

AN ORDINANCE      2007-08-30-0921

**APPROVING THE DEVELOPMENT AGREEMENT AND COUNTY INTERLOCAL AGREEMENT FOR TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-TWO, CITY OF SAN ANTONIO, TEXAS, KNOWN AS THE RIDGE STONE TIRZ AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY CONTRACTS WITH THE TIRZ BOARD, BEXAR COUNTY, AND BIGFISH ON FIVE, L.P., THE DEVELOPER.**

\* \* \* \* \*

**WHEREAS**, the City of San Antonio ("City") recognizes the importance of its continued role in economic development; and

**WHEREAS**, on December 16, 2004, the City Council created Tax Increment Reinvestment Zone Number Twenty-two, City of San Antonio, Texas ("Zone"), located in City Council District 4, by Ordinance Number 100188 in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (hereinafter called the "Act"), and the City's adopted Guidelines and Criteria for the use of TIF to promote development and redevelopment of the Zone property through the use of tax increment financing which development would not otherwise occur solely through private investment in the reasonably foreseeable future, established a Board of Directors for the Zone (the "Board"), described the boundaries of the Zone and authorized the creation of a tax increment fund entitled "Reinvestment Zone Number Twenty-two, City of San Antonio, Texas, Tax Increment Fund" (the "Fund") established at the depository bank of the City; and

**WHEREAS**, on January 31, 2007, the Board approved and adopted a Final Project Plan ("Project Plan"), a Final Financing Plan ("Financing Plan"), a Development Agreement with Bigfish On Five, L.P., ("Developer"), and an Interlocal Agreement with Bexar County providing for their participation in the Zone and contributions to the Fund; and

**WHEREAS**, on March 1, 2007, the City Council authorized the City Manager to execute a Development Agreement and a County Interlocal Agreement through Ordinance 2007-03-01-0239; and

**WHEREAS**, during the process of executing the documents, negotiations arose which resulted in providing the County with an independent right to declare a breach of contract and providing both the City and the County with a right to recover TIF money from the Developer under specific circumstances; and

**WHEREAS**, on August 14, 2007, the Board approved and adopted a new Development Agreement between the City, the County and Bigfish On Five, L.P., ("Developer"), and a new Interlocal Agreement with the County based on the negotiated changes; and

**WHEREAS**, a taxing unit is not required to pay into the Fund any of its tax increment provided from property located in the Zone designated by petition under the Act unless the taxing unit

enters into an Interlocal Agreement with the City which includes conditions for payment into the Fund and specifies the portion and the years for which that tax increment is to be paid into the Fund; and

**WHEREAS**, the City desires to approve the payment of 90% of available City incremental ad valorem taxes generated from new improvements in the Zone into the Fund; and

**WHEREAS**, payment into the Fund shall consist of the tax increment generated from the 2004 tax year through the 2023 tax year, unless the Zone is terminated earlier as authorized or permitted by law; and

**WHEREAS**, in accordance with the Act and Ordinance Number 100188 dated December 16, 2004, the Board has authority to enter into agreements as the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property; and

**WHEREAS**, the Developer has agreed that he may receive a maximum potential reimbursement from the Fund for approved infrastructure improvements of \$3,043,645.00 after cost to Medina Base Road improvements reserve fund, and a maximum potential reimbursement for interest, if any, of \$613,987.00 as set out in Section VII of the Development Agreement, attached as Exhibit 1; and

**WHEREAS**, the Developer did not comply with the City's 2004 TIF Guidelines in regard to Payment and Performance Bonds and Prevailing Wages, and did not comply with the City Code regarding Universal Design requirements, and the City, the Board and the Developer have reached a compromise agreement to waive the pertinent 2004 Guideline requirements and provide for alternative security documents and a prevailing wage procedure, and to remove the value of a portion of the homes which do not meet Universal Design requirements; and

**WHEREAS**, the City, the Board, and the County have agreed to the terms and conditions for their participation in the Zone and contributions to the Fund, as set out on the Interlocal Agreement attached as Exhibit 2 (Bexar County Interlocal Agreement); and

**WHEREAS**, it is now necessary for the City Council to authorize the City Manager or her designee to enter into a Development Agreement with the Board, the County and the Developer which provides for the development of the Zone property as specified in the Project Plan and Financing Plan, and to enter into an Interlocal Agreement with Bexar County; and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and public notice of the time, place and purpose of said meeting was given all as required by Chapter 551, Texas Government Code; **NOW THEREFORE:**

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

**SECTION 1.** This TIRZ, which took effect on December 16, 2004, will continue until its

termination date of September 30, 2024 ("Termination Date") unless otherwise terminated earlier according to the terms of the Development Agreement, upon payment in full of all project costs, or as authorized or permitted by law.

**SECTION 2.** The City Manager or her designee is authorized to execute the attached Development Agreement and the County Interlocal Agreement substantially in accordance with the provisions set out above and in Exhibit 1 (Development Agreement) and Exhibit 2 (Bexar County Interlocal Agreement) attached and incorporated into this Ordinance for all purposes.

**SECTION 3.** Approval and execution of the attached Development Agreement does not have an immediate fiscal impact. To the extent that such funds are available, the City is authorized to reimburse the Developer up to a maximum total payment of \$3,043,645.00 for public infrastructure improvements, and a maximum total payment of \$613,987.00 for interest as authorized by and in accordance with the Act.

**SECTION 4.** Fund 29086014 entitled Special Revenue, TIRZ Ridge Stone is established to record the collection of revenue recorded in internal order 207000000263 and payments using cost center 0703710001 in accordance with the agreement.

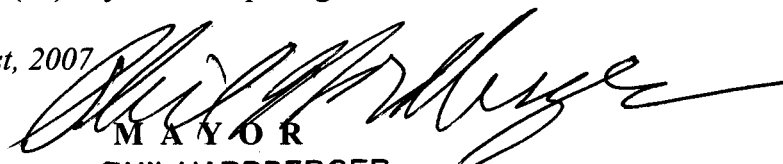
**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders,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

**SECTION 6.** The statements set out in the recitals of this Ordinance are true and correct and are incorporated as part of this Ordinance.

**SECTION 7.** If any provision of this Ordinance or the application of any provision of this Ordinance to any circumstance is held invalid, the remainder of this Ordinance and the application of the remainder of this Ordinance to other circumstances shall nevertheless be valid and this Ordinance would have been enacted without such invalid provision.

**SECTION 8.** This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

**PASSED AND APPROVED** this 30<sup>th</sup> day of August, 2007

  
MAYOR  
PHIL HARDBERGER

ATTEST:   
City Clerk

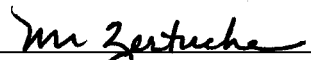
APPROVED AS TO FORM:   
for City Attorney

Exhibit 1  
Ridge Stone TIRZ  
Development Agreement

**DEVELOPMENT AGREEMENT WITH THE CITY OF SAN ANTONIO, TEXAS,  
BEXAR COUNTY,  
BIGFISH ON FIVE, L.P. and  
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER TWENTY-TWO,  
CITY OF SAN ANTONIO, TEXAS**

This Development Agreement ("Agreement"), pursuant to Ordinance No. 2007-\_\_-\_\_-\_\_ passed and approved on the \_\_th day of \_\_\_\_, 2007, is entered into by and between the City of San Antonio, a Texas municipal corporation in Bexar County, Texas ("the City"); Bigfish On Five, L.P., a Texas limited partnership ("the Developer"), the Board of Directors for Reinvestment Zone Number Twenty-two, City of San Antonio, Texas, a tax increment reinvestment zone (the "Board") and Bexar County, a political subdivision of the State of Texas ("the County").

**BACKGROUND:**

**WHEREAS**, both the City and the County recognize the importance of their continued role in economic development, community development, planning and urban design; and

**WHEREAS**, by Ordinance Number 101888, dated December 16, 2004, pursuant to the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code (as amended, hereinafter called the "Act"), the City created Reinvestment Zone Number Twenty-two ("Zone") in accordance with the Act, to promote development and redevelopment of the Zone Property through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future, and established a Board of Directors for the Zone; and

**WHEREAS**, Section 311.002 (1) of the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality establishing a reinvestment zone, for costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in Section 311.002 (1) of the Act ("Project Costs"); and

**WHEREAS**, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such Boards under the Act or by action of the City Council; and

**WHEREAS**, on the 30th day of December, 2006, the Board adopted and approved a final Project Plan and a final Financing Plan defined hereunder and referred to herein as "Project Plan" and "Financing Plan" providing for development of the Zone Property; and

**WHEREAS**, the City approved the Final Project Plan and Final Financing Plan for the Zone by Ordinance Number 2007-03-01-0239 on the 1st day of March, 2007 and authorized the City Manager of the City of San Antonio or her designated representative to execute this Agreement on behalf of the City, and to bind the City to the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to the Act (as amended) and City of San Antonio Ordinance Number 101888, dated December 16, 2004, the Board has authority to enter into agreements that the Board considers necessary or convenient to implement the Project Plan and Financing Plan and to achieve the purposes of developing the Zone Property within the scope of those plans; and

**WHEREAS**, pursuant to said authority above, the Board, the City, the County and the Developer each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as specified in the Proposal, Project Plan, Financing Plan and this Agreement; and

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

## **I. DEFINITIONS**

1.1 The "City," the "County," the "Board" and the "Developer" shall have the meanings specified above.

1.2 "Act" means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as it may be amended from time to time.

1.3 "Agreement" means this document by and among the City, the County, the Board and the Developer, which may be amended from time to time.

1.4 "Available Tax Increment Funds" for each Participating Taxing Entity means the "Tax Increment" contributed by each Participating Taxing Entity as defined in Section 311.012 (a) of the Act to the fund established and maintained by the City for the purposes of implementing the projects of the Zone, less the start-up administrative costs of each Participating Taxing Entity for organizing the Zone and the ongoing administrative costs of each Participating Tax Entity for managing the Zone, and those annual administrative fees, if any, of the Participating Tax Entities.

1.5 "Captured appraised value of real property taxable by a taxing unit for a year" has the meaning provided by §311.012(b) of the Act.

1.6 "City Manager" means the City Manager of the City or her designee.

1.7 "City Code" means the City Code of the City of San Antonio, as amended.

1.8 "Completion" means construction of a public improvement in the Zone in accordance with the engineer's design, Project Plan, Financing Plan and this Agreement. In order for a public improvement to have achieved a state of "Completion" for the purpose of reimbursement under Article VII, the improvement must:

- a. In the case of public improvements constructed prior to the effective date of this Agreement:

- (1) be approved and accepted by the City of San Antonio as evidenced by a letter of acceptance issued by an authorized official of the City of San Antonio; and
- (2) for streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and
- (3) for all public improvements, including streets and drainage improvements, be subject to ongoing repair, replacement and maintenance funded from the Financing Plan pursuant to Section 5.13 of this Agreement; or

b. In the case of improvements constructed after the effective date of this Agreement:

- (1) be inspected by the design engineer, and be the subject of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the public improvements were designed in such a manner as to endure without need for maintenance, repair or replacement for five (5) years, taking into consideration the site and traffic conditions, present and future, at or near the improvements, and certifying that the public improvements were constructed according to the specifications required by the Engineer's design for each improvement; and
- (2) be approved and accepted by the City of San Antonio as evidenced by a letter of acceptance issued by an authorized official of the City of San Antonio; and
- (3) for streets and drainage improvements only, be or have been subject to the one-year extended warranty bond required by Chapter 35 of the City's Unified Development Code; and
- (4) for all public improvements, including streets and drainage improvements, be subject to ongoing repair, replacement and maintenance funded from the Financing Plan pursuant to Section 5.13 of this Agreement.

1.9 "Contract Progress Payment Request" ("CPPR") means a request, prepared in accordance with the requirements of **Exhibit D**, attached hereto and incorporated herein for all purposes, for reimbursement due to the Developer for work completed in accordance with the definition of "completion" above on a specific improvement in the Zone in accordance with the public improvements in the Project Plan and the timeline detailed in **Exhibit A**, the Public Improvements and Construction Schedule. The CPPR shall also reflect all waivers granted through the Incentive Scorecard System.

1.10 "CPPR Approval" means a written acknowledgement from the City to the Developer that the Contract Progress Payment Request, as defined herein, was completed and submitted correctly, and that the Contract Progress Payment Request is ready for presentation to the Board for approval and consideration for reimbursement to the Developer.

1.11 "Construction Schedule" means the timetable for constructing the improvements specified in

the Project Plan, Financing Plan and this Agreement, which timetable is more particularly set forth in **Exhibit A**, 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.

1.12 "Developer" means Bigfish On Five, L.P.

1.13 "Effective Date" means the date that the last party signs this Agreement below, or the date of the last signature of the applicable Interlocal Agreements, whichever is later.

1.14 "Financing Plan" means the final Financing Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which Plan is hereby incorporated into this document by reference for all purposes, as if set out in its entirety.

1.15 "Guidelines" means the 2004 Tax Increment Financing (TIF) and Reinvestment Zone Guidelines and Criteria as passed and approved by the City Council of the City of San Antonio.

1.16 "Participating Taxing Entity" means any governmental entity recognized as such by Texas law which is participating in this Project by contributing a percentage of its tax increment.

1.17 "Phase" means a portion of the Project that is being constructed by the Developer, normally being a set number of units and acres of the Zone Property being constructed together during a specific timeline.

1.18 "Project" has the meaning specified in paragraph 3.1 of this Agreement, and as more specifically detailed in the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.19 "Project Costs" has the meaning provided by Section 311.002(1) of the Act.

1.20 "Project Plan" means the final Project Plan as defined in the Act, as approved and as may be amended from time to time by the Board and the City, which Plan is hereby incorporated by reference into this document as if set out in its entirety, for all purposes.

1.21 "Project Status Report" means a report, prepared and submitted by the Developer in accordance with the requirements of sections 5.5, section 5.17, and **Exhibit B** attached hereto and incorporated herein for all purposes, which report provides quarterly updates of Project construction and compliance with laws, ordinances, and contractual requirements.

1.22 "Public Improvements" include those improvements that provide a public benefit and that are listed in the Project Plan and the Financing Plan. When an improvement has both private and public benefits, only that portion which is dedicated to the public may be reimbursed to the Developer, such as, but not limited to, grading and environmental studies.

1.23 "TIF Unit" means the employees of the City department responsible for the management of the City's TIF Program.

1.24 "Zone" means Tax Increment Reinvestment Zone Number Twenty-two, City of San Antonio,



Texas.

1.25 "Zone Property" means the contiguous geographic area of the City that is included in the boundaries of the Zone, which are more particularly described in the Project and Financing Plans.

Singular and Plural: Words used herein in the singular, where the context so permits, also include the plural and vice versa, unless otherwise specified.

## II. REPRESENTATIONS

2.1 **No Tax Increment Bonds or Notes:** The City, the County, the Board and the Developer represent that they understand and agree that neither the City, the County nor the Board shall issue any bonds or notes to cover any costs directly or indirectly related to the Developer's improvement of the Zone under this Agreement.

2.2 **City and County Authority.** The City represents to the Developer that as of the date of the execution of this document, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement. The County represents to the Developer that as of the date of the execution of this document, the County, a political subdivision of the State of Texas, has the authority to carry out the obligations contemplated by this Agreement.

2.3 **Board's Authority.** The Board represents to the Developer that as of the date of the Board's signature to this document the Zone is a Tax Increment Reinvestment Zone established by the City pursuant to Ordinance Number 101888, passed and approved on December 16, 2004, and that the City and the Board have authority to carry on the functions and operations contemplated by this Agreement.

2.4 **Developer's Authority and Ability to Perform.** The Developer represents to the City, the County and to the Board that the Developer is a limited partnership duly formed in the State of Texas; that the Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement; that the Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that the Developer's performance under this Agreement shall not result in the creation of any claim against the City or the County for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City, the County 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 that the Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.

2.5 **All Consents and Approvals Obtained.** The City, the County, the Board and the Developer represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained, other than the execution of applicable Interlocal Agreements.

2.6 **Assignment of Payments and Payment of Only One Party.** The City, the County, the Board and the Developer may rely upon the payments to be made to them out of the Available Tax

Increment Funds as specified in this Agreement and the Developer may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the forgoing, the City shall issue a check or other form of payment made payable only to the Developer.

**2.7 Reasonable Efforts of all Parties.** The City, the County, the Board and the Developer represent each to the others that they shall each make reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**2.8 Developer's Continuing Duty to Complete Improvements.** The City, the County, the Board and the Developer represent each to the others that they understand and agree that even after the Zone terminates, the Developer shall diligently work to successfully complete any and all required improvements that are not completed before Zone terminates. Such completion shall be at no additional cost to the City, the County and/or the Board.

**2.9 Not Effective Until Execution of Interlocal agreements.** The City, the County, the Board and the Developer represent each to the others that they understand and agree that this Agreement shall have no force or effect unless and until all applicable Interlocal Agreements for the Project are executed between the City and the Participating Taxing Entities.

**2.10 Developer Bears Risk of Reimbursement.** The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from tax increments shall not be, nor shall be construed to be, financial obligations of the City, the County, another Participating Taxing Entity, or the Board. The Developer 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 state 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 or County policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and/or other unanticipated factors.

