

STATE OF TEXAS

§ CHAPTER 380 ECONOMIC DEVELOPMENT

§ GRANT AGREEMENT OF THE

COUNTY OF BEXAR

§ CITY OF SAN ANTONIO

This Chapter 380 Development Grant Agreement (hereafter referred to as this "Agreement"), made and entered into by the City of San Antonio ("City"), a municipal corporation of the State of Texas, the Inner City Tax Increment Reinvestment Zone No. Eleven ("TIRZ"), acting by and through its Board of Directors (the "Board"), and George Gervin Youth Center, Inc., ("Grantee"), a 501(c)(3) non-profit organization, (collectively, the "Parties").

RECITALS

WHEREAS, in accordance with City Ordinance No. 100684 and Chapter 380 of the Texas Local Government Code and Sections 311.010(b) and 311.010(h) of the Texas Tax Code, the City and the Board are authorized to grant funds to promote state and local economic development and to stimulate commercial activity in the municipality and within the boundaries of the TIRZ; and

WHEREAS, Grantee is engaged in an economic development project consisting of: (1) the acquisition of approximately 10 acres of vacant, city-owned property that sits adjacent to the George Gervin Youth Center; (2) the construction of 500 residential units, approximately 25,000 square feet of retail space, two parking structures, green space and recreational areas for open-air gatherings and events, including the necessary public improvements (the "Project"), located at 301 Spriggsdale, San Antonio, Texas (the "Project Site"), in City Council District 2 and within TIRZ boundaries; and

WHEREAS, Grantee's Investment in the Project is anticipated to result ONE HUNDRED FORTY MILLION DOLLARS AND NO CENTS (\$140,000,000.00) in real property improvements that will promote state and local economic development, and stimulate business and commercial activity in the municipality; and,

WHEREAS, Grantee requests economic incentives from the City and Board to spur the Investment and into the development and construction of the Project; and

WHEREAS, the City and Board seek to incentivize Grantee to undertake the Project and have identified the Tax Increment from the Inner City TIRZ as the source of funds to be made available to Grantee in the form of an economic development program grant to cause the Project to be undertaken in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Board passed Resolution T11 2017-05-12-01R, attached **Exhibit A**, approving this Agreement in substantial form, and the direct sale of the property at fair market value and authorizes Tax Increment Financing ("TIF") funds in an amount not to exceed FOUR HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$450,000.00), as the funding source for the purchase of the Project Site; and

WHEREAS, City Council authorizes the City Manager, or her designee, to enter into this Agreement to grant TIF funds as described herein, in accordance with City Ordinance No. _____, passed and approved on February 8, 2018, and attached as **Exhibit B**;

NOW THEREFORE:

The Parties, by the execution of this Agreement, are bound to the mutual obligations set out herein and to the performance and accomplishment of the tasks hereafter described:

SECTION 1. PURPOSE

- 1.1 The purpose of this agreement is to assist Grantee in defraying costs associated with the acquisition and construction of the Project through the award of public funds in the form of an economic development grant. Upon completion, the Project is expected to result in approximately \$140 million of added investment to the TIRZ, promote local economic development and to stimulate business and commercial activity in the City of San Antonio.
- 1.2 The City and the Board support the Project through this Agreement to promote state or local economic development and to stimulate business and commercial activity.

SECTION 2. TERM

- 2.1 The term of this Agreement shall commence upon execution of contract and end on whichever of the following dates should occur the earliest: (i) the date Grantee completes the Project in accordance with the terms of this Agreement; (ii) the date this Agreement is terminated as provided in Section 14; or, (iii) termination of the TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

SECTION 3. THE PROJECT

- 3.1 The Project shall consist of: (1) the acquisition of approximately 10 acres of vacant, abandoned property that sits adjacent to the George Gervin Youth Center; (2) the construction of 500 residential units, approximately 25,000 square feet of retail space, two parking structures, green space and recreational areas for open-air gatherings and events, including the necessary public improvements located at the Project Site.
- 3.2 Phase I of the Project shall, for the purposes of this Agreement, consist of the acquisition of the 10 acres, construction of the 132 residential units, and the necessary public improvements coinciding with the residential units.
- 3.3 The Parties acknowledge that the City currently is the fee-simple owner of the Project Site, as described in the deed incorporated into the Agreement and attached herein as **Exhibit C**.

