RR
04/30/15
Item No. 16D

AN ORDINANCE 2015-04-30-0346

**AUTHORIZING A DEVELOPMENT AGREEMENT WITH 210 DEVELOPMENT GROUP d/b/a MISSION DEVELOPMENT GROUP FOR THE CONSTRUCTION OF MULTI-PURPOSE ATHLETIC FIELDS AND A SENIOR INDEPENDENT LIVING RESIDENTIAL FACILITY AT THE CORNER OF RICHLAND HILLS AND INGRAM ROAD; AUTHORIZING THE CITY TO ACCEPT ANNUAL LEASE PAYMENTS IN THE AMOUNT OF $12,000.00 AND ANNUAL INVESTMENT INCOME IN THE AMOUNT OF 5% OF THE NET OPERATING INCOME OF THE PROJECT.**

* * * * *

**WHEREAS**, on December 9, 2014, the City issued a Request for Qualifications (RFQ) to identify developers to construct athletic fields on 6 acres of City-owned property and to undertake a project on an additional 6 acres of adjacent land to be acquired by the City located at the intersection of Richland Hills and Ingram Road in City Council District 6; and

**WHEREAS**, upon review of the RFQ submitted by 210 Development Group d/b/a Mission Development Group (the "Developer"), City staff requested a detailed proposal from the Developer which was evaluated by the City's Selection Committee (the "Committee"); and

**WHEREAS,** the Committee recommends that City Council authorize a Development Agreement with the Developer to undertake and complete a project consisting of the: (1) construction of athletic fields and associated parking spaces on 6 acres of land owned by the City for the City's benefit and at the Developer's cost; and (2) construction and operation of a Senior Independent Living Residential Facility (the "Facility") on an adjacent 6 acres of land to be acquired by the City and leased to Developer in exchange for an annual payment of $12,000.00 and 5% of the Facility's net operating income (the "Project"); and

**WHEREAS**, once completed the Project is anticipated to result in the investment of approximately $20,000,000.00 in real property improvements; **NOW THEREFORE**:

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

**SECTION 1**. The terms and conditions of a Development Agreement with 210 Development Group d/b/a Mission Development Group for the construction of Project described above are approved.

**SECTION 2**. The City Manager or her designee is authorized to execute the Agreement, a copy of which, in substantially final form, is attached as "**Exhibit A**." The final Agreement shall be filed with this Ordinance upon execution by the parties.

**SECTION 3.** Funds generated by this Ordinance will be deposited into Fund 11001000, Internal Order 223000000XXX and General Ledger 4401150.

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

**SECTION 5.** This Ordinance shall be effective immediately upon its passage by eight (8) votes or after the 10th day after its passage by less than eight (8) affirmative votes.

PASSED AND APPROVED this 30th day of April, 2015.

Ivy R. Taylor

**M A Y O R**
**Ivy R. Taylor**

**ATTEST:**

Leticia M. Vacek
City Clerk

**APPROVED AS TO FORM:**

Martha G. Sepeda
Acting City Attorney

| | |
|---|---|
| **Agenda Item:** | **16D ( in consent vote: 6, 7, 8, 9, 11, 12, 13, 14, 15A, 15B, 16A, 16B, 16C, 16D, 17, 18, 19A, 19B, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30 )** |
| **Date:** | 04/30/2015 |
| **Time:** | 11:00:22 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | An Ordinance authorizing a Development Agreement with 210 Development Group doing business as Mission Development Group for the construction of multipurpose athletic fields and Senior Independent Living Residential Facility at the corner of Richland Hills and Ingram Rd., and authorizing the City to accept annual lease payments in the amount of $12,000.00 and annual investment income in the amount of 5% of the net operating income of the development until the project is sold and 5% from the net proceeds of the sale. |
| **Result:** | Passed |

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

# EXHIBIT A

| | | |
|---|---|---|
| **STATE OF TEXAS** | § | **PUBLIC PRIVATE PARTNERSHIP** |
| | § | **DEVELOPMENT AGREEMENT** |
| | § | **OF THE CITY OF SAN ANTONIO** |
| **COUNTY OF BEXAR** | § | |

This Public Private Partnership Development Agreement of the City of San Antonio (hereinafter referred to as this "Agreement") is made and entered into by and between the City of San Antonio (the "CITY"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, and MISSION DG, LLC (hereinafter referred to as "DEVELOPER") and whom together may be referred to as the "Parties".