**2.11 Not An Obligation of the General Fund.** The Developer represents that it understands that any contributions made by the Developer in anticipation of reimbursement from tax increments shall never be obligations of the general funds of the City or the County, but are only obligations of the TIF Fund, and are subject to limitations.

### **III. THE PROJECT**

**3.1 The Project.** The Project shall consist of approximately 234 single-family homes and the following public improvements to be constructed by the Developer: site work, streets, drainage/retention, water, sewer, street lights, street signs, electric, platting and zoning fees, storm water pollution prevention, park fee, drainage fees, offsite drainage, sewer and water impact fees, Medina Base Road improvements, Engineering and Surveying fees, geotechnical, Phase I Environmental, contingency, construction management, legal and formation expenses for public

improvements to be constructed by the Developer on an approximately 40.587 acre site known as the Ridge Stone Subdivision, as more thoroughly set forth in the Project Plan and Financing Plan.

**3.2 Competitive Bidding.** Contracts for the construction of Public Improvements financed through Available Tax Increment Funds shall be competitively bid in compliance with Chapter 252 of the Local Government Code, and be constructed by or on behalf of the Developer, in compliance with all applicable law unless: (1) Available Tax Increment Funds go toward financing 30 percent or less of the cost for a specific public improvement, in compliance with Chapter 212 of the Local Government Code; and (2) such public improvement is not a building of any sort. Should the Developer not competitively bid a Public Infrastructure Improvement, the Developer must obtain written approval by the City in order to be eligible for partial reimbursement of those Project Costs not competitively bid pursuant to the regulations set forth in Chapters 252 and 212 of the Local Government Code. Partial reimbursements to the Developer in that event shall not exceed thirty percent (30%) of the Project Costs that would otherwise have been eligible for total reimbursements had they been competitively bid.

**3.3 Private Financing.** The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded through the use of the Developer's own capital or through commercial or private construction loans/lines of credit secured solely by the Developer. The Developer may use any or part of the Zone Property as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication. The City, the County and the Board pledge to use Available Tax Increment Funds, up to the maximum amount provided herein, to reimburse the Developer for eligible Project Costs it has expended. **These available tax increment fund reimbursements made to the Developer are not intended to reimburse the Developer for all of its costs incurred in connection with performing its obligations under this Agreement.**

**3.4 Reimbursement.** The parties hereto agree that neither the City, the County, nor the Board can guarantee that those Available Tax Increment Funds shall completely reimburse the Developer, but that those Available Tax Increment Funds shall constitute the total reimbursement to the Developer for the construction of the Public Improvements.

#### **IV. TERM**

**4.1** The term of this Agreement shall commence on the Effective Date and end on the date which is the earlier to occur of the following: (i) the date the Developer receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; (iii) as provided in the Financing Plan; or (iv) September 30, 2024, provided that all existing warranties on the Project shall survive termination of this Agreement.

#### **V. DUTIES AND OBLIGATIONS OF DEVELOPER**

**5.1 Compliance with Laws and Ordinances.** The Developer shall comply with all applicable provisions of the 2004 Guidelines, the City Charter, the City Code, state and federal law, as may be amended from time to time. However, the Council granted waivers of the 2004 Guidelines requirements of Section VI (C), Use Patterns and Special Districts because the Master Development

Plan approved in March 2003 does not meet any Use Patterns or Special Districts.

**5.2 Duty to Complete.** Subject to Article VII, "Compensation to the Developer," the Developer agrees to complete, or cause to be completed, the improvements described in the Project Plan, Financing Plan and in this Agreement. The Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. The Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of improvements to the Zone Property.

**5.3 Commencement of Construction.** From the date of effectiveness forward, the Developer shall not commence any construction on any Phase of the Project until the plans and specifications for a Phase have been approved in writing by the appropriate department of the City, and this Development Agreement has been executed. For purposes of this Section, letters of certification or acceptance issued by the City shall constitute written approval of the City.

**5.4 Payment and Performance Bonds.**

**Phases I, IIA, IIB and IIC:** For Phases I, IIA, IIB and IIC only, the Developer failed to comply with the 2004 TIF Guidelines in that Developer failed to obtain payment and performance bonds before beginning construction. In lieu of payment bonds for Phases I, IIA, IIB, IIC, the Developer has provided or will provide the following: an affidavit of date of completion by the Developer, releases and waivers of lien from every subcontractor, a copy of the Developer's contract with Developer's prime contractor(s), any evidence of payment bonds secured, and an indemnification and a right of set-off against any claimants who may claim against the City under Chapter 2253 of the Texas Government Code.

**Phase III:** For Phase III, the Developer must deliver original Chapter 2253 Performance and Payment Bonds and wait for the City to approve the bonds prior to construction in order for the Phase III public improvements to be eligible for reimbursement. Failure to secure the City's approval of these bonds for Phase III will be considered a breach of contract. In accordance with Chapter 2253 of the Texas Government Code, the Developer shall cause its general contractor or general contractors to obtain such payment and performance bonds naming the City as a beneficiary or obligee of the bonds. The payment and performance bonds for each phase shall be in an amount sufficient to cover the entire contract cost of the Public Improvements for that phase.

The City's Risk Management Department shall determine the acceptability of the bonds. Without limiting other breaches, failure of the Developer to comply with this section or Chapter 2253 of the Texas Government Code is a breach of this contract, and the City or the County may exercise the full range of legal remedies available: (1) to the City, including but not limited to: terminating the Zone, exercising its rights under Article X, and/or removing the value of phases and lots which are ineligible for reimbursement; (2) to the County, terminating its participation in the Zone and exercising its rights under Article X, paragraph 10.2.

**5.5 Supervision of Construction.** The Developer agrees to retain and exercise supervision over the construction of all public and private improvements of the project, and cause the construction of all project improvements to be performed, at a minimum, in accordance with federal, state and local laws and ordinances, including, but not limited to the 2004 TIF Guidelines, the Project Plan, the

Financing Plan, the Unified Development Code, Universal Design, City Ordinance No. 71312, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City and the Board. The Developer also agrees to provide reports of such construction and of compliance with such laws, ordinances, and contractual requirements to the City, the County and to the Board quarterly, or more often if requested by the City, the County or the Board, using the form attached as **Exhibit B**, as it may be amended from time to time. Without limiting other breaches, failure of the Developer to comply with this section is a breach of this contract, and the City may terminate the Zone and exercise the full range of legal remedies available to the City, including Article X below, and/or the County may terminate its participation in the Zone and exercise its rights under Article X, paragraph 10.2.

**5.6 No Vesting of Rights.** The Developer agrees that the TIF program is a discretionary program and that the City and the County have no obligation to extend TIF to the Developer. In exchange for receiving TIF, the Developer agrees that it has no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current and future City Charter, City Code, City Ordinances, and City Unified Development Code, state or federal laws and regulations.

**5.7 Payment of Applicable Fees.** The Developer shall be responsible for paying, or causing to be paid, to the City and all other governmental agencies the cost of all applicable permit fees and licenses which have not been waived and are required for construction of the Project.

**5.8 Delays.** The Developer agrees to commence and complete the Project in accordance with the Construction Schedule. If completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Developer's control, then at the City's reasonable discretion, the deadlines set forth in the Construction Schedule may be extended by the period of each such delay. In the event that the Developer does not complete the Project substantially in accordance with the Construction Schedule, then the parties, in accordance with Section 23.2 of this Agreement, may extend the deadlines set forth in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reach an agreement on the extension of the Construction Schedule, or if the Developer continues to fail to complete the Project in accordance with the revised Construction Schedule, then either the City and/or the County may exercise its remedies under Article X of this Agreement.

**5.9 Litigation against the City or the County.** Developer acknowledges that it is aware that the City's policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ 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 TIF, designate a TIRZ, enter into any TIF contracts or agreements with, or authorize or make any TIF payments to persons engaged in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIF projects during the term of their litigation. "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust,

partnership, association, and any other legal entity. This TIRZ may not be terminated for violations of this policy which occur more than 60 days prior to the execution of this document. Developer also acknowledges that if a principal or participant, as defined herein, initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the County, the County may terminate its participation in the Zone.

**5.10 Small, Minority or Women-owned Business Enterprises.** With respect to Public Improvements, the Developer shall make a good faith effort to comply with the City's and the County's policy regarding the participation of business enterprises eligible as Small, Minority or Women-owned Business Enterprises in subcontracting any of the construction work required to be performed under the Project Plan, Financing Plan or this Agreement. A list of those business enterprises certified by the City as eligible Small, Minority or Women-owned Business Enterprises is available from the City. A list of those business enterprises certified by the County as eligible Small, Minority or Women-owned Business Enterprises is available from the County. The Developer shall maintain records showing (i) its contracts, supply agreements, and services agreements with and to business enterprises that are Small, Minority or Women-owned Business Enterprises, (ii) specify its efforts to identify and award contracts to business enterprises that are Small, Minority or Women-owned Business Enterprises, and (iii) provide reports of its efforts under this paragraph to the City, in a form and manner the City may reasonably prescribe, at least annually during construction of the Project and upon completion of the Project.

**5.11 Tree Ordinance.** In accordance with section 5.5 and 5.6 above, the Developer shall comply and shall cause its contractors and subcontractors to comply with the City Code provisions for tree preservation, located in Chapter 35, Article IV of the City's Unified Development Code, as it may be amended from time to time.

**5.12 Date of Rendering to Appraisal District.** The Developer shall render, or cause to be rendered, any and all residential buildings and commercial buildings to the Bexar County Appraisal District before December 31 of each year of this Agreement if the buildings were completed prior to December 31 of that year.

**5.13 Infrastructure Maintenance.** (a) The Developer shall, at its own cost and expense, maintain or cause to be maintained all public improvements, until acceptance by the City as evidenced by written acceptance required by Section 1.8.a.(1), or 1.8.b.(2), and for one (1) year after Completion.

(b) Upon acceptance of a street or drainage improvement for maintenance by the City, Developer shall deliver to the City a one-year extended warranty bond, naming the City as the obligee, in conformity with Chapter 35 of the City's Unified Development Code. The cost of repair, replacement and maintenance for defects discovered during the first year after completion shall be paid by the Developer or the bond company and shall not be paid out of TIF funds.

(c) After the expiration of the one (1) year extended warranty bond, the cost of the repair, replacement and maintenance of the public improvements shall be the responsibility of the City; however, the City shall be reimbursed from the Contingency Fund as listed in the Financing Plan (the "Contingency Fund") for those costs, including, but not limited to: demolition, rebuilding, engineering, design, re-construction or any other cost necessitated by the failure without regard to fault or degree ("failure") of public infrastructure which is discovered within the second (2<sup>nd</sup>) through fifth (5<sup>th</sup>) years after completion of said infrastructure.

(d) If no costs for the repair, replacement or maintenance of a public improvement as a result of a

failure are claimed by or due to the City during any year within the second (2<sup>nd</sup>) through fifth (5<sup>th</sup>) years after completion of said infrastructure, the Developer shall receive the entire approved reimbursement amount available in that year.

(e) In the event any costs for the repair, replacement or maintenance of a public improvement are claimed by the City due to a failure discovered within the second (2<sup>nd</sup>) through fifth (5<sup>th</sup>) years after completion of said infrastructure, the City shall be fully reimbursed those costs from the Contingency Fund.

(f) In the event the Contingency Fund does not reflect an amount equal to the costs of the repair, replacement or maintenance of the public improvement, the Contingency Fund balance shall be increased by reallocating other costs within the Financing Plan and reducing the approved amount of reimbursement that would have been remitted to the Developer, until the City has been reimbursed its costs in full.

(g) Payment of the City under this section shall take priority over reimbursement of the Developer.

(h) This reallocation of funds shall not be considered an amendment of the Financing Plan, however staff must notify the City Council within thirty (30) days of the reallocation and any reallocation must be ratified by City Council action to be effective.

(i) It shall be no defense to the City's reimbursement of itself out of the TIRZ fund that the City or its agents have inspected, accepted or approved the public infrastructure. Approval or acceptance of public infrastructure is not a waiver of claims under this section. The City may attempt multiple repairs on the same infrastructure and reimburse itself for each attempt.

(j) The Developer, its agents, employees, and contractors will not interfere with reasonable use of all the Public Improvements by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, the Developer shall use its best efforts to dedicate (or grant a public easement) to the Public Improvements where applicable to the appropriate Participating Taxing Entity (as determined by the City), at no additional cost or expense to the City or any other Participating Taxing Entity within sixty (60) days after completion and acceptance of the improvements.

(k) Reimbursement of the developer shall not be unreasonably denied provided the improvement has reached "Completion" under Subsection (a) or (b) above, and provided that the City has no active claim for reimbursement under this section.

(l) The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee or other official of the City or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a city employee or agent do not work an estoppel against the City under this contract or the Unified Development Code.

**5.14 Utility payments.** The Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by the Developer in regard to the development of the Zone Property for all areas owned by the Developer during construction of the Project, and for so long as the Developer owns those areas. Projects within the Zone shall be subject to Section 35.501 et seq. of the San Antonio City Code (impact fees) and the Developer shall not be prohibited from applying for the benefits of any impact fee credits allowed by that Section.

**5.15** The Developer shall cooperate with the City, the County and the Board in providing all necessary information to the City, the County and to the Board in order to assist the City, the County and the Board in determining Developer's compliance with this Agreement.

**5.16 Universal Design and Determination of Tax Increment Portion.** As of the effective date

of this agreement, one hundred and forty-three (143) units in Phases I, IIA and IIB do not comply with the City's Universal Design policy, but according to a compromise agreement reached with the Developer, the value of only thirty-one (31) non-compliant units will be deducted from the captured appraised value of real property taxable by taxing units for each year ("captured appraised value"), resulting in a reduction of the projected captured appraised value by one million, six hundred six thousand, nine hundred dollars (\$1,606,900.00) in tax year 2005, and three million, two hundred ninety-seven thousand, eight hundred and twenty dollars (\$3,297,820.00) in tax years 2006 through 2023. The tax increment collection attributable to the reduction of captured appraised value is estimated to be twenty-one thousand, eight hundred and ninety-two dollars (\$21,892.00) annually, which will not be deposited to the Ridge Stone TIRZ fund but will instead be proportionately retained by the City, Bexar County and the San Antonio River Authority. Developer shall comply and cause builders and lot purchasers to comply with the City's Universal Design Policy as required by the City Code, Chapter 6 Article XII for the remaining 91 units in Phase IIC and Phase III shall comply with the Universal Design requirements. If it is discovered that any of the expected ninety-one (91) units in Phases IIC and III do not comply, those non-compliant units will also be deducted from the captured appraised value in every year of their existence. The City and/or Board shall provide written notice to Developer of the noncompliance with Universal Design Policies. Developer has ninety (90) days from date of notice to address and cure noncompliance. If Developer fails to cure noncompliance issues within the ninety (90) day period, the City and the County may, in their sole discretion, and without TIRZ Board action:

- a. if the City, terminate this TIRZ under the procedures set out in Chapter X; or if the County, terminate its participation in the Zone under the procedures set out in Article X; or
- b. if the City, adjust and reallocate the Financing Plan to reduce the City's portion of the captured appraised value attributable to individual non-compliant lots from the aggregate captured appraised value of the TIRZ. The City may retain the collected taxes attributable to non-compliant lots. The non-compliant tax accounts will not be used in calculating the increment generated by the TIRZ, the TIRZ boundaries will not be amended, and the tax increment base will not be changed.

**5.17 Quarterly Status and Compliance Reports.** The Developer shall submit to the City, the County and the Board written and signed Project Status Reports (see sections 1.21 and 5.5 above) containing all the information requested, starting no later than thirty (30) days following the beginning of construction of the Project, and on the 15th days of January, April, July and October thereafter throughout the duration of the Project, on its construction progress and construction expenses, and its compliance with laws, ordinances, and contractual requirements. If Project Status Reports are not submitted on the assigned dates as above, the Developer understands that no Available Tax Increment Funds will be paid to the Developer and the City and/or the County may exercise their rights in accordance with Article X herein.

**5.18** The Developer shall comply and shall cause all contractors and subcontractors to comply with the City of San Antonio Unified Development Code, as amended from time to time, where applicable regarding the development of the Project.

**5.19** The Developer understands that no Available Tax Increment Funds will be paid to the Developer until a master drainage plan of the Project has been received and approved by the City.



## **VI. DUTIES AND OBLIGATIONS OF CITY, COUNTY AND BOARD**

6.1 **No Bonds.** Neither the City, the County nor the Board shall sell or issue any bonds to pay or reimburse the Developer or any third party for any improvements to the Zone Property performed under the Project Plan, Financing Plan or this Agreement.

6.2 **Pledge of Funds.** Subject to the terms and conditions of this Agreement, and subject to termination of the TIRZ and the removal of the value of non-compliant buildings and lots under section 5.16 above, and subject to any reimbursement of the City under section 5.13, the City, the County and the Board hereby pledge all Available Tax Increment Funds as reimbursement to the Developer, up to the maximum total amount specified in this Agreement, excluding those taxes collected after September 30, 2024.

