

**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  
Amended and Restated 2018**

This Development Agreement (“Agreement”), pursuant to Ordinance No. 2008-05-08-0367, passed and approved on the 8<sup>th</sup> day of May, 2008, subsequently amended pursuant to Ordinance No. 2009-06-18-0508, passed and approved on the 18<sup>th</sup> day of June, 2009, amended pursuant to Ordinance No. 2010-06-10-0524, passed and approved on the 10<sup>th</sup> day of June, 2010, and amended pursuant to Ordinance No. 2015-04-16-0316, passed and approved on the 16<sup>th</sup> of April, 2015, and subsequently amended pursuant to Ordinance No. 2018-\_\_\_\_-\_\_\_\_-\_\_\_\_\_, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2018 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”) with whom together may be referred to as the “Parties”.

**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 (“TIRZ”) 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 TIRZ; 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 issued a total of \$19,050,000.00 in Certificates of Obligation to BDA for capital improvements, via such ordinances as No. 2008-12-04-01067, No. 2010-06-10-0528, and No. 2012-08-02-0542, and has generally supported BDA through City funds to cover certain operating expenses of BDA; and

**WHEREAS**, \$13,944,846.36 of the \$19,050,000.00 (\$18,280,000.00 refinanced in 2016) has been used to fund the New Braunfels Infrastructure Phase I and II as well as the Challenger Drive Inner Circle Infrastructure and City has refinanced the bonds; and

**WHEREAS**, \$4,900,947.49 of the remaining balance of \$5,105,153.64 has been used to fund the Kennedy Hill (formerly Dave Erwin Drive) Infrastructure Project and other approved Street Projects other than the New Braunfels Infrastructure Project and the remaining balance of \$204,206.15 shall be used to fund other eligible project costs; and

**WHEREAS**, the City agrees to issue approximately \$6,000,000.00 to reimburse BDA for the cost of renovating the Science Research and Office Building 167 (located at 2415 Sidney Brooks Road) and 176 (located at 7965 Kennedy Hill Drive); and

**WHEREAS**, the Act authorizes the expenditure of funds derived within a tax increment 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 tax increment 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 16<sup>th</sup> day of March, 2015, the Board adopted and approved a Final Project Plan, a Final Finance Plan, and an amended Development Agreement providing for development of the Zone Property; and

**WHEREAS**, the City approved the Final Project Plan and Final Finance Plan for the TIRZ by Ordinance Number 2015-04-16-0316 on the 16th day of April, 2015 and authorized the City Manager of the City of San Antonio or her designated representative to execute the Amended Development 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 or make available further Certificates of Obligation or other debt obligations, the proceeds of which will be used by BDA to fund Public Infrastructure within the TIRZ, 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 Finance Plan and to achieve the purposes of developing the TIRZ Property within the scope of those plans; and

**WHEREAS**, on the 16<sup>th</sup> day of July, 2018, the TIRZ Board adopted and approved an Amended and Restated Agreement and the BDA Board of Directors approved the Amended and Restated Agreement on the 14<sup>th</sup> day of August, 2018; and

**WHEREAS**, on the 29<sup>th</sup> day of October, 2018 the TIRZ Board adopted and approved an Amended and Restated Agreement, and the BDA Board of Directors approved the Amended and Restated Agreement on the \_\_\_ day of \_\_\_\_\_, 2018; and

**WHEREAS**, the City approved the amended Agreement by Ordinance Number 2018-\_\_\_\_-\_\_\_\_-\_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, 2018 and authorized the City Manager of the City of San Antonio or her designated representative to execute the Amended and Restated Agreement on behalf of the City, and to bind the City to the terms and conditions of the Amended and Restated 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 TIRZ Property as specified in the Final Project Plan, Final Finance Plan and this Amended and Restated 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 the reasonable costs incurred directly and/or indirectly by the City for the administration of the TIF Program.

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 Reinvestment Zone 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 TIRZ 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 TIRZ.

1.6 “BDA” means Brooks Development Authority.

1.7 “Board” means the Board of Directors for Reinvestment Zone Number Sixteen, City of San Antonio, Texas, a tax increment reinvestment zone pursuant to City Ordinance Number 100073, passed and approved on December 9, 2004.

