410	5,457,500
9	2013	* Lyster Rd. to South Property Line	1,501,885
	2013	* South Property Line to Loop 410	5,457,500
Total			54,043,299
* New Braunfels Infrastructure Projects			

EXHIBIT B
Project Status Report

DA - Brooks City-Base
ACW
Amended June 18, 2009



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

Year (year)	start date	end date	Private Improvements								
			Single Family Units		Multi-family Units		Commercial (Retail, Office, etc.)		Other Improvements (Example: day care centers)		
			Proposed	Completed	Proposed	Completed	Proposed	Completed	Proposed	Completed	
2											
4											
6											
8											
10											

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

Phase (years)	Public Improvements													
	start date	end date	Linear Feet	LLFt.	Number	Number/Locati on	LLFt.							
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

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 labeled "Attachment I".

PASSED AND APPROVED THIS 29th day of March 1990.

Lela Cockrell
M A Y O R

ATTEST:

Thomas D. Lehigay
City Clerk

APPROVED AS TO FORM:

Tom Penland
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 expanded, 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 Casimiro
M A Y O R

ATTEST: *Norma J. Rodriguez*
City Clerk

APPROVED AS TO FORM: *John Penning*
City Attorney

85-04

GENERAL CONDITIONS

WAGE AND LABOR STANDARD PROVISIONS-100% LOCALLY FUNDED CONSTRUCTION

Contents

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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 (Sec 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 Guidelines" 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 uncurd violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINES

- 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 5161.1 "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: TX20080041 02/08/2008 TX41

Date: February 8, 2008

General Decision Number: TX20080041 02/08/2008

Superseded General Decision Number: TX20070043

State: Texas

Construction Types: Heavy and Highway

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

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

Modification Number Publication Date
 0 02/08/2008

SUTX2005-001 01/03/2005

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

Motor Grader Operator, Rough...	\$ 12.96	0.00
Oilér.....	\$ 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-Propalled.....	\$ 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
Scrapar 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:

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

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

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

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

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

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

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

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

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

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

END OF GENERAL DECISION

EXHIBIT D

Form and Requirements of Contract Progress Payment Request



CITY OF SAN ANTONIO
Sample Packet
TIRZ Reimbursement Forms and Process

NOTE: If you are seeking reimbursement for infrastructure costs please fill this form. If you are seeking payment of infrastructure/construction costs from Debt Proceeds, please fill out the other form attached to Exhibit D.

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:**

- Release of Lien
- 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	Site Work	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	Construction Management	150,150	200,000	0	-49,850
6	Infrastructure Cost	144,375	100,000	0	44,375
7	Legal and Formation Fees	26,950	21,000	0	5,950
8	Organizational Cost	61,600	60,000	0	1,600
9	Project Cost	10,000	11,500	0	-1,500
10	Regional Storm Water Improvements	20,800	35,000	0	-14,200
11	Sanitary Sewer	15,000	10,000	0	5,000
12	Sidewalks	30,000	28,250	0	1,750
13	Street Lights	86,163	86,100	0	63
14	Water	10,000	11,000	0	-1,000
	TOTAL	861,788	875,681	0	-13,873

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					
TOTAL					

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

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

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

(SAMPLE) Reimbursement for TIRZ Expenses

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

Section 1	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	[REDACTED]	123	\$12,972	[REDACTED]	Ck# 8989
			456	\$4,500		Ck# 8989
			789	\$5,500		Ck# 8989
Total		\$20,000		\$22,972	-\$2,972.00	

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
		[REDACTED]			[REDACTED]	
		[REDACTED]			[REDACTED]	
		[REDACTED]			[REDACTED]	
Total						



**CITY OF SAN ANTONIO
TIRZ Debt Proceeds Payment Forms**

NOTE: If you are seeking payment of infrastructure/construction costs from debt proceeds, please utilize this. If you are seeking reimbursement for infrastructure costs, please fill out the other form attached to Exhibit D.

Prior to submitting an invoice for payment of construction expenses, 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.*)
- Proof of compliance with Prevailing Wages
- All insurance forms required in the Development Agreement
- After construction of infrastructure is completed, 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 must be submitted.

When submitting an invoice for payment, the developer must submit the developer shall submit current standard AIA forms referred to as "Application and Certificate for Payment" and "Schedule of Values."

EXHIBIT E

City of San Antonio's Discretionary Contracts Disclosure Form

**City of San Antonio
Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-81 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity that is a party to the discretionary contract.

(2) Identify any individual or business entity which is a partner, parent or subsidiary business entity, or any individual or business entity identified above in Box (1).

No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a subcontractor on the discretionary contract.

No subcontractor(s); or

List subcontractors:

(4) Identify any lobbyist or public relations firm employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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

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

No contributions made; If contributions made, list below:

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

(6) Disclosure in Proposals:
 Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code) (conflicts of interest) by participating in official action relating to the discretionary contract.

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

Party aware of the following facts:

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

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

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

EXHIBIT F
SBEDA Contract Provisions

CONTRACT PROVISIONS. Each contract to which the SBEDA Ordinance applies shall include the provisions set forth below.

SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the CITY. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

SBEDA Enterprise ("SE") – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

Commercially Useful Function – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONTRACTOR's bid for this project Agreement, attached hereto and incorporated herein as "Attachment _____".

For this Agreement, the Parties agree that:

- (a) The terms of the CITY's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Agreement by reference; and
- (b) The failure of CONTRACTOR or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.

- (c) Failure of CONTRACTOR or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- (d) During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONTRACTOR's SBEDA Plan ("Attachment ____") shall constitute a material breach of the SBEDA Program and this Agreement.
- (e) CONTRACTOR shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment ____") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONTRACTOR to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:

- (a) Failure of CONTRACTOR to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; and
- (b) Modification or elimination by CONTRACTOR of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; and
- (c) Termination by CONTRACTOR of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; and
- (d) Participation by CONTRACTOR in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies the CITY may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the CITY shall be entitled, at its election, to exercise any one or more of the following remedies if the CONTRACTOR materially breaches the requirements of the SBEDA Program:

- (a) Terminate this Agreement for default;
- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the CONTRACTOR under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONTRACTOR under the Agreement.
- (e) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the CITY to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director responsible for the affected Agreement shall then make the decision as to what remedies will be exercised if the Agreement is valued at less than \$25,000. If the Agreement is valued at \$25,000 or greater, then the Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department

Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

Special Provisions for Extension of Agreements. In the event the CITY extends this Agreement without a competitive Bid process, the CITY Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONTRACTOR does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that CONTRACTOR shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONTRACTOR entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
 - (i) subject CONTRACTOR to any of the remedies listed above; and/or
 - (ii) result in rebid of the Agreement to be extended.