

AN ORDINANCE 2017-06-22-0504

AUTHORIZING A FUNDING AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE MIDTOWN TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-ONE, SAN ANTONIO, TEXAS IN AN AMOUNT NOT TO EXCEED TWO-HUNDRED, FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00) FOR THE BROADWAY UNDERPASS IMPROVEMENTS PROJECT LOCATED WITHIN MIDTOWN TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-ONE AND IN CITY COUNCIL DISTRICTS 1 AND 2.

* * * * *

WHEREAS, tax increment financing is an economic development tool authorized by the Tax Increment Financing Act (the "Act"), Chapter 311 of the Texas Tax Code; and

WHEREAS, in accordance with the Act, the City through City Council Ordinance No. 2008-12-11-1134, established Tax Increment Reinvestment Zone Number Thirty-One, known as the Midtown City TIRZ ("TIRZ #31"), 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 #31; and

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

WHEREAS, the City, through the Center City Development Office, presented to the Board, the Broadway Underpass Improvements Project (the "Project"), which consists of public infrastructure and public improvements necessary to facilitate the design and construction of a public parking surface lot to meet the high demand for public parking in the area, which is anticipated to grow substantially as a result of the Broadway Corridor Improvements Project and other neighborhood revitalization development efforts; and

WHEREAS, pursuant to Section 311.008 and Section 311.010 (b) of the Act, the Board has the 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 and to provide for payment of project costs that benefit the reinvestment zone; and

WHEREAS, on November 13, 2015, the Board passed a Resolution authorizing the commitment of funds from the Tax Increment Fund for TIRZ #31 in an amount not to exceed Two Hundred, Fifty Thousand Dollars and No Cents (\$250,000.00) to support the Project; **NOW THEREFORE:**

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


AL
06/22/17
Item No. 24C

SECTION 1. The terms and conditions of a Funding Agreement with Midtown TIRZ #31 for the Project are hereby approved. The City Manager or her designee is authorized to execute this Funding Agreement, a copy of which, in substantial final form is set out in **Exhibit A**. A copy of the fully executed agreement will be substituted for **Exhibit A** upon receipt of all signatures.

SECTION 2. This Ordinance authorizes the commitment of up to Two Hundred, Fifty Thousand Dollars and No Cents (\$250,000.00) in reimbursable tax increment from the Tax Increment Fund for TIRZ #31 for the Project.

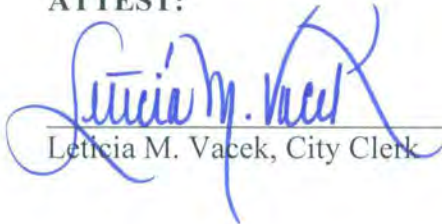
SECTION 3. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 22nd day of June, 2017.



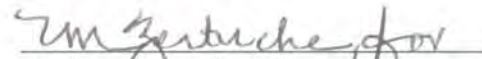
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	24C (in consent vote: 24A, 24B, 24C, 24D)						
Date:	06/22/2017						
Time:	12:39:28 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a funding agreement between the City of San Antonio and Midtown TIRZ #31 for the amount of \$250,000.						
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				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				
Clayton H. Perry	District 10		x				

EXHIBIT A

**FUNDING AGREEMENT
WITH THE CITY OF SAN ANTONIO, TEXAS, AND
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-ONE,
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. _____, and the Board of Director for Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, known as the Midtown 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. 2008-12-11-1134, established Tax Increment Reinvestment Zone Number Thirty-One, San Antonio, Texas, known as the Midtown TIRZ ("TIRZ"), to promote development and redevelopment which would not otherwise occur solely through private investment; and

WHEREAS, the City, through the Center City Development Office ("CCDO"), shall undertake the oversight and delivery of improvement efforts of the City's Broadway Underpass Project ("Project"), located at the intersection of Interstate Highway 35 and Texas Highway 281 and within the TIRZ; and,

