

STATE OF TEXAS	§	CHAPTER 380 ECONOMIC
	§	DEVELOPMENT PROGRAM
	§	GRANT AGREEMENT OF THE
COUNTY OF BEXAR	§	CITY OF SAN ANTONIO

This Chapter 380 Economic Development Program Grant Agreement (hereinafter referred to as this “Agreement”), pursuant to City Ordinance No. 2018-09-20-____, approved on the 20th day of September, 2018, is made and entered into by and among the City of San Antonio (the “CITY”), a municipal corporation of the State of Texas, acting by and through its CITY Manager or her designee, Tax Increment Reinvestment Zone Number Eleven, also known as the Inner City TIRZ, (the “TIRZ”), acting by and through its Board of Directors (the “Board”), and Friedrich Crossing, LP (hereinafter referred to as “GRANTEE”) and whom together may be referred to as the “Parties.”

RECITALS

WHEREAS, on February 21, 2018, Friedrich Lofts, Ltd. (“Developer”) submitted a proposal request for tax increment fund reimbursement for the demolition of the Friedrich Refrigerator Manufacturing Building and construction of a 347-unit mixed-income multifamily housing project, which includes 173 market rental units, 174 affordable units, and a 725-space parking garage, located at 1617 East Commerce Street; and

WHEREAS, the total development cost for the Friedrich Lofts Project is approximately \$65,000,000.00, which includes demolition costs, costs associated with site work, pre-development costs, hard construction costs, contingency, and Developer related expenses; and

WHEREAS, Friedrich Crossing, LP is the successor in interest to this Project; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code and Section 311.010(b) and Section 311.010(h) of the Texas Tax Code, the CITY and the TIRZ are authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and within the TIRZ; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, CITY created such a program for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

WHEREAS, on March 21, 2018, the Board adopted Resolution T11 2018-03-21-04R authorizing approval of the negotiation of this Agreement to provide reimbursement for eligible expenses in an amount not to exceed ONE MILLION SEVEN HUNDRED FORTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$1,745,000.00); and

WHEREAS, on August 14, 2018, the Board adopted Resolution T11 2018-08-14-01R, attached and incorporated into this agreement as **Exhibit A**, authorizing execution of this Agreement; and

WHEREAS, pursuant to said authority above, the Parties hereby enter into a binding agreement to develop the Project; **NOW, THEREFORE**,

The Parties hereto severally and collectively agree, for the consideration herein set forth, and by

the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

ARTICLE I. AGREEMENT PURPOSE

GRANTEE shall undertake the Project which is anticipated to promote local economic development and to stimulate business and commercial activity in the CITY and in the TIRZ. The CITY and TIRZ are supporting the Project through this economic development program grant to provide funds for the purpose of defraying costs associated with the Project's improvements to the Project Site, which is intended to spur development in the TIRZ by adding full-time jobs and increasing tax increment. The grant is of TIRZ funds to be used for Project Costs, as defined by the TIF Act, Texas Tax Code Ch. 311 and in accordance with Chapter 380 of the Texas Local Government Code. This Project will be added to the Project and Finance Plans for the TIRZ.

ARTICLE II. PROJECT REQUIREMENTS

A. Project. Developer is developing the Friedrich Lofts Project, a planned 347-unit mixed-income multifamily housing project located at 1617 East Commerce Street (project site – **Exhibit B**). The total development cost for the Friedrich Lofts Project is approximately \$65,000,000.00, which includes demolition costs, costs associated with site work, pre-development costs, hard construction costs, contingency, and Developer related expenses. Eligible reimbursable Project Costs associated with the demolition of the existing improvements (the "Demolition Work") at the project site are estimated at, but not to exceed, \$1,745,000.00. The TIRZ Board has authorized reimbursement of the cost of the Demolition Work. Demolition Work may include all aspects of demolition to include destruction of existing structure(s), waste removal, environmental studies, environmental remediation, necessary authorization and/or permits, hiring of a licensed/registered structural engineer or environmental engineer or other necessary professionals to describe the demolition, any necessary site, traffic street or sidewalk closures, CPS disconnections prior to demolition, TCEQ applications for voluntary clean up, and site preparation for commencement of construction.