SECTION 4. OBLIGATIONS OF GRANTEE

- 4.1 Grantee shall expend approximately SIXTY FIVE MILLION DOLLARS AND NO CENTS (\$65,000,000.00) to undertake and cause the completion of the Project. Grantee shall retain and provide documentation to the City and Board of all Project related expenditures.
- 4.2 Grantee affirms that the purchase, conveyance and transfer of title of the Project Site necessary to cause the Project to be developed shall be the sole responsibility of the Grantee.
 - a. Escrow: Following authorization to enter into this Agreement, the Parties shall execute the Purchase/Sale Agreement and place it in escrow under a negotiated escrow agreement. The escrow agreement shall require the City to approve, in writing, Grantee's financing plan for Phase I of the Project prior to releasing the document and Grantee closing on the Project Site.

- b. The City’s approval of Grantee’s financing shall be represented by a letter to the escrow agent from the City’s Chief Financial Officer in agreement with the City Manager’s Office and City Attorney’s Office directing the release of the Purchase/Sale Agreement
- c. Should Grantee fail to receive the City’s written approval of its financing for Phase I of the Project prior to the eighteenth (18th) month anniversary of the execution of this Agreement, then the escrow agent shall return all documents to the City and the Project Site shall remain the City’s property with no further obligations to the Grantee.
- d. In the City’s sole discretion, the City may extend Developer’s time to receive the City’s approval on its financing plan by no more than three (3) additional months following the expiration of the 18 months provided above,

4.5 **CONSTRUCTION.** Within eighteen (18) months after the execution of this Agreement, Grantee shall commence or cause the commencement of construction of the Project. Grantee shall complete or cause the completion of the construction of Project by no later than December 31, 2024. Should Grantee fail to time complete the construction of the Project, the Board in its sole discretion, may extend the time of construction by no more than three months.

4.6 **COMPLETION.** The Project shall be considered “completed” after Grantee: (1) has acquired the Project Site; and, (2) has completed construction or caused the completion of construction on the Project in accordance with terms and conditions in this Agreement.

4.7 **QUARTERLY REPORTS.** Grantee shall provide quarterly status updates and compliance reports to the City’s TIF Unit or as or as requested, using the form attached as **Exhibit D**, starting no later than 90 days following the acquisition of the Project Site and continuing at least every 90 days thereafter for the duration of the Project. Quarterly Reports shall include the construction progress, construction expenses and its compliance with all contractual requirements associated with the Project.

4.8 **PUBLIC IMPROVEMENTS.** Grantee shall within 60 days of their “Completion” dedicate such Public Improvements to the City. “Completion” shall mean constructed in accordance with the engineer’s design and this Agreement. In order for a Public Improvement to achieve a state of “Completion” the Public Improvement must: (1) be inspected by a design engineer and be the subject of a certification letter from the design engineer, sealed with the engineer’s professional seal, certifying that the Public Improvements were designed in such a manner as to endure without need for maintenance, repair or replacement for five years, taking into consideration the site and traffic conditions, present and future, at or near the Public Improvements, and certifying that the Public Improvements were constructed according to the specifications required by the engineer’s design for each Public Improvement; and (2) be approved by the City, if necessary.

4.8.1 Grantee shall, at its own cost and expense, maintain or cause to be maintained all public improvements, until Completion and acceptance by the City for one year thereafter.

4.8.2 Grantee shall ensure that its contractors deliver Tex. Govt. Code, Chapter 2253 Performance and Payment Bonds and Grantee shall provide a copy of the Bonds to the City’s TIF Unit prior to construction of the Public Improvements. Grantee agrees that Performance and Payment Bonds shall meet the minimum standards for these bonds set by the City’s Risk Management Division. Failure to meet the City’s minimum standards for these bonds prior to the commencement of construction will be considered a breach of

contract. The bonds shall name the Inner City TIRZ as the beneficiary and the Grantee as the obligee of the bonds. The payment and performance bonds for each phase shall be in an amount sufficient to cover the cost of Public Improvements.

