

ORDINANCE 2019-08-22-0646

**AUTHORIZING EXECUTION OF A FUNDING AGREEMENT IN AN AMOUNT NOT TO EXCEED \$1,131,305.00 FOR THE MISSION ROAD SIDEWALK CONNECTIVITY PROJECT LOCATED AT THE INTERSECTION OF S.E. MILITARY DRIVE TO 99<sup>TH</sup> STREET, SAN ANTONIO, TEXAS, CITY COUNCIL DISTRICT 3, AND WITHIN THE WORLD HERITAGE BUFFER ZONE AND THE MISSION DRIVE-IN TIRZ AND APPROVING AN AMENDED PROJECT AND FINANCE PLAN**

\* \* \* \* \*

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

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

**WHEREAS**, in May 2019, the City of San Antonio's World Heritage Office applied for funding from the City's Tax Increment Financing Program in order to undertake improvement efforts related to the Mission Road Sidewalk Connectivity Project, consisting of street scape improvements along Mission Road from S.E. Military Drive to 99<sup>th</sup> Street just north of Runway 14 at Stinson Municipal Airport in Council District 3; and

**WHEREAS**, on July 16, 2019, the Board adopted resolutions authorizing the execution of a Funding Agreement with the City of San Antonio's World Heritage Office in an amount not to exceed One Million One Hundred Thirty-One Thousand Three Hundred and Five Dollars and No Cents (\$1,131,305.00) for eligible public improvements including the installation of candy cane lighting and brick pavers that distinguish and are characteristic of the World Heritage Trail, and authorizing TIF staff to amend the Project and Finance Plans for the Mission Drive-In TIRZ to include this project; and

**WHEREAS**, it is now necessary for the City Council to approve the Funding Agreement between the City of San Antonio's World Heritage Office and the Board of Directors for TIRZ #32 for the Mission Road Sidewalk Connectivity Project; and

**WHEREAS**, it is officially found and determined that a public hearing was conducted during the same meeting at which this Ordinance was passed and both the hearing and the meeting were open to the public and public notice was provided as required by Chapter 551, Texas Government Code and Chapter 311, Texas Tax Code; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of a Funding Agreement between San Antonio's World Heritage Office and Board of Directors of Tax Increment Reinvestment Zone #32, attached hereto as **Exhibit A**, are hereby approved.

**SECTION 2.** The City Manager or his designee is authorized to execute this Agreement, which has been incorporated into this Ordinance for all purposes.

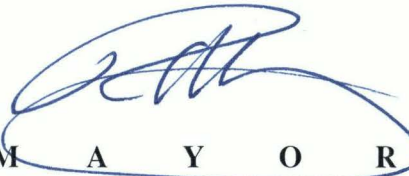
**SECTION 3.** TIF Unit staff is hereby authorized to amend the Mission Drive-In TIRZ Project and Finance Plans to include this Project.

**SECTION 4.** Payment not to exceed the budgeted amount is authorized to the City of San Antonio's World Heritage Office and paid solely from the tax increment generated.

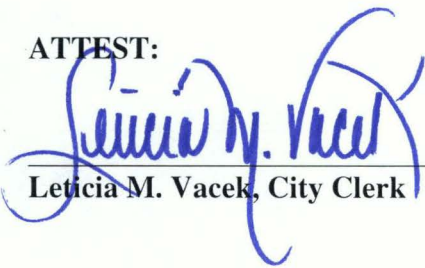
**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** 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 22<sup>nd</sup> day of August, 2019.

