

AN ORDINANCE 2017-10-19-0820

AUTHORIZING APPROVAL OF A FUNDING AGREEMENT BETWEEN THE CITY OF SAN ANTONIO'S WORLD HERITAGE OFFICE AND THE BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-TWO, SAN ANTONIO, TEXAS, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) FOR THE RIVER-TO MISSION CONNECTION PROJECT, LOCATED AT 6701 SAN JOSÉ DRIVE, SAN ANTONIO, TEXAS IN CITY COUNCIL DISTRICT 3 AND WITHIN THE MISSION DRIVE- IN TIRZ.

* * * * *

WHEREAS, in accordance with the Tax Increment Financing Act (the "Act"), Chapter 311 of the Texas Tax Code, the City through Council Ordinance No. 2008-12-11-1174, established Tax Increment Reinvestment Zone Number Thirty-Two, known as the Mission Drive-In City TIRZ, and a Board of Directors ("Board") authorized with all the rights, powers, and duties provided by the Act, in order to promote development and revitalization activities within TIRZ; and

WHEREAS, the City and Board recognizes the importance of their continued role in economic development; community development and urban design; and

WHEREAS, in May 2017, the City of San Antonio's World Heritage Office, applied for funding from the City's Tax Increment Financing Program in order to facilitate and undertake the improvement efforts related to the River-To Mission Connection ("Project"), consisting of public infrastructure and public improvements that address connectivity from the Mission Reach to Mission San José to the Mission Drive-In, located at 6701 San José Drive, and within the TIRZ; and

WHEREAS, on June 27, 2017, the Board passed Resolution T32-2017-06-27-02R, authorizing City staff to negotiate an agreement with the City of San Antonio's World Heritage Office to support the City's efforts regarding the River-To Mission Connection Project; and

WHEREAS, on September 12, 2017, the Board passed Resolution T32 2017-09-12-01R, authorizing approval of the execution of the Funding Agreement with the City of San Antonio's World Heritage Office, including the commitment of reimbursable tax increment from the Tax Increment Fund for the TIRZ in an amount not to exceed ONE HUNDRED, FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00), **NOW THEREFORE:**

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

SECTION 1. The City Council approves the terms and conditions of the Funding Agreement referenced above are hereby approved. The City Manager or her designee is authorized to execute this Agreement, a copy of which, in substantial final form is set out in **Attachment I.** A

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copy of the fully executed agreement will be substituted for **Attachment I** upon receipt of all signatures.

SECTION 2. This Ordinance authorizes the commitment of up to ONE HUNDRED, FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00), in reimbursable tax increment funding from the Mission Drive-In TIRZ Tax Increment Fund to the City's City of San Antonio's World Heritage Office to facilitate public improvement efforts related to the River-To Mission Connection Project, located at 6701 San José Drive, San Antonio, Texas, in Council District 3, and within the TIRZ.

SECTION 3. This Ordinance will not impact the City's General Fund.

SECTION 4. This Ordinance shall be effective immediate upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 19th day of October, 2017.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	27 (in consent vote: 5, 6, 7, 9, 11A, 11B, 12, 13, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27)						
Date:	10/19/2017						
Time:	09:51:43 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a Funding Agreement with the Mission Drive-In Tax Increment Reinvestment Zone in an amount not to exceed \$150,000.00 for public infrastructure located within the Mission Drive-In Tax Increment Reinvestment Zone (TIRZ) 32, located at 6701 San José Drive in City Council District 3 and within the World Heritage Buffer Zone, as approved by the TIRZ Board. [Peter Zaroni, Deputy City Manager; Verónica R. Soto, AICP, Director, Neighborhood and Housing Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

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Attachment I

**FUNDING AGREEMENT
WITH THE CITY OF SAN ANTONIO'S WORLD HERITAGE OFFICE, AND
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-TWO,
CITY OF SAN ANTONIO, TEXAS**

This Funding Agreement ("Agreement") is entered into by and between the City of San Antonio ("City"), a Texas municipal corporation in Bexar County, Texas, acting by and through its City Manager pursuant to Ordinance No. 2017-_____, and the Board of Directors for Tax Increment Reinvestment Zone Number Thirty-Two City of San Antonio, Texas, known as the Mission Drive-In TIRZ ("Board"), together referred as the "Parties".