WHEREAS, on November 13, 2015, the Board approved a Resolution described in attached **Exhibit A**, authorizing the commitment of funds from the Tax Increment Fund in an amount not to exceed TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) to support of the City's efforts regarding the Project an; 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, pursuant to the aforementioned authority, and Ordinance No. _____, approved on the 22nd day of June 2017, the Board and the City agree to enter a binding agreement to ensure that the City is reimbursed for costs that it incurs for the development of the Project, as specifically described and incorporated herein in the attached **Exhibit B**; 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 indirectly for the administration of the City's Tax Increment Financing Program.
- 2.3 **AGREEMENT** – This document by and among the City and the Midtown 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 Midtown TIRZ.
- 2.6 **CITY** – For the purposes of this Agreement and hereinafter shall mean the City of San Antonio Center City Development Operations Department (“CCDO”).
- 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.
- 2.8 **CONSTRUCTION SCHEDULE** - The specific timetable for constructing the improvements specified in this Agreement, which timetable is more particularly set forth in **Exhibit C**, 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 Midtown 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 C**.
- 2.12 **PROJECT** – The City’s Broadway Underpass Project described in Section 4.1 of this Agreement and in attached **Exhibit B**.
- 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 Midtown 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, which is located in the TIRZ at the intersection of Interstate Highway 35 and Texas Highway 281, and as further described in attached **Exhibit D** (Map) as the Central Zone.

- 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 E**.
- 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 F**.
- 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 “Reinvestment Zone Number Thirty-One, 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-One, City of San Antonio, Texas, known as the Midtown 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 TIRZ as established pursuant to City Ordinance No. 93101 provides the Board 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 Tax Increment shall not be, nor shall be construed to be, the financial obligation of the TIRZ. 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 the construction of a new public surface parking facility with approximately 100-200 new parking spaces to alleviate parking deficiencies in the commercial area located at the intersection of Interstate Highway 35 and Texas Highway 281 and within the TIRZ. Public Infrastructure and Public Improvements shall constitute the design, construction, assembly, installation and implementation of public parking, walkways, trails, public art, and planting areas, including but not limited to street curbing, sidewalks, street lighting, landscaping, low impact development features to treat storm-water runoff prior to discharge into the San Antonio River along the Museum Reach and other necessary improvements. 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. CCDO 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 E**.
- 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 TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00).

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

Center City Development Office
Attn: John Jacks, Interim Director
100 W. Houston
Frost Bank Tower, Suite 1900
San Antonio, TX 78204

THE BOARD

Midtown TIRZ #31
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 TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) 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 F**, 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 F**, 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 form or if more information is required, the City will have 60 days upon notice to correct any discrepancies or submit additional information requested.
- 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 pay interest and principal should the City issue any debt instrument such as bonds, notes, certificates of obligation or other public debt to cover Project Costs related to any Public Infrastructure improvements within the Zone;
 - (ii) to pay all ongoing Administrative Costs to the City for administering the TIF Fund and/or the Zone;
 - (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public improvements and associated costs; and
 - (iv) to reimburse the City under any reclaim of funds pursuant to an applicable development agreement;
 - (v) to reimburse the Developers for Public Improvements, as provided in the applicable Agreements and in the Project Plan 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 Inner City 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 attached and 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.

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
Midtown TIRZ #31

Sheryl Sculley
CITY MANAGER

Lou Fox
PRESIDING OFFICER

ATTEST/SEAL:

Leticia Vacek
CITY CLERK

Date: _____

APPROVED AS TO FORM:

Andy Segovia, CITY ATTORNEY

LIST OF EXHIBITS

- I. **EXHIBIT A** – Board Resolution November 17, 2015
- II. **EXHIBIT B** - Broadway Underpass Project
- III. **EXHIBIT C** – Construction Schedule
- IV. **EXHIBIT D** - Project Site (Map)
- V. **EXHIBIT E** - Project Status Report Form
- VI. **EXHIBIT F** - Request for Reimbursement Form

EXHIBIT A

A RESOLUTION OF THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS AUTHORIZING THE COMMITMENT UP TO \$750,000.00 IN TAX INCREMENT FUNDS TO SUPPORT THE CITY'S BROADWAY UNDERPASS PROJECT AND ADDING THE PROJECT TO THE TIRZ PROJECT AND FINANCE PLAN.