  
M A Y O R  
Ron Nirenberg

**ATTEST:**

  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>10 ( in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, P-1, Z-1 )</b>
<b>Date:</b>	08/22/2019
<b>Time:</b>	09:35:19 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	Ordinance approving a Funding Agreement between the Mission Drive-In TIRZ and the City's World Heritage Office for the Mission Road Sidewalk Connectivity Project, located along the World Heritage Trail at the intersection of S.E. Military Drive to 99th Street, north of Runway 14 at Stinson Municipal Airport for an amount not to exceed \$1,131,305.00, for public improvements and eligible project costs and approving the Amended Project Plan and Finance Plan. [Lori Houston, Assistant City Manager; Verónica Soto, Director, Neighborhood and Housing Services]
<b>Result:</b>	Passed

<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Jada Andrews-Sullivan	District 2		x				
Rebecca Viagran	District 3		x				
Dr. Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

CR  
08/22/19  
Item No. 10

## **Exhibit A**

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

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. 2019-\_\_\_\_\_, and the Board of Directors for Tax Increment Reinvestment Zone Number Thirty-Two City of San Antonio, Texas, known as the Mission Drive-In TIRZ ("Board"), together referred as the "Parties".

**BACKGROUND:**

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

**WHEREAS**, in May 2019, the City's World Heritage Office ("WHO"), applied for funding from the City's Tax Increment Financing Program ("TIF") in order to undertake the construction of sidewalks along Mission Road from the intersection of S.E. Military Drive to 99th Street, San Antonio, Texas, City Council District 3, and within the World Heritage Buffer Zone, and the Mission Drive-In TIRZ; and

**WHEREAS**, the total cost for the Project, including sidewalks to the Stinson Municipal Airport and the San Antonio River is approximately \$3 million;

**WHEREAS**, through the 2017-2022 Bond Program, \$2 million has been allocated for the installation of candy cane lighting and brick pavers that distinguish and are characteristic of the World Heritage Trail;

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

**WHEREAS**, in accordance Section 311.008 of the Act, on July 16, 2019, the Board approved Resolution T32-2019-07-16-02R, described in attached **Exhibit A**, authorizing approval of this Agreement, which provides a funding commitment for the Mission Road Sidewalk Connectivity Project in an amount not to exceed One Million One Hundred Thirty One Thousand Three Hundred and Five Dollars and No Cents (\$1,131,305.00) in reimbursable TIF funds for necessary public infrastructure and public improvements associated with the Project and authorizes said commitment to be incorporated into the TIRZ Project Plan; and

**WHEREAS**, pursuant to Ordinance No. 2019-\_\_\_\_\_, approved on the \_\_\_\_ day of \_\_\_\_\_ 2019, the Board and the City agree to enter a binding agreement to ensure that the City is reimbursed for the public infrastructure and public improvement costs associated with the Project, 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, as may be amended from time to time.
- 2.2 **ADMINISTRATIVE COSTS** – Reasonable costs incurred directly and/or indirectly by the City for the administration of the City's Tax Increment Financing Program.
- 2.3 **AGREEMENT** – This document by and among the City and the Mission Drive-In TIRZ Board, which may be amended from time to time in accordance with Section 11.4 Amendments.
- 2.4 **AVAILABLE TAX INCREMENT FUNDS** – Is the meaning given in the Act, Section 311.012(a)Tax, contributed by each participating taxing entity to the TIF Fund and distributed in accordance with the priority of payment of the TIRZ.
- 2.5 **BOARD** - The Board of Directors of the Mission Drive-In TIRZ.
- 2.6 **CITY** – For the purposes of this Agreement and hereinafter shall mean the City of San Antonio's World Heritage Office ("WHO").
- 2.7 **COMPLETION** – In order for the Project to achieve a state of "Completion", Public Improvements must be approved and accepted by the Board as "completed" in accordance with Section 2.8 and 4.1 of this Agreement.
- 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 **CONTRACT PROGRESS PAYMENT REQUEST ("CPPR")** – Request form prepared and submitted by City pursuant to the requirements of this Agreement and the CPPR Form, attached hereto as **Exhibit F**. The CPPR shall also include and reflect all waivers granted through any City program or incentives.
- 2.10 **EFFECTIVE DATE** - The date that is listed on the signature page of this Agreement.
- 2.11 **FINANCE PLAN** – The Mission Drive-In TIRZ Financing Plan, as defined in the Act, and as approved and amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