BACKGROUND:

WHEREAS, the City recognizes the importance of its continued role in economic development; community development and urban design and in accordance with Chapter 311 of the Texas Tax Code (the "Act"), the City through Ordinance No. 2008-12-11-1174, established Tax Increment Reinvestment Zone Number Thirty-Two, San Antonio, Texas, known as the Mission Drive-In TIRZ ("TIRZ"), to promote development and redevelopment which would not otherwise occur solely through private investment; and

WHEREAS, in May 2017, the City's World Heritage Office ("WHO"), applied for funding from the City's Tax Increment Financing Program in order to undertake the oversight and delivery of improvement efforts that address connectivity from the San Antonio River Mission Reach, to Mission San José, and to the Mission Drive-In, as part of a comprehensive plan for the development of the City's River-To- Mission Connection ("Project"), located at 6701 San José Drive, San Antonio, Texas, City Council District 3, and within the World Heritage Buffer Zone and TIRZ; and

WHEREAS, on June 27, 2017, the Board approved Resolution T32-2017-06-27-02R, in support of the Project authorizing City staff to negotiate an agreement in an amount not to exceed One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) in reimbursable TIF funds and make the necessary amendments to the TIRZ Project and Finance Plans for the public infrastructure and public improvements associated with the Project; and

WHEREAS, pursuant to Section 311.008 of the Act, the Board has authority to enter into agreements that the Board deems necessary or convenient to implement the Project Plan and to achieve the purposes of developing the TIRZ within the scope of those plans; and

WHEREAS, in accordance Section 311.008 of the Act, on September 12, 2017, the Board approved Resolution T32-2017-09-12-01R, described in attached **Exhibit A**, authorizing the execution and approval of this Agreement, which provides a funding commitment of the Project in an amount not to exceed One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) in reimbursable TIF funds for necessary public infrastructure and public improvements associated with the Project and authorizes said commitment to be incorporated into the TIRZ Project Plan; and

WHEREAS, pursuant to the aforementioned authority, and Ordinance No. 2017-_____, approved on the ____ day of _____ 2017, the Board and the City agree to enter a binding agreement to ensure that the City is reimbursed for the public infrastructure and public improvement costs associated with the Project; and

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

ARTICLE I. TERM

- 1.1 **TERM.** This term of this Agreement shall commence on the Effective Date of this Agreement and end on whichever of the following dates should occur the earliest: (i) the date the City receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or, (iii) termination of the TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

ARTICLE II. DEFINITIONS

- 2.1 **ACT** - The Tax Increment Financing Act of Texas Tax Code, Chapter 311.
- 2.2 **ADMINISTRATIVE COSTS** – Reasonable costs incurred directly and/or indirectly for the administration of the City's Tax Increment Financing Program.
- 2.3 **AGREEMENT** – This document by and among the City and the Mission Drive-In TIRZ Board, which may be amended from time to time. The Funding Agreement herein.
- 2.4 **AVAILABLE TAX INCREMENT FUNDS** - Tax increment contributed by each participating taxing entity to the TIF Fund, accessible to the City and TIRZ, and used in accordance with the priority of payment, listed in Section 9.8 below.
- 2.5 **BOARD** - The Board of Directors of the Mission Drive-In TIRZ.
- 2.6 **CITY** – For the purposes of this Agreement and hereinafter shall mean the City of San Antonio World Heritage Office (“WHO”).
- 2.7 **COMPLETION** – In order for the Project to achieve a state of “Completion”, Public Improvements must be approved and accepted by the Board as “completed” in accordance with Section 2.8 and 4.1 of this Agreement – December 31, 2018.
- 2.8 **CONSTRUCTION SCHEDULE** - The specific timetable for constructing the improvements specified in this Agreement, which timetable is more particularly set forth in **Exhibit B**, attached hereto and incorporated herein for all purposes and which timetable may be amended from time to time pursuant to the provisions of this Agreement.
- 2.9 **EFFECTIVE DATE** - The date City Council approves this Agreement through Council Ordinance.
- 2.10 **FINANCE PLAN** – The Mission Drive-In TIRZ Financing Plan, as defined in the Act, and as approved and 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.
- 2.11 **PHASE(S)** – The specific timeline and schedule for the Project’s construction and completion, as described in the Construction Schedule incorporated and attached as **Exhibit B**.
- 2.12 **PROJECT** – The City’s River-To-Mission Connection Project, described in Section 4.1 of this Agreement.
- 2.13 **PROJECT COSTS** - Shall have the meaning provided by the Act, and limited to Public Infrastructure and Public Improvements as approved by the Board.