## RECITALS

**WHEREAS,** CITY solicited a Public Private Partnership (P3) in accordance with Section 2267 of the Texas Government Code and its adopted P3 Guidelines for the development of a portion of a 12.31 acre parcel of land located at the northwest corner of the intersection of Ingram Road and Richland Hills Drive in City Council District 6, and as more particularly described in **Exhibit A** (the "Project Site"); and

**WHEREAS**, DEVELOPER submitted a proposal in response to the CITY's solicitation seeking to develop a Senior Living Center on a portion of the Project Site and to construct recreation fields with parking for the CITY's benefit and use (the "Project"), and

**WHEREAS**, upon an evaluation of DEVELOPER's proposal, CITY has agreed to the terms and conditions herein to undertake and complete the Project; and

**WHEREAS**, the City Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No.2015-04-30-_____, passed and approved on April 30, 2015; **NOW THEREFORE**:

The Parties hereto severally and collectively agree, for the consideration herein set forth, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

## ARTICLE I. AGREEMENT PURPOSE

The purpose of this Agreement is to establish the binding terms and conditions upon which DEVELOPER will undertake and complete the Project and to establish the Project's future operating terms following completion of construction.

## ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and shall terminate upon the earlier of: (A) seventy-five (75) years following the completion of construction which shall be evidenced by the issuance of a certificate of occupancy for the Senior Living Center;

or (B) termination of this Agreement as otherwise provided herein (the "Term").

## ARTICLE III. PROJECT REQUIREMENTS

A. Lease of City-Owned Property

1. Lease. In consideration of the covenants and agreements contained herein, CITY hereby leases unto DEVELOPER, and DEVELOPER hereby leases from CITY, approximately 5.04 acres of unimproved land located within the Project Site (the "Leased Property"), to have and to hold for the Term and any holdover or renewal periods, unless sooner terminated as hereinafter provided. A legal description of the Leased Property will be finalized upon the platting of the Project Site and upon being finalized will be attached to this Agreement as **Exhibit B** "Leased Property."

2. Use. The Leased Property shall be used by DEVELOPER exclusively for the purpose of undertaking and operating the Project in accordance with the terms and conditions of this Agreement. No change of use shall be permitted without the express written consent of the CITY evidenced by the passage of an ordinance amending this Agreement by the City Council.

3. Rent. In consideration for the use of the Leased Property, DEVELOPER shall pay an annual payment of TWELVE THOUSAND DOLLARS AND 0 CENTS ($12,000.00) to CITY which shall be due on January 30 of each year of the Term of the Agreement. An initial amount of EIGHT THOUSAND DOLLARS AND 0 CENTS ($8,000.00) shall be due no later than thirty (30) days from the date this Agreement is executed, which represents a pro-rated amount for the period of time between May 2015 through December 2015.

4. Leased Property Condition. It is understood by DEVELOPER that the Leased Property is provided by CITY in "As-Is/Where-Is" condition and that no services or care shall be provided by CITY to the Leased Property. Furthermore, the City provides no warranties on the Leased Properties condition.

5. Insurance/Indemnification. **DEVELOPER covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and authorized representatives of CITY, individually or collectively, from and against any and all defense costs, claims, liens, damages, judgements, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature: (1) arising out of or in connection with DEVELOPER'S use and/or occupancy of the LEASED PROPERTY.**

6. Taxes. DEVELOPER shall be responsible for any and all taxes levied upon the Leased Property and shall ensure the timely payment of such taxes. In no case shall DEVELOPER allow any lien to be attached to the Leased Property as a result of the non-payment of taxes.

B. Construction of Senior Living Center

1. Investment. DEVELOPER shall invest no less than SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND 0 CENTS ($17,500,000.00) (the "Minimum Investment") in the construction of a ONE HUNDRED SEVENTY-SIX unit Independent Senior Living Facility on the Leased Property.