- 2.12 **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**.
- 2.13 **PROJECT** – The City’s Mission Road Sidewalk Connectivity Project, described in Section 4.1 of this Agreement and in attached **Exhibit B**.
- 2.14 **PROJECT COSTS** - Shall have the meaning provided by the Act, and limited to Public Infrastructure and Public Improvements as approved by the Board within the TIRZ boundary, incurred after execution of this Agreement.
- 2.15 **PROJECT PLAN** – The Project Plan as defined in the Act, for the Mission Drive-In TIRZ as approved and amended from time to time by the Board and the City, and incorporated by reference into this document as if set out in its entirety, for all purposes.
- 2.16 **PROJECT SITE** - The real property to be developed by the City and located within the TIRZ at the intersection of S.E. Military Drive to 99th Street, San Antonio, Texas, 78214, described in attached **Exhibit D** (Map).
- 2.17 **PROJECT STATUS REPORT** – 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**, attached and incorporated herein, for all purposes.
- 2.18 **PUBLIC IMPROVEMENTS** - Improvements that provide a public benefit, including but not limited to utilities, streets, street lights, water and sewer facilities, walkways, parks, flood and drainage facilities, parking facilities, demolition work, fencing and landscaping, without regard to location in or outside of the public right of way, and the categories of work included in the definition of Project in this Agreement.
- 2.19 **PUBLIC INFRASTRUCTURE** – A building, highway, road, excavation, and repair work or other project development or public improvement on the Project Site, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, and the categories of work included in the definition of Project in this Agreement.
- 2.20 **TAX INCREMENT** – Shall have the meaning provided by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the TIRZ.
- 2.21 **TIF** – Tax Increment Financing.
- 2.22 **TIF FUND** - The fund created by the City for the deposit of Tax Increments for the Zone, entitled “Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas.”
- 2.23 **TIF UNIT** – The employees of the City department responsible for the management of the City’s Tax Increment Financing Program.
- 2.24 **TIRZ** - Tax Increment Reinvestment Zone Number Thirty-Two, City of San Antonio, Texas, known as the Mission Drive-In TIRZ.

### ARTICLE III. REPRESENTATIONS

- 3.1 **CITY'S AUTHORITY.** The City represents to the Board that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.
- 3.2 **BOARD'S AUTHORITY.** The Board represents that as of that date of the Board's signature to this Agreement, the Board established pursuant to City Ordinance No. 2008-12-11-1174, has the authority to carry out the functions and operations contemplated by this Agreement.
- 3.3 **AUTHORITY AND ABILITY TO PERFORM.** The Parties represent that performance hereunder shall not result in any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and the City shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
- 3.4 **COOPERATE.** The Parties represent that they shall each cooperate and provide each other all necessary information in order to assist determining compliance with this Agreement.
- 3.5 **DUTY TO COMPLETE IMPROVEMENTS.** The Parties represent that they understand and agree that even after the TIRZ terminates, the City shall ensure the successful completion of all required improvements at no additional cost to the TIRZ beyond the maximum TIRZ funding, in accordance with the terms of this Agreement.
- 3.6 **CITY BEARS RISK OF REIMBURSEMENT.** The City understands and agrees that any expenditure made in anticipation of reimbursement from the TIF Fund shall not be, nor shall be construed to be, the financial obligation of the TIRZ. The City shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and unanticipated effects covered under legal doctrine of force majeure.

### ARTICLE IV. THE PROJECT

- 4.1 **PROJECT.** The Project shall consist of the development of public infrastructure and public improvements necessary to the construction of sidewalks and lighting from the intersection of S.E. Military Drive to 99th Street, San Antonio, Texas, City Council District 3, and within the TIRZ. The City will provide Project oversight and complete or cause the completion of the Project, in accordance with this Agreement and no later than June 30, 2021.