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 Capital Administration Costs” means the funds in the amount of up to four percent (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. The Parties agree and in accordance with the attached Finance and Project Plan that from October 1, 2014 (Tax Year 2014/Fiscal Year 2015) through the remaining life of the TIRZ the City Capital Administrative Costs will be two percent (2%) 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 the debt issued or that may be issued by the City.

1.11 “Completion” means construction of a Public Improvement in the TIRZ in accordance with the engineer’s design, Final Project Plan, Final Finance 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 Finance Plan and this Agreement 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 C**, 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.

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 Finance 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 TIRZ Board, BDA 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.

1.18 “Guidelines” means the current Tax Increment Financing (TIF) and Reinvestment Zone Policies, 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 TIRZ Property being developed during a specific period.

1.20 “Project” has the meaning specified in Section 3.1 of this Agreement, and as more specifically detailed in the Final Project Plan and Final Finance 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 section 5.5, section 5.17, and **Exhibit A** 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 Finance 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 TIRZ.

1.26 “TCI” means the City’s Transportation and Capital Improvements Department or any subsequent City department that will oversee the City’s capital improvements projects.

1.27 “TIF” means Tax Increment Financing.

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

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

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

1.31 “TIRZ Property” means the contiguous geographic area of the City that is included in the boundaries of the TIRZ, which are more particularly described in the Final Project and Finance 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 issued or may issue bonds, notes, certificates of obligation to provide a portion of the funds that were allocated or that may be allocated to pay Project Costs in the TIRZ 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, TIRZ revenues will be used to cover any and all costs related to bonds, notes, and certificates of obligation or other financial instruments as necessary. The City will annually review the status of the TIRZ, 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 Finance Plan as long as the maximum total contribution by the City does not exceed one hundred five million, four hundred seventy-three thousand, one hundred four dollars and eighty-seven cents (\$105,473,104.87).

**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 TIRZ 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 section 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 TIRZ or City debt proceeds dedicated to BDA's development of Public Improvements within the TIRZ 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 TIRZ terminates, BDA shall diligently work to successfully complete any and all required Public Improvements

that were not completed before the TIRZ is 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 TIRZ, 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 TIRZ 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 approval 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 TIRZ fund, and subject to limitations.

### III. THE PROJECT

3.1 **The Project.** The Project includes public infrastructure improvements and related capital costs consisting of runway demolition, demolition of buildings, sewer out fall, road construction, site preparation, landscaping, utilities, drainage, parking, and security and smart city technology improvements contained in the Final Project Plan. BDA has begun construction of infrastructure according to the Final Project Plan. To develop Brooks over the next decades, BDA had to complete a number of preparatory actions. Initial actions include master and land use planning, road, traffic, storm water, utility and telecom engineering analyses and reports. Infrastructure includes construction of major road thoroughfares, storm water detention facilities, utility systems and telecommunications infrastructure. Other actions relate to the redevelopment of Brooks to serve as a catalyst for economic development in this zone. These actions include creation of water features, large professionally designed and landscaped park areas with walking trails, soccer, softball, football and other recreation areas and regional storm water detention facilities that can be also used as public green space. BDA and its tenants also identified additional retail services and restaurants. Per the approved Final Project and Final Finance Plans, the following improvements can be reimbursed with TIRZ funds: site work, streets, streetscape enhancements, water, sewer, telecom, gas, drainage and storm water detention facilities, and other costs approved by the Board

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 Reinvestment Zone Funds go toward financing thirty percent (30%) 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 TIRZ 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 TIRZ under this Agreement. BDA acknowledges that any debt proceeds provided by the City may only be used to fund Public Improvements within the TIRZ.

Beginning in Fiscal Year 2018, a portion of the Tax Increment will be reserved for a City Debt Service Reserve. The balance will accumulate over seven (7) years to the maximum annual debt service. The Reserve is planned to be released in Fiscal Year 2029 and 2033 respectively, when the corresponding debt is paid off.

