

THE STATE OF TEXAS
COUNTY OF BEXAR

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ECONOMIC DEVELOPMENT
INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made by and among the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as “CITY”), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2019--___ passed and approved by the City Council on _____, 2019; **BROOKS DEVELOPMENT AUTHORITY**, a political subdivision of the State of Texas, acting through its President & CEO pursuant to authority granted by its Board of Directors on October 9, 2018 (hereafter referred to as “BDA”); and by the **BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER SIXTEEN (Brooks City-Base TIRZ), CITY OF SAN ANTONIO, TEXAS**, a TIRZ created by the CITY pursuant to Chapter 311, Texas Tax Code, (hereafter referred to as the “BOARD”). Collectively, the CITY, BDA and BOARD may be referred to as the “Parties”. This Agreement is made pursuant to Chapter 791, Texas Government Code and Chapter 311, Texas Tax Code (the “TIF Act”).

RECITALS:

WHEREAS, the City Council of CITY created Tax Increment Reinvestment Zone Number Sixteen (the “TIRZ”) in accordance with the TIF Act, to promote economic development and redevelopment within the TIRZ that may not have typically occurred through private investment; and

WHEREAS, BDA has identified Buildings 167 and 176 as facilities with the most potential for economic development and where prospective businesses have shown interest but because of the cost to renovate, BDA is requesting CITY’s assistance through the TIRZ funds; and

WHEREAS, the BOARD and BDA have supported the CITY in its economic development and redevelopment efforts within the TIRZ, and the Parties intend to jointly participate in the funding of a project (as described further below) anticipated to promote investment and development in the TIRZ; and

WHEREAS, pursuant to the authorities cited above, the CITY, BDA, and BOARD each hereby enter into this binding agreement to fund the project as specified in this Agreement, the TIRZ Project Plan (**Exhibit A**), and the TIRZ Finance Plan (**Exhibit B**).

ARTICLE I. THE PROJECT

A. The Project. CITY and BDA have identified Buildings 167 (2415 Sidney Brooks) and 176 (7965 Kennedy Hill) at Brooks as economic development

generators that could attract a large employer, multiple employers or expansion of an existing Brooks tenant. In order for BDA to attract such business prospects to Brooks, Buildings 167 and 176 are in need of major renovations (“Project”). The BDA has identified the required renovations and has documented such renovations in **Exhibit C** entitled “Scope of Work” and the funding necessary to complete the renovations of the Project as described in **Exhibit D** (the “Renovations”), which is estimated to be approximately SIX MILLION DOLLARS AND NO CENTS (\$6,000,000.00) (the “Investment”).

- B. **Business Activities of Potential Employer.** Once the Project is completed, it is anticipated that BDA will be able to attract an employer(s) to occupy Buildings 167 and 176 whose business activities could consist of but not limited to medical education, training, call center and general business activity.
- C. **Potential Tenants.** Once Project is complete, BDA shall work with the City to identify prospects for Buildings 167 and 176.

ARTICLE II. OBLIGATIONS OF THE PARTIES

A. BDA Obligations.

1. In order to undertake and complete the Scope of Work, BDA agrees to provide the Investment to commence the Renovations to the Project. Such costs shall include those described in **Exhibit D** that are directly associated with the Scope of Work performed in accordance with **Exhibit C**.
2. BDA may fund the Renovations through its own source of funding, a temporary loan or other financial instruments up to the amount of the Investment. Any amount exceeding the Investment amount shall be the sole obligation of the BDA and with respect to which the BDA shall not seek any additional reimbursement from the CITY or BOARD. BDA shall complete the Scope of Work even if investment from CITY is insufficient.
3. BDA shall follow its procedures in contracting for the Renovations in accordance Chapter 379B of the Texas Local Government Code and deem the renovations to building 167 and 176 as a “qualifying project” thereunder.
4. BDA shall ensure that the design and construction of the Project are in compliance with City Code and state and federal law.
5. To the extent necessary to make expenditure thereon permissible under applicable law, the Board of Directors of BDA have designated or shall designate the Project as a “redevelopment project” under Chapter 379B, Texas Local Government Code.