* * * * *

WHEREAS, the City of San Antonio received a \$1 million award by the Texas Department of Transportation to beautify five highway underpasses; and

WHEREAS, City staff has indentified the open land under IH-35, IH-37, and Hwy 281 at Broadway St. and North Alamo as one of the five priority sites for the City's Broadway Underpass Project ("Project"); and

WHEREAS, area stakeholders have expressed an interest in using the above areas to address parking issues in the River North/Midtown areas; and

WHEREAS, the funds granted by the Inner City TIRZ Board of Directors ("Board") will be utilized to beautify the underpass areas as stated above within the Inner City TIRZ and providing potential public park areas; and

WHEREAS, the City is working with VIA Metropolitan, the Texas Department of Transportation (TX DOT), San Antonio River Authority (SARA), Centro-San Antonio, and other are stakeholders to formulate landscaping and parking design to include 438 parking spaces, event spaces, transportation amenities, and connectivity between upper and lower Broadway into downtown San Antonio; and

WHEREAS, the proposed Project will be completed in two phases through four improvement zones of which Phase I will include Central Zone and Western Zone and Phase II will include the Newell Zone and Eastern Zone; and

WHEREAS, the proposed Project will also consist of parking, landscaping, an urban garden, and connectively improvements; and

WHEREAS, the City and the Board have indentified \$750,000.00 in TIRZ funding for the Project;

WHEREAS, the Board recognizes that the City is its fiscal agent, and consents to the funding amount of up to \$750,000.00 for the Project; **NOW THEREFORE:**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN, THE INNER CITY TIRZ, CITY OF SAN ANTONIO, TEXAS:

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

SECTION 2: The Inner City TIRZ Board of Directors authorizes the commitment of TIRZ funds from the Inner City TIRZ Tax Increment Fund in an amount not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000.00) for the City's Broadway Underpass Project as described and attached in **Exhibit A**.

SECTION 3: The Inner City TIRZ Board authorizes funds for the City's Broadway Underpass Project to be disbursed in accordance with Chapter 311 of the Texas Tax Code ("TIF Act"), any executed agreements entered into by the City to fund the Project, the Inner City TIRZ Project and Finance Plans, and after approval by the Board of invoices submitted for reimbursable expenses.

SECTION 4. The Inner City TIRZ Board of Directors authorizes staff to include the City's Underpass Project in the Project and Finance Plans of the Inner City TIRZ.

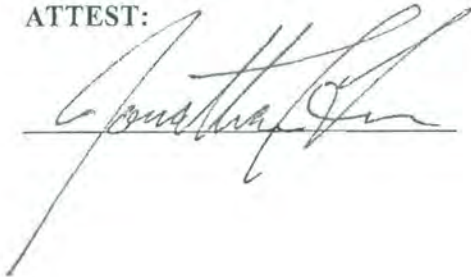
SECTION 5. The Board recognizes that the approval of funding also requires approval of San Antonio City Council.

PASSED AND APPROVED this 13th day of November, 2015.