BDA acknowledges that the priority of payment within the Available Tax Increment Reinvestment Zone Funds will be to the City for payment of the City's debt incurred or that may be incurred including but not limited to Certificates of Obligation dedicated to Public Improvements within the TIRZ and subject to priority of payment in section 7.5.

If there are not sufficient Available Tax Increment Funds and the Reserve 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 TIRZ, 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 TIRZ 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 TIRZ, 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 maximum contribution to BDA under this TIRZ will not exceed one hundred five million, four hundred seventy three thousand, one hundred four dollars and eighty-

seven cents (\$105,473,104.87) 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 and the Reserve incurred and dedicated to the BDA's development of Public Improvements within the TIRZ 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, 2039, 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 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 Finance 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 TIRZ 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 TCI and the TIF Unit. TCI 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 section 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 TIRZ 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 TIF Guidelines, the Final Project Plan, the Final Finance Plan, the Unified Development Code, Universal Design, 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 A**, as it may be amended from time to time. Without limiting other material breaches, failure of BDA to comply with this section is a material breach of this Agreement, and the City may terminate the TIRZ 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 TIRZ. 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 TIRZ 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 TIRZ 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 understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or otherwise established herein. This policy is contained in City Ordinance 2016-05-19-0367 and its subsequent amendments. BDA shall require all its applicable contractors to comply with City Ordinance 2016-05-19-0367 and its subsequent amendments or any other ordinance adopted to repeal and replace City Ordinance 2016-05-19-0367.

**5.11 Tree Ordinance.** In accordance with sections 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 Reinvestment Zone 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 TIRZ under this Agreement. To maximize both Tax Increment and Available Tax Increment Reinvestment Zone Funds, BDA will attempt to contractually require development by other developers, in the TIRZ 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 section 1.12 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 (1) 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 (1<sup>st</sup>) year after Completion shall be paid by BDA, its contractor or the bond company and shall not be paid out of the TIRZ 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 Reinvestment Zone 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 (2<sup>nd</sup>) through fifth (5<sup>th</sup>) years after Completion of said infrastructure. Future issuance of City debt may be hindered should the City have to divert Available Tax Increment Reinvestment Zone 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 TIRZ Fund that the City or its agents have inspected, accepted or approved the Public Infrastructure. Approval or acceptance of Public Infrastructure is not a waiver of claims under this subsection. 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 Amended and Restated 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 TIRZ for all areas owned by BDA during construction of the Project, and for so long as BDA owns those areas. Projects within the TIRZ 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.** Upon the commencement and throughout the duration of the construction of this Project, Developer shall submit to the City's TIF Unit Project Status Reports (See Section 1.22 and 5.5 above), on a quarterly basis, no later than on the 15th day of January, April, July and October or, as requested by the City, in accordance with the requirements of this Agreement and of the Status Report Form, attached hereto as **Exhibit A**.

If Progress Status Reports are not submitted on the assigned date as above, BDA understands that no available Tax Increment Reinvestment Zone Funds will be paid to BDA until after the reports are provided.

**5.18 Duty to Comply.** BDA shall comply and shall cause all contractors and subcontractors to comply with the City's 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.** See the amended Finance Plan attached as Exhibit "E".

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

City of San Antonio	With a Copy to:
Transportation & Capital Improvements	Neighborhood Housing and Services Department
P.O. Box 893366	Attn: TIF Unit
San Antonio, TX 78283-3966	1400 S. Flores St.
Fax: (210) 207-7196	San Antonio, TX 78204
Christie.chapman@sanantonio.gov	Nancy.Sheppard@sanantonio.gov

- b. Before the certificates of obligation proceeds are released to BDA, BDA shall submit to TCI 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 TCI. After approval by City, BDA shall not make any substantial changes to the plans and specifications without prior written approval of TCI. City agrees to provide approvals within thirty (30) days of receiving complete plans. The approvals given in this subsection 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 (HDRC), and the State of Texas Commission on Environmental Quality (TCEQ) (Article 9102).
- d. BDA or BDA's Chief Financial Officer, or his designee, shall obtain a City portal account to access the COSA PRIMELink. BDA shall give TCI and the TIF Unit an acceptable project schedule in Primavera. BDA will update the schedule to reflect actual progress and provide it to TCI and the TIF Unit by the fifth (5<sup>th</sup>) day of the following month (i.e., July 5<sup>th</sup> 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 TCI 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 TCI