B. Demolition Commencement and Completion. GRANTEE shall make commercially reasonable efforts to commence demolition on or before March 31, 2019 ("Commencement Date") and shall use commercially reasonable efforts to complete the Demolition Work on the Project no later than January 31, 2021 (the "Completion Date") subject to Force Majeure. The Commencement Date shall be determined by the issuance of a demolition permit for the Project Site and CITY's receipt of correspondence from the general contractor for the Project certifying that the Demolition Work has commenced. The date that the TIRZ funded Demolition Work is completed shall be the Completion Date.

(C) Legal Compliance. GRANTEE shall comply in all material respects with all applicable Federal, State and local laws and regulations, including, but not limited to, federal Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS) and Texas Commission on Environmental Quality (TCEQ) rules and regulations and all other regulations and laws relating to the environment, Asbestos Containing Materials (ACM), Hazardous Substances or exposure to ACM and Hazardous Substances as applicable and shall

develop and operate the Project in accordance with the terms and conditions of this Agreement.

ARTICLE III. ECONOMIC DEVELOPMENT PROGRAM GRANT

A. **Economic Development Program Grant & Project Reimbursement.** The TIRZ is providing GRANTEE with an Economic Development Program Grant providing up to ONE MILLION SEVEN HUNDRED FORTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$1,745,000.00) in tax increment reimbursements from the TIRZ Fund for eligible Project Costs subject to the terms and conditions of this Agreement and the below listed Payment Conditions.

B. **Project Cost Reimbursement.** Reimbursement is tied to completion of Demolition Work and below payment conditions. GRANTEE understands and agrees that consideration for this Agreement includes, but is not limited to, GRANTEE'S completion of the Project. A failure to complete the Project in Article II is a breach under this Agreement and obligates the GRANTEE to reimburse the TIRZ Fund.

C. **Payment Conditions:**

1. **Agreement Execution.** The Agreement must be executed by all Parties.
2. **Demolition Work Invoice Approval.** Upon completion of the Demolition Work on the Project, the GRANTEE shall submit to the TIF Unit an invoice package as described in **Exhibit C Contract Payment Progress Request (CPPR)**. The invoice package shall be presented to the Board for review and possible reimbursement authorization after TIF Unit review and approval. Failure to timely submit CPPRs or additional information requested may result in delay of Developer's requested reimbursement.
3. **Corrections to CPPR Invoice Package.** Should there be discrepancies in the CPPR invoice package or if more information is required, GRANTEE will have thirty (30) days upon notice by CITY to correct any discrepancies or submit additional information requested by CITY. Failure to timely submit the additional information requested by the CITY may result in delay of the GRANTEE's requested expense reimbursement.
4. **Maximum Reimbursement of GRANTEE.** Following the Board's authorizations and completion of Demolition Work as authorized in this Agreement, the GRANTEE shall receive, in accordance with this Agreement, reimbursements not to exceed ONE MILLION SEVEN HUNDRED FORTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$1,745,000.00) for eligible costs as full reimbursement.
5. **Processing of Payment Requests.** Board-authorized reimbursements of Available TIRZ Funds shall be made to the GRANTEE by the CITY within sixty (60) days if funds are available for disbursement, if the GRANTEE is in compliance in all material respects with laws, statutes, ordinances and the requirements of this Agreement.
6. **Available Tax Increment Funds.** The sole source of the funds to reimburse the GRANTEE for eligible costs shall be the Available TIRZ Funds levied and collected on the TIRZ Property and contributed by the Participating Taxing Entities participating in the TIRZ to the fund created and maintained by the CITY for the purpose of promoting the economic development of the Project.

7. **Order or Priority of Payment.** The Parties agree that the TIRZ Fund will reimburse Developer for eligible Project Costs in the order of priority of payment for the TIRZ.

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

9. **Repayment of Invalid Payments.** If any payment to the GRANTEE is held invalid, ineligible, illegal or unenforceable under federal, state or local laws, including but not limited to the charter, codes, or ordinances of the CITY, then and in that event it is the intention of the Parties that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by the GRANTEE to the CITY for deposit into the TIRZ Fund, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained in this Agreement.

10. **Project Status Report.** The document the GRANTEE prepared and submitted in accordance with this Agreement's requirement and Exhibit E, attached and incorporated herein.

11. If project status reports are not submitted on the assigned dates, the GRANTEE understands that no available Tax Increment Funds will be reimbursed to the GRANTEE until after the reports are provided.

Notwithstanding the Effective Date, payment of any and all funds set out in this Agreement is contingent upon the inclusion of the Project through an official amendment of the TIRZ Project Plan or approval of an Ordinance authorizing the inclusion of the Project through an amendment to the TIRZ Project by the governing body of the TIRZ and CITY.

