

AN ORDINANCE

2015-10-22-0907

**AUTHORIZING A PRE-DEVELOPMENT AND A RIGHT OF ENTRY AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, THE BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS AND GEORGE GERVIN YOUTH CENTER TO FUND PRE-DEVELOPMENT ACTIVITIES UP TO \$150,000.00 ON CITY OWNED PROPERTY LOCATED AT 301 SPRIGGS DALE AND WITHIN THE BOUNDARIES OF THE INNER CITY TIRZ.**

\* \* \* \* \*

**WHEREAS**, the Inner City Tax Increment Reinvestment Zone Number Eleven (the “TIRZ”) was designated on December 14, 2000, through Ordinance 93101 and amended boundaries and extended term on December 5, 2013, through Ordinance 2013-12-05-0871 by City Council to support development, redevelopment, revitalization and public infrastructure improvements within an area adjacent to downtown San Antonio; and

**WHEREAS**, the City of San Antonio (“City”) and the Inner City TIRZ Board (“Board”) desire to provide funding for Pre-Development Activities associated with the Echo East mixed use development project proposed by the George Gervin Youth Center (GGYC) (“Developer”) within the Inner City Tax Increment Reinvestment Zone Number Eleven; and

**WHEREAS**, the proposed Project will consist of approximately 250 units of apartments/condos; a specialty grocery store with pharmacy; ten to fifteen retail business enterprises; professional office space; a boutique hotel; a banquet hall and parking within the TIRZ (“Project”); and

**WHEREAS**, the Project will be located at 301 Spriggsdale currently owned by the City (“Project site”); and

**WHEREAS**, GGYC owns property adjacent to the Project site and requests that the City grant GGYC a Right of Entry to conduct the pre-development activities to assess the viability of development on the Project site; and

**WHEREAS**, on August 14, 2014 the Inner City TIRZ Board of Directors recommended the award of up to \$150,000.00 to George Gervin Youth Center to fund a Pre-Development Agreement; and

**WHEREAS**, the Pre-Development Agreement will require GGYC to conduct a full site assessment, develop conceptual drawings, conduct financial feasibility analysis, create a master plan, and a financial plan for the proposed Project; and

**WHEREAS**, GGYC will deliver to the City a master plan, conceptual drawings, financial feasibility schedule, associated civil engineering, financing plan, full site assessment and market study; and

**WHEREAS**, if it is determined by the City and the Board after pre-development activities are completed that development of the Project Site is viable, then the GGYC will have a right of first refusal to purchase the Project site from the City at terms and conditions agreeable to the City;  
**NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of the Pre-Development and Right of Entry Agreement with the George Gervin Youth Center for the Project within the Inner City TIRZ in the amount up to \$150,000.00 are approved.

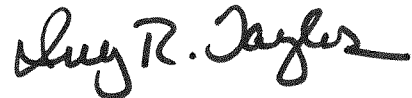
**SECTION 2.** The City Manager or her designee is authorized to execute the Pre-Development and Right of Entry Agreement, a copy of which, in substantially final form, is attached to this Ordinance as Exhibit A. A copy of the fully executed agreement will be substituted for Exhibit A upon receipt of all signatures.

**SECTION 3.** City Staff is authorized to amend the Inner City TIRZ Project and Finance Plans to include this Project.

**SECTION 4.** There is no fiscal impact from the proposed action. All funding for the proposed projects will be paid from the Inner City TIRZ fund from available tax increment and will not impact the City's General Fund.

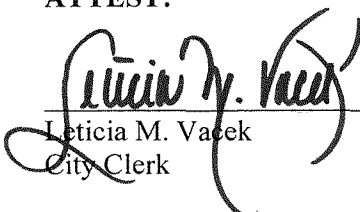
**SECTION 5.** This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective ten (10) days after passage.

PASSED AND APPROVED this 22<sup>nd</sup> day of October, 2015.

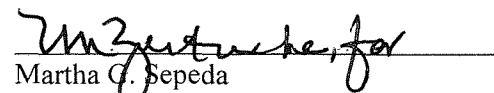


M A Y O R  
Ivy R. Taylor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Martha C. Sepeda  
Acting City Attorney

|                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                    |            |            |                |               |               |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------|------------|----------------|---------------|---------------|
| <b>Agenda Item:</b> | <b>12 ( in consent vote: 4, 6, 7, 8, 9, 10, 11, 12, 15 )</b>                                                                                                                                                                                                                                                                                                                                                                                                                                         |                    |            |            |                |               |               |
| <b>Date:</b>        | 10/22/2015                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    |            |            |                |               |               |
| <b>Time:</b>        | 09:30:57 AM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                    |            |            |                |               |               |
| <b>Vote Type:</b>   | Motion to Approve                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                    |            |            |                |               |               |
| <b>Description:</b> | An Ordinance authorizing the execution of a Pre-development and Right of Entry Agreements with the George Gervin Youth Center to conduct due diligence on the proposed Echo East mixed use development project on City owned property at 301 Spriggsdale and authorizing payment to the George Gervin Youth Center of \$150,000.00 from the Inner City TIRZ Fund to fund the pre-development analysis. [Peter Zanoni, Deputy City Manager, John Dugan, Director, Planning and Community Development] |                    |            |            |                |               |               |
| <b>Result:</b>      | Passed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                    |            |            |                |               |               |
| <b>Voter</b>        | <b>Group</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Not Present</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Motion</b> | <b>Second</b> |
| Ivy R. Taylor       | Mayor                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                    | x          |            |                |               |               |
| Roberto C. Treviño  | District 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                | x             |               |
| Alan Warrick        | District 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | x                  |            |            |                |               |               |
| Rebecca Viagran     | District 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Rey Saldaña         | District 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Shirley Gonzales    | District 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Ray Lopez           | District 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Cris Medina         | District 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Ron Nirenberg       | District 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Joe Krier           | District 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    | x          |            |                |               |               |
| Michael Gallagher   | District 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                    | x          |            |                |               | x             |

# **EXHIBIT A**

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**PRE- DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS  
GEORGE GERVIN YOUTH CENTER, INC., and  
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ELEVEN,  
CITY OF SAN ANTONIO, TEXAS**

This Pre- Development Agreement (“Agreement”), pursuant to City of San Antonio Ordinance Number 2015-\_\_-\_\_, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2015, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas (“the City”); George Gervin Youth Center, Inc., a 501(c)(3) nonprofit organization. (“the Developer”), and the Board of Directors for Reinvestment Zone Number Eleven, City of San Antonio, Texas, a tax increment reinvestment zone (the “Board”) and 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**, a tax increment reinvestment zone (“TIRZ”) created pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the “Act”) may only be designated by the City within the city limits; and

**WHEREAS**, by Ordinance Number 93101, dated December 14, 2000, the City created Reinvestment Zone Number Eleven in accordance with the Act, to promote development and redevelopment of the Zone Property, within the Inner City TIRZ boundary, through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future, and established a Board of Directors for the Zone, and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; 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**, the Developer has proposed a mixed-use development for the Project site to consist of approximately 250 units of apartments/condos; a specialty grocery store with pharmacy; ten to fifteen retail business enterprises; professional office spaces; a boutique hotel; a banquet hall and parking; and