- 4.9 Grantee shall cause the Project to be constructed in compliance with of all applicable federal, state, and local laws, and regulations, including the City’s Unified Development Code, and rules and regulations promulgated by the Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS), Texas Commission on Environmental Quality (TCEQ), and all regulations related to Hazardous Substances or exposure to ACM and Hazardous Substances.
- 4.10 Grantee shall promote economic development through the hiring of local subcontractors and workforce and shall pay or cause to be paid prevailing wages as applicable to the trade being performed.

SECTION 5. OBLIGATIONS OF THE CITY AND BOARD

- 5.1 The City and Board will make an Economic Development Grant available to Grantee in accordance with the terms and conditions of this Agreement.
- 5.2 The City and Board shall make the Project Site available to Grantee for direct sale.
- 5.3 The City shall not unreasonably withhold payment of Board approved Grant Funds.
- 5.4 Neither the City nor the Board shall be liable to Grantee or any other entity or person for costs or expenses incurred, or improvements made in furtherance of the Project.

SECTION 6. ECONOMIC DEVELOPMENT GRANT

- 6.1 In consideration of full and satisfactory performance of activities required by this Agreement, the City and Board are making an Economic Development Grant available to Grantee in the amount not to exceed FOUR HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$450,000.00) (“Grant Funds”). Grant Funds shall be reimbursed after submission of invoices by Grantee to the TIF Unit for Board approval of Project costs. Project costs shall mean the appraised fair market value of the Project Site and the cost of the appraisal of the Project Site charged by a City approved appraiser for their services, described and attached hereto as **Exhibit E**. Grant Funds are subject to availability of TIF Funds and the priority of payment for the TIRZ.
- 6.2 Grant Funds shall be disbursed as follows:
- i. Subject to availability and priority of payment, the City and Board shall reimburse Grantee the cost of the appraisal for the Project Site and 50% of the determined fair market value of the Project Site within 60 days following Board approval and confirmation of the acquisition of Project Site.
 - ii. Subject to availability and priority of payment, the City and Board shall reimburse Grantee 40% of the determined fair market value of the real property for the Project Site to Grantee within 60 days following Board approval and confirmation of commencement of construction of the Project.
 - iii. Subject to availability and priority of payment, the City and Board shall reimburse Grantee the remaining 10% of the determined fair market value of the of the real property for the Project Site to Grantee within 60 days following Board approval and confirmation of completion of construction of the Project.

- 6.3 Grantee acknowledges that the disbursement of Grant Funds is subject to TIF funds being available pursuant to the priority of payment for the TIRZ.
- 6.4 If Available TIF Funds do not exist in an amount sufficient to make payment in full when payments are due, partial payment shall be made in the order of priority described in Section 6.2 of this Section, and the remainder shall be paid as TIF Funds become available. No fees, costs, expenses, interest or penalties shall be paid to the Parties for any partial or late payment.
- 6.5 If any payment to Grantee 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 such invalid, ineligible, illegal, or unenforceable payment shall be repaid in full by Grantee to the TIRZ 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.
- 6.6 Grantee may use all, any or part of the Project Site as collateral for the acquisition and construction as required for the completion of the Project.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