ARTICLE IV. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and shall terminate upon the earlier of: (A) the final payment of Funds by the TIRZ to GRANTEE in the amount of the Maximum Disbursement Amount and completion of the Demolition Work in accordance with Article II; (B) TIRZ termination on September 30, 2025; or (C) termination of this Agreement as otherwise provided herein (the "Term"). Notwithstanding the foregoing, if for any reason GRANTEE is unable to commence the Demolition Work by the Commencement Date, this Agreement will automatically terminate and neither party shall have any further obligation hereunder except those which expressly survive the termination of this Agreement.

ARTICLE V. CITY AND TIRZ OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by this Agreement, TIRZ will pay GRANTEE in accordance with Article III above.

B. TIRZ will not be liable to GRANTEE or any other entity for any costs incurred by GRANTEE in connection with this Agreement.

C. The CITY agrees to act as the fiscal agent on behalf of the TIRZ by making reimbursements from the TIRZ Fund for the Project pursuant to this Agreement. Additionally, the CITY/City Center Development Operations shall monitor GRANTEE's compliance with the terms and conditions of this Agreement and provide updated information to the TIRZ regarding the progress of the Project.

D. Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ Funds, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or the CITY.

ARTICLE VI. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of Funds associated with this Agreement. GRANTEE shall retain such records and any supporting documentation for the greater of: (1) five (5) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall, following reasonable advance written notice from the CITY/TIRZ, give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all material records related to the cost of Project (the "Records") and the expenditure of the Funds. CITY's access to the Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the CITY. GRANTEE shall not be required to disclose to the CITY or TIRZ any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the CITY/TIRZ reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized CITY representatives shall be cause for CITY and/or TIRZ to provide notice of intent to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default. Notwithstanding Section A above, all Records shall be retained by GRANTEE for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed.

ARTICLE VII. MONITORING

A. The CITY reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. The CITY will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which

to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Articles VIII and IX herein.

B. The GRANTEE shall allow the CITY and the Board access to the Project Property for inspections during and upon completion of construction, and to documents and records reasonably considered necessary by the CITY and/or the Board to assess the GRANTEE's compliance with this Agreement.

ARTICLE VIII. DEFAULT/CURE PERIOD/SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE fails to comply with the terms of this Agreement such non-compliance shall be deemed a default. CITY shall provide GRANTEE with written notification as to the nature of the default (the "Notice of Default") and grant GRANTEE a sixty (60) day period from the date of CITY's written notification to cure such default (the "Cure Period"). Should GRANTEE fail to cure the default within the Cure Period, CITY may, upon written notification (the "Notice of Suspension"), suspend this Agreement in whole or in part and withhold further payments to GRANTEE. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within the Cure Period, CITY may, in its sole discretion, extend the Cure Period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Default advise CITY of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Article VIII may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. CITY shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

E. Any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

ARTICLE IX. TERMINATION

A. CITY and/or TIRZ shall have the right to terminate this Agreement in whole or in part for cause should GRANTEE fail to perform under the terms and conditions herein, or should GRANTEE fail to cure a default after receiving written notice of such default with sixty (60) days opportunity to cure. CITY and TIRZ may, upon issuance to GRANTEE of written notice of

termination (the “Notice of Termination”), terminate this Agreement for cause and all Grant Funds disbursed to GRANTEE by TIRZ shall be repaid. A Notice of Termination shall include: (1) the reasons for such termination; and (2) the effective date of such Termination.

B. Should CITY and/or TIRZ terminate this Agreement for cause, then TIRZ shall have the right to recapture any and all disbursed Funds made under this Agreement. The TIRZ shall be entitled to the repayment of the Funds within sixty (60) calendar days from the date of the Notice of Termination.

C. In addition to the above, this Agreement may be terminated by written agreement of the Parties as follows:

1. By the CITY/TIRZ (with the consent of GRANTEE) in which case the two parties shall agree upon the termination conditions, including the repayment of funds and the effective date of termination; or
2. By the GRANTEE (with the consent of the CITY/TIRZ) upon written notification to CITY, setting forth the reasons of such termination, a proposed pay-back plan of all funds disbursed, and the proposed effective date of such termination.