6.3 **Co-ordination of Board Meetings.** The City and the Board hereby agree that all meetings of the Board shall be coordinated through and facilitated by the department of the City responsible for managing the TIF Program, and that all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with Chapter 2, Article IX, of the City Code.

6.4 **Collection Efforts.** The City and the Board shall use reasonable efforts to cause each Participating Taxing Entity which levies real property taxes in the Zone to levy and collect their ad valorem taxes due on the Zone Property and to contribute their portion of the Available Tax Increment Fund towards reimbursing the Developer for the construction of the Public Improvements required under the Project Plan, Financing Plan and this Agreement.

6.5 **Certificate of Completion.** The City and the Board shall use reasonable efforts to issue, or cause to be issued a Certificate of Completion for items satisfactorily brought to Completion by the Developer in constructing this Project.

6.6 **Form of Reimbursement Requests.** The City and the Board hereby agree that all reimbursement requests from the Developer shall be initiated by the submission of a CPPR form, attached hereto as **Exhibit D**.

## **VII. COMPENSATION TO DEVELOPER**

7.1 **Obligation Accrues as Increment is Collected.** The City and the County's obligation to contribute their Tax Increment Payments to the Tax Increment Fund shall accrue as the City and the County collect their Tax Increment. The City and the County agree to deposit their Tax Increment Payments to the Tax Increment Fund on or before April 15 and September 15 (or the first business day thereafter) of each year.

7.2 **CPPR Approval.** Upon completion of the Public Improvements in each phase of the Project, the Developer shall submit to the City and the County a completed Contract Progress Payment Request (hereinafter "CPPR"), as detailed in **Exhibit D** hereof. The CPPR shall be presented to the Board for review and possible reimbursement authorization after the City review

and approval, as evidenced by a written CPPR Approval issued by the City.

**7.3 Maximum Reimbursement of Developer.** Following the Board's authorizations, the Developer shall receive, in accordance with the Financing Plan and the Project Plan, total reimbursements for Public Improvements of a maximum of three million, seven hundred and ninety-four thousand, one hundred and sixty dollars (\$3,794,160.00) for public improvements, plus interest, if any, at a maximum of six hundred thirteen thousand, nine hundred and eighty-seven dollars (\$613,987.00) on eligible project costs, as full reimbursement for designing and constructing the Public Improvements required under the Project Plan, Financing Plan and this Agreement. The County's maximum contribution over the life of the TIRZ shall be one million, twenty-eight thousand, two hundred and nine dollars (\$1,028,209.00).

**7.4 Processing of Payment Requests.** Board-authorized reimbursements of Available Tax Increment Funds shall be made to the Developer by the City within thirty (30) days after the deposit of the City and County's Tax Increment Payment to the Tax Increment Fund, if the Developer is in compliance with laws, statutes, ordinances and the requirements of this Agreement.

**7.5 Available Tax Increment Funds.** The sole source of the funds to reimburse the Developer for Project Costs shall be the Available Tax Increment Funds levied and collected on the Zone Property and contributed by the Participating Taxing Entities participating in the Zone to the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project.

**7.6 Order or Priority of Payment.** The parties agree that the City and the Board may use funds in the Tax Increment Fund to pay eligible expenditures in the following order or priority of payment: (i) to reimburse eligible startup Administrative Costs incurred by each Participating Taxing Entity; (ii) to pay all other ongoing Administrative Costs to the City and County for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City and County, then the ongoing Administrative Costs of the City and County shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in the Development Agreement; (iv) to the Medina Base Road improvements reserve fund; (v) to reimburse the City and/or the County under any reclaim of funds pursuant to Article X; (vi) to reimburse the Developer for public improvements, including financing costs, as provided in the Development Agreement and in the Project Plan to the extent that funds in the Tax Increment Fund are available for this purpose. The foregoing notwithstanding, no funds will be paid from the Tax Increment Fund to a Participating Taxing Entity for its financial or legal services in any dispute arising under this Agreement with another Participating Taxing Entity or Participating Taxing Entities.

**7.7 Partial Payments.** If Available Tax Increment 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 Tax Increment Funds become available. No fees, costs, expenses or penalties shall be paid to any party on any late payment.

**7.8 Repayment of Invalid Payments.** If any payment to the Developer is held invalid,

ineligible, illegal or unenforceable under present or future 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 hereto that such invalid, ineligible, illegal or unenforceable payment shall be repaid in full by the Developer to the City for deposit into the fund created and maintained by the City for the purpose of implementing the Public Improvements of the Project, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable payment was never contained herein.

## VIII. INSURANCE

8.1 The Developer shall, prior to the commencement of work on the Public Improvements of any Phase under this Agreement, furnish an original insurance policy or endorsement, and a completed certificate of insurance for inspection and copying to the City's TIF Unit, which shall both be clearly labeled "**Ridge Stone TIRZ, Phase No. \_\_\_\_.**" The insurance policy or endorsement and the original certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original insurance policy or endorsement and the certificate(s) or forms must have the agent's original signature, including the signer's company affiliation, title and phone number, and shall be mailed directly from the agent or agency to the City. The City and the County shall have no duty to pay or perform under this Agreement until such insurance policy or endorsement and certificate shall have been delivered to the City's TIF Unit and to the County's Community and Development Programs Department, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

8.2 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 coverages 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, but in no instance will the City allow modification whereupon the City may incur increased risk.

8.3 The Developer's financial integrity is of interest to the City and the County, therefore, subject to the Developer's right to maintain reasonable deductibles in such amounts as are approved by the City, the Developer or the Developer's Contractor, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Project Plan and Financing Plan, and any extension hereof, at the Developer or the Developer'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 rated A - or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

Type	Amount
(1) Worker's Compensation & Employer's Liability	Statutory \$500,000/\$500,000/\$500,000

- |     |  |  |
|-----|--|--|
| (2) | Comprehensive General Liability<br>(Including Broad Form Coverage,<br>Contractual Liability, Bodily and<br>Personal Injury, and Completed<br>Operations) | Combined limits of \$1,000,000 per<br>occurrence and \$2,000,000 in the<br>aggregate or its equivalent in umbrella or<br>excess liability coverage |
| (3) | Business Automobile Liability<br>(any auto, including employer's non-<br>owned and hired auto coverage)  | \$1,000,000 combined single limit<br>per occurrence  |

8.4 The City and the County shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and the City may make a reasonable request for 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 hereto or the underwriter of any such policies). Upon such request by the City, the Developer or the Developer's contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

8.5 The Developer agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance shall contain the following required provisions:

- a. Name the City and its officers, employees, and elected representatives as additional insured as respects operations and activities of, or on behalf of, the named insured performed under agreement with the City, with the exception of the Workers' compensation policy;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policy shall provide a waiver of subrogation in favor of the City.

8.6 The Developer shall notify the City and the County in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City and the County at the following address:

City of San Antonio  
Housing and Neighborhood Services Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Bexar County Community  
and Development Programs  
Attn: Executive Director

233 N. Pecos Suite 590  
San Antonio, Texas 78207

8.7 If the Developer fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements during the construction of the Public Improvements, the City may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have and is not the exclusive remedy for failure of the Developer to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon the Developer's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order the Developer to stop work hereunder, and/or to withhold any payment(s) that become due to the Developer hereunder until the Developer demonstrates compliance with the requirements hereof.

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which the Developer may be held responsible for payments of damages to persons or property resulting from the Developer's or its general contractor's performance of the work covered under this Agreement.

**8.9 THE DEVELOPER SHALL ALSO INDEMNIFY THE CITY, THE COUNTY, ALL OTHER PARTICIPATING TAXING ENTITIES AND THE BOARD AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THE DEVELOPER'S AND THE DEVELOPER'S GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS.**

8.10 The Developer shall also require its general contractor or general contractors working on the Public Improvements in this Project to indemnify the City, the County, all other Participating Taxing Entities, and the Board and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.

## **IX. WORKERS COMPENSATION INSURANCE COVERAGE**

9.1 This Article is applicable only to construction of Public Improvements, the costs for which the Developer is seeking reimbursement from the City and the Board, and is not intended to apply to the private improvements made by the Developer.

9.2. Definitions:

- a. Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a age agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Phase of the Project for the duration of the project.

- b. Duration of the project - includes the time from the beginning of the work on the Phase of the Project until the Developer's/person's work on the project has been completed and accepted by the City.
- c. Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Developer has undertaken to perform on the Project, regardless of whether that person contracted directly with the Developer and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

9.3 The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the Project, for the duration of the Project.

9.4 The Developer must provide a certificate of coverage to the City and the County prior to being awarded the contract.

9.5 If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the Phase of the Project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the City and the County showing that coverage has been extended.

9.6 The Developer shall obtain from each person providing services on a project, and shall provide to the City and the County:

- a. a certificate of coverage, prior to that person beginning work on the Phase of the Project, so the City and the County will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- b. no later than seven days after receipt by the Developer, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Phase of the Project.

9.7 The Developer shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

9.8 The Developer shall notify the City and the County in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

9.9 The Developer shall post on the Zone Property a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

9.10 The Developer shall contractually require each person with whom it contracts to provide services on a Project, to:

- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable Phase of the Project;
- b. provide to the Developer, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the applicable Phase of the Project;
- c. provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- d. obtain from each other person with whom it contracts, and provide to the Developer:
  - (1) a certificate of coverage, prior to the other person beginning work on the Project; and
  - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable Phase of the Project;
- e. retain all required certificates of coverage on file for the duration of the applicable Phase of the Project and for one year thereafter;
- f. notify the City and the County in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. contractually require each person with whom it contracts, to perform as required by paragraphs a-g with the certificates of coverage to be provided to the person for whom they are providing services.

9.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Developer is representing to the City and to the County that all employees of the Developer who will provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Phase of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-

Insurance Regulation. Providing false or misleading information may subject the Developer to administrative penalties, criminal penalties, civil penalties, or other civil actions.

9.12 The Developer's failure to comply with any of these provisions is a breach of contract by the Developer which entitles the City to declare the Agreement void and exercise all legal remedies or the County to terminate its participation in the Zone and exercise its right to reimbursement under Article X, paragraph 10.2 if the Developer does not remedy the breach within ten (10) days after receipt of notice of breach from the City or the County without necessity of the ninety (90) day cure period as set forth in Article X.

## **X. BREACH AND TERMINATION**

10.1 **City's Right to Terminate.** If the County sends notice of breach as provided for herein OR the City determines that Developer has failed to commence construction of the Project, failed to complete construction of the Project, or failed to perform any other obligation pursuant to the Final Project and Financing Plan or any other term of this Agreement OR Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the City, the City may terminate its participation in the Zone. Prior to terminating its participation in the Zone, the City shall provide written notice to Developer and the County (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s). If the objection and/or concern as set out in the notice is not resolved within ninety (90) calendar days from the date of such notice, the City's participation in the Zone shall automatically terminate effective as of the date such notice is sent. If the City terminates its participation in the Zone under this Article X, Developer shall repay the City the following amounts: 1) if the breach occurs during a Construction Phase, the Developer shall repay City an amount equal to the funds the City paid into the Tax Increment Fund during that specific Phase, or 2) if the breach occurs after all Construction Phases are completed, the Developer shall repay City an amount equal to the funds the City paid into the Tax Increment Fund during the twelve months preceding the date notice of breach is sent pursuant to this Article X. The repayment to the City shall come from the Developer to the extent the Developer has received reimbursement from the Fund in an amount equal to the funds contributed by the City during respective Construction Phase or twelve (12) month period preceding the date notice of breach is sent, and from the Tax Increment Fund to the extent the funds contributed by the City during respective Construction Phase or twelve (12) month period preceding the date notice of breach is sent have not been used for reimbursement to the Developer.

Funds which become due and owing under this provision shall be paid to the City within ninety (90) calendar days after Developer receives written notice of breach. The City may extend the ninety (90) day cure period under this Agreement in its own discretion. The City shall look only to the Developer and the Tax Increment Reinvestment Fund of this Zone for any reimbursement, contractual claim, damages, or payment of any type.

10.2 **County's Right to Terminate.** If the City sends notice as provided for herein OR the County determines that Developer has failed to commence construction of the Project, failed to complete construction of the Project, or failed to perform any other obligation pursuant to the Final Project



and Financing Plan or any other term of this Agreement OR Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the County, the County may terminate its participation in the Zone. Prior to terminating its participation in the Zone, the County shall provide written notice to Developer, the City and the Board (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s). If the objection and/or concern as set out in the notice is not resolved within ninety (90) calendar days from the date of such notice, County's participation in the Zone shall automatically terminate effective as of the date such notice is sent.

If the County terminates its participation in the Zone under this Article X, Paragraph 10.2, Developer shall repay the County the following amounts: 1) if the breach occurs during a Construction Phase, the Developer shall repay County an amount equal to the funds the County paid into the Tax Increment Fund during that specific Phase, or 2) if the breach occurs after all Construction Phases are completed, the Developer shall repay County an amount equal to the funds the County paid into the Tax Increment Fund during the twelve months preceding the date notice of breach is sent pursuant to this Article X, Paragraph 10.2. The repayment to the County shall come from the Developer to the extent the Developer has received reimbursement from the Fund in an amount equal to the funds contributed by the County during respective Construction Phase or twelve (12) month period preceding the date notice of breach is sent, and from the Tax Increment Fund to the extent the funds contributed by the County during respective Construction Phase or twelve (12) month period preceding the date notice of breach is sent have not been used for reimbursement to the Developer.

Funds which become due and owing under this provision shall be paid to the County within ninety (90) calendar days after Developer receives written notice of breach. The County may extend the ninety (90) day cure period under this Agreement in its own discretion. The County shall look only to the Developer and the Tax Increment Reinvestment Fund of this Zone for any reimbursement, contractual claim, damages, or payment of any type.

10.3 Upon either the City or the County sending notice in accordance with sections 10.1 or 10.2 above, neither the City nor the County shall make further payments to the TIF Fund. In addition, the City shall not distribute any TIF Fund money to the Developer until the Developer's breach is cured to the satisfaction of the City and/or the County. If the Developer's breach is not cured within the period provided for herein, either the City or the County or both may exercise their rights under this Article X or extend the cure period, in their sole discretion. If both the City and the County elect to terminate their participation in the Zone, the City shall then distribute the remaining TIF Fund money to the County and any other Participating Taxing Entities, without Board approval, and in accordance with Interlocal Agreements.

10.4 Notwithstanding paragraph 10.1 or 10.2 above, in the event the Developer fails to furnish any documentation required in Article XIV (Examination of Records) or Article V, Paragraph 5.17 (Quarterly Status and Compliance Reports) herein within thirty (30) days following the written request for same, then the Developer shall be in breach of this Agreement without necessity of the ninety (90) day cure period as set forth herein.

## **XI. INDEMNIFICATION**

11.1 The DEVELOPER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY) and the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), the COUNTY (and the elected officials, employees, officers, directors, and representatives of the County) and all PARTICIPATING TAXING ENTITIES (and the elected officials, employees, officers, directors, and representatives of these ENTITIES), 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, the COUNTY, BOARD, and/or upon any of the PARTICIPATING TAXING ENTITIES directly or indirectly arising out of, resulting from or related to the DEVELOPER'S negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of the DEVELOPER, any agent, officer, contractor, subcontractor, director, representative, employee, consultant or subconsultants of the DEVELOPER, 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 COUNTY, the BOARD, or the PARTICIPATING TAXING ENTITIES under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The DEVELOPER shall promptly advise the CITY, the COUNTY, the BOARD, and the PARTICIPATING TAXING ENTITIES in writing of any claim or demand against the CITY, the COUNTY, the BOARD, any PARTICIPATING TAXING ENTITIES related to or arising out of the DEVELOPER'S activities under this Agreement and shall see to the investigation and defense of such claim or demand at the DEVELOPER's cost to the extent required under the INDEMNITY in this paragraph. The CITY, the COUNTY, the BOARD, and/or any PARTICIPATING TAXING ENTITIES shall have the right, at their option and at their own expense, to participate in such defense without relieving the DEVELOPER of any of its obligations under this paragraph.