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<sup>st</sup> 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 (SBEDA) including a description of BDA's SBEDA Program and results of any scoring criteria generated under City Ordinance 2016-05-19-0367, 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. City shall reimburse BDA on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIMELink) within thirty (30) days after receipt of an approved invoice. All requests for reimbursement shall be submitted through the COSA PRIMELink. BDA shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMELink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMELink and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, BDA must submit a schedule of values for payment to be approved by TCI, 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 two percent (2%) of the contract amount, may be withheld by the City for City Capital Administration Costs. Starting on October 1, 2014 (Tax Year 2014/Fiscal Year 2015) through the life of the TIRZ, funds in the amount of up to two percent (2%) of the contract amount may be withheld by the City for City Project Administrative Costs. Actual City Capital Administration Costs will be calculated using the most recent cost allocation plan and indirect cost proposal for TCI. Currently the cost allocation plan is designed for TCI 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 Capital Administration Costs will be charged in this manner to the project work effort on a monthly basis until the four percent (4%) cap has been charged by the City and starting on October 1, 2014 (Tax Year 2014/Fiscal Year 2015) until the two percent (2%) cap has been charged by the City at the end of the CO Project, any excess funds remaining in the work effort within the four percent (4%) cap or starting on October 1, 2014 (Tax Year 2014/Fiscal Year 2015) the two percent (2%) cap for City Capital 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 Capital 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, and TCI, 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 TIRZ. 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 Use of TIRZ Revenue:** The Board and BDA shall use TIRZ revenues to pay in priority; first, all principal and interest requirements on bonds, notes, certificates of obligation, or other financial instruments that have been or may have been issued by the City and allocated (City Allocated Debt) to BDA eligible projects in the TIRZ. After the required monthly amount has been deposited to the TIRZ Debt Service Fund and the Reserve to pay the next interest and principal payment due on the payment date of the City Allocated Debt, and subject to priority of payment in section 7.5, the remaining TIRZ revenues in the TIRZ account may be used by BDA to pay the cost of BDA debt service requirements for eligible TIF projects, or to pay BDA for public improvements, including financing costs and in accordance with section 7.5.

**6.2 Coordination 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.

**6.3 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.

**6.4 Payment Requests.** The City and the Board hereby agree that all payment requests from BDA not submitted via the Portal as described in section 5.20(j) shall be initiated by the submission of a CPPR form, attached hereto as **Exhibit C**. City payments to BDA for Public Improvements within the TIRZ 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 TIRZ Fund shall accrue as the City collects its Tax Increment. The City agrees to deposit its Tax Increment payments in the TIRZ 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 C** 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 Finance Plan and the Final Project Plan, total payment for Public Improvements including financing cost of a maximum of one hundred five million, four hundred seventy three thousand, one hundred four dollars and eighty-seven cents (\$105,473,104.87) as full payment for designing and constructing the Public Improvements required under the Final Project Plan, Final Finance 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 Reinvestment Zone Funds shall be made to BDA within thirty (30) days after deposit of a Tax Increment payment to the TIRZ Fund, if BDA is in compliance with laws, statutes, ordinances and the requirements of this Agreement.

7.5 **Order or Priority of Payment.** The cost of the public infrastructure improvements and other approved costs will be paid annually from revenues produced by the TIRZ. In addition to the capital costs, other costs to be paid from the TIRZ revenues include City annual administrative fees. Revenues derived from the TIRZ will be used to pay costs in the following order of priority of payment: (i) to repay any necessary debt obligation of the City for debt dedication to BDA’s development of public improvements within the Tax Increment Reinvestment Zone; (ii) to accumulate a reserve fund, up to the amount of the maximum annual debt service, for any necessary debt obligation of the City for debt dedicated to BDA’s development of public improvements within the Tax Increment Reinvestment Zone; (iii) to reimburse eligible startup Administrative Costs; (iv) to pay all other ongoing Administrative Costs to the City for administering the TIRZ; (v) to pay City Capital Administrative Costs to the City as described in the this Agreement; (vi) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in this Agreement; (vii) to reimburse the City under any reclaim of funds pursuant to Article X of this Agreement; (viii) to pay BDA for eligible debt obligations of BDA for debt to public improvements as provided in this Agreement and in the Final Project Plan; and (ix) 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 TIRZ are available for this purpose. The foregoing notwithstanding, no fund will be paid from the TIRZ 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 TIRZ 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 TIRZ 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 Reinvestment Zone Funds to pay City’s debt

incurred and dedicated to BDA's development of Public Improvements within the TIRZ when due, then BDA is required to pay the cost of debt due.