B. CITY Obligations.

1. CITY will work with Brooks to possibly provide economic incentives to future employer(s) and/or tenant(s) to Buildings 167 and 176.
2. Since there are insufficient funds in the tax increment fund of TIRZ to fund the Renovations to the Project in time to meet BDA's timeline, CITY shall issue debt in an amount not more than \$6 million, proceeds from which shall be transferred by the CITY to the BDA for use by the BDA to facilitate Project completion (whether by reimbursing itself for the Investment or to provide the remaining funding necessary to complete the Investment to the extent not initially paid by the BDA). City may issue such debt to reimburse BDA and will use best efforts to issue such debt prior to the end of City's 2019 fiscal year.
3. There is an understanding among the Parties that the issuance of debt by the CITY will result in the CITY's incurring costs (issuance costs and interest thereon) in excess of the \$6 million principal amount. Those costs and expenses, in addition to the principal amount, shall be reimbursable to the CITY through the TIRZ.

C. BOARD Obligations.

1. The BOARD shall authorize the TIRZ to reimburse the CITY for the debt service (principal and interest) on the \$6 million indebtedness incurred by the City for the purpose of reimbursing BDA for the costs of the Renovations, as well as any and all costs associated with such debt issuance (such total debt service, closing costs, and other fees and expenses relating to such indebtedness, the "Reimbursement Amount").
2. Payments from TIRZ BOARD should equal principal and interest payment schedule of related debt. The BOARD shall ensure that the CITY is paid incrementally over the term of the TIRZ and any extensions thereof until such time as the CITY is reimbursed the entirety of the Reimbursement Amount.
3. The BOARD shall pay to the CITY the Reimbursement Amount, to the extent of its availability of funds and when and as the expenses included in the Reimbursement Amount are incurred by the CITY. Amounts owed to the CITY by the TIRZ shall constitute a first lien priority payment in the TIRZ Finance Plan, payable by TIRZ prior to its payment of any other obligations.
4. The BOARD shall not authorize other TIRZ projects, without the CITY's consent, that will compromise or in any way subordinate the CITY's reimbursement from the TIRZ until such time as the Reimbursement Amount is paid in full.

5. The BOARD shall not pledge, hypothecate, place a lien on, or otherwise encumber its revenues or funds without receipt of CITY's prior written consent.

ARTICLE III. TERM AND TERMINATION

A. Agreement Term and Termination

This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect until: 1) expiration of the TIRZ (which is anticipated 2039); or 2) full-payment to CITY of the Reimbursement Amount.

B. Early Termination

1. If the CITY, BDA or BOARD fails to perform any material obligation of this Agreement, then the remaining performing Parties shall provide written notice to the Party failing to perform stating its intent to terminate this Agreement and detailing its objection(s) or concern(s). If the objection(s) and/or concern(s) as set out in the notice are not resolved within (90) ninety days from the date of such notice, then any non-defaulting Party may terminate its participation in this Agreement and seek repayment of funds expended on the Project from the defaulting Party or Parties.

IV. MISCELLANEOUS

A. Understandings

The renovation costs incurred by the BDA for the Project in the amount of the Investment, and reimbursed to BDA by the City, shall ultimately be payable solely from the tax increment deposited into the Tax Increment Fund of the TIRZ in the manner and priority provided for in this Agreement.

B. Severability

1. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, State or local laws, including but not limited to the City Charter, City Codes, or ordinances of the CITY, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

2. In the event this Agreement shall be held invalid, the Parties hereto agree that the Tax Increment Fund shall not refund any prior Tax Increment Payments under this Agreement unless ordered to do so by a Court having proper jurisdiction and subject to any rights of appeal.

C. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties hereto and embodies the entire agreement of the Parties. There are no other agreements, assurances, conditions, covenants (express or implied), or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

D. Written Amendment

This Agreement may be changed or amended only by a written instrument duly executed on behalf of each Party hereto. All Parties to this Agreement understand and recognize that only the City Council of CITY, the Board of Directors of BDA, and BOARD have authority to approve a change or amendment to this Agreement on behalf of CITY, BOARD or BDA, respectively.

E. Notices

1. The initial addresses of the Parties are listed below. Each Party may designate a different address by giving the other Parties ten (10) days' prior notice.

CITY

Rene Dominguez
Economic Development
City of San Antonio
100 Military Plaza
San Antonio, Texas 78205

BDA

Samantha Carneiro
Chief Financial Officer
Brooks Development Authority
3201 Sidney Brooks
San Antonio, Texas 78235

TIRZ BOARD

Michelle Krupa
Chair
Reinvestment TIRZ Number Sixteen (16),
City of San Antonio, Texas
1400 South Flores
San Antonio, TX 78204
Attn: TIF Unit

2. All notices required or permitted hereunder shall be in writing and shall be deemed delivered the earlier of (i) when actually received by personal delivery if received during normal business hours; or (ii) on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed; or (iii) on the date of receipt if mailed by certified mail, return receipt requested, addressed to

the respective other Party at the address prescribed in Article IV, Section E. 1 of this Agreement, or at such other address as the receiving Party may have theretofore prescribed by written notice to the sending Party.