11.2 It is the express intent of the parties to this agreement, that the INDEMNITY provided for in this paragraph, to the extent permitted by law, is an INDEMNITY extended by the DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY, the COUNTY, the BOARD, and the PARTICIPATING TAXING ENTITIES from the consequences of the CITY's own negligence, the COUNTY'S own negligence, the BOARD's own negligence, or negligence of the other PARTICIPATING TAXING ENTITIES provided however, that the INDEMNITY provided for in this paragraph shall apply only when the negligent act of the CITY, the COUNTY, the BOARD, or a PARTICIPATING TAXING ENTITY is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY, the COUNTY, the BOARD, or of a PARTICIPATING TAXING ENTITY is the sole cause of the resultant injury, death, or damage. The DEVELOPER further agrees to defend, at DEVELOPER's expense, the CITY (on behalf of the CITY and in the name of the CITY), the COUNTY (on behalf of the COUNTY and in the name of the COUNTY), the BOARD (on behalf of the BOARD and in the name of the BOARD), and any PARTICIPATING TAXING ENTITIES, (on behalf of the

**PARTICIPATING TAXING ENTITIES and in the names of the PARTICIPATING TAXING ENTITIES), against any claim or litigation brought against the CITY (and its elected officials, employees, officers, directors and representatives), the COUNTY (and its elected officials, employees, officers, directors and representatives), the BOARD (and its officials, employees, officers, directors and representatives), or any PARTICIPATING TAXING ENTITIES (and their officials, employees, officers, directors and representatives), in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**11.3 WHEREAS, as further consideration for this Development Agreement, DEVELOPER is providing this additional INDEMNIFICATION agreement in lieu of producing the above-referenced PAYMENT BOND for PHASE I and II. THIS INDEMNIFICATION IN LIEU OF THE PAYMENT BOND SHALL BE EFFECTIVE UNTIL THE DATE WHICH IS FIFTEEN (15) MONTHS AFTER THE COMPLETION OF PHASE I and II OF THE PROJECT. THE HOUSING and NEIGHBORHOOD SERVICES DEPARTMENT OF THE CITY OF SAN ANTONIO SHALL, IN ITS SOLE DISCRETION, DETERMINE THE COMPLETION DATE OF EACH PHASE. BIGFISH ON FIVE, L.P., SHALL, AND DOES HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS THE CITY OF SAN ANTONIO, THE COUNTY AND THE TIRZ 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 ATTORNEY FEES OF ANY KIND OR NATURE WHATSOEVER WHICH ARE ASSERTED WITHIN FIFTEEN (15) MONTHS OF THE COMPLETION DATE OF EACH PHASE BY ANY PERSON OR ENTITY FOR UNPAID SUMS DUE ANY CLAIMANT FOR LABOR OR MATERIALS FURNISHED FOR THE IMPROVEMENT OF PHASE I and II OF THE PROJECT. BIGFISH ON FIVE, L.P.'s OBLIGATIONS UNDER THIS INDEMNIFICATION AGREEMENT SHALL BE FURTHER SECURED BY ITS INTEREST IN THE PROPERTY TAX INCREMENT COLLECTED BY THE CITY OF SAN ANTONIO AND THE COUNTY ON ALL PHASES OF THE PROJECT PURSUANT TO TAX INCREMENT FINANCING, AND BIGFISH ON FIVE, L.P. HEREBY AUTHORIZES THE CITY OF SAN ANTONIO AND THE COUNTY TO RETAIN FROM SAID TAX INCREMENT A SUM EQUAL TO THAT ASSERTED BY ANY CLAIMANT TO SATISFY ANY VALID CLAIM SHOULD BIGFISH ON FIVE, L.P. FAIL OR OTHERWISE REFUSE TO SATISFY SAME. BIGFISH ON FIVE, L.P.'s INDEMNITY OBLIGATIONS TO THE CITY OF SAN ANTONIO AND THE COUNTY 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 ATTORNEY FEES OF ANY KIND OR NATURE WHATSOEVER BY ANY PERSON OR ENTITY FOR UNPAID SUMS DUE ANY CLAIMANT FOR LABOR OR MATERIALS FURNISHED FOR THE IMPROVEMENT OF PHASE I and II OF THE PROJECT. TO THE EXTENT THAT THIS INDEMNIFICATION IN LIEU OF PAYMENT BOND CONFLICTS WITH THE INDEMNIFICATION PROVISIONS IN PARAGRAPHS 11.1 AND 11.2 ABOVE, THE PROVISIONS IN 11.1 AND 11.2 CONTROL OVER THOSE SET FORTH IN THIS PARAGRAPH. PRIOR TO EXPENDING ANY MONEY THAT DEVELOPER WOULD BE OBLIGATED TO INDEMNIFY, CITY OF SAN ANTONIO,**

THE COUNTY OR THE TIRZ BOARD SHALL SEND WRITTEN NOTICE TO DEVELOPER DESCRIBING IN REASONABLE DETAIL THE CLAIM AND ALLOWING DEVELOPER TO CURE SUCH CLAIM WITHIN FIFTEEN (15) CALENDAR DAYS OF RECEIVING THE NOTICE. This INDEMNIFICATION in lieu of the PAYMENT BOND shall be effective until the date which is fifteen (15) months after the completion of PHASE I of the project. The Housing and Neighborhood Services Department of the CITY of SAN ANTONIO shall, in its sole discretion, determine the completion date of each phase. BIGFISH ON FIVE, L.P., shall, and does hereby agree to INDEMNIFY and HOLD HARMLESS the CITY of SAN ANTONIO, the COUNTY and the TIRZ 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 attorney fees of any kind or nature whatsoever which are asserted within fifteen (15) months of the completion date of each phase by any person or entity for unpaid sums due any claimant for labor or materials furnished for the improvement of PHASE I of the project. BIGFISH ON FIVE, L.P.'s obligations under this INDEMNIFICATION agreement shall be further secured by its interest in the property tax increment collected by the CITY of SAN ANTONIO and the COUNTY on all phases of the project pursuant to tax increment financing, and BIGFISH ON FIVE, L.P. hereby authorizes the CITY of SAN ANTONIO and the COUNTY to retain from said tax increment a sum equal to that asserted by any claimant to satisfy any valid claim should BIGFISH ON FIVE, L.P. fail or otherwise refuse to satisfy same. BIGFISH ON FIVE, L.P.'s INDEMNITY obligations to the CITY of SAN ANTONIO and the COUNTY 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 attorney fees of any kind or nature whatsoever by any person or entity for unpaid sums due any claimant for labor or materials furnished for the improvement of PHASE I of the project. To the extent that this INDEMNIFICATION in lieu of PAYMENT BOND conflicts with the INDEMNIFICATION provisions in paragraphs 11.1 and 11.2 above, the provisions in 11.1 and 11.2 control over those set forth in this paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, CITY of SAN ANTONIO, the COUNTY, or the TIRZ BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within fifteen (15) calendar days of receiving the notice.

11.4 WHEREAS, as further consideration for this Development Agreement, DEVELOPER is providing this additional INDEMNIFICATION agreement in lieu of producing the required PREVAILING WAGE payroll evidence for phases commenced before the 1<sup>st</sup> day of November, 2006. This INDEMNIFICATION in lieu of full compliance with CITY ordinance No. 71312 shall be effective until the date which is two (2) years after the completion of all phases of the project. The Director of the Housing and Neighborhood Services Department of the CITY of SAN ANTONIO, or his successor, shall, in his sole discretion, determine the completion date of each phase. BIGFISH ON FIVE, L.P., shall, and does hereby agree to INDEMNIFY and HOLD HARMLESS the CITY of SAN ANTONIO, the COUNTY and the TIRZ 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 attorney fees of any kind or nature whatsoever which are asserted within two (2) years of

the completion date of all phases by any person or entity for penalties or sums due any worker or agency for labor furnished for the improvement of all phases of the project. BIGFISH ON FIVE, L.P.'s obligations under this indemnification agreement shall be further secured by its interest in the property tax increment collected by the CITY of SAN ANTONIO and the COUNTY on all phases of the project pursuant to tax increment financing, and BIGFISH ON FIVE, L.P. hereby authorizes the CITY of SAN ANTONIO and the COUNTY to retain from said tax increment a sum equal to that asserted by any worker or agency to satisfy any valid claim or penalty should BIGFISH ON FIVE, L.P. fail or otherwise refuse to satisfy same. BIGFISH ON FIVE, L.P.'s INDEMNITY obligations to the CITY of SAN ANTONIO and the COUNTY 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 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 improvement of all phases of the project. To the extent that this INDEMNIFICATION in lieu of compliance with CITY ordinance no. 71312 conflicts with the INDEMNIFICATION provisions in paragraphs 11.1 and 11.2 above, the provisions in 11.1 and 11.2 control over those set forth in this paragraph. Prior to expending any money that DEVELOPER would be obligated to INDEMNIFY, the CITY of SAN ANTONIO, the COUNTY, or the TIRZ BOARD shall send written notice to DEVELOPER describing in reasonable detail the claim and allowing DEVELOPER to cure such claim within fifteen (15) calendar days of receiving the notice.

## **XII. SITE INSPECTION AND RIGHT OF ENTRY**

12.1 The Developer shall allow the City, the Board, and/or the County access to the Project Property owned or controlled by the Developer for inspections during and upon completion of construction of the Project, and to documents and records considered necessary by the City, the Board and/or the County to assess the Developer's compliance with this Agreement. The Developer shall, in each contract with a builder or lot purchaser, retain a right of entry into the properties and structures in favor of the City for the purpose of allowing the Housing and Neighborhood Services Department's employees and agents as well as County employees to conduct random non-destructive walk-throughs and monitoring of the properties and structures.

## **XIII. LIABILITY**

13.1 As between the City, the County, the Developer, the Board, and any Participating Taxing Entity, the Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of the Developer's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the County, the Board, or any Participating Taxing Entity as a result of the Agreement.

13.2 To the extent permitted by Texas law, no director, officer, employee or agent of the City, the County, the Board, or any other Participating Taxing Entity shall be personally responsible for any liability arising under or growing out of this Agreement.

## **XIV. EXAMINATION OF RECORDS**

14.1 The City and the County each reserve the right to conduct, at its own expense, examinations, during regular business hours and following notice to the Board and the Developer of the books and records related to this Agreement with the City and the County (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Board and/or the Developer's services hereunder) no matter where the books and records are located. The City and the County also reserve the right to perform any and all additional audits relating to the Board's and/or the Developer's services, provided that such audits are related to those services performed by the Board and/or the Developer for the City and the County under this Agreement. These examinations shall be conducted at the offices maintained by the Board and/or the Developer.

14.2 All applicable records and accounts of the Board and/or the Developer relating to this Agreement, together with all supporting documentation, shall be made available in Bexar County, Texas by the Board and/or the Developer throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred, upon City request, at no cost to the City, to the City for retention. During this time, the City or the County, at its own expense, may require that any or all of such records and accounts be submitted for audit to the City or the County or to a Certified Public Accountant selected by either the City or the County within ten (10) days following written request for same.

14.3 Should the City or the County discover errors in internal controls or in record keeping associated with the Project, the Board and/or the Developer shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed sixty (60) days after discovery and notification by the City or the County to the Board and/or the Developer of such discrepancies. The Board and/or the Developer shall inform the City and the County in writing of the action taken to correct such audit discrepancies.

14.4 If it is determined as a result of such audit that the Board and/or the Developer has 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. In addition, if the audit determined that there were overcharges of more than two percent (2%) of the greater of the budget or payments to the Developer for the year in which the discrepancy occurred, and the TIF Fund is entitled to a refund as a result of such overcharges, then the Developer shall pay the cost of such audit.

## **XV. NON-WAIVER**

15.1 No course of dealing on the part of the City, the County, the Board, or the Developer nor any failure or delay by the City, the County, the Board, or the Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

## **XVI. ASSIGNMENT**

16.1 All covenants and agreements contained herein by the City, the County and/or the Board shall bind their successors and assigns and shall inure to the benefit of the Developer and their

successors and assigns.

16.2 The City, the County and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City or County creates without prior consent of the Developer. If the City, the County and/or the Board assign their rights and obligations under this Agreement then the City, the County and/or the Board shall send the Developer written notice of such assignment within fifteen (15) days of such assignment.

16.3 The Developer may sell or transfer its rights and obligations under this Agreement only with the approval of the Board and the written consent of the City and the County, as evidenced by an ordinance passed and approved by the City Council and a resolution or order adopted by the Bexar County Commissioners Court, when a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement. This restriction on the Developer's rights to sell or transfer is subject to the right to assign as provided in Paragraph 16.6 below.

16.4 Any work or services contracted herein shall be contracted only by written contract or agreement and, unless the City grants specific waiver in writing, shall be subject by its terms, insofar as any obligation of the City or the County is concerned, to each and every provision of this Agreement. Compliance by the Developer's contractors and/or subcontractors with this Agreement shall be the responsibility of the Developer. Copies of those written contracts must be submitted with the CPPR in order to be considered for eligible project cost reimbursement.

16.5 The City and the County shall in no event be obligated to any third party, including any contractor, subcontractor or consultant of the Developer, for performance of work or services under this Agreement except as set forth in Section 16.7 of the Agreement.

16.6 Any restrictions herein on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. In no event, however, shall the City or the County be obligated in any way to the aforementioned financial institution or other provider of capital.

16.7 Each transfer or assignment to which there has been consent, pursuant to paragraph 16.3 above, shall be by instrument in writing, in form reasonably satisfactory to the City and the County, and shall be executed by the transferee or assignee who shall agree in writing for the benefit of the City, the County and the Board to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) executed copies of such written instrument shall be delivered to the City and one (1) executed copy of such written instrument shall be delivered to the County. Failure to first obtain, in writing, the City or County's consent, or failure to comply with the provisions herein contained shall operate to prevent any such transfer or assignment from becoming effective.

16.8 In the event the City and the County approve the assignment or transfer of this Agreement, as provided in paragraph 16.6 above, the Developer shall be released from such duties and obligations.

16.9 Except as set forth in paragraph 16.3, the receipt of services from an assignee of the Developer shall not be deemed a waiver of the covenant in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further observance or performance by

the Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City or the County unless such waiver is in writing, and approved by the City Council of the City in the form of a duly passed ordinance and approved by the Bexar County Commissioners Court.

## **XVII. NOTICE**

17.1 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:

### **CITY**

City of San Antonio  
City Manager's Office  
P.O. Box 893366  
San Antonio, Texas 78283-3966  
FAX: (210) 207- 7032

### **BOARD**

Board of Directors, Tax Increment  
Reinvestment Zone Number Twenty-two  
City of San Antonio, Texas  
C/O Housing and Neighborhood Services Dept.  
ATTN: David D. Garza, Director  
City of San Antonio  
1400 S. Flores  
FAX: (210) 207-7914

### **THE COUNTY**

Honorable Nelson W. Wolff  
County Judge  
Bexar County Courthouse  
100 Dolorosa Street  
San Antonio, Texas 78205  
Re: Ridge Stone TIRZ

### **With copies to:**

Aurora M. Sanchez  
Executive Director, Bexar County Community  
and Development Programs  
233 N. Pecos Suite 590  
San Antonio, Texas 78207  
Re: Ridge Stone TIRZ

Bexar County Criminal District  
Attorney's Office-Civil Section  
Criminal Justice Center  
300 Dolorosa Street  
San Antonio, Texas 78205  
Re: Ridge Stone TIRZ

### **DEVELOPER**

Harry Hausman  
Bigfish On Five, L.P.  
ACROPOLIS BUILDING  
13409 N.W. MILITARY HWY., SUITE 302  
SAN ANTONIO, TX 78231  
FAX: (210) 493-6772

17.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when receipt of such transmission is received if such receipt is during normal business hours or the next business day if



such receipt is after normal business hours. Any communication so delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Each party shall have the right from time to time and at any time to change its address by giving at least fifteen (15) days written notice to the other party.

### **XVIII. CONFLICT OF INTEREST**

18.1 The Board and the Developer each acknowledges that it is informed that the Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 In accordance with Section 311.0091(h)(1) of the Act, and pursuant to the subsection above, the Board and the Developer each 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 or the County. The Board and the Developer each further warrants and certifies that each member of the Board and that the Developer has tendered to the City a **Discretionary Contracts Disclosure Statement** in compliance with the City's Ethics Code.

### **XIX. INDEPENDENT CONTRACTORS**

19.1 It is expressly understood and agreed by all parties hereto that in performing their services hereunder, the Board and the Developer at no time shall be acting as agents of the City or the County and that all consultants or contractors engaged by the Board and/or the Developer respectively shall be independent contractors of the Board and/or the Developer. The parties hereto understand and agree that neither the City nor the County shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Board and/or the Developer respectively, under this Agreement unless any such claims are due to the fault of the City or the County.

19.2 The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

## XX. TAXES

20.1 The Developer 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 hereafter be levied upon the Zone Property or upon the Developer or upon the business conducted on the Zone Property or upon any of the Developer's property used in connection therewith, including employment taxes; and the Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developer.

20.2 The Developer shall include in the CPPR submission evidence of payment of the taxes and fees above.

## XXI. COMPLIANCE WITH SBEDA AND EEO POLICIES

21.1 **Agreement to Not Discriminate.** The Board and the Developer are each hereby advised that it is the policy of the City that business enterprises eligible as Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. Except for those Public Improvements commenced prior to the creation of the Zone, the Board and the Developer each agrees for itself that the Board and the Developer will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. The Developer further agrees that with respect to the remaining Public Improvements the Developer will make a good faith effort to comply with the applicable terms and provisions of the City's Non-Discrimination Policy, the City's Small, Minority or Woman-owned Business Advocacy Policy and the City's Equal Opportunity Affirmative Action Policy, these policies being available in the City's Department of Economic Development, Division of Internal Review and the City's Office of the City Clerk.