- 2.14 **PROJECT PLAN** – The Project Plan as defined in the Act, for the Mission Drive-In TIRZ as approved and amended from time to time by the Board and the City, and incorporated by reference into this document as if set out in its entirety, for all purposes.
- 2.15 **PROJECT SITE** - The real property to be developed by the City and located within the TIRZ at 6701 San José Drive, San Antonio, Texas, 78214, described in attached **Exhibit C (Map)**.
- 2.16 **PROJECT STATUS UPDATES** – Statement(s) prepared and submitted by the City in accordance with the requirements of this Agreement, including quarterly updates and reports of compliance with laws, ordinances, and contractual requirements, and as described and attached in **Exhibit D**.
- 2.17 **PUBLIC IMPROVEMENTS** - Improvements that provide a public benefit and that are listed in Section 4.1 of this Agreement. When an improvement has both private and public benefits, only that portion dedicated to the public may be reimbursed to the City, such as, but not limited to capital costs, including the actual costs of public improvements, alteration, remodeling, repair, or reconstruction of existing structures.
- 2.18 **PUBLIC INFRASTRUCTURE** – A physical system that is owned by the public, provides essential services such as transportation, utilities, energy, telecommunications, waste disposal, park lands, sports, buildings, housing facilities and the management and use of resources, including drainage systems, irrigation systems, sidewalks, roadways, drain systems, water systems, driveways, trails, parking lots, and other physical systems.
- 2.19 **REQUEST FOR REIMBURSEMENT (“RFR”)** – Form to be prepared and submitted by the City to request reimbursement from the TIF Fund for eligible Project Costs in accordance with the requirements described and attached in **Exhibit E**.
- 2.20 **TAX INCREMENT** – Shall have the meaning provided by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the TIRZ.
- 2.21 **TIF** – Tax Increment Financing.
- 2.22 **TIF FUND** - The fund created by the City for the deposit of Tax Increments for the Zone, entitled “Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas.”
- 2.23 **TIF UNIT** – The employees of the City department responsible for the management of the City's Tax Increment Financing Program.
- 2.24 **TIRZ** - Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas, known as the Mission Drive-In TIRZ.

ARTICLE III. REPRESENTATIONS

- 3.1 **CITY’S AUTHORITY.** The City represents to the Board 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.
- 3.2 **BOARD’S AUTHORITY.** The Board represents that as of that date of the Board's signature to this Agreement, the Board established pursuant to City Ordinance No. 2008-12-11-1174, has the authority to carry out the functions and operations contemplated by this Agreement.

- 3.3 **AUTHORITY AND ABILITY TO PERFORM.** The Parties represent that performance hereunder shall not result in 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 the City shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
- 3.4 **COOPERATE.** The Parties represent that they shall each cooperate and provide each other all necessary information in order to assist determining compliance with this Agreement.
- 3.5 **DUTY TO COMPLETE IMPROVEMENTS.** The Parties represent that they understand and agree that even after the TIRZ terminates, the City shall ensure the successful completion of all required improvements at no additional cost to the TIRZ.
- 3.6 **CITY BEARS RISK OF REIMBURSEMENT.** The City understands and agrees that any expenditure made in anticipation of reimbursement from the TIF Fund shall not be, nor shall be construed to be, the financial obligation of the TIRZ. The City 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, and unanticipated effects covered under legal doctrine of force majeure.

ARTICLE IV. THE PROJECT

- 4.1 **PROJECT.** The Project shall consist of the development of public infrastructure and public improvements necessary to facilitate connectivity from the Mission Reach to Mission San José to the Mission Drive-In, as part of a comprehensive plan, located at 6701 San José Drive, San Antonio, Texas, City Council District 3, and within the TIRZ. The City will provide Project oversight and complete or cause the completion of the Project, in accordance with this Agreement and no later than December 31, 2018.

ARTICLE V. OBLIGATIONS OF THE CITY

- 5.1 **PROJECT OVERSIGHT.** The City agrees to monitor activities and provide reasonable oversight of the Project, including the management of construction of Public Infrastructure and Public Improvements. WHO shall be the point of contact on all matters regarding the Project.
- 5.2 **COMMENCEMENT.** The City agrees and shall ensure that construction on any Phase of the Project: (i) has been approved in writing by the appropriate City department; and, (ii) the requirements of all local, State and Federal laws have been met from the effective date of the commencement of construction on the Project.
- 5.3 **WRITTEN AGREEMENT.** The City agrees that any work or services contracted under this Agreement shall be contracted only by written contract and, unless specific waiver is granted in writing by the Board, such contract shall be subject to this Agreement.
- 5.4 **COMPLIANCE.** The City agrees to ensure compliance by Project contractors and subcontractors of 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), Chapter 2258 of the Texas Government Code, and all applicable local, state, and federal laws and regulations as amended.