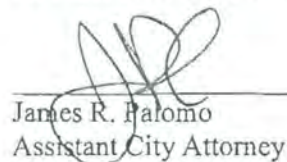


Board Vice Chairperson

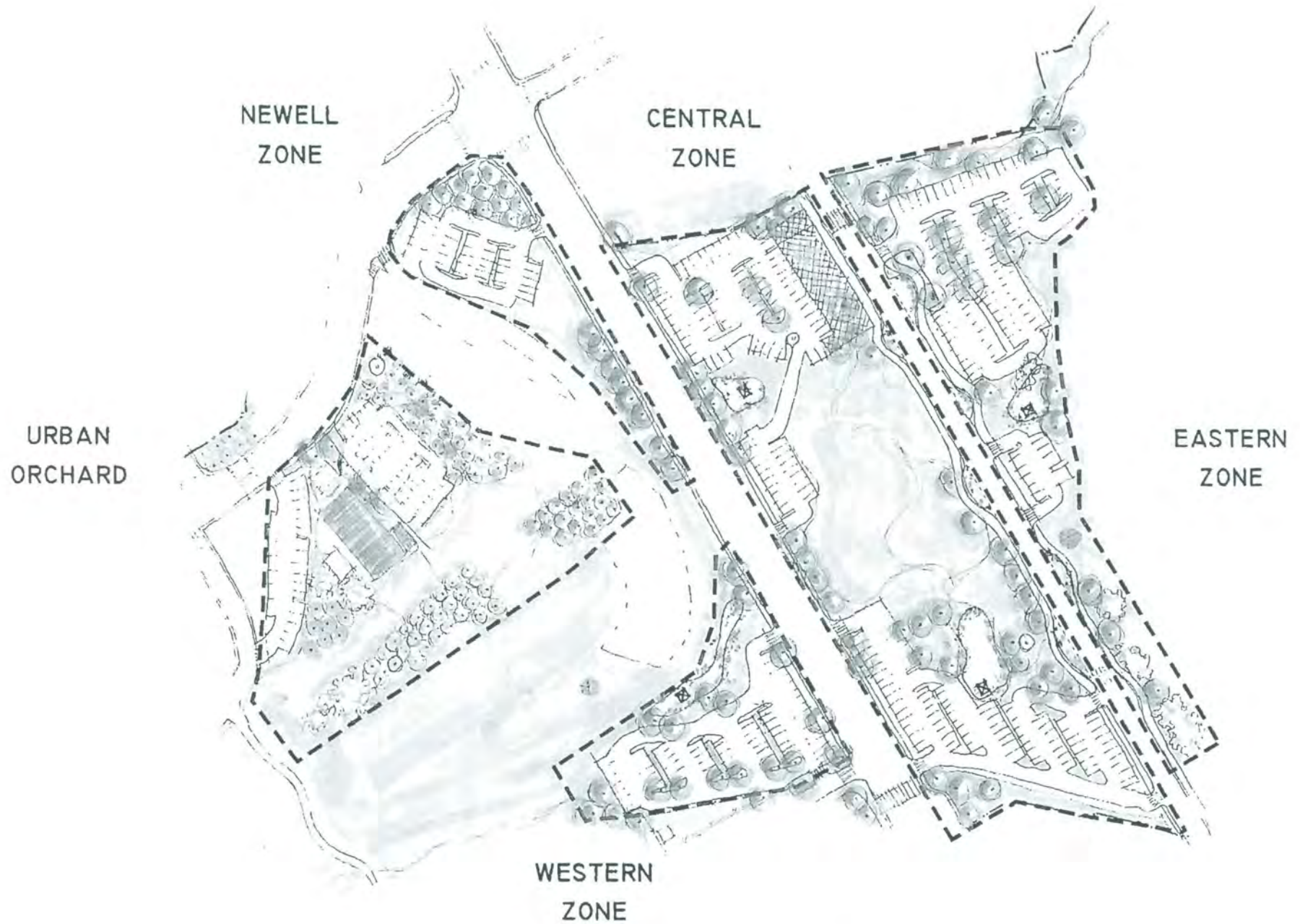
ATTEST:



APPROVED AS TO FORM:



James R. Palomo
Assistant City Attorney



SEPTEMBER 2015

IH35 / 281 PROJECT



EXHIBIT B

BROADWAY UNDERPASS IMPROVEMENTS PROJECT

In July 2013, the Transportation and Capital Improvement (TCI) Department received a grant from the Texas Department of Transportation to beautify five underpass sites around the City with landscaping. The underpass located between Broadway and Alamo St. at the intersection of IH35 and Hwy 281 was one of the sites selected. As part of the public outreach effort in anticipation of the project, area stakeholders felt that the site could be better utilized to help alleviate parking conditions in the area. The proposed parking lot is within easy walking distance to destinations such as Pearl, the Museum Reach of the San Antonio River, the San Antonio Museum of Art, the Luxury, Rosella Coffee, and popular music venues such as Sam's Burger Joint and Maverick Park - all of which have very limited public parking options. The demand for parking in the area is also expected to grow substantially from anticipated development as a result of the Broadway Corridor Improvements Project and from office, retail, restaurant, and housing developments currently being planned in the area.