21.2 **Remedies for Material Deficiencies.** The Developer agrees that if material deficiencies in any aspect of its Small Business Economic Development Advocacy utilization plan are found as a result of a review or investigation conducted by the City's Department of Economic Development, the Developer will be required to submit a written report to the City's Department of Economic Development. The Developer will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating its efforts to resolve any deficiencies. If the City's Department of Economic Development denies a GFEP based on reasonable and published criteria, said denial will constitute failure to satisfactorily resolve any deficiencies by the Developer. Within ninety (90) days following receipt of notice from the City's Department of Economic Development, the Developer's failure to obtain an approved GFEP that includes the specific criteria not previously met shall constitute a breach and result in a penalty on the Developer of \$1,000 per day as liquidated damages for the breach until all deficiencies are resolved. The Developer's failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitutes a further (additional) condition of breach by the Developer and which can, at the option of the Director of the Department of Economic Development, result in termination of this Agreement.

## **XXII. PREVAILING WAGES**

22.1 The TIF program is a discretionary program, and the Board and the Developer are each hereby advised that it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to TIF Development Agreements. For those public improvements constructed under construction contracts executed prior to the **1<sup>st</sup> day of November, 2006**, the Developer will make every effort to seek and produce all evidence of its compliance and its subcontractors' compliance with City Ordinance No. 71312. If, after making every effort, the Developer is unable to produce sufficient evidence of the payment of prevailing wages as required by City Ordinance No. 71312, the Developer may provide a detailed affidavit setting out its efforts to obtain the required records, and the reasons for the failure to do so. The Developer may attach to its own evidence of compliance the affidavits of subcontractors regarding the payment of all sums paid those working for the subcontractor and such evidence and affidavit should be sufficient to establish compliance for the purpose of approving reimbursements unless and until the contrary has been determined by the Director of Public Works or his designee. The subcontractors' affidavits should contain the name and occupation of each worker employed by the subcontractor in the construction of the public improvement, and the actual per diem wages paid to each worker, or contain a statement that the information is not available, that the subcontractor used best efforts to obtain that information, and that the subcontractor believes that he paid prevailing wage rates to his workers in compliance with Chapter 2258 of the Texas Government Code. The Director of Public Works or his designee shall in his sole discretion determine the adequacy of such affidavits, in number, content and form. For those public improvements constructed under construction contracts executed by the Developer after the **1<sup>st</sup> day of November, 2006**, the Board and the Developer each individually agree that the Developer will comply with City Ordinance No. 71312 and its successors, the Developer will require subcontractors to comply with City Ordinance No. 71312, and the City shall not accept affidavits as set out above.

In accordance with the provisions of Chapter 2258 and Ordinance No. 71312, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement is included as **Exhibit C**, and made a part of this Agreement. The Developer is required, and shall require its subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer calls for bids for construction of a given phase. The Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Developer's general contractor and all subcontractors for construction of each phase. The Developer shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Developer or any subcontractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement. The Developer, in the execution of this Agreement, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin.

## **XXIII. CHANGES AND AMENDMENTS**

23.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by the City, the County, the Board and the Developer and evidenced by passage of a subsequent City ordinance, as to the City's approval and an order of the Bexar County Commissioners Court as to the County's approval.

23.2 Notwithstanding the above, the phasing of the Construction Schedule may be amended by approval of the Board and the City, as evidenced by an agreement in writing between the Board and the Director of the Department of the City responsible for the management of the TIF Program, as long as the overall Final Project Plan and Final Financing Plans are not materially changed (more than seven (7) percent) by such amendment. In the event an amendment to the phasing of the Construction Schedule will result in a material change (more than seven (7) percent) to the overall Final Project Plan or Final Financing Plan, then such amendment shall comply with the requirements of Section 23.1, above. No change under this section may result in an increase in the maximum contribution of the City or any other participating taxing entity. The Developer may rely on the determination of the Director of the Department of the City responsible for the management of the TIF Programs whether a change in the phasing of the Construction Schedule would result in a material change to the overall Final Project Plan and Final Financing Plans.

23.3 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services hereunder may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

#### **XXIV. SEVERABILITY**

24.1 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 charter, code, or ordinances of the City, then and in that event it is the intent of the parties hereto 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 intent of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of this 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.

#### **XXV. LITIGATION EXPENSES**

25.1 Under no circumstances will the Available Tax Increment Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in litigation related to TIF or TIRZ or adversarial proceedings related to TIF or TIRZ regarding this Agreement against the City, the County, or any other public entity.

## **XXVI. LEGAL AUTHORITY**

26.1 Each person executing this Agreement on behalf of the City, the County, the Board or the Developer, represents, warrants, assures and guarantees that he has have full legal authority to (i) execute this Agreement on behalf of the City, the County the Board and/or the Developer, respectively and (ii) to bind the City, the County, the Board and/or the Developer to all of the terms, conditions, provisions and obligations herein contained.

## **XXVII. VENUE AND GOVERNING LAW**

27.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

27.2 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.

## **XXVIII. PARTIES' REPRESENTATIONS**

28.1 This Agreement has been jointly negotiated by the City, the County, the Board and the Developer and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

## **XXIX. CAPTIONS**

29.1 All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

## **XXX. ENTIRE AGREEMENT**

30.1 This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

30.2 The **Exhibits** attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an **Exhibit** and a provision of this Agreement, the provision of this Agreement shall prevail over the **Exhibit**.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be signed on the date of the each signature below. In accordance with Section 1.13 above, this Agreement will become effective on the date of the last signature below or on the date of the last signature of the applicable

Interlocal Agreements, whichever is later:

**CITY OF SAN ANTONIO**

**BEXAR COUNTY**

\_\_\_\_\_  
Sheryl Sculley  
City Manager

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

**ATTEST/SEAL:**

\_\_\_\_\_  
Nelson W. Wolff  
County Judge

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

**ATTEST/SEAL:**

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

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

\_\_\_\_\_  
Gerard Rickhoff  
County Clerk

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

**APPROVED AS TO FINANCIAL CONTENT BY BEXAR COUNTY:**

\_\_\_\_\_  
David Smith, Budget Officer and  
Executive Director of Planning and  
Resource Management

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

\_\_\_\_\_  
Tommy Tompkins,  
County Auditor

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

SUSAN D. REED, Criminal  
District Attorney

\_\_\_\_\_  
Michael D. Bernard  
City Attorney

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

By: \_\_\_\_\_

Larry Roberson  
Assistant Criminal District Attorney  
Civil Section

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

**BOARD OF DIRECTORS**  
**Ridge Stone TIRZ**

\_\_\_\_\_  
Name: John A. Carpen  
Presiding Officer, Board of Directors  
Date: 8/14/07

**ATTEST/SEAL:**

\_\_\_\_\_  
Name: Charles Guza  
Secretary, Board of Directors  
Date: 8-14-07

**BOARD OF DIRECTORS,  
TAX INCREMENT REINVESTMENT  
ZONE NUMBER TWENTY-TWO,  
CITY OF SAN ANTONIO, TEXAS**

Name: John A. Campbell  
Title: Chairman, Board of Directors  
Address: 11923 PEMBRIDGE COVE SA  
Date: 8/14/07

**DEVELOPER**

22R  
BIGFISH ON FIVE, L.P.,  
a Texas limited partnership  
By: Turner Bowman  
Date: 8-14-07

**CITY CLERK**

Leticia M. Vacek  
Date: \_\_\_\_\_

**EXHIBIT A**

**Construction Schedule**



## **EXHIBIT A**

### **RIDGE STONE DEVELOPMENT TARGETS**

Site Area 40.587 Acres  
Single-family Development 40.587 Acres

<b>Phase</b>	<b>Year</b>	<b>Number of Units</b>	<b>Type of Construction</b>
1	2004	87	Single-family
2A	2005	36	Single-family
2B	2006	20	Single-family
2C	2006	35	Single-family
3	2006	56	Single-family
	<b>Total</b>	<b>234</b>	<b>Single-family</b>

## **EXHIBIT B**

### **Project Status Report**



## CITY OF SAN ANTONIO TAX INCREMENT REINVESTMENT ZONE Project Status Report

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

- January 15<sup>th</sup>, for the first quarter,
- April 15<sup>th</sup>, for the second quarter,
- July 15<sup>th</sup>, for the third quarter and
- October 15<sup>th</sup>, for the fourth quarter.

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

Each quarterly report must include the following information:

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

In addition, for the City to monitor compliance with Sections 7.3 and 7.4 of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

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

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

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

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

Phases (year)	start date	end date	Private Improvements					
			Single-Family Units		Multi-family Units		Commercial Acres and Square Feet	
			Proposed	Completed	Proposed	Completed	Proposed	Completed
1								Completed
2								
3								
4								
5								
6								
7								
8								
9								
10								

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

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

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

Year	Original Project Plan			Actual/Projected		
	Single-Family	Multi -Family	Other	Single -Family	Multi -Family	Other
1999						
2000						
2001						
2002						
2003						
2004						
2005						
2006						
2007						
2008						

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

**EXHIBIT C**  
**Prevailing Wage Rates**

DA – Ridge StoneHeathers Cove 7-23-07

SKS

AN ORDINANCE 71312

AMENDING ORDINANCE NO. 60110, DATED JANUARY 17, 1985, SO AS TO ADOPT A NEW "GENERAL CONDITIONS" SECTION IN 100% LOCAL FUNDED CITY PUBLIC WORKS CONSTRUCTION CONTRACTS AS SET OUT IN THE REVISED CITY WAGE AND LABOR STANDARD PROVISIONS.

\*\*\*\*\*

WHEREAS, the City Council wishes to establish the general prevailing rate of per diem wages in the form of a sum certain for each of two distinct categories of wages described as "minimum hourly base pay" and "minimum hourly fringe benefit contribution" for all 100% Locally Funded city construction contracts; and

WHEREAS, there is a new United States Department of Labor Wage Determination Decision for Bexar County, Texas, published in the Federal Register, that applies to such 100% Locally Funded contracts; and

WHEREAS, any 100% Locally Funded City Public Works Construction Contractor/Subcontractor is strictly prohibited from paying the various classification of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" by the accounting process of adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to net a combined total of the two categories of the wage; and

WHEREAS, it is the intent of the City Council to allow various classification of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan; and

WHEREAS, the city staff has prepared new "General Conditions", governing wages and labor standards and practices, which are set forth in Attachment I and incorporated herein by reference for all purposes, and which are to be made part of all future 100% Locally Funded City Public Works Construction Contracts; NOW THEREFORE



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

SECTION 1. Ordinance No. 60110, pass on January 17, 1985, is hereby amended to replace the 100 % Locally Funded City Public Works Construction Contract "General Conditions" document attached thereto with the new updated "General Conditions" document attached hereto and labled "Attachment I".

PASSED AND APPROVED THIS 29<sup>th</sup> day of March 1990.

*Lila Cockrell*  
M A Y O R

ATTEST:

*James D. Leasing*  
City Clerk

APPROVED AS TO FORM:

*Tom Finlay*  
City Attorney

AN ORDINANCE 60110

REPEALING ORDINANCE NO. 49318 OF APRIL 27, 1978  
AND REPLACING SAME WITH THIS ORDINANCE, AND  
AUTHORIZING THE CITY MANAGER TO INSTRUCT THE  
DIRECTOR OF PUBLIC WORKS TO INSERT NEW GENERAL  
CONDITIONS GOVERNING WAGE AND LABOR STANDARDS AND  
PRACTICES IN ALL FUTURE 100% LOCALLY FUNDED CITY  
PUBLIC WORKS CONSTRUCTION CONTRACTS.

\* \* \* \* \*

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

SECTION 1. Ordinance No. 49318 of April 27, 1978 is hereby formally repealed.

SECTION 2. In accordance with Article 5159a, Revised Civil Statutes of Texas, as amended, the City Council hereby adopts the most current United States Department of Labor Wage Determination Decisions for Bexar County, Texas (wage determination decision in effect ten (10) days prior to bid opening) as periodically published in the Federal Register as the local general prevailing rate of per diem wages to be paid to various classifications of laborers, workmen, and mechanics employed in either building construction trades or heavy/highway construction trades in constructing 100% Locally Funded City Public Works Construction projects.

Furthermore, it is hereby the expressed intent of the City Council of the City of San Antonio to clearly establish the general prevailing rate of per diem wages to be a sum certain, in dollars and cents, for each of two distinct categories of wage being, "minimum hourly base pay" and "minimum hourly fringe benefit contribution." The contractor/subcontractor is strictly prohibited from paying the various classifications of laborers, workmen, and mechanics any amount less than the "minimum hourly base pay" and then adding the reduction in "minimum hourly base pay" to the "minimum hourly fringe benefit contribution" so as to "net" a combined total of the two intended, distinct categories of the wage in 100% Locally Funded City Public Works Construction contracts.

It is recognized by the City Council that certain job classifications are not entitled to receive any "minimum hourly fringe benefits" by virtue of adopting the United States Department of Labor Wage Determination Decisions for Bexar County, Texas and that result is the express intent of the City Council.

It is also the intent of the City Council to allow the contractor/subcontractor to pay various classifications of laborers, workmen, and mechanics the minimum hourly "cash equivalent" of the appropriate "minimum hourly fringe benefit contribution" listed in a wage determination decision in lieu of benefits contributed to a permissible fringe benefit plan.

SECTION 3. The City Manager is hereby directed to instruct the Director of Public Works to insert into all future 100% Locally Funded City Public Works construction contracts, new "General Conditions" (as set forth in Attachment I, which is incorporated herein by reference for all purposes) governing wage and labor standards and practices.

The City Manager, in consultation with the Director of Public Works, is hereby authorized by City Council to periodically amend such "General Conditions" administratively to reflect needed improvements in the document as required, ~~except~~ that only the City Council shall be authorized to amend legislative matters specifically addressing the prevailing rate of minimum per diem wages, holiday pay, etc.

PASSED AND APPROVED this 17<sup>th</sup> day of January, 1985.

*Henry Cisneros*  
M A Y O R

ATTEST: *Norma J. Rodriguez*  
City Clerk

APPROVED AS TO FORM:

*John Finkley*  
City Attorney

85-04

## **GENERAL CONDITIONS**

### **WAGE AND LABOR STANDARD PROVISIONS-100% LOCALLY FUNDED CONSTRUCTION**

#### **Contents**

1. GENERAL STATEMENT
2. WAGE & HOUR OFFICE, PUBLIC WORKS DEPT. RESPONSIBILITIES
3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES
4. BREACH OF WAGE & LABOR STANDARDS PROVISIONS
5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION
6. MINIMUM WAGE
7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS
8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS
9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS
10. UNDERPAYMENT OF WAGES OR SALARIES
11. POSTING WAGE DETERMINATION DECISION/STATEMENT AND "NOTICE TO EMPLOYEES"
12. PAYROLLS & BASIC PAYROLL RECORDS
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14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES
15. EMPLOYEE INTERVIEWS TO ASSURE WAGE & LABOR STANDARD COMPLIANCE
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19. JOBSITE CONDITIONS
20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

1. GENERAL STATEMENT

This is a 100% locally funded Public Works Contract and Article 5159a, Revised Civil Statutes of Texas, as amended, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance No. 60110 as amended and passed by the City Council of the City of San Antonio. Copies of both the current Ordinance as amended and the wage rates are contained in the Special Conditions, and are included instruments of this contract and full compliance with same shall be required.

Any deviation from Wage and Labor Standard Provisions compliance may be cause for City's withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. WAGE & HOUR OFFICE, PUBLIC WORKS, RESPONSIBILITIES

The Wage & Hour Office, Public Works Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Public Works that:

- a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.
- b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.
- c. Applicable Wage Determination Decisions, including any applicable modifications, and related statements are posted at the work-site by the contractor and that proper job classifications and commensurate minimum hourly base and fringe wage rates are paid.
- d. Employees are periodically interviewed (at random) on each project as required.
- e. That no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.
- f. That any and all periodic administrative directives to the Wage & Hour Office from the Director of Public Works are being implemented.

3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed upon the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Wage & Hour Office, City of San Antonio for further investigation. Claims and disputes not reported by the employee to the City's Wage & Hour Office in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's contract rights against the contractor on behalf of the employee. Waiver by the employee of this City intervention shall not constitute waiver by the City to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

4. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The City of San Antonio reserves the right to terminate this contract for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future City of San Antonio contracts for lack of responsibility, as determined by the City of San Antonio. Recurrent violations, whether remedied or not, will be considered by the Director of Public Works when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Public Works projects. The general remedies stated in this paragraph 4. above, are not exhaustive and not cumulative for the City reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable City of San Antonio ordinances, state and federal statutes.

5. EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determination decision contained in the original contract documents, contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Wage and Hour Office identifying that class of laborers/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgment and information resources available to him at the time, and any similar prior decisions, the Director of Public Works, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor which shall be enforced by the Wage and Hour Office.