2. Construction. DEVELOPER shall commence construction at the Leased Property on or before _____ __, 2015 ("Commencement Date"), and shall use commercially reasonable efforts to complete construction no later than December 31, 2016 (the "Completion Date"), subject to Force Majeure as defined in this Agreement. The Commencement Date shall be determined by the issuance of a building permit for the Leased Property and CITY's receipt of correspondence from the general contractor for the Project certifying that construction has commenced. The Completion Date shall be determined by the issuance of a Certificate of Occupancy for the Independent Senior Living Facility.

a. DEVELOPER shall provide progress reports to CITY on the Project and Project Site on a quarterly basis from the Commencement Date through the Completion Date (the "Construction Period").

b. DEVELOPER shall comply with all applicable local, state and federal environmental requirements including all applicable City construction and development regulations.

c. DEVELOPER is responsible for complying with all applicable City Code provisions, including provisions of the Unified Development Code, enforced pursuant to the CITY's subdivision platting authority, and as amended, including, but not limited to, those provisions related to drainage, utilities, and substandard public street rights-of-ways for development and construction of the Project including the Public Improvements. In addition, DEVELOPER shall exercise commercially reasonable efforts to follow the Urban Neighborhood recommendations of the applicable Master Plan, if any, and shall consider incorporating low impact development strategies for water quality, storm water and drainage where appropriate for the Project. This Agreement in no way obligates City to approve any subsequent permits or requests for the Project as DEVELOPER is still responsible for acquiring all necessary permits and/or approvals as needed for the Project.

3. Operation. DEVELOPER shall operate the Senior Living Center in accordance with DEVELOPER's proposal (**Exhibit C**).

4. Annual Income Payment to City. In addition to the Rent payment as described in Article III(A)(3), DEVELOPER shall pay annually to CITY an amount equal to five-percent (5%) of the Senior Living Center's Net Operating Income or EIGHTY-THOUSAND DOLLARS ($80,000.00), whichever is greater. Such payment shall be made no later than

February 28 of each year following the Completion Date for the Term of the Agreement.

5. Taxes. DEVELOPER agrees that the Project shall be assessed a taxable value of not less than the Minimum Investment and that DEVELOPER shall pay all required taxes on the Leased Property and its real and personal property improvements annually in a timely fashion.

6. Sale of Project. No sale of the Project shall be completed without the consent of CITY. However, should DEVELOPER seek to sell the Senior Living Center for any reason during the Term of this Agreement, and CITY provides its consent, then CITY shall be entitled to recover not less than five-percent (5%) of the fair market value of the Project as determined by an independent appraisal or five-percent (5%) of the sale price, whichever is greater.

C. Recreation Fields

1. Construction. DEVELOPER agrees to undertake and complete the design and construction of multi-purpose athletic/recreation fields on the remaining 6.45 acres of the Project Site at its own expense. The design and construction shall include one hundred and seventy-seven (177) parking spaces that are utilized exclusively in conjunction with the recreation fields. The anticipated cost of the recreation fields is ONE MILLION TWO HUNDRED AND TWO THOUSAND DOLLARS AND 0 CENTS ($1,202,000.00) which shall be demonstrated by DEVELOPER by providing invoicing to the CITY evidencing all costs associated with the construction of the recreation fields. Such fields shall be for the use and benefit of the CITY, who may use such fields as it sees fit. Construction on the fields shall commence no later than _____ __, 2015 and shall be completed no later than May 31, 2016.

Upon completion of construction, DEVELOPER shall deliver such fields with an acknowledgement that DEVELOPER maintains no interest in the fields or the Project Site, that no liens are attached to the Project Site and that no fees or charges are owed associated with the construction of the recreation fields.

2. Design. DEVELOPER shall coordinate the design and construction of the recreation fields with City staff that shall be designated by the Director of the City's TCI Department.

3. Operation. DEVELOPER shall not be required to operate or maintain any portion of the recreation fields.

4. Surety. DEVELOPER shall be required to provide a performance bond in an amount sufficient to ensure the construction and completion of the recreation fields and associated parking spaces. Such bond must be approved by CITY prior to any construction activities on the Project Site.

## ARTICLE IV. RETENTION AND ACCESSIBILITY OF RECORDS

A. DEVELOPER shall maintain the fiscal records and supporting documentation for the operation of the Senior Living Facility to support the DEVELOPER's calculation for the Minimum Investment as described in Article III(B)(1) and the CITY's annual income payment in accordance with Article III(B)(4). DEVELOPER shall retain such records and any supporting documentation for the greater of: (1) five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. DEVELOPER shall, following reasonable advance written notice from the CITY, give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all material records, including audited financial statements, related to the Minimum Investment as described in Article III (B)(1) and the CITY's annual income payment in accordance with Article III (B)(4) (the "Records"). CITY's access to the Records will be limited to information needed to verify that DEVELOPER is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the CITY. DEVELOPER shall not be required to disclose to the CITY any information that by law DEVELOPER is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require DEVELOPER to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of DEVELOPER. The rights to access the Records shall continue as long as the Records are retained by DEVELOPER. Failure to provide reasonable access to the Records to authorized CITY representatives shall be cause for CITY to provide notice of intent to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. Notwithstanding Section A above, all Records shall be retained by DEVELOPER for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed.