D. Notwithstanding the foregoing, GRANTEE shall not be relieved of its obligation to repay any and all disbursed funds made under this Agreement, nor shall GRANTEE be relieved of any liability to TIRZ for actual damages due to TIRZ by virtue of any breach by GRANTEE of any terms of this Agreement.

E. Other Remedies Available. The CITY/TIRZ shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and repayment of funds, if GRANTEE defaults under the material terms of this Agreement and fails to cure such default within the cure period set forth above.

ARTICLE X. NOTICE

Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the Party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such Party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such Party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either Party may designate another address for all purposes under this Agreement by giving the other Party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

If intended for CITY, to:

City of San Antonio
Attn: Director
Neighborhood and Housing Services Development

1400 S. Flores
San Antonio, TX 78204

If intended for TIRZ Board, to: Neighborhood and Housing Services Development
Attn: Tax Increment Finance Unit
1400 S. Flores St.
San Antonio, TX 78204

If intended for GRANTEE, to: David Holland
10210 N. Central Expressway
Ste. 300
Dallas, TX 78231

ARTICLE XI. SPECIAL CONDITIONS AND TERMS

- A. Termination of TIRZ. The Parties agree that, in the event that the CITY, acting in accordance with State law, terminates Reinvestment Zone #11 or adopts an ordinance that causes the termination date of Reinvestment Zone #11 to occur on a date earlier than provided in the ordinance that initially established the TIRZ.
- B. Public Information. GRANTEE acknowledges that this Agreement and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement or any document delivered pursuant to this Agreement waives an otherwise applicable exception to disclosure.
- C. Duty to pay taxes. GRANTEE shall pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees which are now or may be levied upon the Zone Property, the GRANTEE or upon the business conducted on the Zone Property or any of the GRANTEE's property used in connection therewith, including employment taxes. Notwithstanding the foregoing, in the event GRANTEE becomes exempt from certain taxes and fees pursuant to an agreement with the San Antonio Housing Trust, the non-payment of such taxes due to GRANTEE'S exemption shall in no event be considered a violation of this Section XI(C). GRANTEE shall also maintain in current status all Federal, State, and local licenses and permits required for GRANTEE's business operation.

ARTICLE XII. CONFLICT OF INTEREST

- A. GRANTEE shall ensure that no employee, officer, or individual agent of CITY shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to

employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. CITY may terminate this Agreement immediately if the GRANTEE has offered, conferred, or agreed to confer any benefit on a CITY of San Antonio employee or official that the CITY of San Antonio employee or official is prohibited by law from accepting. Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law. Notwithstanding any other legal remedies, the CITY may obtain reimbursement for any expenditure made to the GRANTEE resulting from the improper offer, agreement to confer, or conferring of a benefit to a CITY of San Antonio employee or official.

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

ARTICLE XIII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. As a condition of entering into this Agreement, GRANTEE represents and warrants that it will comply with the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance 2010-06-17-0531. As part of such compliance, GRANTEE shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers funded in whole or in part with funds made available under this Agreement, nor shall GRANTEE retaliate against any person for reporting instances of such discrimination. GRANTEE shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's relevant marketplace. GRANTEE understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of GRANTEE from participating in CITY contracts, or other sanctions as provided by applicable law. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the Incentives received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Article in all agreements entered into by GRANTEE associated with the funds made available through this Agreement.

ARTICLE XIV. LEGAL AUTHORITY

A. Each Party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the Incentives and Waivers authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each Party or representing themselves as signing and executing this Agreement on behalf of a Party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that Party and to validly and legally bind that Party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Articles VIII or IX if there is a dispute as to the legal authority of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to CITY for all Incentives it has received from CITY under this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Article.

ARTICLE XV. LITIGATION AND CLAIMS

A. GRANTEE shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out of the performance of any activities hereunder. The City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation or adversarial proceedings related to TIF against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIRZ, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIF payment to persons engaged in litigation or adversarial proceedings related to TIF with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIRZ projects during the term of their litigation.

B. During the term of this Agreement, if Developer files or pursues an adversarial proceeding regarding this Agreement against the City and/or the Board, without first engaging in good faith mediation of the dispute, then all access to funding provided hereunder shall be withheld and Developer will be ineligible for consideration to receive any future tax increment funding while any adversarial proceedings remain unresolved.

C. Under no circumstances will the Available Tax Increment received under this Agreement be used, either directly or indirectly to pay costs or attorneys fees incurred in any adversarial proceeding against the City, the Board or any other public entity. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XXVI.