**WHEREAS**, the Developer has sought funding to complete Pre-Development Activities in order to assess the viability of the proposed mixed-use development for the Project site; and

**WHEREAS**, the Project site is a twenty acre site that combines two ten acre tracts into twenty contiguous acres of land of which ten acres is located off Spriggsdale and ten acres located of East Commerce; and

**WHEREAS**, the City currently owns ten acres of the Project site and desires to seek development opportunities for the site which is located within the boundaries of the Inner City TIRZ; and

**WHEREAS**, on the 14<sup>th</sup> day of August, 2015 the Board approved funding for Pre-development Activities related to a proposed mixed-use development by the Developer; and

**WHEREAS**, the Board will adopt and approve an amended Project Plan and an amended Finance Plan defined hereunder and referred to as “Project Plan” and “Finance Plan” which will include this Project for development of the Zone Property; and

**WHEREAS**, pursuant to the Act and City of San Antonio Ordinance Number 2015-\_\_-\_\_-\_\_, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2015, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Finance Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

**WHEREAS**, pursuant to said authority above, the Board, the City, and the Developer each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as may be specified in any future amended Project Plans, and Finance Plans and this Agreement; and

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

## **ARTICLE I. DEFINITIONS**

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

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

1.3 “Administrative Costs” means reasonable costs directly incurred by any Participating Taxing Entity related to its agreement to participate in the funding of the Zone, as described in this Agreement, and the Project and Finance Plan. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the Zone incurred prior to entering into and during this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective.

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

1.5 “Available Tax Increment Funds” means the “Tax Increment” contributed by each Participating Taxing Entity to the TIF Fund, as paid out in accordance with the priority of payment listed in Section 7.6 below.

1.6 “Captured appraised value of real property taxable by a taxing unit for a year” has the meaning provided by §311.012(b) of the Act.

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

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

1.9 “Completion” means final approval of specific Pre-Development Activities as described and in accordance with this Agreement, and the Project Plan. In order for a Pre-Development Activity to have achieved a state of “Completion” for the purpose of reimbursement under Article VII of this Agreement, or for purposes of the Right of First Refusal under Article VI the Pre-Development Activity must:

- (1) be approved and accepted by the City or appropriate entity as evidenced by a letter of acceptance issued by an authorized official of the City or appropriate entity.

1.10 “Contract Progress Payment Request” (“CPPR”) means a request, prepared in accordance with the requirements of **Exhibit C**, Contract Progress Payment Request Form, attached and incorporated herein, for reimbursement to the Developer for work completed in accordance with the definition of “Completion” on specific Pre-Development Activities in the Zone in accordance with the Pre-Development Activities in the Project Plan and the timeline detailed in **Exhibit A**. The CPPR shall also reflect all waivers granted through any City program or incentives.

1.11 “CPPR Approval” means a written acknowledgement from the City to the Developer that the CPPR was completed and submitted correctly, and that the CPPR is ready for presentation to the Board for approval and consideration of reimbursement to the Developer.

1.12 “Developer” means George Gervin Youth Center, Inc., a 501(c)(3) nonprofit organization.

1.13 “Effective Date” means the last date that a Party signs this Agreement.

1.14 “Finance Plan” means the amended 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, which Plan is hereby incorporated into this Agreement by reference for all purposes, as if set out in its entirety.

1.15 “Guidelines” means the current Tax Increment Financing (TIF) and Reinvestment Zone policy as passed and approved by the City Council of the City of San Antonio and amended from time to time.

1.16 “Participating Taxing Entity” means any governmental entity recognized as such by Texas law, which is participating in this Project by contributing a percentage of its tax increment.

1.17 “Pre-Development Phases” means the timetable for completing all Phases of and Activities of Pre-Development specified in this Agreement, which timetable is more particularly set forth in **Exhibit A**, Pre-Development Phases, attached and incorporated in this Agreement for all purposes and which timetable may be amended by the Parties from time to time pursuant to Section 19.2.



1.18 “Pre-Development Activities” has the meaning specified in Section 3.1 of this Agreement and as more thoroughly set forth in **Exhibit A and E** attached and incorporated herein for all purpose.

1.19 “Project” has the meaning specified in Section 3.1 of this Agreement and as more thoroughly set forth in the **Exhibit A and E** attached and incorporated herein for all purposes.

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

1.21 “Project Plan” means the amended Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

1.22 “Project Property” means 301 Spriggsdale San Antonio, TX 78220 and as more thoroughly described in **Exhibit F** attached and incorporated herein for all purposes.

1.24 “Project Status Report” means a report, prepared and submitted by the Developer in accordance with the requirements of this Agreement, and **Exhibit B** attached and incorporated herein for all purposes, which report provides quarterly updates of Phases of Pre-Development and compliance with laws, ordinances, and contractual requirements.

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

1.25 “TIF” means Tax Increment Financing.

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

1.27 “TIF Unit” means the employees of the City department responsible for the management of the City’s Tax Increment Financing Program.

1.28 “TIRZ” means Tax Increment Reinvestment Zone.

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

1.30 “Zone Property” means the contiguous geographic area of the City that is included in the boundaries of the Zone, which are more particularly described in the Project and Finance Plans incorporated herein.

Singular and Plural: Words used in the singular, where the context so permits, also include the plural and vice versa, unless otherwise specified.

## **ARTICLE II. REPRESENTATIONS**

2.1 **No Tax Increment Bonds or Notes:** The City, the Board and the Developer represent that they understand and agree that neither the City nor the Board shall issue any bonds or notes to cover any costs directly or indirectly related to the Developer's improvement of the Zone under this Agreement.

2.2 **City Authority.** The City represents to the Developer that as of the date of the execution of this Agreement, 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.** Board represents to the Developer that as of the date of the Board's signature to this Agreement the Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 93101, passed and approved on December 14, 2000, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 **Developer's Authority and Ability to Perform.** The Developer represents to the City and to the Board that the Developer is a 501(c)(3) nonprofit organization; that the Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement; that the Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation nor result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and that the Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

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

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

2.7 **Right to Assign Payment.** The City and the Developer may rely upon the payments to be made to them out of the TIF Fund as specified in this Agreement and the Developer may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to the Developer.

2.8 **Developer's Continuing Duty to Complete Obligations.** The City, the Board and the Developer represent each to the others that they understand and agree that even after the Zone terminates, the Developer shall diligently work to successfully complete any and all required

obligations that are not completed before the Zone terminates. 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 the Developer represent each to the others that they understand and agree that the City is the only participating taxing entity contributing one hundred percent (100%) of its tax increment to the TIF Fund, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

**2.10 Developer Bears Risk of Reimbursement.** The Developer understands and agrees that any expenditure made by the Developer in anticipation of reimbursement from Tax Increments shall not be, nor shall be construed to be, financial obligations of the City, Board or participating taxing entities. The Developer shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of Tax Increment, changes in tax rates or tax collections, changes in 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, unanticipated effects covered under legal doctrine of force majeure.

**2.11 Not an Obligation of the General Fund.** Any contributions made by the Developer in anticipation of reimbursement from tax increments shall never be an obligation of the City's general fund, but are only obligations of the TIF Fund, and are subject to limitations herein.