## ARTICLE V. MONITORING

The CITY reserves the right to confirm DEVELOPER's compliance with the terms and conditions of this Agreement. The CITY will provide DEVELOPER with a written report of the monitor's findings. If the monitoring report notes deficiencies in DEVELOPER's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by DEVELOPER and a reasonable amount of time in which to attain compliance. Failure by DEVELOPER to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Articles _____ and _____ herein.

## ARTICLE VI. DEFAULT/CURE PERIOD/TERMINATION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event DEVELOPER fails to comply with the terms of this Agreement such non-compliance shall be

deemed a default. CITY shall provide DEVELOPER with written notification as to the nature of the default (the "Notice of Default") and grant DEVELOPER a sixty (60) day period from the date of CITY's written notification to cure such default (the "Cure Period"). Should DEVELOPER fail to cure the default within the Cure Period, CITY may, upon written notification (the "Notice of Termination"), terminate this Agreement in whole or in part.

B. In the case of default for causes beyond DEVELOPER's reasonable control, which cannot with due diligence be cured within the Cure Period, CITY may, in its sole discretion, extend the Cure Period, provided that DEVELOPER shall: (1) immediately upon receipt of Notice of Default advise CITY of DEVELOPER's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion all steps necessary to cure same.

C. Should DEVELOPER fail to comply with Article III(A)(3), Article III(B)(4) and/or Article III(B)(6) or any parts of Article III (C), such failure shall be deemed a material default and the CITY may terminate this Agreement for cause. Should CITY terminate this Agreement for cause, then the DEVELOPER acknowledges that DEVELOPER's failure to perform will cause CITY to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the CITY of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such failure to perform, DEVELOPER agrees that liquidated damages may be assessed and recovered by the CITY as against Contractor and its Surety, in the event of a failure to perform or complete and without the CITY being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore DEVELOPER shall be liable to CITY for payment of liquidated damages in the amount of FIVE MILLION DOLLARS AND 0 CENTS ($5,000,000.00). Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and DEVELOPER shall pay them to CITY without limiting CITY'S right to terminate this agreement for default as provided elsewhere herein.

D. In addition to the above, this Agreement may be terminated by written agreement of the Parties as follows:

1. By the CITY (with the consent of DEVELOPER) in which case the two parties shall agree upon the termination conditions, and the effective date of termination; or

2. By the DEVELOPER (with consent of CITY) in which case the two parties shall agree upon the termination conditions, and the effective date of termination.

E. Other Remedies Available. The City shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if DEVELOPER defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above.

## ARTICLE VII. NOTICE

Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the Party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such Party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such Party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either Party may designate another address for all purposes under this Agreement by giving the other Party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

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|---|---|
| If intended for CITY, to: | City of San Antonio<br>Attn: Director<br>Center City Development Office<br>P.O. Box 839966<br>San Antonio, TX 78283-3966 |
| If intended for DEVELOPER, to: | MISSION DG LTD<br>Attn: _____<br>_____<br>_____<br>_____ |

## ARTICLE VIII. RESERVED

## ARTICLE IX. CONFLICT OF INTEREST

A. DEVELOPER shall ensure that no employee, officer, or individual agent of CITY shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar

terms. DEVELOPER shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. City may terminate this Agreement immediately if the DEVELOPER has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting. Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the City may obtain reimbursement for any expenditure made to the DEVELOPER resulting from the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

## ARTICLE X. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. As a condition of entering into this Agreement, DEVELOPER shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall DEVELOPER retaliate against any person for reporting instances of such discrimination. DEVELOPER shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's relevant marketplace. DEVELOPER understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of DEVELOPER from participating in City contracts, or other sanctions as provided by applicable law. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by DEVELOPER under this Agreement shall involve any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. DEVELOPER shall, to the best of its knowledge and belief, include the substance of this Article in all agreements entered into by DEVELOPER associated with the funds made available through this Agreement.

## ARTICLE XI. LEGAL AUTHORITY

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the Incentives authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Article VII if there is a dispute as to the legal authority of either DEVELOPER or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. DEVELOPER is liable to CITY for all Incentives it has received from CITY under this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Article.