6. MINIMUM WAGE

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the wage determination decision included in this contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous U.S. Department of Labor decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City contract execution and provisions thereof disclosed to the Wage and Hour Office, City of San Antonio, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period (e.g. monthly or quarterly, etc.) shall be prorated by the contractor/sub-contractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the non-federally funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he, she is employed on such work to work in excess of 40 hours in such work period unless said laborer/mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the wage determination decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6. above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the jobsite on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 <sup>1</sup>/<sub>2</sub>) times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

- a. When a "full investigation" (as called for in and as construed under Article 5159a, Sec. 2 and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects," as may be amended) evidences underpayment of wages by contractor/sub-contractor to laborers/mechanics employed upon the work covered by this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or this contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, so much thereof as the City of San Antonio may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages required by this contract plus possible penalty (See b. below). The amount so withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds, or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.
- b. Article 5159a, Revised Civil Statutes of Texas, as amended, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars (\$60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar (\$60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.
- c. If unpaid or underpaid workers cannot be located by the Contractor or the City after diligent efforts to accomplish same, unpaid or underpaid wages shall be reserved by the City in a special "unfound worker's account" established by the City of San Antonio, for such



employees. If after one (1) year from the final acceptance of the project by the City, workers still cannot be located, in order that the City can make effective interim re-use of the money, such wages and any associated liquidated damages may be used to defray actual costs incurred by the City in attempting to locate said workers and any remaining monies may then revert back to the City's original funding source for the project. However, unpaid or underpaid workers for which money was originally reserved are eligible to claim recovery from the City for a period of not-to-exceed three (3) years from the final acceptance of the project by the City. Recovery after expiration of the three year period is prohibited.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision:

NOTICE TO LABORERS/MECHANICS

Both the City of San Antonio and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this jobsite and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Martin Luther King Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training programs registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing, within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Wage & Hour Office, Public Works Division, P.O. Box 839966, San Antonio, Texas 78283-3966. It is mandatory that you

promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Wage & Hour Office within the sixty (60) calendar day period so that you do not waive your potential right of recovery under the provisions of the City of San Antonio Public Works contract that governs this project.

Both the City of San Antonio and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

12. PAYROLLS & BASIC PAYROLL RECORDS

- a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Wage & Hour Office of the City of San Antonio. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Wage & Hour Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Wage & Hour Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Public Works, Wage & Hour Office, City of San Antonio, P. O. Box 839966, San Antonio, Texas 78283-3966.
- b. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U. S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

- c. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of San Antonio at reasonable times and locations for purposes of monitoring compliance with this contract.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Director of Public Works or his designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor's, or any other contractor's/subcontractor's work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; and any other measures that may be appropriately utilized to mitigate or eliminate the jobsite and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such proceeding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious jobsite entry of City of San Antonio Wage & Hour representatives displaying and presenting proper identification credentials to the jobsite superintendent or his representative. While on the jobsite, the Wage & Hour representatives shall observe all jobsite rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Wage & Hour representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any City of San Antonio public work shall be induced, by any means, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION" PROVISION

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate this contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEES

- a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Wage & Hour Office of the City of San Antonio, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.
- b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is not registered and participating in a training plan approved

by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee is first listed on, to the Wage & Hour Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

- c. Paragraphs 15.a. and b. above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This sub-paragraph 15.c. shall not apply to those portions of a project deemed to be building construction.

d. RATIOS, APPRENTICE TO JOURNEYMAN:

The Ratio of Apprentice to Journeyman for this project shall be the same as the Ratio permitted under the plan approved by the Employment and Training Administration, Bureau of Apprenticeship and Training, U.S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When a "full investigation" (as called for in, and as construed under, Article 5159a, Sec. 2, and as further generally described in an administrative directive to the City's Wage & Hour Office from the City's Director of Public Works entitled "Conducting Wage and Labor Standards Investigations on 100% Locally Funded City Construction Projects", as may be amended) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/sub-contractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of this contract (especially paragraph 10 underpayment of wages), shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars (\$75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. JOBSITE CONDITIONS

Contractors/subcontractors will not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

- a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by Vernon's Annotated Texas Statutes, especially Article 5181.1 "Child Labor" (as may be amended), and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling law on this subject. The contractor/subcontractor should seek clarification from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.
- b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Public Works is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.
- c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the City of San Antonio may exercise over the contractor.

GENERAL DECISION: **TX20030043** 02/25/2005 TX43

Date: February 25, 2005

General Decision Number: **TX20030043** 02/25/2005

Superseded General Decision Number: TX020043

State: Texas

Construction Types: Heavy and Highway

Counties: Bell, Bexar, Brazos, Comal, Coryell, Guadalupe, Hays, McLennan, Travis and Williamson Counties in Texas.

Heavy (excluding tunnels and dams) and Highway Construction Projects (does not include building structures in rest area projects). \*NOT TO BE USED FOR WORK ON SEWAGE OR WATER TREATMENT PLANTS OR LIFT/PUMP STATIONS IN BELL, CORYELL, MCLENNAN AND WILLIAMSON COUNTIES.

Modification Number	Publication Date
0	06/13/2003
1	01/14/2005
2	02/18/2005
3	02/25/2005

Effective date March 10, 2005

SUTX2005-001 01/03/2005

	Rates	Fringes
Air Tool Operator.....	\$ 16.00	0.00
Asphalt Distributor Operator...	\$ 12.09	0.00
Asphalt paving machine operator	\$ 11.82	0.00
Asphalt Raker.....	\$ 9.96	0.00
Asphalt Shoveler.....	\$ 10.56	0.00
Broom or Sweeper Operator.....	\$ 9.74	0.00
Bulldozer operator.....	\$ 11.04	0.00
Carpenter.....	\$ 12.25	0.00
Concrete Finisher, Paving.....	\$ 10.53	0.00
Concrete Finisher, Structures..	\$ 10.95	0.00
Concrete Paving Curbing Machine Operator.....	\$ 14.00	0.00
Concrete Paving Finishing Machine Operator.....	\$ 12.00	0.00
Concrete Rubber.....	\$ 10.88	0.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel Operator.....	\$ 13.66	0.00
Electrician.....	\$ 24.11	0.00
Flagger.....	\$ 9.49	0.00
Form Builder/Setter, Structures	\$ 10.88	0.00
Form Setter, Paving & Curb.....	\$ 9.89	0.00
Foundation Drill Operator, Truck Mounted.....	\$ 15.00	0.00
Front End Loader Operator.....	\$ 11.36	0.00
Laborer, common.....	\$ 9.34	0.00
Laborer, Utility.....	\$ 10.12	0.00
Mechanic.....	\$ 14.74	0.00
Mixer operator, Concrete Paving	\$ 15.25	0.00
Mixer operator.....	\$ 10.83	0.00
Motor Grader Operator, Fine Grade.....	\$ 15.26	0.00
Motor Grader Operator, Rough...	\$ 12.96	0.00
Oiler.....	\$ 14.71	0.00
Painter, Structures.....	\$ 11.00	0.00
Pavement Marking Machine Operator.....	\$ 11.52	0.00
Pipelayer.....	\$ 10.49	0.00
Planer Operator.....	\$ 17.45	0.00
Reinforcing Steel Setter, Paving.....	\$ 15.50	0.00
Reinforcing Steel Setter, Structure.....	\$ 14.00	0.00
Roller Operator, Pneumatic, Self-Propelled.....	\$ 9.34	0.00
Roller Operator, Steel Wheel, Flat Wheel/Tamping.....	\$ 9.60	0.00
Roller Operator, Steel Wheel, Plant Mix Pavement.....	\$ 10.24	0.00
Scraper Operator.....	\$ 9.93	0.00
Servicer.....	\$ 11.41	0.00
Sign Installer (PGM).....	\$ 14.85	0.00



Slip Form Machine Operator.....	\$ 15.17	0.00
Spreader Box operator.....	\$ 10.39	0.00
Structural Steel Worker.....	\$ 13.41	0.00
Tractor operator, Crawler Type.	\$ 11.10	0.00
Traveling Mixer Operator.....	\$ 10.04	0.00
Trenching machine operator, Heavy.....	\$ 14.22	0.00
Truck Driver Tandem Axle Semi- Trailer.....	\$ 10.95	0.00
Truck driver, lowboy-Float.....	\$ 15.30	0.00
Truck driver, Single Axle, Heavy.....	\$ 11.88	0.00
Truck driver, Single Axle, Light.....	\$ 9.98	0.00
Wagon Drill, Boring Machine, Post Hole Driller Operator.....	\$ 14.65	0.00
Welder.....	\$ 14.26	0.00
Work Zone Barricade Servicer...	\$ 11.15	0.00

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

GENERAL DECISION: **TX20030022** TX22

Date: June 13, 2003

General Decision Number: **TX20030022**

Superseded General Decision No. TX020022

State: TEXAS

Construction Type:  
RESIDENTIAL

County(ies):

BEXAR

COMAL

GUADALUPE

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories.)

Modification Number  
0

Publication Date  
06/13/2003

COUNTY(ies):

BEXAR

COMAL

GUADALUPE

SUTX4027A 05/01/1983

	Rates	Fringes
AIR CONDITIONING MECHANICS	6.60	
CARPENTERS	6.99	
CEMENT MASONS	7.46	
DRYWALL HANGERS	8.73	
ELECTRICIANS	9.66	
IRON WORKERS	5.67	
LABORERS	5.15	
PAINTERS (Including Drywall taping)	8.16	
PLUMBERS	7.70	
ROOFERS	5.74	

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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Wage and Hour Division  
U. S. Department of Labor  
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Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U. S. Department of Labor  
200 Constitution Avenue, N. W.  
Washington, D. C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

## **EXHIBIT D**

### **Form and Requirements of Contract Progress Payment Request**



## **CITY OF SAN ANTONIO CPPR Form and Instructions**

Prior to submitting an invoice to request reimbursement, the developer must submit to the TIF Unit:

- All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and Inspections
- Copies of the payment and performance bond in accordance with executed Development Agreement
- Proof of compliance of the Bidding Policies must accompany the invoices submitted to include, but is not limited to: Publication of request for proposals, list of bidders, rating of bidders, and reason for choosing bidder (*Please refer to City's policy on Bidding Requirements.*)
- Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations and codes.

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include related project name, invoice number, period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method of payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or a cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- **Column A** is the category from the Sources and Uses page for projected expenses
- **Column B** is the forecasted maximum allowable cost per the Final Finance Plan
- **Column C** is the actual developer's expense
- **Column D** is the amount of prior requests
- **Column E** is the balance column. The balance is the difference between the projected expenses and the actual developer's expenses. (The balance column will be used for internal tracking purposes only.)

**\* All Invoice Payments:**

- **Must Be Accompanied by Receipt or Cancelled Check**
- **Must Reference the Project**

**\* Only those categories outlined in the approved Final Finance Plan are eligible expenses for reimbursement.**

### (SAMPLE) Reimbursement for TIRZ Expenses

<b>Project Name:</b> NAD Residential TIRZ		<b>Period covered by this invoice:</b> 12/02---8/03			
<b>Invoice#:</b> One (1)		<b>Phase(s) covered by this invoice:</b> Phases 1, 2, & 3			
Section	A Activity	B Maximum Allowable from Final Finance Plan	C Invoices Amount	D Prior Requests	E **Balance
1	Construction Management	44,200	40,624	0	3,576
2	Contingency	192,500	199,215	0	-6,715
3	Driveway Approach	20,000	22,972	0	-2,972
4	Engineering Survey	50,050	50,000	0	50
5	Formation Fees	150,150	200,000	0	-49,850
6	Gas	144,375	100,000	0	44,375
7	Green Belt/Green Space	26,950	21,000	0	5,950
8	Infrastructure Cost	61,600	60,000	0	1,600
9	Legal Fees	10,000	11,500	0	-1,500
10	Organizational Cost	20,800	35,000	0	-14,200
11	Official Traffic Control Device	15,000	10,000	0	5,000
12	Parking Facilities	30,000	28,250	0	1,750
13	Project Cost	86,163	86,100	0	63
14	Public Schools	10,000	11,000	0	-1,000
15	Recreational Park Area	105,942	105,940	0	2
16	Regional Storm Water Improvements	73,344	73,444	0	-100
17	Relocation Cost	40,747	55,474	0	-14,727
18	Sanitary Sewer	35,000	65,000	0	-30,000
19	Sidewalks	47,500	67,587	0	-20,087
20	Streetscape Planting	20,000	20,000	0	0
21	Street Lights	25,000	25,105	0	-105
22	Water	19,500	19,500	0	0
<b>TOTAL</b>		<b>1,286,321</b>	<b>1,365,211</b>	<b>0</b>	<b>-78,890</b>

Financing Cost does not accrue interest

\*\*The Balance Column is used for Tracking purposes only

All Invoice Payments:

Must Be Accompanied by Receipt or Cancelled Check

Must Reference the Project

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

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



## Reimbursement for TIRZ Expenses

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

Financing Cost does not accrue interest

\*\*The Balance Column is used for Tracking purposes only

All Invoice Payments:

Must Be Accompanied by Receipt or Cancelled Check

Must Reference the Project

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

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

<b>(SAMPLE) Reimbursement for TIRZ Expenses</b>						
<b>Project Name:</b>				<b>Period covered by this invoice:</b>		
NAD Residential TIRZ				12/02---8/03		
<b>Invoice #:</b>				<b>Phase covered by this invoice:</b>		
One (1)				Phases 1,2, & 3		
<b>Section 1</b>	<b>Plat and/or MDP #</b>	<b>Maximum Allowable from Final Finance Plan</b>	<b>Invoice #(s)</b>	<b>Invoice Amount(s)</b>	<b>Balance</b>	<b>Method of Payment</b>
<b>Site Work</b>						
Dirt Movers Inc.	00451364		1520	10,000		Ck# 2140
Dirt Movers Inc.	145246		1555	22,000		Ck# 2141
Dirt Movers Inc.	783581		1600	2,500		Ck# 2142
Dirt Movers Inc.	891771		1680	1,124		Ck# 2142
Dirt Movers Inc.	157863146		1685	5,000		Ck# 2144
<b>Total</b>		<b>44,200</b>		<b>40,624</b>	<b>3,576</b>	

<b>Reimbursement for TIRZ Expenses</b>						
<b>Project Name:</b>				<b>Period covered by this invoice:</b>		
<b>Invoice #:</b>				<b>Phase covered by this invoice:</b>		
<b>Section 1</b>	<b>Plat and/or MDP #</b>	<b>Maximum Allowable from Final Finance Plan</b>	<b>Invoice #(s)</b>	<b>Invoice Amount(s)</b>	<b>Balance</b>	<b>Method of Payment</b>
<b>Site Work</b>						
<b>Total</b>						

**(SAMPLE) Reimbursement for TIRZ Expenses**

<b>Project Name:</b> NAD Residential TIRZ			<b>Period covered by this invoice:</b> 12/02---8/03			
<b>Invoice #:</b> One (1)			<b>Phase covered by this invoice:</b> Phases 1,2, & 3			
<b>Section 2</b> <b>Streets &amp; Approaches</b>	<b>Plat and/or MDP #</b>	<b>Maximum Allowable from Final Finance Plan</b>	<b>Invoice #(s)</b>	<b>Invoice Amount(s)</b>	<b>Balance</b>	<b>Method of Payment</b>
NAD Contractors	00451364		2020	\$165,000		Ck# 2523
<b>Total</b>		<b>\$192,500</b>		<b>\$165,000</b>	<b>\$27,500</b>	

**Reimbursement for TIRZ Expenses**

<b>Project Name:</b>			<b>Period covered by this invoice:</b>			
<b>Invoice #:</b>			<b>Phase covered by this invoice:</b>			
<b>Section 2</b> <b>Streets &amp; Approaches</b>	<b>Plat and/or MDP #</b>	<b>Maximum Allowable from Final Finance Plan</b>	<b>Invoice #(s)</b>	<b>Invoice Amount(s)</b>	<b>Balance</b>	<b>Method of Payment</b>
<b>Total</b>						

**(SAMPLE) Reimbursement for TIRZ Expenses**

<b>Project Name:</b> NAD Residential TIRZ			<b>Period covered by this invoice:</b> 12/02---8/03			
<b>Invoice #:</b> One (1)			<b>Phase covered by this invoice:</b> Phases 1,2, & 3			
<b>Section 3 Parkway</b>	<b>Plat and/or MDP #</b>	<b>Maximum Allowable from Final Finance Plan</b>	<b>Invoice #(s)</b>	<b>Invoice Amount(s)</b>	<b>Balance</b>	<b>Method of Payment</b>
Fast City Contractors	3574216		123	\$10,000		Ck# 8989
			456	\$4,500		Ck# 8989
			789	\$5,500		Ck# 8989
<b>Total</b>		<b>\$20,000</b>		<b>\$20,000</b>	<b>\$0.00</b>	

**Reimbursement for TIRZ Expenses**

<b>Project Name:</b> NAD Residential TIRZ			<b>Period covered by this invoice:</b> 12/02---8/03			
<b>Invoice #:</b> One (1)			<b>Phase covered by this invoice:</b> Phases 1,2, & 3			
<b>Section 3 Parkway</b>	<b>Plat and/or MDP #</b>	<b>Maximum Allowable from Final Finance Plan</b>	<b>Invoice #(s)</b>	<b>Invoice Amount(s)</b>	<b>Balance</b>	<b>Method of Payment</b>
<b>Total</b>						

**EXHIBIT E**

**City of San Antonio's Discretionary Contracts Disclosure Form**

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

**(1) Identify any individual or business entity that is a party to the discretionary contract.**

**(2) Identify any individual or business entity which is a *partner, parent* or *subsidiary* business entity, of any individual or business entity identified above in Box (1):**

☐ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

**(3) Identify any individual or business entity that would be a *subcontractor* on the discretionary contract.**

☐ No subcontractor(s); or

List subcontractors:

**(4) Identify any *lobbyist* or *public relations firm* employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.**

☐ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3).