In response to stakeholder feedback, staff coordinated with area stakeholders and agency partners including VIA, Centro San Antonio, San Antonio River Authority (SARA), and others to gauge interest in such a project and plan its funding and design. The entire underpass site was surveyed and given a conceptual design. Based on construction estimates, available funding, and anticipated impact, the Central Zone was identified for the first phase of the project, which is the focus of this action. Additional phases of the underpass parking project will be evaluated after assessing the success of the Central Zone and as additional funding is identified. The six-acre Central Zone project site, as proposed, will include approximately 180 parking spaces, ample green space with landscaping and trees, and will include a walking trail to facilitate connectivity between the east and west sides of Broadway. The City is also partnering with the San Antonio River Authority to include three Low Impact Development (LID) features to showcase best practices for slowing and treating storm water runoff before leaving the site. Later phases of improvement for the site may include a skate park, public art, and/or a food truck court. These additional uses and improvements will be considered as future funding and partners are identified to activate this critical gateway into downtown. Notices were sent and two public meetings were held to share project information and solicit input on December 12, 2016 and January 19, 2017. The estimated cost of the project is approximately \$1,393,581. Funding for the project has been identified from four sources as outlined below.

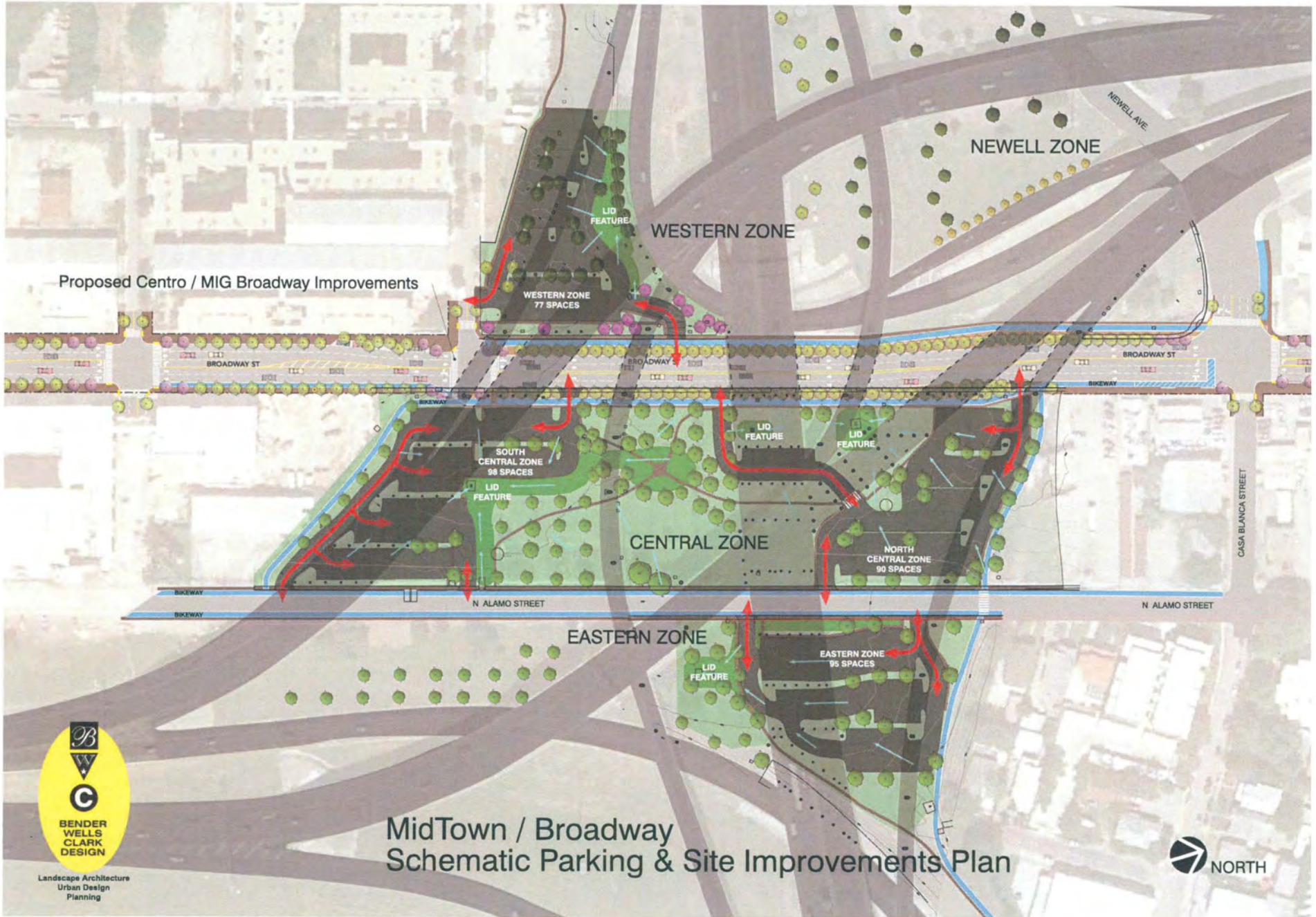
Midtown TIRZ	43,581.00*
SARA Watershed Wise Rebate	100,000.00
Parking Fund's FY 2017 Budget	250,000.00
<u>Inner City TIRZ</u>	<u>1,000,000.00</u>
TOTAL FUNDING	1,393,581.00