### ARTICLE V. OBLIGATIONS OF THE CITY

- 5.1 **PROJECT OVERSIGHT.** The City agrees to monitor activities and provide reasonable oversight of the Project, including the management of construction of Public Infrastructure and Public Improvements. WHO shall be the point of contact on all matters regarding the Project.
- 5.2 **COMMENCEMENT.** The City agrees and shall ensure that construction on any Phase of the Project: (i) has been approved in writing by the appropriate City department; and, (ii) the requirements of all local, State and Federal laws have been met from the effective date of the



commencement of construction on the Project.

- 5.3 **WRITTEN AGREEMENT.** The City agrees that any work or services contracted under this Agreement shall be contracted only by written contract and, unless specific waiver is granted in writing by the Board, such contract shall be subject to this Agreement.
- 5.4 **COMPLIANCE.** The City agrees to ensure compliance by Project contractors and subcontractors of all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City Code, (including the Unified Development Code such as Universal Design and Construction requirements), Chapter 2258 of the Texas Government Code, and all applicable local, state, and federal laws and regulations as amended.
- 5.5 **PROJECT INSPECTION.** The City agrees to provide the Board and TIF Unit access to the Project Site for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project. The Board and TIF Unit shall be provided a right of entry onto the Project Site to conduct random walk-through inspections.
- 5.6 **SUPERVISION OF CONSTRUCTION.** The City agrees to cause the performance of all construction of all Public Infrastructure and Public Improvements, at a minimum, in accordance with all Federal, State and local laws, including, but not limited to the current TIF Guidelines, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City. The City also agrees to provide reports including inspections of such construction and of compliance with such laws, ordinances, and contractual requirements.
- 5.7 **COMPLETION.** The City agrees to complete, or cause to be completed, the Public Infrastructure and Public Improvements, in accordance with Section 2.8 and Section 4.1 of this Agreement and no later than June 30, 2021.
- 5.8 **DELAYS AND EXTENSION(S).** City is responsible for the Project's construction, which shall be completed no later than June 30, 2021. If the commencement of completion of the Project is delayed by reason(s) beyond the City's control, then at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the commencement and completion deadlines set forth in this Agreement may be extended by no more than six (6) months. In the event that City does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with ARTICLE XI. ASSIGNMENTS, CHANGES AND AMENDMENTS of this Agreement, the Parties may extend the deadlines in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reasonably reach an agreement on the extension of the Construction Schedule, or if City fails to complete the Project in compliance with the revised Construction Schedule, other than as a result of force majeure, this constitutes a material breach.
- 5.9 **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.

- 5.10 **QUARTERLY STATUS AND COMPLIANCE REPORTS.** The City agrees to submit to the TIF Unit written and signed Project Status Reports (see Sections 2.17 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**.
- 5.11 **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 **ELIGIBLE PROJECT COSTS.** Costs shall be considered eligible only if approved by the Board, incurred directly and specifically in the performance of, and in compliance with this Agreement and all applicable laws.
- 6.2 **PLEDGE OF FUNDS.** The Board hereby pledges Available TIF Funds, as reimbursement to the City for approved Project Costs, up to One Million One Hundred Thirty One Thousand Three Hundred and Five Dollars and No Cents (\$1,131,305.00) 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.

#### **ARTICLE VII. NOTICE**

- 7.1 **ADDRESSES.** Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving Party at the following addresses:

**THE CITY**

World Heritage Office  
Attn: Colleen Swain, Director  
101 S. Santa Rosa St.  
Centro de Artes, 2<sup>nd</sup> Floor  
San Antonio, TX 78207

**THE BOARD**

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

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

#### **ARTICLE VIII. RECORDS**

- 8.1 **RIGHT TO REVIEW.** The Board shall have the right to access records related to the Project, including but not limited to the Project's construction schedule and expenditures. At the Request of the Board, the City agrees to provide the Board and the TIF Unit access to records related to the Project for examinations during regular business hours.
- 8.2 **PRESERVATION OF RECORDS.** The City shall retain, preserve, and make available to the Board all records and accounts relating to the Project and this Agreement throughout the term of this

Agreement and for 12 months after the termination of this Agreement.