- 7.1 Grantee shall maintain the fiscal records and supporting documentation for expenditures of disbursed Grant Funds associated with this Agreement. Grantee shall retain such records and any supporting documentation for a period of four (4) years from the end of Agreement Term, unless required to be retained for a period longer than four (4) years by State law or court order.
- 7.2 Grantee shall, following reasonable advance written notice from the City and Board, give their authorized representatives, access to and the right to examine all records i.e. material information related to the Project including all books, accounts, records, audit reports, files, documents, written or photographic material videotape or other papers, things, or property related to the costs and the expenditure pertaining to this Agreement (the "Records").
- 7.3 Grantee shall provide the City and Board access to the Records and information needed to verify that Grantee is and has been in compliance with the provisions of this Agreement and to verify that the Grant Funds are used in accordance with the terms of this Agreement.
- 7.4 Should a good faith dispute or question arise as to the validity of the information provided by Grantee, the City and Board reserve the right to require Grantee to obtain an independent firm to verify the information. The certified statement by an independent firm shall be provided at the sole cost of Grantee. The rights to access records shall continue as long as the records are retained by Grantee. Failure to provide reasonable access to the records by authorized City representatives shall be cause for City and Board to provide notice of intent to default.
- 7.5 Grantee's obligation to retain Records and accessibility of Records shall survive the termination of the Agreement after completion of the Project Term.

SECTION 8. MONITORING

- 8.1 The City and Board reserve the right to confirm Grantee's compliance with the terms and conditions of this Agreement. Grantee shall provide or cause the City and Board to be provided access to the Project Site for inspections during and upon completion of the Project. Grantee shall provide or cause the City and Board to be provided access to Records and information reasonably necessary to assess Grantee's compliance with this Agreement.
- 8.2 The City and Board will provide Grantee a written report of the monitor's findings. If the monitoring report notes deficiencies in Grantee's performance under this Agreement, the

monitoring report shall include the requirements and actions to be taken by Grantee to correct such deficiencies, which shall be completed within a reasonable amount of time. Failure to take action specified in the monitoring report may be cause for Termination of this Agreement.

SECTION 9. INDEPENDENT CONTRACTOR

- 9.1 It is expressly understood and agreed by the Parties hereto that Grantee is not an agent or representative of the City and/or the TIRZ and that Grantee, its employees, partners, and subcontractors are not employees or contractors of the City and Board.

SECTION 10. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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:
- (1) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - (2) an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - (3) an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- 10.2 Pursuant to the subsection above, Grantee warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Grantee further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- 11.1 Grantee understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status or disability, 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 under this Agreement.
- 11.2 None of the performances rendered by Grantee under this Agreement shall involve, and no portion of the Grant Funds received by Grantee shall be used to support of any sectarian or religious activity. Nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.
- 11.3 Grantee shall include or cause to be included the substance of Section 11 herein, in all sub-grant and contractor agreements.

SECTION 12. LEGAL AUTHORITY

- 12.1 Each Party assures and guarantees to the other that each possess the legal authority to enter into this Agreement, to receive/deliver the Grant Funds authorized by this Agreement, and to perform its obligations under this Agreement.
- 12.2 The person(s) signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, hereby guarantees that s/he or they have been duly authorized to execute this Agreement, on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions set forth.
- 12.3 City and Board shall have the right to terminate this Agreement in accordance with Section 13 and Section 14 herein, if there is a dispute as to the legal authority, of either Grantee or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Grantee is liable to the TIRZ for any money it has received from the City and Board for performance of the provisions of this Agreement if the City and Board terminate this Agreement for reasons enumerated in this Section.

SECTION 13. LITIGATION AND CLAIMS

- 13.1 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly and/or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City, the Board or any other public entity including any cost incurred from violations or settlements of, or failure to comply with, federal and state regulations.
- 13.2 During the term of this Agreement, if Grantee files and/or pursues an adversarial proceeding regarding this Agreement against the City and/or Board, without first engaging in good faith mediation of the dispute, then at the City's and/or Board's option, all access to the funding provided for hereunder will be withheld. No funds provided under this Agreement will be disbursed while any adversarial proceeding regarding this Agreement remains unresolved.
- 13.3 Grantee shall give the City and Board immediate written notice of any action, including any proceeding before an administrative agency, or legal action filed against Grantee arising out of performance of any activity under this Agreement. Except as otherwise directed by the City and Board, Grantee shall furnish immediately to the City and Board copies of all pertinent papers received by Grantee with respect to such action or claim. Grantee shall notify the City and Board immediately of any legal action filed against the Grantee or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Grantee shall submit a copy of such notice to the City and Board within 15 calendar days after receipt.
- 13.4 No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.
- 13.5 This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.
- 13.6 For purposes of this Section, "adversarial proceedings" include any cause of action regarding this Agreement filed by Grantee against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration. Nothing contained in this Section shall effect or otherwise affect the indemnity provisions contained in this Agreement.