ARTICLE XVI. [RESERVED]

ARTICLE XVII. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by all Parties to this Agreement. Any amendments to this Agreement which change or increase any of the Incentives or Waivers to be provided GRANTEE by CITY and/or TIRZ must be approved by CITY ordinance, with TIRZ Board approval, and in accordance with an official amendment of the TIRZ Project Plan and Financing Plan by the governing body of the TIRZ and CITY.

B. Notwithstanding the above, the Commencement and Completion Date in Article II. B. may be amended by approval of the CITY, as evidenced by an agreement in writing between the GRANTEE and the Director of the Neighborhood and Housing Services Department. The CITY Council and the TIRZ Board specifically authorizes the Director of the Neighborhood and Housing Services Department to amend the Term of this Agreement as well as the Commencement and Completion Date for a period not to exceed six (6) months without further CITY Council and TIRZ Board approval.

C. It is understood and agreed by the Parties hereto that performance under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

D. Any alterations, additions, or deletions to the terms of this Agreement (other than those terms in Article II or III) required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XVIII. SUBCONTRACTING

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by GRANTEE complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, neither CITY nor TIRZ is liable to GRANTEE's subcontractor(s).

C. GRANTEE assures and shall obtain assurances from all of its contractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

ARTICLE XIX. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not award any Incentives provided under this Agreement to any party which it knows to be debarred, suspended or otherwise

excluded from or ineligible for participation in assistance programs by the CITY.

ARTICLE XX. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that, except as otherwise expressly provided herein, any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between GRANTEE and the CITY or TIRZ or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

ARTICLE XXI. ASSIGNMENT

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties.

ARTICLE XXII. ORAL AND WRITTEN AGREEMENTS

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

ARTICLE XXIII. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

The CITY/TIRZ may grant temporary relief from any deadline for performance of any term of this Agreement if the GRANTEE 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 or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain relief based upon *force majeure*, the GRANTEE must file a written request with the CITY. CITY will not unreasonably withhold its consent.

ARTICLE XXIV. INSURANCE

A. **Applicability.** The GRANTEE will require that the insurance requirements contained in this Article be included in all its contracts or agreements for the Demolition Work where GRANTEE is seeking payment under this Agreement, unless specifically exempted in writing by the CITY.

B. **Proof of Insurance.** Prior to the commencement of any work under this Agreement, GRANTEE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CITY's TIF Unit, which shall be clearly labeled "**Inner City TIRZ, Friedrich Lofts Project**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY shall not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable

endorsements, directly from the insurer's authorized representative to the CITY at the same addresses listed in section E. of this Article. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's TIF Unit. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement for the CITY.

C. **Right to Review.** The CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the CITY allow modification whereupon the CITY may incur increased risk.

D. **Required Types and Amounts.** The GRANTEE's financial integrity is of interest to the CITY, therefore, subject to the GRANTEE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, the GRANTEE or the GRANTEE's contractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Project Plan and Finance Plan, and any extension hereof, at the GRANTEE's or the GRANTEE's contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the Best Company and/or otherwise acceptable to the CITY, in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Explosion, Collapse, Underground g. Environmental Impairment/Impact-sufficiently broad to cover disposal liability. h. Damage to property rented to you. 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

<p>4. Business Automobile Liability</p> <p>a. Owned/leased vehicles</p> <p>b. Non-owned vehicles</p> <p>c. Hired Vehicles</p>	<p><u>C</u>ombined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000 per occurrence</p>
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E. **Requests for Changes.** The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and the CITY may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any such policies). GRANTEE and/or GRANTEE’s contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the addresses provided below within ten (10) days of the requested change. GRANTEE and/or GRANTEE’s contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to CITY at the following addresses:

CITY Clerk
CITY of San Antonio
Attn: Risk Management Department
P.O. Box 839966
San Antonio, Texas 78283-3966

CITY of San Antonio
Neighborhood and Housing Services
Department
TIF Unit
1400 S. Flores
San Antonio, Texas 78204

F. **Required Provisions and Endorsements.** GRANTEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the CITY and its respective officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers’ compensation and professional liability policies;
- b. Provide for an endorsement that the “other insurance” clause shall not apply to the CITY of San Antonio if CITY is an additional insured shown on the policy;
- c. Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the CITY; and
- d. Provide thirty (30) calendar days advance written notice directly to CITY at the same addresses listed in section E. of this Article of any suspension, cancellation,

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

G. **Cancellation, Suspension, and Non-Renewal.** Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, GRANTEE and/or GRANTEE's contractor shall provide a replacement Certificate of Insurance and applicable endorsements to CITY at the same addresses listed in Section E. of this Article. CITY shall have the option to suspend GRANTEE's and/or GRANTEE's contractor's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the CITY may exercise its remedies under Article IX of this Agreement.