### **ARTICLE III. THE PROJECT**

**3.1 The Project.** The Project shall include Pre-development Activities to be carried out on the Project Property located at 301 Spriggsdale San Antonio, TX 78220 and as more thoroughly described in **Exhibit F** by the Developer. The Pre-development Activities shall be completed by the Developer in accordance with and for the purposes outlined in **Exhibits A and E** of this Agreement. The Pre-Development Activities shall include the following:

1). Conducting a full site assessment for development; 2) Developing conceptual drawing; 3) Conducting a financial feasibility and demographic analysis; 4) Creating both a master and financial plan; 5) Completing a market study by an independent real estate firm; 6) Completing Environmental and Engineering studies and assessments; 7) Completing a Project Property survey; 8) Identifying buildable space; 9) Securing investors and financing; and 10) delivering to the City any original documents created as a result of Pre-Development Activities and as required by this Agreement.

**3.2 Pre-Development Documents.** The Developer shall maintain any and all records for review and examination in accordance with Article XII of this Agreement. The Developer shall also provide the City and the Board originals of any documents, professional services reports, and studies procured or produced as a result of Pre-Development Activities including but not limited to all, contracts executed for Pre-Development services, surveys, Master Plans, Conceptual Drawings and design concepts, Engineering and Architectural documents, schematics, environmental studies and assessments, feasibility studies, demographic reports, and financial documents before termination of this Agreement. ("Pre-Development Documents") If

Developer fails to maintain and or provide originals of any Pre-Development Documents to the City and the Board, then Developer shall return any payments received under this Agreement.

**3.3 Private Financing.** The cost of all Phases of Pre-Development the Public Improvements and all other approved expenses associated with the Project shall be funded by the Developer's own capital or through commercial or private construction loans/lines of credit secured solely by the Developer. The City and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse the Developer for eligible Project Costs it has expended. These Available Tax Increment Fund reimbursements made to the Developer are not intended to reimburse the Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

**3.4 Reimbursement.** Neither the City nor the Board can guarantee that Available Tax Increment Funds shall completely reimburse the Developer, but those Available Tax Increment Funds shall constitute the only source of reimbursement to the Developer for the costs of all Phases of Pre-Development .

#### **ARTICLE IV. TERM**

**4.1** The term of this Agreement shall commence on the Effective Date and end on whichever of the following dates should occur the earliest: (i) December 31, 2016; (ii) the date this Agreement is terminated as provided in Article VIII; or (iii) termination of the Inner City TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

#### **ARTICLE V. DUTIES AND OBLIGATIONS OF DEVELOPER**

**5.1 Compliance with Laws and Ordinances.** Notwithstanding any other provision of this Agreement, the Developer agrees to retain and exercise supervision over all Pre-development Activities and or any activities directly of indirectly related to the Project, and shall comply and require its contractors and subcontractors to comply with all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City Code (including the Unified Development Code such as Universal Design and Construction requirements), all City ordinances, state, federal and local law, as amended.

**5.2 Duty to Complete.** Subject to Article VII, "Compensation to Developer," the Developer agrees to complete, or cause to be completed, the Pre-Development Activities described in Section 3.1 and **Exhibit A and E** of this Agreement. The Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. The Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over any Pre-Development Activities.

**5.3 Discretionary Program.** The Developer agrees that the TIF program is a discretionary program and that the City has no obligation to extend TIF to the Developer. In exchange for receiving TIF, the Developer agrees that it has no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future

City charter, City Code, City ordinances, and City Unified Development Code, state or federal laws and regulations.

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

**5.5 Delays.** The Developer agrees to commence and complete the Project in accordance with the Pre-development Phases and Activities in (**Exhibit A**). If Project completion is delayed due to war, civil commotion, acts of God, inclement weather, governmental restrictions, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Developer's control, then at the City's reasonable discretion, the deadlines set forth in the attached **Exhibit A** may be extended by the period of each such delay. In the event that the Developer does not complete the Project substantially in accordance with **Exhibit A**, then the Parties, in compliance with Section 19.2 of this Agreement, may extend the deadlines set forth in **Exhibit A** but not past the expiration of the Zone. If the Parties cannot reach an agreement on the extension of the deadlines in **Exhibit A**, or if the Developer continues to fail to complete the Project in accordance with the revised deadlines, then the City may exercise its remedies including but not limited to termination of the Agreement.

**5.6 Litigation Against the City.** 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 applicants and the TIF applicant's developers, partners, 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 agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

**5.7 Utility payments.** The Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the Pre -development Activities related to the Project or in the Zone Property for all areas owned by the Developer during the Project, and for so long as the Developer owns or as a right of entry in those areas. The Project shall be subject to Section 35.501 et seq. of the San Antonio City Code (impact fees) and the Developer shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

5.8 **Duty to Cooperate.** The Developer shall cooperate with the City and the Board in providing all necessary information to the City and the Board in order to assist the City and the Board in determining Developer's compliance with this Agreement.

5.9 **Quarterly Status and Compliance Reports.** The Developer shall submit to the City and the Board written and signed Project Status Reports (see Section 1.22 above) containing all required information, starting no later than 30 days following the beginning of the Project, and on the 15<sup>th</sup> days of January, April, July and October thereafter throughout the duration of the Project, or more often if requested by the City, or the Board, on its Project progress and expenses, proof of insurance and its compliance with laws, ordinances, and contractual requirements. If Project Status Reports are not submitted on the assigned dates as above, the Developer understands that no Available Tax Increment Funds will be paid to the Developer and the City may exercise its rights in accordance with Article VIII.

## **ARTICLE VI. DUTIES AND OBLIGATIONS OF CITY AND BOARD**

6.1 **No TIF Bonds.** Neither the City nor the Board shall sell or issue any bonds to pay or reimburse the Developer or any third party for any eligible costs or services provided under the terms of this Agreement or improvements to the Zone Property performed under the Project Plan, Finance Plan or this Agreement.

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, termination of the Zone, and any reimbursement to the City under Section 5.13, the City and the Board hereby pledge all Available Tax Increment Funds as reimbursement to the Developer for approved Project costs, up to the maximum total amount specified in Section 7.3 in this Agreement.

6.3 **Form of Reimbursement Requests.** The City and the Board agree that all reimbursement requests from the Developer shall be initiated by the submission of a CPPR form, attached as **Exhibit C**.

6.4 **Future Funding and Development.** The Developer acknowledges that neither the City nor the Board are obligated to provide any funding beyond the scope of this Agreement. The parties acknowledge that this Agreement does not obligate the City nor the Board to grant, sell, or convey to the Developer or any other person or entity the Project Property.

6.5 **Right of First Refusal.** During the term of this Agreement, if it is determined after Pre-Development Activities are completed that development of the Project Property is desired by both the City and the Board, as evidenced in writing by an amendment to the Project Plan and by an Ordinance passed by City Council, the City shall first offer to sell the Project Property to the Developer at terms and conditions agreeable to the City. The right of first refusal for the Developer to purchase and develop the Project Property will be governed by the following:

a. After the completion of the Pre-Development Activities in accordance with this Agreement, before the City may sell the Project Property to a third party, the City shall first offer to sell the Project Property to the Developer at terms and conditions agreeable to the City. The Developer shall have thirty (30) days in which to accept such offer from the City to purchase and

develop the Project Property. If the Developer does not accept such offer from the City within thirty (30) days, then the City shall be free to sell the Project Property to a third party.

b. In consideration for the right of first refusal, the Developer agrees to pay \$100.00 to the City to be deposited in the TIF fund within sixty (60) days after final execution of this Agreement. At anytime, the City may sell, transfer, or convey the Project Property to a third party if City Council passes a City Ordinance calling for the Project Property to be sold, transferred, or conveyed because of a public or private nuisance, emergency, or for a public purpose or necessity.