- 8.3 **DISCREPANCIES.** Should errors be discovered in internal controls or in record keeping associated with the Project, such discrepancies shall be corrected upon discovery or within a reasonable period of time, not to exceed 60 days after discovery. The Board shall be informed of the action taken to correct such discrepancies.
- 8.4 **OVERCHARGES.** If it is determined that the TIRZ has been overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIF Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges.

#### **ARTICLE IX. REIMBURSEMENT**

- 9.1 **CPPR APPROVAL.** Upon completion by City of eligible project costs, City may submit to the TIF Unit a completed CPPR. Should there be discrepancies in the CPPR or if more information is required, City will have thirty (30) calendar days upon notice by TIF staff to correct any discrepancy or submit additional requested information. Failure to timely submit the additional information requested by the City may result in the delay of City's requested expense reimbursement.
- 9.2 **MAXIMUM REIMBURSEMENT.** Following Board approval and City Council authorization, the City shall receive in accordance with this Agreement, from the TIF Fund a total maximum reimbursement of ONE MILLION ONE HUNDRED THIRTY ONE THOUSAND THREE HUNDRED AND FIVE DOLLARS AND NO CENTS (\$1,131,305.00) 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 **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.
- 9.6 **PRIORITY OF PAYMENT.** The Parties agree that TIF Funds will be used to reimburse City for eligible Projects Costs in the order of priority of payment for the TIRZ.
- 9.7 **SOURCE OF FUNDS.** The Parties agree the sole source of the funds to reimburse City shall be the Available Tax Increment levied and collected on the real property located in the TIRZ and contributed by the participating taxing entity to the TIRZ Fund.
- 9.8 **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 required by section 8.4 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. In addition, the City and/or the Board may terminate this Agreement in the following manners: (1) Termination without Cause pursuant to Section 10.2, (2) Termination for Cause pursuant to Section 10.3, and (3) Termination by law pursuant to Section 10.4.
- 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 **RECAPTURE.** If the Board terminates this Agreement for cause, then the TIRZ shall have the right to recapture all the disbursed TIF Funds made under this Agreement and the City shall repay and deposit all TIF Funds disbursed to the City under this Agreement to the TIF Fund of the Mission Drive-In TIRZ within 60 days from the date of Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Mission Drive-In TIRZ.
- 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 that constitutes a material change to the terms of this Agreement shall be effectuated by an amendment, in writing, executed by the passage of Board Resolution and subsequent City Ordinance. For amendments that provide additional funding commitments of less than \$50,000, only Board approval shall be required. Following Board approval, the Director of Neighborhood Housing or his or her designee shall have authority to execute such amendments without further action by the San Antonio City Council.
- 11.5 **CONSTRUCTION SCHEDULE.** Notwithstanding the above, the Construction Schedule may be amended, as evidenced by approval of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee. In the event an amendment to the Construction Schedule as stated in section 5.8 will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 11.4, above. City may rely on the determination of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee, in coordination with the Office of the City Attorney, whether a change in the Construction Schedule would result in a material change to the overall Project requirements.

#### **ARTICLE XII. NON-DISCRIMINATION**

- 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.

#### **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**

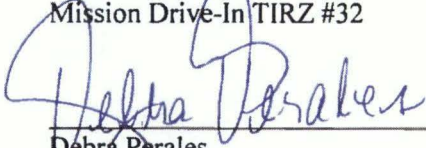
- 15.1 **FINAL AGREEMENT.** This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

**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 \_\_\_\_\_, 2019.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**BOARD OF DIRECTORS**  
Mission Drive-In TIRZ #32

\_\_\_\_\_  
Erik Walsh  
CITY MANAGER  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
Debra Perales  
PRESIDING OFFICER  
Date: 7/16/19

**ATTEST/SEAL:**

**ATTEST**

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Andrew Segovia  
CITY ATTORNEY