* Midtown TIRZ approved a total of \$250,000 for underpass improvements in the Midtown TIRZ area. Although the Central Zone lies just outside the Midtown TIRZ boundaries, \$43,581 of the total cost can be paid by the Midtown TIRZ for surveying and schematic design costs for the entire underpass area. As future funding is identified for phase two, the remaining balance of \$206,419 will be used to complete proposed improvements of the Broadway Underpass Improvements project within the Midtown TIRZ boundary.

SARA will manage the project through the design and construction phase using an existing Interlocal Agreement with the City. They will also provide maintenance of the LID features for the first three years after construction in exchange for a portion of the parking revenues to cover their cost. The City of San Antonio's Parking Division of the Center City Development and Operations Department will manage and maintain the parking lot, and the Transportation and Capital Improvements Department will maintain the remainder of the site. Once all the necessary agreements and funding commitments are approved, construction of the Central Zone will commence in October 2017 and be completed in February 2018.

EXHIBIT C

EXHIBIT D



Landscape Architecture
Urban Design
Planning

MidTown / Broadway Schematic Parking & Site Improvements Plan

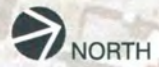


EXHIBIT E



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 (year)	Private Improvements									
	start date	end date	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												
			Sidewalks and Approaches	Streets	Drainage	Water	Sewer	Electrical (Line Extension)	Gas	Street Lights	Traffic Signal Light	Landscaping	Other
	<i>start date</i>	<i>end date</i>	<i>Linear Feet</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Li.Ft.</i>	<i>Number</i>	<i>Number/Location</i>	<i>Li.Ft.</i>	
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.

EXHIBIT F



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:	Signature of Certifying Financial Official		Signature of Certifying Engineer	
	_____		_____	
	Typed or printed Name and Title		Typed or printed Name & Title	
	John Doe, CPA _____		John Smith, Engineer _____	
	DATE: _____		DATE: _____	

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.