6.6 **Right of Entry.** Upon execution of this Agreement, the City will execute a Right of Entry Agreement with the Developer to allow the Developer to carry out its obligations under this Agreement. The parties agree to the terms and conditions of the Right of Entry Agreement attached as **Exhibit G** and hereto incorporated for all purposes.

## **ARTICLE VII. COMPENSATION TO DEVELOPER**

7.1 **CPPR Approval.** Upon completion of the Pre-Development Activities the Developer shall submit to the Board a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in **Exhibit C** hereof and before September 30, 2016. The CPPR shall be presented to the Board for review and possible reimbursement authorization after the City review and approval, as evidenced by a written CPPR Approval issued by the City. Failure to timely submit CPPR's in accordance with this Section 7.1 shall result in disallowance of any such Developer requests for reimbursement of expenses.

7.2 **Corrections to CPPR.** Should there be discrepancies in the CPPR or if more information is required, Developer will have thirty (30) days upon notice by City to correct any discrepancies or submit additional information requested by City. Failure to timely submit the additional information requested by the City shall result in disallowance of the Developer's requested expense reimbursement.

7.3 **Maximum Reimbursement of Developer.** Following the Board's authorizations, the Developer shall receive, in accordance with this Agreement, total reimbursements for approved Pre-Development costs from the City of a maximum of One Hundred and Fifty Thousand Dollars (**\$150,000.00**) for Pre-Development costs regarding the Echo East Project, as full reimbursement for the obligations required under this Agreement.

7.4 **Processing of Payment Requests.** Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within forty-five (45) days after the deposit of the City's Tax Increment Payment to the TIF Fund, if the Developer is in compliance with laws, statutes, ordinances and the requirements of this Agreement.

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

**7.6 Order or Priority of Payment.** The Parties agree that the City and the Board may use funds in the Tax Increment Fund to pay eligible expenditures in the following order or priority of payment: (i) to fully reimburse eligible startup Administrative Costs incurred by City; (ii) to pay all other ongoing Administrative Costs to the City for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City, then the ongoing Administrative Costs of the City shall be reimbursed on a pro rata basis; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in this Development Agreement; (iv) to reimburse the City under any reclaim of funds pursuant to Article VIII; (v) to reimburse any Developer and or Grantee for any Inner City TIRZ project costs including Pre-development costs associated with the Echo East Project, including financing costs, as provided in this Agreement and to the extent that funds in the TIF Fund are available for this purpose. The foregoing notwithstanding, no funds will be paid from the TIF Fund to a Participating Taxing Entity or the Developer for its financial or legal services in any dispute arising under this Agreement or a related interlocal agreement between the Developer and a Participating Taxing Entity or between Participating Taxing Entities.

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

**7.8 Repayment of invalid payments.** If any payment to the developer is held invalid, ineligible, illegal or unenforceable under 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 that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by the developer to the city for deposit into the TIF fund, and that the remainder of this agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained in this agreement.

## **ARTICLE VIII. DEFAULT AND TERMINATION**

**8.1** In the event that the Developer or Developer's contractors fail to commence any Phase of Pre-Development Activities, fail to complete the Project, or fail to perform any other obligation pursuant to any term of this Agreement, the City and/or the Board may declare a material breach and notify the Developer by certified mail. The City or Board may terminate this Agreement if the Developer does not take adequate steps to cure its failure within ninety (90) calendar days after receiving written notice from the City and/or the Board requesting the failure be cured. In the event of such default, and as one of the remedies of the City and/or the Board, the Developer shall return any payments under this Agreement for any Phase of Pre-Development Activities within ninety (90) calendar days after receiving written notice from the City and/or the Board that the Developer has defaulted on this Agreement; EXCEPT that no refund is due if Developer, with the City's and the Board's written consent, assigns its remaining obligations under this Agreement to a qualified party who timely completes the Developer's obligations under this Agreement, pursuant to Article XIV (Assignment) herein.



8.2 After sending notice of failure under Section 8.1 above, the City and Board shall not distribute TIF funds to the Developer until the Developer's default is cured. If the default is not cured, the City and Board may retain all undistributed TIF funds, terminate this agreement, and unencumber the unpaid balance under the terms of this agreement without further Board or Council action.

8.3 Notwithstanding Section 8.1 above, in the event the Board and/or the Developer fails to furnish any documentation required in Article XII (Examination of Records) herein within thirty (30) days following the written request for same, then the Board and/or the Developer shall be in default of this Agreement.

#### **ARTICLE IX. INDEMNIFICATION**

9.1 The DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the DEVELOPER'S activities under this AGREEMENT, including any acts or omissions of the DEVELOPER, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. THE DEVELOPER SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY DEVELOPER OR DEVELOPER'S PREDECESSORS IN TITLE, OR THE FAILURE OF DEVELOPER OR DEVELOPER'S PREDECESSORS IN TITLE, TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The DEVELOPER shall advise the CITY, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the CITY, the BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the DEVELOPER'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the DEVELOPER's cost to the extent required under the INDEMNITY in this Section

THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The CITY, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the DEVELOPER of any of its obligations.

9.2 DEVELOPER shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, and the BOARD and their respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever which are asserted by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. DEVELOPER'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Section 9.1 above, the provisions in Section 9.1 control over those set forth in this Section. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY or the BOARD shall send written notice to DEVELOPER describing in reasonable

detail the claim and allowing DEVELOPER to cure such claim within 15 calendar days of receiving the notice.

#### **ARTICLE X. SITE INSPECTION AND RIGHT OF ENTRY**

10.1 The Developer shall allow the City and the Board access to the Project property owned or controlled by the Developer for inspections during and upon completion of each Phase of the Project, and to documents and records considered necessary by the City and the Board to assess the Developer's compliance with this Agreement.

#### **ARTICLE XI. RESPONSIBILITIES OF THE PARTIES**

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

11.2 **City and Board.** To the extent permitted by Texas law, no director, officer, employee or agent of the City, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

#### **ARTICLE XII. EXAMINATION OF RECORDS**

12.1 **Right to Review.** Following notice to the Board and the Developer, the City reserves the right to conduct, at its own expense, examinations, during regular business hours and of the books and records related to this Agreement (including contracts, paper, correspondence, copies, books, accounts, billings and other information related to the performance of the Board and/or the Developer's services hereunder) no matter where the books and records are located. The City also reserves the right to perform any and all additional audits relating to the Board's and/or the Developer's services, provided that such audits are related to those services performed by the Board and/or the Developer for the City under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or the Developer.