SECTION 14. DEFAULT, TERMINATION AND RECAPTURE

- 14.1 The City and Board shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of termination should the City and Board determine that Grantee has failed to comply with any material term of this Agreement. The City and Board will provide Grantee with written notification as to the nature of the non-compliance (the “Notice of Default”), and provide Grantee a 60 day period from the date of the City’s or Board’s written notification to cure (the “Cure Period”), if possible, any issue of non-compliance under this Agreement.
- 14.2 In the case of default for cause beyond Grantee's reasonable control, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the Director for the Department that oversees the City’s TIF Program, the Cure Period may be extended provided that Grantee shall immediately, upon receipt of Notice of Default, advise the City of Grantee’s intention to cure such default, and complete all steps necessary to cure such default within the extended period granted.
- 14.3 Should Grantee fail to cure any default within the Cure Period, the City and/or Board may, upon issuance to Grantee of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.
- 14.4 Upon receipt of Notice of Termination for non-compliance, the City and Board shall have the right to recapture all funds disbursed under the terms of this Agreement from Developer or seek to reacquire the the Project Site at the Developer’s cost. Grantee shall repay any and all disbursed funds within sixty (60) days from the date of the Notice of Termination, which shall be deposited to the TIF Fund for the Inner City TIRZ.

SECTION 15. SPECIAL CONDITIONS AND TERMS

- 15.1 Grantee understands and agrees that if Grantee is a “business” and if the City or Board’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10, Tex. Govt. Code, as amended, then in the event of Grantee’s conviction of knowingly employing an undocumented worker, Grantee shall return to the TIF fund of the Inner City TIRZ all funds that Grantee received from the City and Board through this Agreement, with repayment required within six months of final conviction. Interest shall accrue at the rate of .5% per month until the time of such repayment from the date of final conviction.
- 15.2 The Parties agree that, in the event the City acting in accordance with State law, terminates the TIRZ, or adopts an ordinance that causes the termination date of the TIRZ to occur on a date earlier than provided in the ordinance that established the TIRZ, then this Agreement shall terminate on the date the TIRZ is terminated.
- 15.3 Grantee acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to it, waives an otherwise applicable exception to disclosure.

SECTION 16. SUBCONTRACTS

- 16.1 Grantee shall ensure that performances rendered under all subcontracts of the Project comply with all provisions of this Agreement as if such performance were rendered by Grantee. Grantee shall bear full responsibility for the performances of all subcontractors who work on the Project.

- 16.2 Grantee, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, the City and Board shall not be liable to Grantee's subcontractors.
- 16.3. Grantee assures and shall obtain assurances from all of its subcontractors where applicable, to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status or disability, 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 under this Agreement.

SECTION 17. INSURANCE

- 17.1 Unless Grantee has secured and filed all necessary insurance waivers with the State of Texas that apply to any workers who perform services under funding provided by this Agreement, then the following shall apply:
- (1) Grantee shall require that the Insurance requirements contained in this Section be included in all its contracts or agreements for public improvements, unless specifically exempt in writing by the City and Board.
 - (2) Within 30 calendar days after the execution of this Agreement, Grantee shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled "Echo East Project" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City and Board will not accept a Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City and Board at the address listed in Section 17.2 of this Agreement. The City and Board shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
 - (3) The City and Board reserve the right to review the Insurance requirements of this Section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereupon the City may incur increased risk.
 - (4) Grantee's financial integrity is of interest to the City and Board, therefore, subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City. Grantee or Grantee's contractor, shall obtain and maintain in full force and effect during the construction of all public improvements undertaken for the development of the Project by Grantee or Grantee's contractor(s) and required by this Agreement, at the Grantee's or Grantee's contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employee Liability	\$1,000,000 / \$1,000,000 / \$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/Impact sufficiently broad to cover disposable liability h. Damage to property rented	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/lease vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