H. **CITY's Remedies.** In addition to any other remedies the CITY may have upon GRANTEE and/or GRANTEE's contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, the CITY shall have the right to order GRANTEE to stop work, and/or withhold any payment(s), which become due to the GRANTEE until GRANTEE and/or GRANTEE's contractor demonstrates compliance with the requirements.

I. **Responsibility for Damages.** Nothing herein contained shall be construed as limiting in any way the extent to which GRANTEE and/or GRANTEE's contractor may be held responsible for payments of damages to persons or property resulting from GRANTEE's or its subcontractors' performance of the work covered under this Agreement.

J. **Primary Insurance.** It is agreed that GRANTEE's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the CITY for liability arising out of operations under this Agreement.

K. **Obligation of GRANTEE.** GRANTEE agrees to obtain all insurance coverage's with minimum limits of not less than those limits delineated in Article XXIV from each subcontractor to GRANTEE and provide a Certificate of Insurance and Endorsement that names the GRANTEE and the CITY as an additional insured. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in this Agreement. GRANTEE and any subcontractors are responsible for all damages to their own equipment and/or property. GRANTEE must provide CITY current proof of insurance for all projects and applicable contracts and agreements executed pursuant to this Agreement in Quarterly Status and Compliance Reports.

L. **"All Risk".** Prior to the commencement of any construction and at all times during the performance of such construction GRANTEE and/or GRANTEE's contractors shall obtain and keep in full force and effect builder's "all risk" insurance policies affording coverage of such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a "replacement cost" basis, insuring 100% of the insurable value of construction improvements.

XXV. INDEMNIFICATION

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

It is the EXPRESS INTENT of the parties to this AGREEMENT that the INDEMNITY provided for in this section, is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or

litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

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

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

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

B. GRANTEE shall, and does hereby agree to DEFEND, INDEMNIFY and HOLD HARMLESS the CITY, and the BOARD and their respective agents and employees from and against all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and reasonable attorney fees of any kind or nature whatsoever which are asserted by any person or entity for penalties or sums due any worker or agency for services, labor or materials furnished for the PROJECT. GRANTEE'S INDEMNITY obligations to the CITY under this INDEMNIFICATION shall be limited to all encumbrances, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, controversies, agreements, demands, damages, losses, liens, causes of action, suits, judgments, and reasonable attorney fees of any kind or nature whatsoever by any person or entity for violations of Chapter 2258 of the Texas Government Code or for any sums or penalties due any worker or agency for labor furnished for the PROJECT. To the extent that this INDEMNIFICATION conflicts with the INDEMNIFICATION provisions in Section A above, the provisions in Section A control over those set forth in this Section. Prior to expending any money that GRANTEE would be obligated to INDEMNIFY, the CITY or the BOARD shall send written notice to GRANTEE describing in reasonable detail the claim and allowing GRANTEE to cure such claim within 15 calendar days of receiving the notice.

ARTICLE XXVI. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is incorporated herein by reference for all purposes as an essential part of the Agreement, which governs the rights and duties of the Parties.

Exhibit A TIRZ Resolutions

	T11 2018-03-21-O4R
	T11 2018-08-14-O1R
Exhibit B	Project Description
Exhibit C	Contract Progress Payment Request
Exhibit D	Discretionary Contracts Disclosure Statement
Exhibit E	Project Status Report Form

WITNESS OUR HANDS, EFFECTIVE as of _____, 2018 (the “Effective Date”):

Accepted and executed in three duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2018-_____-_____, dated _____, 2018, and by GRANTEE pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

GRANTEE:
Friedrich Crossing, LP

Sheryl L. Sculley
CITY MANAGER

By: _____
Name:
Title:

ATTEST:

ATTEST (if required):

Leticia Vacek
CITY CLERK

Name:
Title:

APPROVED AS TO FORM:

CITY ATTORNEY

**TAX INCREMENT
REINVESTMENT ZONE #11:**

ATTEST:

Name:
Councilman William Shaw
Presiding Officer

Name:

DRAFT