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

12.3 **Discrepancies.** Should the City discover errors in internal controls or in record keeping associated with the Project, the Board and/or the Developer shall correct such discrepancies

either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by the City or the County to the Board and/or the Developer of such discrepancies. The Board and/or the Developer shall inform the City in writing of the action taken to correct such discrepancies.

**12.4 Overcharges.** If it is determined that the Board and/or the Developer has overcharged for the cost of the Pre-Development Activities, then such overcharges shall be immediately returned to the TIF Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to the Developer for the year in which the discrepancy occurred, and the TIF Fund is entitled to a refund due to these overcharges, then the Developer shall pay the cost of the audit.

### **ARTICLE XIII. NON-WAIVER**

**13.1 Actions or Inactions.** No course of dealing on the part of the City, the Board, or the Developer nor any failure or delay by the City, the Board, or the Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

**13.2 Receipt of Services.** The receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further observance or performance by the Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such a waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

### **ARTICLE XIV. ASSIGNMENT**

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

**14.2 Assignment by Developer.** The Developer may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City as evidenced by an ordinance passed and approved by the City Council, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement.

**14.3 Work or Services Subject to this Agreement.** Any work or services contracted herein shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by the Developer's contractors

and/or subcontractors with this Agreement shall be the responsibility of the Developer. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible Project Cost reimbursement.

**14.4 No Third Party Obligation.** The City shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of the Developer, for performance of work or services under this Agreement except as set forth in Section 14.6 of this Agreement.

**14.6 Written Instrument.** Each transfer or assignment to which there has been consent, pursuant to Section 14.2 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 executed copies of such written instrument shall be delivered to the City. Failure to obtain, the City's consent in writing, or failure to comply with the provisions herein first shall prevent any such transfer or assignment from becoming effective. In the event the City approves the assignment or transfer of this Agreement, the Developer shall be released from such duties and obligations.

**14.7 No Waiver.** Except as set forth in Section 14.3, the receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further observance or performance by the Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance.

## **ARTICLE XV. NOTICE**

**15.1 Addresses.** 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**

Department of Planning and Community  
Development  
Attn: TIF Unit  
1400 S. Flores  
San Antonio, TX 78204

### **BOARD**

Board of Directors, Inner City Tax Increment  
Reinvestment Zone Number Eleven  
City of San Antonio, Texas  
C/O Planning and Community Development  
ATTN: John Dugan, Director  
1400 S. Flores  
San Antonio, TX 78204

### **DEVELOPER**

George Gervin Youth Center, Inc.  
6903 Sunbelt Dr.  
San Antonio, Texas 78218

15.2 **Change of Address.** Each Party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile shall be deemed delivered when receipt of such is during normal business hours or the next business day if receipt is after normal business hours. Any communication delivered in person shall be deemed received when 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: (i) in writing, (ii) delivered to a principal officer or managing entity of the recipient in person, by courier, mail, facsimile, or similar transmission, and (iii) 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 by applicable law or this Agreement, a written waiver, 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 to change its address by giving at least fifteen (15) days written notice to the other Parties.

## **ARTICLE XVI. CONFLICT OF INTEREST**

16.1 **Charter and Ethics Code Prohibitions.** The Board and the Developer each acknowledges that it is informed that the Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

16.2 **Warrant and Certification.** In accordance with Section 311.0091(h)(1) of the Act, and pursuant to Section 16.1 above, the Developer warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Developer further warrants and certifies that the Developer has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code using the form provided in **Exhibit D**.

## **ARTICLE XVII. INDEPENDENT CONTRACTORS**

17.1 **No Agency.** All Parties expressly agree that in performing their services under this Agreement, the Board and the Developer at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or the Developer respectively shall be independent contractors of the Board and/or the Developer. The City shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed

by the Board and/or the Developer respectively, under this Agreement unless any such claims are due to the fault of the City.

17.2 **No Authority.** The Parties 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.

## **ARTICLE XVIII. TAXES**

18.1 **Duty to Pay.** The Developer shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees which are now or may be levied upon the Zone Property, the Developer or upon the business conducted on the Zone Property or any of the Developer's property used in connection therewith, including employment taxes. Developer shall also maintain in current status all Federal, State, and local licenses and permits required for Developer's business operation.

18.2 **Evidence of Payment.** The Developer shall include in the CPPR submission evidence of payment.

## **ARTICLE XIX. CHANGES AND AMENDMENTS**

19.1 **Ordinance and Order Required.** Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing executed by the City, the Board and the Developer and evidenced by passage of a subsequent City ordinance.

19.2 **Pre-Development Phases and Activities Schedule.** Notwithstanding the above, the Pre-development Phases and Activities Schedule as detailed in **Exhibit A** may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the City Department responsible for overseeing the TIF Unit, (the "TIF Director") as long as the overall Amended Project Plan and Amended Finance Plans are not materially changed by such amendment. In the event an amendment to the Pre-development Phases and Activities Schedule will result in a Material Change to the overall Project Plan or Financing Plan, then such amendment shall comply with the requirements of Section 19.1 above. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. The Developer shall rely on the determination of the TIF Director and the City Attorney's Office as to whether a change in the Pre-development Phases and Activities Schedule would result in a Material Change to the overall Project requirements.

19.3 **Automatic Incorporation of Laws.** Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.

## **ARTICLE XX. SEVERABILITY**

20.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under federal, state or local laws, then said clause or provision shall not affect any other clause or provision and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable clause or provision, there be added to 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.

## **ARTICLE XXI. LITIGATION EXPENSES**

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

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

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

21.4 For purposes of this Article, "adversarial proceedings" include any cause of action regarding this Agreement filed by the Board and/or the Developer against the City in any state or federal court, as well as any state or federal administrative hearing, and Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article IX above.

## **ARTICLE XXII. LEGAL AUTHORITY**

22.1 **All Consents and Approvals Obtained.** Each person executing this Agreement on behalf of each Party, represents, warrants, assures and guarantees that he or she has full legal authority to (i) execute this Agreement on behalf of the City, the Board and/or the Developer, respectively and (ii) to bind the City, the Board and/or the Developer to all of the terms, conditions, provisions and obligations of this Agreement.



### **ARTICLE XXIII. VENUE AND GOVERNING LAW**

23.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue and jurisdiction arising under or in connection with this Agreement 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.

### **ARTICLE XXIV. PARTIES' REPRESENTATIONS**

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

### **ARTICLE XXV. CAPTIONS**

25.1 All captions used in this Agreement 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 to this Agreement.

### **ARTICLE XXVI. LICENSES/CERTIFICATIONS**

26.1 Developer warrants and certifies that Developer and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

### **ARTICLE XXVII. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

27.1 Developer shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with public funds. Further no portion of the funds received shall be used in support of any sectarian or religious activity.

### **ARTICLE XXVIII. ENTIRE AGREEMENT**

28.1 **No Contradictions.** This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

28.2 **Incorporation of Exhibits.** The Exhibits A through G attached to this Agreement are incorporated herein and shall be considered a part of this Agreement, except that if there is a

conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

**IN WITNESS THEREOF**, the Parties have caused this instrument to be signed on the date of the each signature below. This Agreement will become effective on the date of the last signature below:

**CITY OF SAN ANTONIO**

George Gervin Youth Center, Inc.