F. Non-Waiver

Failure of any Party hereto to insist on the strict performance of any of the terms herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

G. Assignment

Except for the CITY's right to delegate provisions of this Agreement and the performance of obligations to the BOARD, no Party shall assign this Agreement at law or otherwise without the prior written consent of the other Parties, and no Party shall delegate any portion of its performance under this Agreement without the prior written consent of the other Parties. All Parties to this Agreement understand and recognize that only the City Council of CITY has authority to approve an assignment or delegation of this Agreement on behalf of CITY by a Party to this Agreement.

H. Successors

This Agreement shall bind and benefit the Parties and their legal successors. This Agreement does not create any personal liability on the part of any trustee, officer, director, employee, elected or appointed official, or agent of a Party to this Agreement.

I. TIRZ Project and Finance Plan

The Parties agree that any amendments to the TIRZ Project and Finance Plans that affect the Projects shall not apply unless such amendments are approved in writing by the BOARD, the City Council of CITY and the Board of Directors of BDA.

J. No Waiver of Immunity

No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance or non-performance of the covenants contained herein. CITY and BDA acknowledge that the CITY and BDA are both political subdivisions of the State of Texas and that the CITY and BDA are both subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001*et seq.* and the remedies authorized therein

regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Agreement will be interpreted according to the Constitution and general laws of the State. Nothing in this Agreement waives any governmental immunity available to the CITY or BDA under the laws of the State of Texas.

K. Access to Financial Information

Each Party to this Agreement shall have reasonable access to financial information and audit reports regarding the operation of the TIRZ, contribution of Tax Increment Payments to the Tax Increment Fund, and expenditures from the Tax Increment Fund for the Renovations to the Project.

L. Development/Project Agreements

The BDA, as Developer represents that it will enforce the provisions of this Agreement, as required, and shall be solely responsible for insuring compliance with all applicable federal, State, and local laws, in any and all written agreements executed by the BDA for the purposes of carrying out the Renovations.

M. Independent Contractors

1. All Parties expressly agree that in performing their services under this Agreement, the CITY, BOARD, BDA at no time shall be acting as agents for each other. The Parties further agree that any and all consultants or contractors engaged by a Party to this Agreement shall not be an independent contractor of the other Parties to this Agreement. No Party to this Agreement shall be liable for any claims that may be asserted by any third party occurring in connection with services performed by another Party to this Agreement and/or any developer, under this Agreement unless any such claims are due to the fault of the Party.

2. BDA is solely responsible for compensation payable to any employee, contractor, or subcontractor, and none of BDA's employees, contractors, or subcontractors will be deemed employees, contractors, or subcontractors of the CITY or the BOARD because of this or any other agreement related thereto.

N. Litigation Expenses

Under no circumstances will the available Tax Increment Funds that are the subject of this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in litigation related to the TIRZ or adversarial proceedings related to the TIRZ regarding this Agreement involving the City or any other public entity. The Parties shall bear their own costs, including, but not limited to, attorneys' fees, for any action at law or in equity brought to enforce or interpret any provision of this Agreement. This paragraph does not affect the indemnity provisions herein.

O. Legal Authority

Each person executing this Agreement represents and guarantees that he or she has legal authority to execute this Agreement on behalf of their respective Party and to bind said Party and their successors and assigns to all of the terms, conditions and obligations of this Agreement.

P. Venue and Governing Law

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Venue and jurisdiction for any claim or dispute arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

Q. Parties' Representations

The CITY, BOARD and BDA jointly negotiated this Agreement, which shall not be construed against or in favor of a Party simply because that Party primarily assumed responsibility for drafting.

R. Captions

All captions used in this Agreement are for the convenience of reference only and shall not be construed to have any effect or meaning as to the Agreement between the Parties.

Signatures on next page.

IN WITNESS THEREOF, the Parties hereto have made and executed this Agreement, to be effective on the date of the last signature below (“Effective Date”).

CITY:

City of San Antonio

Erik Walsh
City Manager

BOARD:

Brooks Development Authority

Leo Gomez
President & CEO

Attest:

Leticia Vacek
City Clerk

As to Form:

City Attorney

TIRZ:

Tax Increment Reinvestment Zone #16

Michelle Krupa, Chairperson