**7.7 Payment of Debt Service on Certificates of Obligation, Bonds, Notes, or other financial instruments Funded Improvements.** City is automatically authorized to make transfers in approximate equal monthly installments, from the TIRZ Fund to the TIRZ 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 debt issued or that may be issued by the City utilized for BDA eligible projects including but not limited to CO Projects under section 5.20 the terms of this 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 TIRZ 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 completed Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "**Brooks City Base TIRZ,**" and the name of any other approved Public Infrastructure projects in the description of operations block of the certificate. The 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 certificate(s) or form must have the agent's 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 section 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 coverage 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 Finance 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	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following:  a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <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 ten (10) days of the requested change. BDA and/or BDA's subcontractor shall pay any costs incurred resulting from said changes.

with a copy to:

City of San Antonio  
NHSD  
Attn: TIF Unit  
1400 S. Flores St.  
San Antonio, Texas 78204

City of San Antonio  
TCI  
P.O. Box 893366  
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 section 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 section 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 coverage with minimum limits of not less than those limits delineated in section 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 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 (7) 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 ten (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 (1) year thereafter;
- f. notify the City in writing by certified mail or personal delivery, within ten (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 subsections a-f, 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 Finance 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 section 10.1 above, the City shall not distribute the proceeds of Certificates of Obligation or any debt that may be issued by the City 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 TIRZ Funds to BDA until BDA's default is secured. If the default is not cured the City and the Board may retain all undistributed TIRZ Fund money for distribution in the TIRZ Fund.

10.3 Notwithstanding section 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 TIRZ 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 section 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 section.**

**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 Neighborhood and Housing Services Department (TIF Unit) 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 this 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 section 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 section 16.7 of this 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 section 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 section 16.6 above, BDA shall be released from such duties and obligations.

16.9 Except as set forth in section 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 NHSD  
ATTN: TIF Unit  
City of San Antonio  
1400 S. Flores  
San Antonio, Texas 78204

### **BROOKS DEVELOPMENT AUTHORITY**

Samantha Carneiro Chief Financial Officer  
Brooks Development Authority,  
3201 Sidney Brooks  
San Antonio, Texas 78235  
Phone: (210) 678-3300  
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 City Charter 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.

### **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 this Development Agreement. BDA agrees that its construction contractor performing work the City funded portion of the Project will comply with City Ordinance No. 71312 and its successors such as ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, BDA shall request upon advertisement of construction bids, and the City will provide BDA with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. With respect to the City funded portion of the Project, BDA is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time that BDA calls for bids for construction of a given phase. With respect to the City funded portion of the Project, the Grantee 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 require its construction contractor to collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as deemed necessary by City to confirm compliance with this Agreement.

Upon audit of the records and certified payrolls under this section, should the City or its auditors find any wage violations, BDA shall cause its construction contractor to forfeit as a penalty to the City sixty dollars and no cents (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman, or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve BDA's contractor from its obligations 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. 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 B**, 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 Finance 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 Finance Plan, then such amendment shall comply with the requirements of section 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 Finance 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 Reinvestment Zone 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**.

*(Signature blocks on following page)*

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: Leo Gomez, President & CEO  
Date: \_\_\_\_\_

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

**CITY CLERK**

  
\_\_\_\_\_  
Michelle R. Krupa  
Title: Presiding Officer, Board of Directors  
Date: 10/29/18

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk  
Date: \_\_\_\_\_

Approved as to form:   
\_\_\_\_\_  
Andrew Segovia  
City Attorney  
Date: 10-29-18