\_\_\_\_\_  
Sheryl Sculley  
City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
By:  
Date: \_\_\_\_\_

**BOARD OF DIRECTORS  
INNER CITY TIRZ**

**ATTEST/SEAL:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Chairman, Board of Directors  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Secretary, Board of Directors  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Martha G. Sepeda  
Acting City Attorney  
Date: \_\_\_\_\_

**EXHIBIT A**  
**Pre-development Phases and Activities**

Predevelopment Activity Phasing:

Phase I: Full Site Assessment

- Environmental Studies
- Property site survey
- Identify buildable space
- Outline demographic factors
- Procure a Master Plan

Phase II: Financial Feasibility Analysis

Phase III: Conceptual Drawings

Phase IV: Master Plan

Phase V: Financing Plan

Completion of all Phases by September 30th, 2016

**EXHIBIT B**

**Project Status Report**

## Status Report TIRZ Funded Project

|                    |                             |                            |                     |                         |  |
|--------------------|-----------------------------|----------------------------|---------------------|-------------------------|--|
| Project Name:      | Echo East - Pre-development | TIRZ Name & #:             | Inner City TIRZ #11 | Report Date:            |  |
| Progress Report #: |                             | Scheduled Start Date:      |                     | Actual Start Date:      |  |
| Reporting Period:  |                             | Scheduled Completion Date: |                     | Actual Completion Date: |  |

| Task Name                      | Task Detail                                                                | Estimated Completion Date | Actual Completion Date | % Completed this Reporting Period | % Completed to Date | Description of Work Completed This Reporting Period |
|--------------------------------|----------------------------------------------------------------------------|---------------------------|------------------------|-----------------------------------|---------------------|-----------------------------------------------------|
| Site Assessment                | Environmental Studies; Property Survey; Demographic Analysis; Market Study |                           |                        |                                   |                     |                                                     |
| Financial Feasibility Analysis | Identify Costs, Preliminary Sources and Uses Budget; Project Pro-forma     |                           |                        |                                   |                     |                                                     |
| Conceptual Drawings            | Preliminary Design and Renderings                                          |                           |                        |                                   |                     |                                                     |
| Master Plan                    | Master Site Plan, Project Phasing and Scope for Each Phase                 |                           |                        |                                   |                     |                                                     |
| Financing Plan                 | Identify and Secure Preliminary Commitments for Debt and Equity Sources    |                           |                        |                                   |                     |                                                     |

Comments: (Please describe any project milestones, accomplishments or setbacks that have occurred during this reporting period)

**Certification:**

I certify that to the best of my knowledge and belief, the data above is correct and accurately reflects the status of the project to date.

Signature of  
 Certifying  
 Individual: \_\_\_\_\_  
  
 Type or \_\_\_\_\_

Date: \_\_\_\_\_  
  
 Telephone: \_\_\_\_\_

## **EXHIBIT C**

### **Contract Progress Payment Request Form & Requirements**



## CITY OF SAN ANTONIO Contract Progress Payment Request (CPR) Form and Requirements

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- **All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections**
- **Copies of the payment and performance bond in accordance with executed Development Agreement**
- **Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to: Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.*)**
- **Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes.**

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

**\* All invoice Payments must be accompanied by:**

- **Receipt or Cancelled Check**
- **Must Reference the Project**

**\* Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.**

## (SAMPLE) Reimbursement for TIRZ Expenses

| <b>Project Name:</b><br>NAD Residential TIRZ |                                   | <b>Period covered by this invoice:</b><br>12/02---8/03       |                      |                     |                |
|----------------------------------------------|-----------------------------------|--------------------------------------------------------------|----------------------|---------------------|----------------|
| <b>Invoice#:</b><br>One (1)                  |                                   | <b>Phase(s) covered by this invoice:</b><br>Phases 1, 2, & 3 |                      |                     |                |
| Section                                      | A<br>Activity                     | B<br>Maximum Allowable from Final Finance Plan               | C<br>Invoices Amount | D<br>Prior Requests | E<br>**Balance |
| 1                                            | Construction Management           | 44,200                                                       | 40,624               | 0                   | 3,576          |
| 2                                            | Contingency                       | 192,500                                                      | 199,215              | 0                   | -6,715         |
| 3                                            | Driveway Approach                 | 20,000                                                       | 22,972               | 0                   | -2,972         |
| 4                                            | Engineering Survey                | 50,050                                                       | 50,000               | 0                   | 50             |
| 5                                            | Formation Fees                    | 150,150                                                      | 200,000              | 0                   | -49,850        |
| 6                                            | Gas                               | 144,375                                                      | 100,000              | 0                   | 44,375         |
| 7                                            | Green Belt/Green Space            | 26,950                                                       | 21,000               | 0                   | 5,950          |
| 8                                            | Infrastructure Cost               | 61,600                                                       | 60,000               | 0                   | 1,600          |
| 9                                            | Legal Fees                        | 10,000                                                       | 11,500               | 0                   | -1,500         |
| 10                                           | Organizational Cost               | 20,800                                                       | 35,000               | 0                   | -14,200        |
| 11                                           | Official Traffic Control Device   | 15,000                                                       | 10,000               | 0                   | 5,000          |
| 12                                           | Parking Facilities                | 30,000                                                       | 28,250               | 0                   | 1,750          |
| 13                                           | Project Cost                      | 86,163                                                       | 86,100               | 0                   | 63             |
| 14                                           | Public Schools                    | 10,000                                                       | 11,000               | 0                   | -1,000         |
| 15                                           | Recreational Park Area            | 105,942                                                      | 105,940              | 0                   | 2              |
| 16                                           | Regional Storm Water Improvements | 73,344                                                       | 73,444               | 0                   | -100           |
| 17                                           | Relocation Cost                   | 40,747                                                       | 55,474               | 0                   | -14,727        |
| 18                                           | Sanitary Sewer                    | 35,000                                                       | 65,000               | 0                   | -30,000        |
| 19                                           | Sidewalks                         | 47,500                                                       | 67,587               | 0                   | -20,087        |
| 20                                           | Streetscape Planting              | 20,000                                                       | 20,000               | 0                   | 0              |
| 21                                           | Street Lights                     | 25,000                                                       | 25,105               | 0                   | -105           |
| 22                                           | Water                             | 19,500                                                       | 19,500               | 0                   | 0              |
| <b>TOTAL</b>                                 |                                   | 1,286,321                                                    | 1,365,211            | 0                   | -78,890        |