☐ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☐ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:	Title:	Date:
	Company or D/B/A:	

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

Exhibit 2  
Ridge Stone TIRZ  
Bexar County Interlocal Agreement



THE STATE OF TEXAS

§ RIDGE STONE TIRZ

COUNTY OF BEXAR

§

§ BEXAR COUNTY

### INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** (the "Agreement") is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "City"), a Texas Municipal Corporation, acting through its City Manager pursuant to Ordinance No. 2007-\_\_-\_\_-\_\_ passed and approved by the City Council on the \_\_th day of \_\_\_\_, 2007, **BEXAR COUNTY**, a political subdivision of the State of Texas, acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on the \_\_ day of \_\_\_\_, 2007 (hereafter referred to as "the County"), and the **BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER TWENTY-TWO, CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "the Board"), a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (hereafter referred to as "the Act"). The City, the County, and the Board may be referred to singularly as a "Party" or collectively as "Parties." This Agreement is made pursuant to Chapter 311, Texas Tax Code for the participation of the City and the County in the Ridge Stone Project (the "Project").

### RECITALS:

**WHEREAS**, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City of San Antonio, Texas (the "City") created Tax Increment Reinvestment Zone Number Twenty-two, City of San Antonio, Texas (the "Zone"), created a Board of Directors for the Zone (the "Board") and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

**WHEREAS**, the Board and the County support the City in development activities for the Ridge Stone Project, and the County intends to participate in the Zone Project by contributing fifty percent (50%) of the maintenance and operation portion of the County's general fund tax on the Captured Appraised Value for tax years 2004-2023; and

**WHEREAS**, pursuant to said authority above, the Board, the City and the County each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as specified in the Project Plan, Financing Plan and the Development Agreement; and

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

### I. CONTENTS

#### **A. Table**

This Agreement consists of the following sections:

<u>Section</u>	<u>Description</u>	<u>Page</u>
I.	Contents	2
II.	Definitions	2
III.	Background	4
IV.	Rights and Obligations of the County	5
V.	Rights and Obligations of the City and the Board	8
VI.	Term and Termination	10
VII.	Miscellaneous	12
Exhibit "A"	Development Targets	

#### **B. Parts Incorporated**

The following documents are hereby incorporated into this Agreement by this reference for all purposes:

1. City of San Antonio Ordinance No. 100188, dated December 16, 2004, which designated the Zone;
2. Project and Financing Plans for the Zone as adopted by the City on the \_\_th day of \_\_\_\_\_, 2007, by Ordinance No. 2007-\_\_-\_\_-\_\_\_\_; and
3. The Development Agreement between the City, the County, the Developer and the Board, approved by Ordinance No. 2007-\_\_-\_\_-\_\_\_\_ and executed on the \_\_th, day of \_\_\_\_\_, 2007.

## **II. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set out below:

1. "Administrative Costs" means reasonable costs directly incurred by a Participating Taxing Entity (as hereinafter defined) related to its agreement to participate in the development of the Zone, as described in this Agreement. These costs include, but are not limited to, reasonable costs and expenses for legal review and financial analysis related to the Zone incurred prior to entering into this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective. The initial startup Administrative Costs for all Participating Taxing Entities is seventy-five thousand dollars (\$75,000.00), of which the County shall receive six thousand, one hundred ninety dollars and fifty-eight cents (\$6,190.58), and the City shall receive sixty-eight thousand, eight hundred and nine dollars and forty-two cents (\$68,809.42). The Parties also agree that the ongoing annual Administrative Costs during the life of the Zone are anticipated to be as follows:

A. The City                      \$247,000.00    (\$13,000.00/year); and

B. The County                  \$38,000.00    (\$2,000.00/year).

The total Administrative Costs to be paid out of the TIF fund are estimated to be three hundred sixty thousand dollars (\$360,000.00) in the aggregate for the life of the Zone.

2. The "Board" means the Board of Directors of the Zone established to manage, and/or operate the Zone pursuant to Sections 311.0091 and 311.010 of the Act, as well as implement the Project, as described in City of San Antonio Ordinance No. 100188, dated December 16, 2004.
3. "Captured Appraised Value" means the captured appraised value of the Zone, as defined by Section 311.012(b), Texas Tax Code (and as said Code may be amended from time to time).
4. "Construction Schedule" means the schedule contained in the Project Plan which is incorporated into this document in its entirety by reference, for the construction of all components of the Project, which may be amended from time to time by the Developer, the County, the Board and City in accordance with the terms of the Development Agreement.
5. The "Developer" means **BIGFISH ON FIVE, L.P.** .
6. "Development Agreement" means the agreement entered into between the City, the County, the Developer and the Board which was approved by the Board on the \_\_\_th day of \_\_\_\_\_, 2007, by the City Council on the \_\_\_th day of \_\_\_\_\_, 2007, and by the County on the \_\_\_th day of \_\_\_\_\_, 2007.
7. "Financing Plan" means the Final Reinvestment Zone Financing Plan for the Zone as adopted by the Board on the 2nd day of February, 2007, and as approved by the City Council on the 1st day of March, 2007.
8. "Participating Taxing Entity" or "Participating Taxing Entities" means, singularly, a taxing unit participating in the Zone, and collectively, all taxing units participating in the Zone, and shall include the City and the County.
9. "Project Costs" means the items set forth and described in Section 311.002(1) of the Act (which may be amended from time to time), which are included in the Project Plan for the Project. The Project Costs include public infrastructure improvements and related capital costs including: site work, storm water pollution prevention, streets, drainage, sewer, water, street lights, street signs, CPS electric, lift station, SAWS fees, off site water, platting/zoning fees, traffic fees, park fees, drainage fees, improvements to Medina Base Road, trails and park improvements in the adjacent city park, engineering/surveying fees, geotechnical, phase one environmental, contingency, construction management, legal and formation fees for public improvements to be constructed by the Developer on an approximately 47.002 acre site known as the Ridge Stone Subdivision. The Project Costs for public improvements including Medina Base Road improvements are estimated at three million, seven hundred

ninety- four thousand, four hundred and sixty dollars (\$3,794,160.00) for the life of the Zone, plus a maximum of six hundred thirteen thousand, nine hundred and eighty-seven dollars (\$613,987.00) in interest on eligible project costs.

10. "Project Plan" means the Final Project and Reinvestment Zone Financing Plan for the Zone as adopted by the Board on the 31st day of January, 2007 and approved by the City Council of the City on the 1st day of March, 2007.
11. "Tax Increment" has the meaning assigned by section 311.012 of the Texas Tax Code, and applies only to taxable real property within the Zone.
12. "Tax Increment Base" has the meaning assigned by section 311.012 of the Texas Tax Code, and means the total appraised value of all real property taxable by a Participating Taxing Entity and located in the Zone as of January 1, 2004, the year in which the Zone was designated.
13. "Tax Increment Fund" means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled "Reinvestment Zone Number Twenty-two (22), City of San Antonio, Texas Tax Increment Fund."
14. "Tax Increment Payment" means the amount of the Tax Increment that a Participating Taxing Entity agrees to deposit annually into the Tax Increment Fund in accordance with this Agreement, the Project Plan and the Finance Plan.
15. "Zone" means Reinvestment Zone Number Twenty-two (22), City of San Antonio, Texas, created by the City on December 16th, 2004, by Ordinance No. 100188.

### III. BACKGROUND

- A. **City Action.** Resolution of Intent No. 2004-34-33, passed and approved by the City Council of the City on September 23, 2004, expressed the City's intent to create a tax increment reinvestment zone in accordance with Chapter 311, Texas Tax Code, to support revitalization activities for the Zone, and the development of the Project. On December 16, 2004, the City Council of the City passed and approved Ordinance No. 100188, which created the Zone.
- B. **Project Location.** The Project is located in the southwest section of the City of San Antonio, approximately east of Loop 410 and south of Medina Base Road. The Project is in the Southwest Independent School District and encompasses approximately 40.587 acres.
- C. **Project Value.** The Tax Increment Base for the Zone as determined by the Bexar Appraisal District is one million three hundred ninety-nine thousand and six hundred dollars (\$1,399,600.00) and the projected Captured Appraised Value of all the taxable real property in the Zone at the end of the Agreement Term is estimated to be twenty-four million, three

hundred fifty-three thousand, five hundred and sixty dollars (\$24,353,560.00). The Project does not include the issuance of TIF bonds or certificates of obligation.

- D. Project Phasing and Duration.** Project Phasing and Duration. The Project includes the construction of approximately 234 single-family homes with an average sales price of \$95,000.00. Construction will be carried out in three phases as specified in the Development Agreement. The Zone is projected to terminate on September 30, 2024, unless earlier termination occurs under this Agreement (the "term of the Zone").
- E. Mutual Agreement.** The City and the County agree to participate in the Zone, and to deposit their respective Tax Increment Payments to the Tax Increment Fund, in accordance with the terms, and in consideration of the agreements set forth herein. The County hereby acknowledges receipt of notice of the initial creation of the Zone. The Parties hereto agree that, except as provided herein, no tax-supported public debt instrument will be issued by a Participating Taxing Entity, or the Board to finance any costs or improvements on the Project.

#### **IV. RIGHTS AND OBLIGATIONS OF THE COUNTY**

**A. Tax Increment Participation by the County**

1. Subject to the limitations set out in this Agreement, the County agrees to participate in the Zone by contributing to the Tax Increment Fund fifty percent (50%) of the maintenance and operation portion of the County's general fund tax on the Captured Appraised Value for each tax year, beginning with the 2004 tax year, and ending with the 2023 tax year. The County specifically excludes from its Tax Increment any other tax, including Bexar County Hospital District taxes, Flood Control District taxes and the debt service portion of taxes collected by County.
2. The Parties agree that the County's contribution to the Tax Increment Fund shall be used to fund public improvements to support the development and revitalization efforts in the Zone, limited to eligible Project Costs. The County's contributions to the Tax Increment Fund shall end when it has contributed the maximum total contribution provided for herein, on the Zone termination date of September 30, 2024, or upon termination of this Agreement or the Development Agreement by any party, whichever occurs first. Notwithstanding anything herein to the contrary, the total County Tax Increment Payments to the Tax Increment Fund shall not exceed one million twenty-eight thousand, two hundred and nine dollars (\$1,028,209.00).

**B. Tax Increment Payment**

1. The County's obligation to contribute its Tax Increment Payment to the Tax Increment Fund, as provided in Article IV, Paragraph A.1 of this Agreement, shall accrue as the County collects its Tax Increment. The Parties hereto agree that all real property taxes collected each year by the County that are attributable to real property in the Zone, shall first constitute taxes on the Tax Increment Base and after the total amount of taxes on the Tax Increment Base have been collected, shall then, except as may be excepted herein, constitute the Tax Increment. The County agrees to deposit its Tax Increment Payments

to the Tax Increment Fund on or before April 15 and September 15 (or the first business day thereafter) of each year. The amount of each Tax Increment Payment shall be based on the Tax Increments that were received by the County, and not previously deposited, during the semi-annual periods preceding each deposit date (For example, the first deposit on September 15, 2007 shall be for Tax Increments received, and not previously deposited, through June 30, 2007. The next deposit on April 15, 2008 shall be for Tax Increments received, and not previously deposited, through January 31, 2008.) The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received from January 1, 2004 through June 30, 2007.

2. One month prior to a payment required under Article IV, paragraph B.1 of this Agreement, the City shall provide to the County an updated fact sheet that includes detail as to what portion of the Project has been completed to date, a schedule of what portion of the Project is to be completed in the following year and a current roster of the Zone's board members, including the term of each board member, the entity that appointed the board member and the date for the annual meeting. The update shall also include a summary of requests for reimbursements that have been submitted to the City by the Developer, and a report showing Board or City approved expenses. Also prior to the County's payment, the City shall provide a statement of TIF Fund Activity, including a tally of requests for reimbursement, City and Board approved payments, payments not approved by the City and the Board, outstanding balance due to the Developer, or if the maximum contribution has been reached, the pro rata balance due to each Participating Taxing Entity.
3. Pursuant to the Act, in the event there is a conflict between the Parties in regards to the amount of the Tax Increment owed by the County, the Parties agree that the County will make a reasonable determination as to the amount of any Tax Increment owed by the County under this Agreement and the County will be responsible for reasonably determining which tax collections will be apportioned for purposes of determining the County Tax Increment. The annual Total Appraised Value of all real property taxable by the County located in the Zone shall be determined through an independent third party verification obtained from the Bexar County Appraisal District. The Bexar County Tax Office will verify taxes levied and collected in regards to the property contained with the Zone.
4. The Parties agree that payment for the performance of governmental functions or services under this Agreement shall only be made from current revenues available to the paying Party. In other words, a Party is not obligated to perform said services or functions if said Party lacks current revenues to pay for said services or functions.
5. The Parties expressly agree that, to the extent permitted by law, any delinquent deposit of a Tax Increment Payment under this Agreement by the County shall be administered as provided in Section 311.013(c) of the Act (or its successor provision). The Parties expressly agree that the County shall not owe any penalty or interest on Tax Increments that have been levied, but not received by the County. In addition, the County shall not be obligated to contribute its Tax Increment Payments from any non-Tax Increment

revenue source. Furthermore, the County shall not be obligated to contribute its Tax Increment Payment to the Tax Increment Fund in the event a Participating Taxing Entity, other than the County, discontinues its required contribution (except as otherwise agreed to in this Agreement) or fails to fully contribute its entire contribution to the Tax Increment Fund during the term of this Agreement unless the discontinuance is in compliance with and authorized by a written amendment to this Agreement.

6. The City and the Board agree to the extent permitted by law to comply with the Project Plan and the Development Agreement. The City and the Board agree to provide prior written notice to all Participating Taxing Entities of a proposed material change (by which is meant any change that would constitute a seven percent (7%) increase or decrease in either the Project Cost or the scope and scale of the Project) to the Project Plan or the Development Agreement. The Participating Taxing Entities shall have a period of thirty (30) business days from the date of receipt of such notice of a material change to provide comment(s) and objection(s) to the proposed change. The absence of written objections or comments by the Participating Taxing Entity to the City will constitute approval of the proposed material change by the Participating Taxing Entity. If a Participating Taxing Entity provides written notice to the City that it objects to the proposed material change to the Project Plan or the Development Agreement, and the objection, as set out in the notice, is not resolved within forty-five (45) business days from the date of such notice and the City approves such material change, then the Participating Taxing Entity providing the objection may thereafter discontinue its Tax Increment Payments and terminate its participation in the Zone. Upon prior ten (10) day written notice to County, during which period the County may raise objections and/or concerns, the Parties shall have the right to amend and modify the Project Plan if the amendment or modification does not constitute a material change as defined herein.
7. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the County shall not have any obligation or responsibility for any costs or expenses associated with the development of the Zone or the implementation of the Project Plan, including, without limitation, any obligation to pay or repay any debt issued by another Participating Taxing Entity, the Zone, or Board relating to the Zone or any costs associated with the operation of the Zone, the Project, or any other projects relating thereto.

**C. School District Provisions**

The County understands that the Project is located in the Southwest Independent School District. The County further understands that the Southwest Independent School District is not participating in the Zone.

**D. Management of the Zone**

1. The City is the only Participating Taxing Entity with any responsibility for managing or administering the Project. The Participating Taxing Entities, during the term of this Agreement, may inspect the Project site and review Project plans and drawings upon reasonable notice.

2. The Board shall be composed of eleven (11) members, as provided by Section 311.0091(c) of the Texas Tax Code. Accordingly, the County shall have the right to appoint two (2) members to the Board.

**E. Expansion of the Zone**

The obligation of the County to participate in the Zone is limited to the description of the Zone contained in the Project and Financing Plans. The County's participation shall not extend to the Tax Increment on any additional property added to the Zone by the City unless the County approves in writing such participation.

**V. RIGHTS AND OBLIGATIONS OF CITY AND BOARD**

**A. Tax Increment Participation by City**

1. Subject to the limitations set out in this Agreement, the City agrees to participate in the Zone by contributing to the Tax Increment Fund ninety percent (90%) of the City's Tax Increment for each tax year beginning with the 2004 tax year and ending with the 2023 tax year.
2. The Parties agree that the City's contribution to the Tax Increment Fund shall be used to fund public improvements to support the development and revitalization efforts in the Zone, limited to eligible Project Costs. The City's contributions to the Tax Increment Fund shall end when the City has contributed the maximum total contribution provided for herein, on the Zone termination date of September 30, 2024, or upon termination of this Agreement or the Development Agreement by any party, whichever occurs first. Notwithstanding anything herein to the contrary, the total City Tax Increment Payments to the Tax Increment Fund shall not exceed three million seven hundred thirty-nine thousand, nine hundred and thirty-eight dollars (\$3,739,938.00) in the aggregate.