- 5.5 **PROJECT INSPECTION.** The City agrees to provide the Board and TIF Unit access to the Project Site for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project. The Board and TIF Unit shall be provided a right of entry onto the Project Site to conduct random walk-through inspections.
- 5.6 **SUPERVISION OF CONSTRUCTION.** The City agrees to cause the performance of all construction of all Public Infrastructure and Public Improvements, at a minimum, in accordance with all Federal, State and local laws, including, but not limited to the current TIF Guidelines, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City. The City also agrees to provide reports including inspections of such construction and of compliance with such laws, ordinances, and contractual requirements.
- 5.7 **COMPLETION.** The City agrees to complete, or cause to be completed, the Public Infrastructure and Public Improvements, in accordance with Section 2.8 and Section 4.1 of this Agreement and no later than December 31, 2018.
- 5.8 **DELAYS.** The City agrees to complete or cause the completion of the Project, in accordance with this Agreement and no later than December 31, 2018. In the event the Project is not completed substantially in accordance with this Agreement, then at the reasonable discretion of the TIF Economic Development Manager, the deadlines set forth in the Construction Schedule may be extended but not past the expiration of the TIRZ.
- 5.9 **EXTENSION(S).** The City agrees to provide the Board Written Notice of Extension(s) within 30 days of a delay for any deadline of any term of this Agreement. Upon receipt of a Notice of Extension, the TIF Economic Development Manager shall have reasonable discretion to extend any deadlines set forth herein without further approval or City Ordinance.
- 5.10 **FORCE MAJEURE.** The Board may also grant temporary relief from any deadline for performance of any term of this Agreement if the City is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault of the City. The burden of proof for the need of such relief shall rest on the City. To obtain relief based on force majeure, the City must file a written request with the Board. Then, at the TIF Economic Development Manager's reasonable discretion, the deadlines set forth in this Agreement may be extended without subsequent City Ordinance.
- 5.11 **QUARTERLY STATUS AND COMPLIANCE REPORTS.** The City agrees to submit to the TIF Unit written and signed Project Status Reports (see Sections 2.16 and 5.4 above) containing all required information, on the 15th day of January, April, July and October throughout the duration of the Project, or more often if requested by the Board or the TIF Unit, using the form attached as **Exhibit D**.
- 5.12 **MAINTENANCE.** The City shall, at its own cost and expense, maintain or cause to be maintained all Public Infrastructure and Public Improvements, to the extent required by this Agreement.

ARTICLE VI. OBLIGATIONS OF THE BOARD

- 6.1 **FUNDING.** Funding shall be in consideration of full and satisfactory performance of the City's obligations required in this Agreement and contingent on: (i.) reasonable oversight of the Project, (ii.) completion of the Project, (iii.) Board approval and, (iv.) availability of TIF Funds.

- 6.2 **BOARD APPROVAL.** Upon execution of this Agreement, the Board shall consider for approval the City's requests for reimbursement of eligible Project Costs, including completion of Public Infrastructure and Public Improvements.
- 6.3 **ELIGIBLE PROJECT COSTS.** Costs shall be considered eligible only if approved by the Board, incurred directly in the performance of, and in compliance with this Agreement.
- 6.4 **PLEDGE OF FUNDS.** Funding shall be provided to the City for the development and design of the Project, located at the Project Site, subject to the terms and conditions in this Agreement, priority of payment schedule, and termination of the TIRZ. The Board hereby pledges Available TIF Funds, as reimbursement to the City for approved Project Costs, up to One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00).

ARTICLE VII. NOTICE

- 7.1 **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:

THE CITY

World Heritage Office
Attn: Colleen Swain, Director
100 W. Houston
Frost Bank Tower, Suite 1900
San Antonio, TX 78205

THE BOARD

Mission Drive-In TIRZ #32
Attn: TIF Unit
1400 S Flores
San Antonio, TX 78204

- 7.2 **CHANGE OF ADDRESS.** Notice of change of address by either Party must be made in writing and mailed to the other Party within 5 business days of such change.

ARTICLE VIII. RECORDS

- 8.1 **RIGHT TO REVIEW.** The Board shall have the right to access records related to the Project, including but not limited to the Project's construction schedule and expenditures. At the Request of the Board, the City agrees to provide the Board and the TIF Unit access to records related to the Project for examinations during regular business hours.
- 8.2 **PRESERVATION OF RECORDS.** The City shall retain, preserve, and make available to the Board all records and accounts relating to the Project and this Agreement throughout the term of this Agreement and for 12 months after the termination of this Agreement.
- 8.3 **DISCREPANCIES.** Should errors be discovered in internal controls or in record keeping associated with the Project, such discrepancies shall be corrected upon discovery or within a reasonable period of time, not to exceed 60 days after discovery. The Board shall be informed of the action taken to correct such discrepancies.
- 8.4 **OVERCHARGES.** If it is determined that the TIRZ has been overcharged for the cost of the Public Improvements, 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.