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: _____ DATE: _____	Signature of Certifying Engineer _____ Typed or printed Name & Title: _____ 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

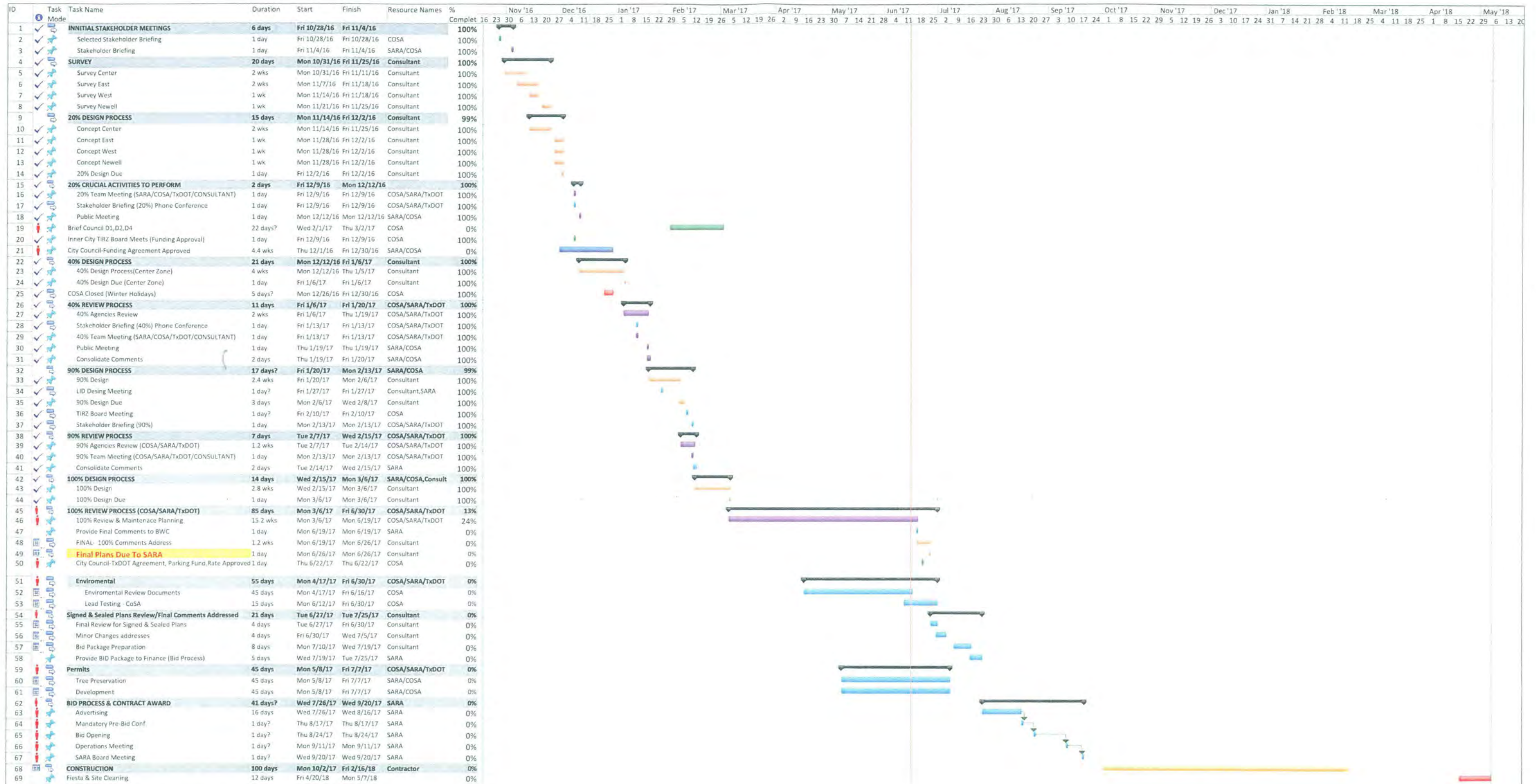
Project Name: NAD Residential TIRZ	Period covered by this invoice: 12/02---8/03
Invoice #: One (1)	Phase covered by this invoice: Phases 1,2, & 3

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		\$192,500		\$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						