Financing Cost does not accrue interest

\*\*The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

Receipt or Cancelled Check

Must Reference the Project

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

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



## Reimbursement for TIRZ Expenses

|                      |                 |                                                  |                        |                       |                  |
|----------------------|-----------------|--------------------------------------------------|------------------------|-----------------------|------------------|
| <b>Project Name:</b> |                 | <b>Period covered by this invoice:</b>           |                        |                       |                  |
| <b>Invoice#:</b>     |                 | <b>Phase(s) covered by this invoice:</b>         |                        |                       |                  |
|                      | <b>A</b>        | <b>B</b>                                         | <b>C</b>               | <b>D</b>              | <b>E</b>         |
| <b>Section</b>       | <b>Activity</b> | <b>Maximum Allowable from Final Finance Plan</b> | <b>Invoices Amount</b> | <b>Prior Requests</b> | <b>**Balance</b> |
| 1                    |                 |                                                  |                        |                       |                  |
| 2                    |                 |                                                  |                        |                       |                  |
| 3                    |                 |                                                  |                        |                       |                  |
| 4                    |                 |                                                  |                        |                       |                  |
| 5                    |                 |                                                  |                        |                       |                  |
| 6                    |                 |                                                  |                        |                       |                  |
| 7                    |                 |                                                  |                        |                       |                  |
| 8                    |                 |                                                  |                        |                       |                  |
| 9                    |                 |                                                  |                        |                       |                  |
| 10                   |                 |                                                  |                        |                       |                  |
| 11                   |                 |                                                  |                        |                       |                  |
| 12                   |                 |                                                  |                        |                       |                  |
| 13                   |                 |                                                  |                        |                       |                  |
| 14                   |                 |                                                  |                        |                       |                  |
| 15                   |                 |                                                  |                        |                       |                  |
| 16                   |                 |                                                  |                        |                       |                  |
| 17                   |                 |                                                  |                        |                       |                  |
| 18                   |                 |                                                  |                        |                       |                  |
| 19                   |                 |                                                  |                        |                       |                  |
| 20                   |                 |                                                  |                        |                       |                  |
| 21                   |                 |                                                  |                        |                       |                  |
| 22                   |                 |                                                  |                        |                       |                  |
| <b>TOTAL</b>         |                 |                                                  |                        |                       |                  |

Financing Cost does not accrue interest

\*\*The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

Receipt or Cancelled Check

Must Reference the Project

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

### CERTIFICATION:

I certify, that to the best of my knowledge and belief, the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.

**Signature of Certifying Financial Official**

**Signature of Certifying Engineer**

**Typed or printed Name and Title:**

**Typed or printed Name & Title:**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**(SAMPLE) Reimbursement for TIRZ Expenses**

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

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

**Reimbursement for TIRZ Expenses**

|                      |                                        |
|----------------------|----------------------------------------|
| <b>Project Name:</b> | <b>Period covered by this invoice:</b> |
| <b>Invoice #:</b>    | <b>Phase covered by this invoice:</b>  |

| Section 1    | Plat and/or<br>MDP # | Maximum<br>Allowable<br>from Final<br>Finance Plan | Invoice #(s) | Invoice<br>Amount(s) | Balance | Method of<br>Payment |
|--------------|----------------------|----------------------------------------------------|--------------|----------------------|---------|----------------------|
| Site Work    |                      |                                                    |              |                      |         |                      |
|              |                      |                                                    |              |                      |         |                      |
|              |                      |                                                    |              |                      |         |                      |
|              |                      |                                                    |              |                      |         |                      |
|              |                      |                                                    |              |                      |         |                      |
| <b>Total</b> |                      |                                                    |              |                      |         |                      |

**(SAMPLE) Reimbursement for TIRZ Expenses**

Project Name:

Period covered by this invoice:

NAD Residential TIRZ

12/02---8/03

Invoice #:

Phase covered by this invoice:

One (1)

Phases 1,2, &amp; 3

| Section 2<br>Streets &<br>Approaches | Plat and/or<br>MDP # | Maximum<br>Allowable<br>from Final<br>Finance Plan | Invoice #(s) | Invoice<br>Amount(s) | Balance         | Method of<br>Payment |
|--------------------------------------|----------------------|----------------------------------------------------|--------------|----------------------|-----------------|----------------------|
| NAD<br>Contractors                   | 00451364             |                                                    | 2020         | \$165,000            |                 | Ck# 2523             |
|                                      |                      |                                                    |              |                      |                 |                      |
|                                      |                      |                                                    |              |                      |                 |                      |
|                                      |                      |                                                    |              |                      |                 |                      |
|                                      |                      |                                                    |              |                      |                 |                      |
| <b>Total</b>                         |                      | <b>\$192,500</b>                                   |              | <b>\$165,000</b>     | <b>\$27,500</b> |                      |

**Reimbursement for TIRZ Expenses**

Project Name:

Period covered by this invoice:

Invoice #:

Phase covered by this invoice:

| Section 2<br>Streets &<br>Approaches | Plat and/or<br>MDP # | Maximum<br>Allowable<br>from Final<br>Finance Plan | Invoice #(s) | Invoice<br>Amount(s) | Balance | Method of<br>Payment |
|--------------------------------------|----------------------|----------------------------------------------------|--------------|----------------------|---------|----------------------|
|                                      |                      |                                                    |              |                      |         |                      |
|                                      |                      |                                                    |              |                      |         |                      |
|                                      |                      |                                                    |              |                      |         |                      |
|                                      |                      |                                                    |              |                      |         |                      |
|                                      |                      |                                                    |              |                      |         |                      |
| <b>Total</b>                         |                      |                                                    |              |                      |         |                      |

**(SAMPLE) Reimbursement for TIRZ Expenses**

|                                              |                              |                                                              |                                                          |                              |                |                              |
|----------------------------------------------|------------------------------|--------------------------------------------------------------|----------------------------------------------------------|------------------------------|----------------|------------------------------|
| <b>Project Name:</b><br>NAD Residential TIRZ |                              |                                                              | <b>Period covered by this invoice:</b><br>12/02---8/03   |                              |                |                              |
| <b>Invoice #:</b><br>One (1)                 |                              |                                                              | <b>Phase covered by this invoice:</b><br>Phases 1,2, & 3 |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
| <b>Section 3<br/>Parkway</b>                 | <b>Plat and/or<br/>MDP #</b> | <b>Maximum<br/>Allowable<br/>from Final<br/>Finance Plan</b> | <b>Invoice #(s)</b>                                      | <b>Invoice<br/>Amount(s)</b> | <b>Balance</b> | <b>Method of<br/>Payment</b> |
| Fast City<br>Contractors                     | 3574216                      |                                                              | 123                                                      | \$10,000                     |                | Ck# 8989                     |
|                                              |                              |                                                              | 456                                                      | \$4,500                      |                | Ck# 8989                     |
|                                              |                              |                                                              | 789                                                      | \$5,500                      |                | Ck# 8989                     |
|                                              |                              |                                                              |                                                          |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
| <b>Total</b>                                 |                              | <b>\$20,000</b>                                              |                                                          | <b>\$20,000</b>              | <b>\$0.00</b>  |                              |

**Reimbursement for TIRZ Expenses**

|                                              |                              |                                                              |                                                          |                              |                |                              |
|----------------------------------------------|------------------------------|--------------------------------------------------------------|----------------------------------------------------------|------------------------------|----------------|------------------------------|
| <b>Project Name:</b><br>NAD Residential TIRZ |                              |                                                              | <b>Period covered by this invoice:</b><br>12/02---8/03   |                              |                |                              |
| <b>Invoice #:</b><br>One (1)                 |                              |                                                              | <b>Phase covered by this invoice:</b><br>Phases 1,2, & 3 |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
| <b>Section 3<br/>Parkway</b>                 | <b>Plat and/or<br/>MDP #</b> | <b>Maximum<br/>Allowable<br/>from Final<br/>Finance Plan</b> | <b>Invoice #(s)</b>                                      | <b>Invoice<br/>Amount(s)</b> | <b>Balance</b> | <b>Method of<br/>Payment</b> |
|                                              |                              |                                                              |                                                          |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
|                                              |                              |                                                              |                                                          |                              |                |                              |
| <b>Total</b>                                 |                              |                                                              |                                                          |                              |                |                              |

## **EXHIBIT D**

### **City of San Antonio's Discretionary Contracts Disclosure Form**

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity<sup>1</sup> that is a **party** to the discretionary contract:

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

☐ No partner, parent or subsidiary; or

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

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

☐ No subcontractor(s); or

List subcontractors:

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

☐ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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

**(5) Political Contributions**

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

☐ No contributions made; If contributions made, list below:

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

**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate , ("conflicts of interest") by participating in official action relating to the discretionary contract.