ARTICLE IX. REIMBURSEMENT

- 9.1 **REIMBURSEMENT.** Reimbursements are not intended to reimburse all costs or expenses incurred by the City for performance of the City's obligations under this Agreement. The Board cannot guarantee that Available TIF Funds shall completely reimburse City. Available TIF Funds from this Agreement shall constitute a source of reimbursement to the City for the completion of the Public Infrastructure and Public Improvements resulting from the Project.
- 9.2 **MAXIMUM REIMBURSEMENT.** Following Board approval and City Council authorization, the City shall receive in accordance with this Agreement, from the TIF Fund a total maximum reimbursement of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00) for eligible Project Costs.
- 9.3 **AVAILABLE TAX INCREMENT FUNDS.** The sole source of the funds to reimburse the City for Project Costs shall be the Available TIF Funds levied and collected on the TIRZ and contributed by the Participating Taxing Entities participating in the TIRZ to the fund, created and maintained by the City for the purpose of implementing the Public Improvements of the Project.
- 9.4 **REQUESTS FOR REIMBURSEMENT.** The Parties agree that all requests for reimbursement from the City shall be in accordance to Section 2.19 of this Agreement and **Exhibit E**, attached hereto.
- 9.5 **RFR APPROVAL.** Upon completion of Public Improvements and the Board's receipt of the City's completed RFR form, attached **Exhibit E**, the TIF Unit shall review such request(s) and make a recommendation for payment to the Board for consideration and approval.
- 9.6 **CORRECTIONS TO RFR.** Should there be discrepancies in the RFR or if more information is required, the City will have 60 calendar days to correct any discrepancy or submit additional information requested. Failure to timely submit the additional information requested by TIF Unit Staff may result in delay of requested expense reimbursement.
- 9.7 **PROCESSING OF PAYMENT REQUESTS.** Board authorized reimbursements shall be made available to the City within 60 days after the deposit of the City's Tax Increment Payment to the TIF Fund, subject to availability, priority of payment and the requirements herein.
- 9.8 **ORDER OR PRIORITY OF PAYMENT.** The Parties agree that TIF Funds will be used to pay eligible expenditures in the following order or priority of payment:
- (i) to reimburse eligible startup Administrative Costs;
 - (ii) to pay all other ongoing Administrative Costs;
 - (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public improvements and associated costs as described in any Development Agreements; and
 - (iv) to reimburse the Developers, if any, and/or the City for public improvements, as provided in the Project and Finance Plans. These costs will be financed/reimbursed to the extent that funds in the Tax Increment Fund are available for these purposes.
- 9.9 **PARTIAL PAYMENTS.** If TIF Funds are not available in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority above, and the remainder shall be paid as TIF Funds become available. No fees, costs, expenses or penalties shall be paid on any partial or late payment.

ARTICLE X. TERMINATION

- 10.1 **TERMINATION.** For purposes of this Agreement, termination shall mean the expiration of the term as provided by Article I. Section 1.1 Term, herein.
- 10.2 **TERMINATION FOR WITHOUT CAUSE** This Agreement may also be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, the proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 10.3 **TERMINATION FOR CAUSE.** Each Party shall have the right to terminate this Agreement in whole or in part for cause if the City fails to perform the terms and conditions herein or, if the City fails to cure a default within 60 days after receiving written notice of Default from the Board, requesting that the failure be cured.
- 10.4 **CURE.** Upon written Notice of Default resulting from a breach of this Agreement, such default may be cured within 60 days from the date of the Notice of Default.
- 10.5 **NOTICE OF TERMINATION.** In the event that Party fails to comply with this Agreement, such non-compliance shall be deemed a default and this Agreement may summarily be terminated upon the issuance of a written Notice of Termination, which shall include: (1) the reasons for termination; and (2) the effective date of Termination.
- 10.6 **RIGHT TO RECAPTURE TIF FUNDS.** If the Board terminates this Agreement for cause, then the TIRZ shall have the right to recapture all the disbursed TIF Funds made under this Agreement and the City shall repay and deposit all TIF Funds disbursed to the City under this Agreement to the TIF Fund of the Mission Drive-In TIRZ within 60 days from the date of Notice of Termination.
- 10.7 **OTHER REMEDIES AVAILABLE.** The Board shall have the right to seek any remedy in law to which it may be entitled, in addition to termination and repayment of funds, if the City defaults under the material terms of this Agreement.

ARTICLE XI. ASSIGNMENTS, CHANGES AND AMENDMENTS

- 11.1 **ASSIGNMENTS.** The Parties shall not transfer, pledge or assign their rights and obligations under this Agreement without first procuring written approval by the Board as evidenced by Resolution passed and approved by the Board.
- 11.2 **AUTOMATIC INCORPORATION OF LAWS.** Changes in Federal, State and local laws, rules, or regulations may occur during the term of this Agreement and any such change(s) 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.
- 11.3 **INVALID PROVISION.** If any provision of this Agreement is held invalid, ineligible, illegal or unenforceable under City, State, Federal laws, then said provision and the remainder of this Agreement shall be construed as if such provision was never contained in this Agreement.
- 11.4 **AMENDMENTS.** Except when the terms of this Agreement expressly provide otherwise, any alteration, addition, or deletion to the terms of this Agreement shall be by amendment in writing executed by the passage of Board Resolution and subsequent City Ordinance.

