

AN ORDINANCE

2016-06-30-0521

**AUTHORIZING A CHAPTER 380 MASTER ECONOMIC INCENTIVE  
DEVELOPMENT AGREEMENT WITH CROCKETT URBAN  
VENTURES, LLC. IN AN AMOUNT OF \$7,440,973.00 FOR THE  
REDEVELOPMENT OF THE WITTE AND FISH MARKET BUILDINGS  
IN CITY COUNCIL DISTRICT 1.**

\* \* \* \* \*

**WHEREAS**, Crockett Urban Ventures, LLC (“Developer”) intends to undertake an economic development project consisting of the redevelopment of the Witte Building located at 135 E. Commerce St. and the Fish Market Building located at 155-161 E. Commerce St. (the “Project”); and

**WHEREAS**, the Project is anticipated to result in approximately \$67.5 million being invested in the two buildings with the Witte Building being converted into 4 housing units, 2,500 sq. ft. of river level retail, 1,900 sq. ft. of street level retail and 1,000 sq. ft. of banquet space and the Fish Market Building being converted into a 195 key Hilton Canopy Hotel with restaurant coffee shop and rooftop pool bar; and

**WHEREAS**, the redevelopment will also result in a new public elevator, river walk staircase and electric utility vault; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the “City”) is authorized to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the “Program”) for the purpose of making loans and grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, the City has negotiated terms of a Chapter 380 Master Incentive Economic Development Agreement with Developer to undertake and complete the Project; and

**WHEREAS**, the Project is within the Houston Street Tax Increment Reinvestment Zone (the “TIRZ”) and the Board of Directors of the TIRZ authorized the City through a duly authorized resolution passed and approved on June 23, 2016 to include the City’s portion of the Project’s tax increment as the funding source for the Chapter 380 Master Incentive Economic Development Grant Agreement in an amount up to \$5,324,877.00 through the TIRZ Tax Increment Financing fund; and



**WHEREAS**, in addition to the Project's tax increment, the Agreement provides for a Riverwalk Capital Improvements Reimbursement Grant in the amount of \$1,045,186.00, an Inner City Incentive Fund Grant in the amount of \$800,000.00, an Economic Development Program Loan in the amount of \$112,000.00 and City and SAWS fee waivers in a cumulative amount of \$158,910.00; and

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting Developer in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE**:

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

**SECTION 1.** The City Council approves the terms and conditions of a Chapter 380 Master Incentive Economic Development Agreement with Crockett Urban Ventures, LLC to undertake and complete an economic development project consisting of the redevelopment of the Witte Building located at 135 E. Commerce St. and the Fish Market Building located at 155-161 E. Commerce St.

**SECTION 2.** The City Manager or her designee is authorized to execute a Chapter 380 Master Incentive Economic Development Agreement with Crockett Urban Ventures, LLC in accordance with the purpose and intent of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution.

**SECTION 3.** Funding in the amount of \$1,045,186.00 for this Ordinance is available in Fund 29093000, Cost Center 1910900001, General Ledger 5201040, as part of the Fiscal Year 2016 Budget and payment is authorized to Crockett Urban Ventures, LLC.

**SECTION 4.** Funding in the amount of \$912,000.00 for this Ordinance is available in Fund 29059000, Cost Center 1909010001, General Ledger 5201040, as part of the Fiscal Year 2016 Budget and payment is authorized to Crockett Urban Ventures, LLC.


**SECTION 5.** Payment not to exceed the amount of \$5,324,877.00 is authorized to Crockett Urban Ventures LLC through Fund 29104000, Cost Center 0703280001, General Ledger 5201040. Annual payments to Crockett Urban Ventures, LLC shall not exceed the amount equal to the previous year's General Fund portion of ad valorem taxes remitted to the City for a period not to exceed 15 years and at such times funds are authorized to be encumbered.

**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

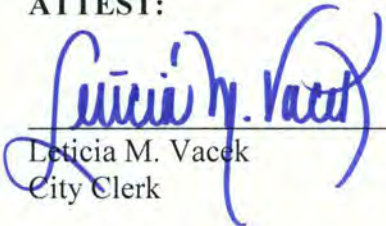
RR  
6/30/16  
Item No. 28

**SECTION 7.** This Ordinance shall be effective immediately upon passage by eight (8) affirmative votes; otherwise, it shall be effective on the tenth day after passage.


PASSED AND APPROVED this 30<sup>th</sup> day of June, 2016.