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

Party aware of the following facts:

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

|            |                                 |       |
|------------|---------------------------------|-------|
| Signature: | Title:<br><br>Company or D/B/A: | Date: |
|------------|---------------------------------|-------|

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

## **EXHIBIT E**

### **Project Scope**

TIRZ funding is intended to support Pre-development Activities for the proposed Echo East project which when funded would utilize ten acres of City owned land, held on behalf of the Inner City TIRZ Board of Directors, and ten contiguous acres currently owned by the George Gervin Youth Center, Inc. (GGYC) for a mixed use development. GGYC, who will serve as the developer, is a 501(c)3 not for profit organization incorporated in the State of Texas in 1991. GGYC has been authorized to conduct business in Texas since 1991, Arizona since 2008 and Michigan since 2015. The organization has established business lines in community development and program services. The proposed project will include approximately 250 units of apartments/condos; a specialty grocery store with pharmacy; ten to fifteen retail business enterprises; professional office spaces; a boutique hotel; a banquet hall and appropriate parking.

The Pre-Development funding will be used to conduct a full site assessment, develop conceptual drawings, conduct a financial feasibility analysis and create a master plan for the development including a financial plan. In addition, the City will require a full market study by an independent real estate market research firm.

Deliverables to the City will include the following:

- 1). A Master Plan;
- 2). Conceptual drawings;
- 3). Financial feasibility schedule;
- 4). Associated civil engineering;
- 5). Legal requirements;
- 6). Financing plan; and
- 7). A full site assessment and market study.

All deliverables are to be completed during the Term of this Agreement and delivered to the City before termination of this Agreement.

Developer shall provide to the City original versions of any documents, professional services reports, studies and plans resulting from this Pre-development agreement, to include contracts executed for Pre-development services, surveys, master plans, conceptual drawings and design concepts, engineering and architectural documents, schematics, environmental studies and assessments, feasibility studies, demographic reports, market studies and financial documents.



**EXHIBIT F**

**Project Property**



## **EXHIBIT G**

### **Right of Entry**

## Right of Entry Agreement

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**Authorizing Ordinance:** City Code of San Antonio, Texas §§ 37-15, 37-2(e) and City Ordinance 2015-\_\_-\_\_\_\_-\_\_\_\_\_

**Owner:** City of San Antonio

**Owner's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966

**Requester:** George Gervin Youth Center, Inc.

**Requester's Address:** 6903 Sunbelt Dr., San Antonio, Texas 78218

**Purpose of Access:** To perform Pre-Development Activities as authorized under the Pre-Development Agreement approved by City Council Ordinance 2015-\_\_-\_\_\_\_-\_\_\_\_\_.

**Subject Property:** 301 Spriggsdale San Antonio, TX 78220 and more specifically described in Exhibit A attached to this Agreement for all purposes herein.

**Beginning Date:** The date upon approval and execution of the Pre-development Agreement approved by City Council Ordinance 2015-\_\_-\_\_\_\_-\_\_\_\_\_.

**Ending Date:** The date which is the earliest to occur of the following: 1) the date in which completion of all work related to the Purpose of Access is completed; 2) the date of termination of the Pre-development Agreement approved by City Council Ordinance 2015-\_\_-\_\_\_\_-\_\_\_\_\_,; 3) the date of sale of the Subject Property by City Council.

### 1. Performance of Work.

From the Beginning Date through the Ending Date, Requester and its authorized agents and representatives may enter the Subject Property to perform work consistent with the Purpose of Access. In so doing, Requester may employ such equipment and independent contractors as it deems necessary or convenient to accomplish the Purpose of Access.

### 2. Noninterference, Restoration.

Requester must minimize interference with Owner's activities on the Subject Property. At the completion of work, Requester must, at its expense, restore the Subject Property to substantially the same or better physical condition as it was in at the Beginning Date.

### **3. Expense, Compliance.**

Requester will perform all work at its own expense and will comply with all applicable federal, state, and local laws, rules, and regulations in the course of performing the work.

### **4. Indemnity.**

4.1 The REQUESTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the OWNER (and the elected officials, employees, officers, directors, and representatives of the OWNER), the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), and any PARTICIPATING TAXING ENTITY (and the elected officials, employees, officers, directors, and representatives of any such entity), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the OWNER, BOARD, and/or upon any PARTICIPATING TAXING ENTITY directly or indirectly arising out of, resulting from or related to the REQUESTOR'S activities under this AGREEMENT, including any acts or omissions of the REQUESTOR, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or sub-consultants of the REQUESTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the OWNER, the BOARD, or any PARTICIPATING TAXING ENTITY under Texas Law and without waiving any defenses of the Parties under Texas, Federal, or International Law.

4.2 IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF OWNER, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF OWNER, UNDER THIS CONTRACT. THE REQUESTOR SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIMS, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY REQUESTOR OR REQUESTOR'S PREDECESSORS IN TITLE, OR THE FAILURE OF REQUESTOR OR REQUESTOR'S PREDECESSORS IN TITLE, TO COMPLY WITH LOCAL, STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

4.3 It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by REQUESTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the OWNER from the consequences of the OWNER'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the Owner is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the Owner is the sole cause of the resultant injury, death, or damage. REQUESTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE OWNER AND IN THE NAME OF THE OWNER, any claim or litigation brought against the OWNER and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The REQUESTOR shall advise the OWNER, the BOARD, and any PARTICIPATING TAXING ENTITY in writing within 24 hours of any claim or demand against the OWNER, the

**BOARD, or any PARTICIPATING TAXING ENTITY related to or arising out of the REQUESTOR'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at the REQUESTOR's cost to the extent required under the INDEMNITY in this Section**

**THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**The OWNER, the BOARD, and/or any PARTICIPATING TAXING ENTITY shall have the right, at their option and at their own expense, to participate in such defense without relieving the REQUESTOR of any of its obligations.**

### **5. Release of Liability.**

Requestor releases Owner from any liability for injury arising from the condition of the Subject Property.

### **6. Public Information.**

Requestor acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

### **7. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, the counterparts constitute only one agreement. In making proof of the agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

**IN WITNESS THEREOF**, the parties hereto have caused this instrument to be signed on the date of the each signature below. This Agreement will become effective on the date of the last signature below:

*Signatures on next page*

**City of San Antonio,**  
a Texas municipal corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**George Gervin Youth Center, Inc. a**  
Texas Corporation

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST/SEAL:**

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

## **Exhibit A**