ARTICLE XII. NON-DISCRIMINATION AND SECTARIAN ACTIVITY

- 12.1 **NON-DISCRIMINATION.** In accordance with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, 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.
- 12.2 **SECTARIAN OR RELIGIOUS ACTIVITY.** None the performances rendered under this Agreement shall involve, and no portion of funds received under this Agreement shall be used in support of any sectarian or religious activity.

ARTICLE XIII. GOVERNING LAW

- 13.1 **TEXAS LAW.** This Agreement shall be construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in with this 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 XIV. CAPTIONS

- 14.1 **CAPTIONS.** All captions herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to this Agreement.

ARTICLE XV. ENTIRE AGREEMENT

- 15.1 **FINAL AGREEMENT.** 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.
- 15.2 **INCORPORATION AND EXHIBITS.** Exhibits referenced below 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.

EXHIBIT A - Resolution T32-2017-09-12-01R

EXHIBIT B – Construction Schedule

EXHIBIT C - Project Site (Map)

EXHIBIT D - Project Status Report Form

EXHIBIT E - Request for Reimbursement Form

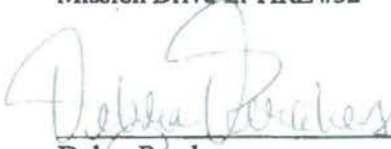
Signatures on the following page

EXECUTED BY THE PARTIES IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original on this the ____ day of _____, 2017.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BOARD OF DIRECTORS
Mission Drive-In TIRZ #32

Sheryl Sculley
CITY MANAGER
Date: _____




Debra Perales
PRESIDING OFFICER
Date: 9/12/17

ATTEST/SEAL:

ATTEST

Leticia Vacek
CITY CLERK



Nancy Sheppard
TIF Economic Development Manager

Date: _____

Date: 9/12/17

APPROVED AS TO FORM:

Andrew Segovia
CITY ATTORNEY

Exhibit A

T32 2017-09-12-01R

RESOLUTION BY THE BOARD OF DIRECTORS ("BOARD") OF TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-TWO, SAN ANTONIO, TEXAS KNOWN AS THE MISSION DRIVE-IN TAX INCREMENT REINVESTMENT ZONE ("TIRZ"), AUTHORIZING APPROVAL AND THE EXECUTION OF THE FUNDING AGREEMENT WITH THE CITY OF SAN ANTONIO'S WORLD HERITAGE OFFICE IN AN AMOUNT NOT TO EXCEED NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS FOR THE CITY'S RIVER-TO-MISSION CONNECTION PROJECT

* * * * *

WHEREAS, in May 2017, the City's World Heritage Office applied for funding from the City's Tax Increment Financing ("TIF") Program in order to undertake the oversight and delivery of the City's *River-To- Mission Connection Project*, located at 6701 San José Drive, San Antonio, Texas, City Council District 3, and within the World Heritage Buffer Zone and TIRZ; and

WHEREAS, on June 27, 2017, the Board passed Resolution T32-2017-06-27-02R, authorizing City staff to negotiate an agreement with the City's World Heritage Office in an amount not to exceed One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) in reimbursable TIF funds and to make the necessary amendments to the TIRZ Project and Finance Plans for the public infrastructure and public improvements associated with the *River-To-Mission Connection Project*.

WHEREAS, on September 12, 2017, the Board considered the Proposed Funding Agreement with City's World Heritage Office, as described in substantial form in attached **Exhibit A**; **NOW THEREFORE**;

BE IT RESOLVED BY THE BOARD:

SECTION 1: The recitals set out above are adopted in their entirety.

SECTION 2: The Board hereby approves and authorizes the execution of the Funding Agreement described in attached **Exhibit A**.

SECTION 3: The Board acknowledges that subsequent approval by City Council is required.

PASSED AND APPROVED this 12th day of September, 2017.