## ARTICLE XII. LITIGATION AND CLAIMS

A. DEVELOPER shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against DEVELOPER arising out the performance of any activities hereunder. Except as otherwise directed by CITY, DEVELOPER shall furnish immediately to CITY copies of all pertinent papers received by DEVELOPER with respect to such action or claim. DEVELOPER shall notify the CITY immediately of any legal action, known to DEVELOPER, filed against the DEVELOPER or any subcontractor thereto, or of any known proceeding filed under the federal bankruptcy code to which DEVELOPER or any subcontractor is a party. DEVELOPER shall submit a copy of such notice to CITY within 30 calendar days after receipt. No Incentives provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding, DEVELOPER is not required to notify CITY of claims or litigation which arise out of DEVELOPER's operations on the Project, including, without limitation, landlord tenant disputes, personal injury actions (e.g., slip and falls), and other operational activities or relationships.

B. DEVELOPER acknowledges that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et seq*., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## ARTICLE XIII. ATTORNEY'S FEES

A. In the event DEVELOPER should default under any of the provisions of this Agreement and the CITY should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of DEVELOPER herein contained, DEVELOPER agrees to pay to the

reasonable fees of such attorneys and such other expenses so incurred by the CITY.

B. In the event CITY should default under any of the provisions of this Agreement and the DEVELOPER should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of CITY herein contained, CITY agrees to pay to the DEVELOPER reasonable fees of such attorneys and such other expenses so incurred by the DEVELOPER.

## ARTICLE XIV. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by all Parties to this Agreement. Any amendments to this Agreement which change or increase any of the City's liabilities or commitments must be approved by CITY ordinance.

B. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

## ARTICLE XV. SUBCONTRACTING

A. DEVELOPER shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by DEVELOPER complies with all terms and provisions of this Agreement as if such performance were rendered by DEVELOPER.

B. DEVELOPER, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is not liable to DEVELOPER's subcontractor(s).

C. DEVELOPER assures and shall obtain assurances from all of its contractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

## ARTICLE XVI. RESERVED

## ARTICLE XVII. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between DEVELOPER and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## ARTICLE XVIII. ASSIGNMENT

A. This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. Notwithstanding the foregoing, DEVELOPER may assign this Agreement to a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of DEVELOPER. In such cases, DEVELOPER shall give CITY no less than thirty (30) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Any attempt to assign the Agreement without the notification and subsequent consent of CITY, if consent is required under this Article, shall release CITY from performing any of the terms, covenants and conditions herein. Any assignment of this Agreement in violation of this Article shall enable CITY to terminate this Agreement and exercise its rights under Article IX of this Agreement.

B. Any restrictions in this Agreement on the transfer or assignment of the DEVELOPER's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, shall the CITY be obligated in any way to said financial institution or other provider of capital. The City shall only issue checks or any other forms of payment made payable to the DEVELOPER.

## ARTICLE XIX. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements among the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

## ARTICLE XX. AUTHORIZED RELIEF FROM PERFORMANCE *(Force Majeure)*

The CITY may grant temporary relief from any deadline for performance of any term of this Agreement if the DEVELOPER is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the DEVELOPER. The burden of proof for the need for such relief shall rest upon the DEVELOPER. To obtain relief based upon *force majeure*, the DEVELOPER must file a written request with the CITY. CITY will not unreasonably withhold its consent.

## ARTICLE XXI. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is incorporated herein by reference for all purposes as an essential part of the Agreement, which governs the rights and duties of the Parties.

| | |
|---|---|
| Exhibit A | PROJECT SITE |
| Exhibit B | LEASED PROPERTY |
| Exhibit C | DEVELOPER'S PROPOSAL |

**WITNESS OUR HANDS, EFFECTIVE as of _____, 2015 (the "Effective Date"):**

Accepted and executed in three duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2015-04-30-_____, dated April 30, 2015, and by DEVELOPER pursuant to the authority of its _____.

**CITY OF SAN ANTONIO,**
a Texas Municipal Corporation

_____
Sheryl L. Sculley
City Manager

**DEVELOPER:**
**MISSION DG, LLC**

By:_____
NAME:
TITLE:

ATTEST:

_____
Leticia Vacek
City Clerk

APPROVED AS TO FORM:

_____
CITY ATTORNEY