**B. Tax Increment Payment**

1. The City's obligation to contribute its Tax Increment Payment to the Tax Increment Fund as provided above in Article V, paragraph A.1 of this Agreement shall accrue as the City collects its Tax Increment. The Parties hereto agree that all real property taxes collected each year by the City that are attributable to real property in the Zone, shall first constitute taxes on the Tax Increment Base and after the total amount of taxes on the Tax Increment Base have been collected, shall then, except as may be excepted herein, constitute the Tax Increment. The City agrees to deposit its Tax Increment Payment to the Tax Increment Fund on or before April 15 and September 15 (or the first business day thereafter) of each year. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received by City, and not previously deposited, during the semi-annual periods preceding each deposit date. (For example, the first deposit on September 15, 2007 shall be for the Tax Increments received, and not previously deposited, through June 30, 2007. The next deposit on April 15, 2008 shall be for Tax Increments received, and not previously deposited, through January 31, 2008). The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received from January 1, 2004 through June 30, 2007.



2. The Parties expressly agree that, to the extent permitted by law, any delinquent deposit of a Tax Increment Payment under this Agreement by the City shall be administered as provided in Section 311.013(c) of the Act (or its successor provision). The Parties expressly agree that the City shall not owe any penalty or interest on Tax Increments that have been levied, but not received by the City. In addition, the City shall not be obligated to contribute its Tax Increment Payments from any non-Tax Increment revenue sources. Furthermore, the City shall not be obligated to contribute its Tax Increment Payment to the Tax Increment Fund in the event a Participating Taxing Entity, other than the City, discontinues its required contribution (except as otherwise agreed to in this Agreement) or fails to fully contribute its entire contribution to the Tax Increment Fund during the term of this Agreement unless the discontinuance is in compliance with and authorized by a written amendment to this Agreement.
3. The Parties agree that payment for the performance of governmental functions or services under this Agreement shall only be made from current revenues available to the paying Party. In other words, a Party is not obligated to perform said services or functions if said Party lacks current revenues to pay for said services or functions.
4. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the City shall not have any obligation or responsibility for any costs or expenses associated with the development of the Zone or the implementation of the Project Plan, including, without limitation, any obligation to pay or repay any debt issued by another Participating Taxing Entity, the Zone, or Board relating to the Zone or any costs associated with the operation of the Zone, the Project, or any other projects relating thereto.

**C. Financing of Project Costs**

Each Participating Taxing Entity shall participate in the payment of Project Costs only to the extent described herein. The City and the Board shall be entitled to enter into any other agreements to pay Project Costs and other reasonable expenses from the Tax Increments paid into the Tax Increment Fund by the City without the consent of any other Participating Taxing Entity, but will provide written notice of such agreement(s) when entered into (and upon written request, will provide copies of such agreement(s) and all applicable exhibits) to each Participating Taxing Entity. However, except as provided herein, neither Board nor the City shall ever use any Tax Increment Payments contributed by a Participating Taxing Entity, other than that contributed by the City to make payments on bonds, interests of obligations, or other similar debt interests without the prior written authorization by and consent of all Participating Taxing Entities.

**D. Disbursement of Funds in the Tax Increment Fund**

1. Each Participating Taxing Entity agrees that the City shall administer the Tax Increment Fund on behalf of the Board, pursuant to Ordinance No. 94468, passed and approved by the City Council on August 30, 2001. No funds shall be disbursed from the Tax Increment Fund without the prior written approval of the Board and the City; EXCEPT if the City or County is entitled to reclaim funds pursuant to Article VI, paragraph B, then no approval is necessary.

2. The County agrees that the City and the Board may, to the extent funds are available in the Tax Increment Fund and to the extent allowed by law, use such funds to reimburse the City and the County for their Administrative Costs, if the City and the County provide an invoice for Administrative Costs with their requests to the Board for reimbursement. If it is determined during the term of this Agreement that reimbursement of Administrative Costs is not allowed under law, the Parties agree that the Board shall set the amount which the City and the County may withhold as Administrative Costs from their respective Tax Increment Payment based on the best evidence available to the Board to make such projections, including but not limited to invoices reflecting Administrative Costs incurred by the City and the County. The Parties agree and understand that under no circumstances shall Administrative Costs, in the aggregate, exceed the amount set out and described in Article II, paragraph 1 of this Agreement.
3. The County further agrees that the City and the Board may disburse funds in the Tax Increment Fund to pay expenditures in the following order or priority of payment: (i) to reimburse eligible startup Administrative Costs incurred by the City and the County; (ii) to pay all other ongoing Administrative Costs to the City and County for administering the Tax Increment Fund and/or the Zone, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the City and County, then the ongoing Administrative Costs of the City and County shall be reimbursed on a pro rata basis based on each taxing entity's level of participation in the Zone; (iii) to reimburse the City for costs of the repair, replacement, and maintenance of public infrastructure and associated costs as described in the Development Agreement; (iv) to reimburse the County under any reclaim of funds under Article VI, paragraph B; (v) to reimburse the City under any reclaim of funds pursuant to Article X, Paragraph 10.1 of the Development Agreement; (vi) to reimburse the Developer for public improvements, including financing costs, as provided in the Development Agreement and in the Project Plan to the extent that funds in the Tax Increment Fund are available for this purpose. The foregoing notwithstanding, no funds will be paid from the Tax Increment Fund to a Participating Taxing Entity for its financial or legal services in any dispute arising under this Agreement with another Participating Taxing Entity or Participating Taxing Entities.

## **VI. 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 September 30, 2024, unless earlier terminated as provided herein (the "Agreement Term"). Subject to the terms of this Agreement, the County agrees to participate under this Agreement, beginning with the 2004 tax year and ending in accordance with the terms provided herein. The Parties agree and understand that the City's and the County's Tax Increment Payments will not be made after September 30, 2024, as set out in Article IV, paragraph A.2 and Article V, paragraph A.2 of this Agreement.

### **B. Early Termination**

The City and the County shall not be required to remit a Tax Increment Payment into the Tax Increment Fund of the Zone unless the conditions of Section 311.013(d) of the Act are met.

In accordance with Article VII, paragraph L.1 of this Agreement, the City agrees to enforce the terms of the Development Agreement. Pursuant to Article X of the Development Agreement, the City may terminate the Zone for any of the reasons listed in the Development Agreement. The termination of the Development Agreement also terminates this Interlocal Agreement. Further, and after giving any required notice, the County may terminate its participation in the Zone and shall not be required to deposit a Tax Increment Payment into the Tax Increment Fund as required by this Agreement if: (1) a Party to this Agreement breaches the Agreement; (2) the County determines that a breach of the Development Agreement has occurred; (3) the City and/or Board declare that a breach of the Development Agreement has occurred; (4) in accordance with Article IV, paragraph B.4 of this Agreement, in the event any other Participating Tax Entity discontinues its Tax Increment Payment and terminates its participation in the Zone; or (5) any party to this Agreement or the Development Agreement initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceedings related to TIF or TIRZ against or involving the County.

Prior to terminating its participation in the Zone, the City or County shall provide written notice to Developer, and the Board (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s). If the objection and/or concern as set out in the notice is not resolved within ninety (90) business days from the date of such notice, this Agreement shall automatically terminate effective as of the date such notice is sent.

In the event a Participating Taxing Entity terminates this Agreement because of a breach of the Development Agreement by Developer or Developer initiates, pursues or otherwise engages in litigation related to TIF or TIRZ or any type of adversarial proceeding related to TIF or TIRZ against or involving the County, Developer shall repay the County the following amounts: 1) if the breach occurs during a Construction Phase, the Developer shall repay County an amount equal to the funds the County paid into the Tax Increment Fund during that specific Phase, or 2) if the breach occurs after all Construction Phases are completed, the Developer shall repay County an amount equal to the funds the County paid into the Tax Increment Fund during the last twelve months. Funds which become due and owing under this provision shall be paid by Developer to the County within ninety (90) calendar days after Developer receives written notice of breach from a Participating Taxing Entity. The County may extend the ninety (90) day cure period under this Agreement in its own discretion. If Developer fails to pay the County within the time specified, the County may seek reimbursement of all payments made into Tax Increment Fund from any undisbursed funds in the Tax Increment Fund. Each Participating Taxing Entity agrees to look only to the Developer and the Tax Increment Reinvestment Fund of this Zone for any reimbursement, contractual claim, damages, or payment of any type.

### **C. Disposition of Tax Increments**

Upon expiration or termination of the Zone, any money remaining in the Tax Increment Fund shall be paid to the Participating Taxing Entities on a pro rata basis in accordance with Section 311.014(d) of the Act, in the order of priority described above. In addition, any payments returned to the City by Developer pursuant to Article X, paragraph 10.1 of the Development Agreement shall also be distributed to Participating Taxing Entities on a pro rata basis.

## **VII. MISCELLANEOUS**

### **A. Understanding**

Any and all costs incurred by the Developer are not, and shall never become general obligations or debts of any Participating Taxing Entity. The eligible public improvement infrastructure costs incurred by Developer shall be payable solely from the Tax Increment Fund in the manner and priority provided in this Agreement and only to the extent that tax increment funds become available. The Parties agree and understand that under no circumstance shall the eligible costs exceed the maximum specified in the Project Plan. No Participating Taxing Entity shall be obligated above and beyond what is actually collected as tax increment funds. The City and the Board each represent that the Developer understands and agrees that the Project Plan does not forecast sufficient tax revenues in the Tax Increment Fund to reimburse the Developer for all its estimated contributions or costs.

### **B. Severability**

1. In the event any term, covenant, or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition herein contained, provided that such invalidity does not materially prejudice any Party hereto in its respective rights and obligations contained in the valid terms, covenants, or conditions hereof.
2. In the event any term, covenant, or condition shall be held invalid and said invalidity substantially impairs a material right of a Participating Taxing Entity or Board, then this Agreement shall be void as to that Participating Taxing Entity and that Participating Taxing Entity shall have no further obligation to contribute any future Tax Increment Payments to the Tax Increment Fund. In such a situation, the Parties hereto agree that the Tax Increment Fund shall not refund any prior Tax Increment Payments under this provision of this Agreement.

### **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. All Parties to this Agreement understand and recognize that only City Council of the City and only the Commissioners Court of the County have authority to

approve a change or amendment to this Agreement on behalf of the City or the County, 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 (10) days' prior written notice.

**CITY**

Sheryl Sculley  
City Manager  
City of San Antonio  
100 Military Plaza  
San Antonio, Texas 78205  
Re: Ridge Stone TIRZ

**THE COUNTY**

Honorable Nelson W. Wolff  
County Judge  
Bexar County Courthouse  
100 Dolorosa Street  
San Antonio, Texas 78205

**With copies to:**

David G. Garza  
Director  
Neighborhood Services Dept.  
1400 So. Flores St.  
San Antonio, Texas 78204  
Re: Ridge Stone TIRZ

Aurora M. Sanchez  
Executive Director, Bexar County Community  
and Development Programs  
233 N. Pecos Suite 590  
San Antonio, Texas 78207  
Re: Ridge Stone TIRZ

Bexar County Criminal District  
Attorney's Office-Civil Section  
Criminal Justice Center  
300 Dolorosa Street  
San Antonio, Texas 78205  
Re: Ridge Stone TIRZ

**And:**

**BOARD**

Presiding Officer/Chairperson  
"Reinvestment Zone Number Twenty-two,  
City of San Antonio, Texas"  
c/o Neighborhood Services Department  
1400 So. Flores St.  
San Antonio, Texas 78204

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 or facsimile if received during normal business hours and on the next business day if received after normal business hours; or (ii) on the third business day following deposit in a United States Postal Service post office or receptacle with proper postage affixed or on the date of receipt if mailed by certified mail, return receipt requested, addressed to the respective

other Party at the address prescribed in Section I of this Agreement, or at such other address as the receiving Party may have theretofore prescribed by notice to the sending Party.

**F. Non-Waiver**

Failure of any Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon breach 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 breach or failure of performance.

**G. Assignment**

Except for the City's right to assign and delegate 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 written consent of the other Parties. All Parties to this Agreement understand and recognize that only the City Council of the City and only the Commissioners Court of the County have authority to approve a delegation or assignment (of any kind) of this Agreement on behalf of the City or the County, respectively.

**H. Successors**

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

**I. Project Plan**

The County acknowledges that it was permitted to review and comment upon the Project Plan before it was submitted to the Board and the City Council for approval. The Parties agree an amendment to the Project Plan shall not apply to the County unless the County approves the amendment as provided herein if such amendment to the Project Plan (i) has the effect of directly or indirectly increasing the percentage or amount of Tax Increment to be contributed by the County to the Tax Increment Fund; or (ii) increases or reduces the geographical area of the Zone set forth in the Project Plan.

**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.

**K. Access to Financial Information**

The Board agrees to conduct or to cause to be conducted, at a minimum, an annual audit, a copy of which will be provided to the County. Furthermore, each Party to this Agreement shall have reasonable access to financial information and audit reports regarding the

operation of the Zone, contribution of Tax Increment Payments to the Tax Increment Fund, and expenditures from the Tax Increment Fund for Project Costs. In addition, the City agrees, during the term of this Agreement, to prepare and deliver an annual report to the County in accordance with Section 311.016, Texas Tax Code.

**L. Development Agreement**

1. The City, the County and the Board have entered into a written Development Agreement with the Developer related to the Project and the development of the Zone. The City hereby represents that it will enforce the provisions of this Agreement, in accordance with the direction of the City Council of San Antonio as it exists at the time of the decision, including, to the extent contained in the Development Agreement, the Developer's compliance with (i) applicable building codes and ordinances, including but not limited to flood, subdivision, building, electrical, plumbing, fire, and life safety codes and ordinances, as amended; all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, orders, and codes, as amended; and rules and codes that govern development over the Edwards Aquifer Recharge Zone (if applicable); (ii) the TIF Guidelines and Criteria in effect on the date the Zone was designated by City and the Construction Schedule (attached hereto as Exhibit "A" and as may be amended in accordance with the terms of the Development Agreement); and, (iii) to the extent applicable, the same competitive bidding processes, payment of prevailing wages, payment and performance bonding procedures and use of minority/small businesses that would be required of the City if it were awarding contracts for constructing the public infrastructure improvements. The City and the Board agree to provide the County with a copy of any notice that is delivered or sent to any party under this Agreement or the Development Agreement as soon as reasonably practical but in no event less than thirty (30) days after the notice is delivered or sent.
2. For those City-controlled construction contracts for new development or public improvements in the Zone advertised for bid after the effective date of this Agreement, the City agrees that, to the extent allowed by law, it will include in the bid specifications for said construction contracts a statement encouraging both general contractors and subcontractors to provide access to some form of affordable basic health insurance for permanent fulltime employees and their dependents.

**M. Zone Designation**

The City represents that its designation of the Zone meets the criteria of Section 311.005(a), Texas Tax Code, and that said designation also complies with Texas Attorney General Opinion No. JC-0152 (December 8, 1999).

**IN WITNESS HEREOF, THE CITY OF SAN ANTONIO; BEXAR COUNTY; AND REINVESTMENT ZONE NUMBER TWENTY-TWO (22), CITY OF SAN ANTONIO, TEXAS** have made and executed this Agreement in triplicate originals on the date of the last signature below.

**CITY OF SAN ANTONIO**

**BEXAR COUNTY**

\_\_\_\_\_  
Sheryl Sculley  
City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
Nelson W. Wolff  
County Judge  
Date: \_\_\_\_\_

**ATTEST/SEAL:**

**ATTEST/SEAL:**

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk  
Date: \_\_\_\_\_

\_\_\_\_\_  
Gerard Rickhoff  
County Clerk  
Date: \_\_\_\_\_

**APPROVED AS TO FINANCIAL CONTENT BY BEXAR COUNTY:**

\_\_\_\_\_  
David Smith, Budget Officer and  
Executive Director of Planning and  
Resource Management  
Date: \_\_\_\_\_

\_\_\_\_\_  
Tommy Tompkins,  
County Auditor  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

SUSAN D. REED, Criminal  
District Attorney

\_\_\_\_\_  
Michael D. Bernard  
City Attorney  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jill Torbert  
Assistant Criminal District Attorney  
Civil Section  
Date: \_\_\_\_\_

**BOARD OF DIRECTORS**  
**Ridge Stone TIRZ**

**ATTEST/SEAL:**



**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael D. Bernard  
City Attorney  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

SUSAN D. REED, Criminal  
District Attorney

By: \_\_\_\_\_  
Jill Torbert  
Assistant Criminal District Attorney  
Civil Section  
Date: \_\_\_\_\_

**BOARD OF DIRECTORS**  
**Ridge Stone TIRZ**

John A. Campbell  
Name: John A. Campbell  
Presiding Officer, Board of Directors  
Date: 8/14/07

**ATTEST/SEAL:**

Charlie Garcia  
Name: Charlie Garcia  
Secretary, Board of Directors  
Date: 8-14-07

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## **EXHIBIT A**

### **RIDGE STONE DEVELOPMENT TARGETS**

Site Area 40.587 Acres  
Single-family Development 40.587 Acres

<b>Phase</b>	<b>Year</b>	<b>Number of Units</b>	<b>Type of Construction</b>
1	2004	87	Single-family
2A	2005	36	Single-family
2B	2006	20	Single-family
2C	2006	35	Single-family
3	2006	56	Single-family
	<b>Total</b>	<b>234</b>	<b>Single-family</b>