APPROVED AS TO FORM

Debra Perales
Presiding Officer

Alma Rosa Lozano
Assistant City Attorney

Exhibit B

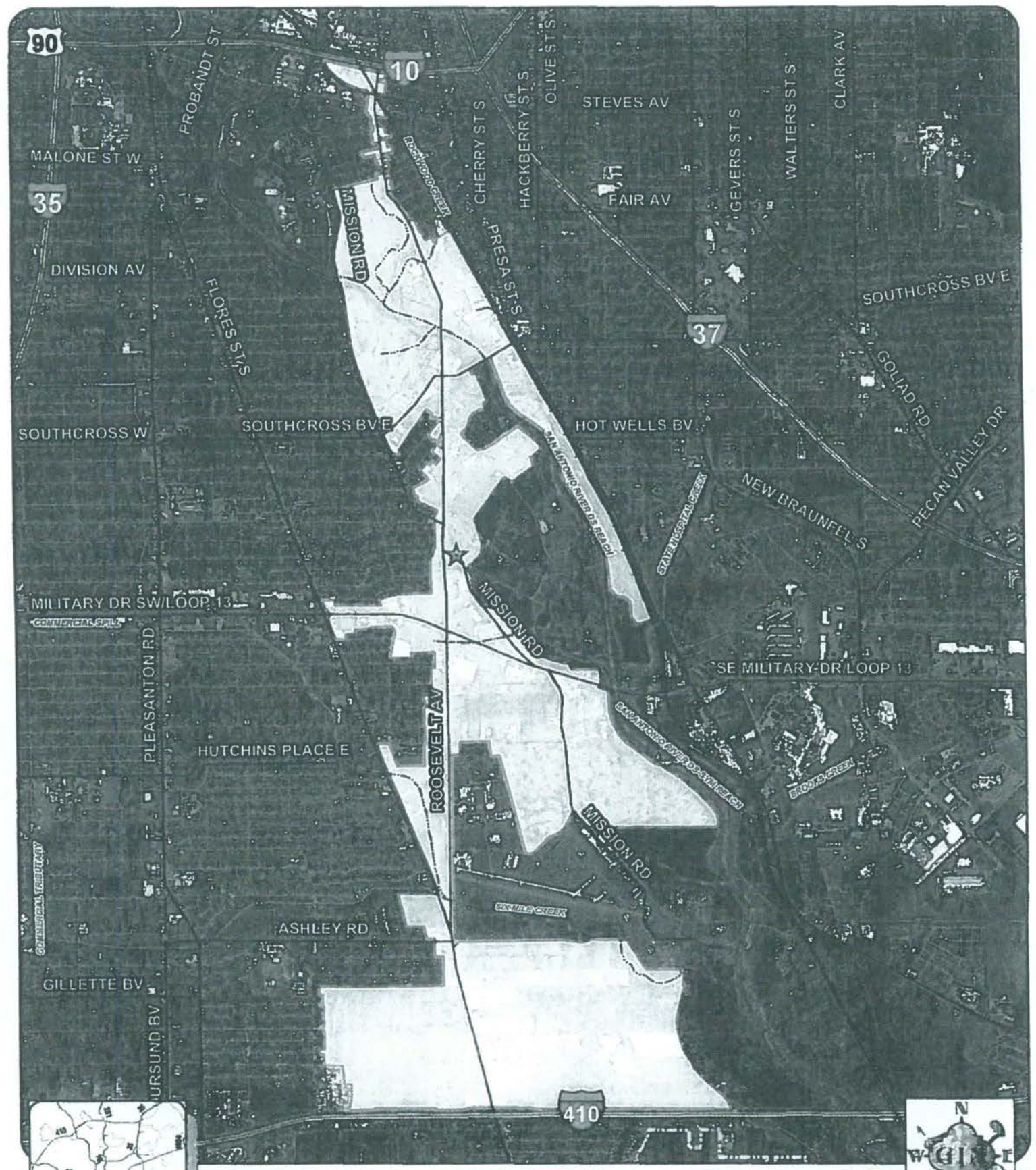
CONSTRUCTION SCHEDULE
Napier Avenue Right Hand Turn Lane
World Heritage Buffer Zone

NO.	TASK NAME	2017		2018			
		FALL	EARLY WINTER	WINTER	SPRING		
1.	Design						
2.	Mobilization						
	Traffic Control						
	Storm Water						
	Pollution						
	Prevention						
3.	Remove & Salvage						
	Remove sidewalk						
	Remove curb						
	Sawcut & remove pavement						
	Remove light post						
4.	New Construction						
	Curb & Sidewalk						
	Base prep						
	Milling						
	Final Pavement						
	Pavement Striping						
5.	Close-out						

Anticipated Start Date: December 15, 2017

Anticipated End Date: June 15, 2018

Exhibit C



- Mission Drive-In
- City of San Antonio
- Major Roads
- Project Site
- Expressways
- Creeks



City of San Antonio

Mission Drive-In TIRZ

City of San Antonio
Information Technology Services in Support of
Our Public Services, Initiatives

Michael Tomera
1615 Broadway St., 14th Floor
San Antonio, TX 78206





Map Source: City of San Antonio, Department of Public Works, GIS Department, 2016. All rights reserved. This map is for informational purposes only and does not constitute a warranty or representation of any kind. The City of San Antonio is not responsible for any errors or omissions on this map. For more information, please contact the City of San Antonio, Department of Public Works, GIS Department, 100 N. Nueces Street, San Antonio, TX 78202. Phone: (210) 204-3000. Fax: (210) 204-3001. Email: gis@sanantonio.gov. Website: www.sanantonio.gov.