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

City Clerk City of San Antonio Attn: Risk Management Dept. P.O. Box 839966 San Antonio, TX 78283-3966	City of San Antonio Neighborhood and Housing Services Dept. Attn: TIF Unit 1400 S. Flores San Antonio, TX 78204
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17.3 Grantee agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- (1) Name the Grantor (both the City of San Antonio and the Inner City TIRZ #11) and its respective officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed pursuant to this Agreement, with the exception of the workers' compensation and professional liability policies;
- (2) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- (3) Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City and Board; and
- (4) Provide thirty (30) calendar days advance written notice directly to the City and Board at the same address listed in Section 17.2 of this Agreement regarding any suspension, cancellation,

non-renewal or material change in coverage, and not less than 10 calendar days advance written notice for nonpayment of premium.

- 17.4 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee and/or Grantee's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to the City and Board at the addresses listed in Section 17.2 of this Agreement. The City and Board shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 17.5 In addition to any other remedies the City and Board may have upon Grantee's and/or Grantee's contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City and Board shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee and/or Grantee's contractor demonstrates compliance with the requirements hereof.
- 17.6 Nothing contained in this Agreement shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its contractors' performance of the work associated with this Agreement.
- 17.7 It is agreed that Grantee's and/or Grantee's contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City and Board for liability arising out of operations associated with this Agreement.
- 17.8 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.
- 17.9 Grantee agrees to obtain all insurance coverages with minimum limits of not less than the limits delineated in Section 17.1 (4) of this Agreement this from each contractor of Grantee and provide a Certificate of Insurance and Endorsement that names Grantee, the City and Board as an additional insureds.

SECTION 18. INDEMNIFICATION

- 18.1 **GRANTEE COVENANTS AND AGREES THAT GRANTEE SHALL, AND AGREES TO CONTRACTUALLY REQUIRE EACH OF ITS CONTRACTORS 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, THE BOARD, AND/OR UPON ANY OF THE OTHER PARTICIPATING TAXING ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO GRANTEE'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF GRANTEE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUB-CONSULTANTS OF GRANTEE, 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, AND/OR THE OTHER PARTICIPATING TAXING ENTITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

GRANTEE SHALL ALSO INDEMNIFY, DEFEND AND HOLD THE PARTICIPATING TAXING ENTITIES HARMLESS FROM ANY CLAIM, DAMAGES, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, ATTORNEY'S FEES, AND PENALTIES ARISING FROM POLLUTION OF THE PROPERTY BY GRANTEE OR GRANTEE'S PREDECESSORS IN TITLE, OR THE FAILURE OF GRANTEE'S PREDECESSORS IN TITLE TO COMPLY WITH LOCAL STATE OR FEDERAL ENVIRONMENTAL LAWS OR REGULATIONS.

THE INDEMNITY PROVIDED FOR IN THE FOREGOING SECTIONS SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, EXCEPT TO THE EXTENT PROVIDED BELOW.

IN THE EVENT GRANTEE AND GRANTOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

Grantee 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 GRANTEE'S ACTIVITIES, UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION, AND DEFENSE OF SUCH CLAIM, OR DEMAND AGAINST GRANTEE, OR THE CITY OR BOARD AT THE GRANTEE'S SOLE COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS SECTION. THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES. 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 GRANTEE OF ANY OF ITS OBLIGATIONS.

- 18.2 **GRANTEE SHALL AND DOES HEREBY AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND BOARD, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL ENCUMBRANCES, CLAIMS, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BOND, BILLS, COVENANTS, CONTROVERSIES, AGREEMENTS, AGENTS, 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, GRANTEE'S INDEMNITY, OBLIGATIONS TO THE CITY UNDER THIS INDEMNIFICATION SHALL BE LIMITED TO ALL ENCUMBRANCES, CLAIMS, SUITS, DEBTS, DUES, SUMS OF MONEY, ACCOUNTS, RECKONINGS, BOND, BILLS, COVENANTS, CONTROVERSIES, AGREEMENTS, AGENTS, DEMANDS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND ATTORNEY FEES OF ANY KIND OR NATURE WHATSOEVER BY ANY PERSON OR ENTITY OR 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 18.1 ABOVE, THE PROVISIONS IN SECTION 18.1 OF THIS AGREEMENT CONTROL OVER THOSE SET FORTH IN THIS SECTION. PRIOR TO EXPENDING ANY MONEY THAT GRANTEE WOULD BE OBLIGATED TO INDEMNIFY, THE CITY OR THE BOARD SHALL SEND WRITTEN NOTICE TO GRANTEE DESCRIBING IN REASONABLE DETAIL THE CLAIM AND ALLOWING GRANTEE TO CURE SUCH CLAIM WITHIN 60 DAYS OF RECEIVING THE NOTICE AS SET FORTH IN SECTION 14 OF THIS AGREEMENT.

SECTION 19. DEBARMENT

- 19.1 By signing this Agreement, Grantee certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

SECTION 20. RIGHTS UPON DEFAULT

- 20.1 It is expressly understood and agreed by the Parties that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreement by the Parties under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 21. ASSIGNMENT

- 21.1 Grantee covenants and agrees that during the term of this Agreement, it shall notify the City and Board in writing at least thirty (30) calendar days prior to any sale or transfer of its business or Project and/or Project location. In the event of a sale or transfer, Grantee may assign its rights and obligations under this Agreement to an assignee only with the consent of the City and Board. Any purchaser or transferee requesting an assignment of this Agreement shall be bound by the terms and conditions of this Agreement. Failure to provide the required notification of sale or transfer may subject Grantee to the termination provisions in Section 14 of this Agreement.

SECTION 22. CHANGES AND AMENDMENTS

- 22.1 Except as specifically provided in Section 22.3 of this Agreement, any alteration, addition or deletion to the terms of this Agreement shall be by amendment, in writing and executed between the Parties to this Agreement subject to authorization by the City and Board.
- 22.2 It is understood and agreed by the Parties that performances under this Agreement shall be rendered in accordance with the laws and rules governing Economic Development Grants Chapter 380, the Texas Local Government Code and the terms and conditions of this Agreement.
- 22.3. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 23. ORAL AND WRITTEN AGREEMENTS

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

SECTION 24. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

- 24.1 Relief from performance of the Agreement if completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Grantee's control, shall be available at the reasonable discretion of the Director for the Department that oversees the City's TIF Program, who may extend the deadlines set forth in this Agreement for such delay. The burden of proof for the need of such relief shall rest upon the Grantee to the satisfaction of the City and Board. To obtain relief based on *force majeure*, Grantee must file a written request with the Director for the Department that oversees the City's TIF Program.

SECTION 25. INCORPORATION OF ATTACHMENTS

- 25.1 Each of Attachments referenced below are incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties.

Exhibit A: Board Resolution T11 2017-05-12-01R

Exhibit B: City Ordinance

Exhibit C: Deed for Project Site

Exhibit D: Quarterly Progress Report

Exhibit E: Appraisal

SECTION 26. ENTIRE AGREEMENT

- 26.1 This Agreement, together with its authorizing ordinance and its attachments constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same is in writing, dated subsequent to the date hereto and duly executed by the parties.

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE AS OF _____, 2018.

CITY OF SAN ANTONIO
a Texas Municipal Corporation

GRANTEE
George Gervin Youth Center, Inc.

BY: Sheryl Sculley
City Manager

BY: Frances Boynes, CEO
Grantee

DATE

DATE

TAX INCREMENT ZONE #11

Inner City TIRZ #11 Board
Presiding Officer

DATE

ATTEST/SEAL:

BY: Leticia M. Vacek
City Clerk

DATE

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