Site

BCAD Parcels 2016

City of San Antonio

Napier Avenue

Turn Lane



City of San Antonio
 Information Technology Services Department
 GIS Public Services Division
 My San Antonio
 111 S. Nueces St., 20th Floor
 San Antonio, TX 78202



Exhibit D



CITY OF SAN ANTONIO
TAX INCREMENT REINVESTMENT ZONE
Project Status Report

Pursuant to the Development Agreement, the DEVELOPER has agreed to provide periodic reports of construction to the CITY upon reasonable request. The City requests that the Developer submit a TIRZ project status report every quarter every year until the project is complete, due by:

- January 15th, for the first quarter,
- April 15th, for the second quarter,
- July 15th, for the third quarter and
- October 15th, for the fourth quarter

At the completion of the project, the DEVELOPER shall submit a comprehensive final report.

Each quarterly report must include the following information:

- The number of Private Improvements completed (single-family and/or multi-family and commercial when applicable) and year in which they were completed
- The Public Improvements completed and costs incurred to date by year in which improvements were completed
- Indicate whether the construction is on track with the approved Final Project and Finance Plan
- If the project timeline has slipped, the Developer is to submit an updated project timeline
- The sale prices of the single-family homes completed (Please obtain and provide sales data for original sales price of every home sold.)
- Photos of: housing and commercial developments; before, during and after construction

In addition, for the City to monitor compliance with insurance requirements of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

- the City and its officers, employees and elected representatives are additional insureds as respects the operations and activities of, or on behalf of, the named insured contracting with the City, with the exception of the workers' compensation policy;
- the endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City of San Antonio is an additional insured shown on the policy;
- the Workers' Compensation and employers' liability policy provides a waiver of subrogation in favor of the City of San Antonio; and
- Notification to the City of any cancellation, non-renewal or material change in coverage was given not less than thirty (30) days prior to the change or ten (10) days prior to the cancellation due to non-payment of premiums, accompanied by a replacement Certificate of Insurance.

Attached is a form you may use to fulfill this reporting requirement.

TIRZ Project Progress Report (Construction)

Name of Project:	TIRZ #:
Progress Report #:	TIRZ Term: From: To:
Period Covered by this Report: From: To:	

The number of Private Improvements (single-family and/or multi-family and commercial if applicable) completed and year in which they were done

Phases (years)	start date	end date	Private Improvements							
			Single-Family Units		Multi-family Units		Commercial Acres and Square Feet		Other Improvements (example: day care centers)	
			Proposed	Completed	Proposed	Completed	Proposed	Completed	Proposed	Completed
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

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

Phases (year)	Public Improvements												
	start date	end date	Sidewalks and Approaches <i>Linear Feet</i>	Streets <i>Li.Ft.</i>	Drainage <i>Li.Ft.</i>	Water <i>Li.Ft.</i>	Sewer <i>Li.Ft.</i>	Electrical (Line Extension) <i>Li.Ft.</i>	Gas <i>Li.Ft.</i>	Street Lights <i>Number</i>	Traffic Signal Light <i>Number/Location</i>	Landscaping <i>Li.Ft.</i>	Other
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
TOTALS													

➤ Is Construction on track with the approved Final Project and Finance Plan? If not, please submit an updated timeline with the actual construction and the projected buildout.

Year	Original Project Plan			Actual/Projected		
	Single-Family	Multi -Family	Other	Single -Family	Multi -Family	Other

Certification: I certify that to the best of my knowledge and belief, the data above is correct and that all outlays were made in accordance with the terms of the Development Agreement.	Signature of Certifying Individual:	Date:
	Type or printed Name and Title:	Telephone #:

Exhibit E



CITY OF SAN ANTONIO Contract Progress Payment Request (CPPR) 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

Project Name: NAD Residential TIRZ		Period covered by this invoice: 12/02—8/03			
Invoice#: One (1)		Phase(s) covered by this invoice: Phases 1, 2, & 3			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1	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
	TOTAL	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.

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
	<u>John Doe, CPA</u>	<u>John Smith, Engineer</u>
	DATE: _____	DATE: _____

Reimbursement for TIRZ Expenses

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

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

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

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

(SAMPLE) Reimbursement for TIRZ Expenses

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

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

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this Invoice:
Invoice #:	Phase covered by this invoice:

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

(SAMPLE) Reimbursement for TIRZ Expenses

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

Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
NAD Contractors	00451364		2020	\$165,000		Ck# 2523
Total		\$192,600		\$165,000	\$27,500	

Reimbursement for TIRZ Expenses

Project Name:	Period covered by this invoice:
Invoice #:	Phase covered by this invoice:

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

(SAMPLE) Reimbursement for TIRZ Expenses

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

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Fast City Contractors	3574216		123	\$10,000		Ck# 8989
			456	\$4,500		Ck# 8989
			789	\$5,500		Ck# 8989
Total		\$20,000		\$20,000	\$0.00	

Reimbursement for TIRZ Expenses

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

Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)	Balance	Method of Payment
Total						