  
M A Y O R  
Ivy R. Taylor

**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Martha G. Sepeda  
Acting City Attorney



<b>Agenda Item:</b>	<b>28</b>						
<b>Date:</b>	06/30/2016						
<b>Time:</b>	01:29:36 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing an Economic Development Incentive Agreement with Crockett Urban Ventures LLC in an amount up to \$7,440,973.00 for the redevelopment of the Witte and Fish Market Buildings. [Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development & Operations Department]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5			x			
Ray Lopez	District 6		x				
Cris Medina	District 7			x			
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				x

## **ATTACHMENT 1**

WITTE/FISH MARKET BUILDING  
REDEVELOPMENT PROJECT

MASTER ECONOMIC DEVELOPMENT  
INCENTIVE AGREEMENT

\_\_\_\_\_, 2016

## TABLE OF CONTENTS

### PAGE

AGREEMENT PURPOSE	
AGREEMENT PERIOD	
PROJECT REQUIREMENTS	
ECONOMIC DEVELOPMENT PROGRAM GRANT AND LOAN	
CITY OBLIGATIONS	
RETENTION AND ACCESSIBILITY OF RECORDS	
MONITORING	
DEFAULT/CURE PERIOD/SUSPENSION	
TERMINATION	
NOTICE	
SPECIAL CONDITIONS AND TERMS	
CONFLICT OF INTEREST	
NONDISCRIMINATION AND SECTARIAN ACTIVITY	
LEGAL AUTHORITY	
LITIGATION AND CLAIMS	
ATTORNEY'S FEES	
CHANGES AND AMENDMENTS	
SUBCONTRACTING	
DEBARMENT	
RIGHTS UPON DEFAULT	
NON-ASSIGNMENT	
ORAL AND WRITTEN AGREEMENTS	
AUTHORIZATION RELIEF FROM PERFORMANCE	
INCORPORATION OF EXHIBITS	



WITTE BUILDING/FISH MARKET BUILDING REDEVELOPMENT PROJECT  
MASTER ECONOMIC DEVELOPMENT INCENTIVES AGREEMENT

This Witte Building/Fish Market Building Redevelopment Project Master Economic Development Incentive Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "CITY"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee, 135 E. Commerce LLC, a limited liability corporation and 155 E. Commerce Hotel LLC, a limited liability corporation. For the purposes of this Agreement, Crockett Urban Ventures, LLC shall be referred to as "Developer", for one or more ownership entities, including, but not limited to, 135 E. Commerce LLC and 155 E. Commerce Hotel LLC.

**RECITALS**

**WHEREAS**, the DEVELOPER owns the Witte Building at 135 E. Commerce and intends to redevelop the property into 4 housing units, approximately 2,500 sq. ft. of river level retail, approximately 1,900 sq. ft of street level retail, and approximately 1,000 sq. ft. of banquet space; and

**WHEREAS**, the DEVELOPER also owns the Fish Market Building at 155-161 E. Commerce and intends to redevelop the property into a 195-key Hilton Canopy Hotel with restaurant and rooftop pool bar; and

**WHEREAS**, the redevelopment of the Witte Building and Fish Market Building as described in the above recitals shall, for the purposes of this Agreement, be referred to as the "Project"; and

**WHEREAS**, the DEVELOPER is seeking economic incentives from the CITY in the form of grants, loans and fee waivers to undertake and complete the Project; and

**WHEREAS**, the CITY has identified funds to be made available to DEVELOPER for use in undertaking and completing the Project in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the CITY is authorized to grant and loan funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, the City Council has authorized the City Manager or her designee to enter into this Agreement in accordance with City Ordinance No.2016-06-30-\_\_\_\_\_, passed and approved on June 30, 2016 to grant and loan certain funds as described herein; and

**WHEREAS**, the Board of Directors of the Houston Street Tax Increment Reinvestment Zone (the "TIRZ") has authorized the City to use the City's portion of the tax increment created by the Project as a source of funding for this Agreement, in accordance with that certain TIRZ Resolution approved on June 23, 2016;

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting the Developer in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:



## ARTICLE I. AGREEMENT PURPOSE

The DEVELOPER shall undertake the Project which is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio and within the boundaries of the TIRZ. The CITY and the TIRZ are supporting the Project through this Agreement to provide funds to be used to defer costs associated with the Project.

## ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence upon the Effective Date listed on the signature page and terminate upon the earlier of: (A) the payment of all grant funds, loan funds and waivers due to DEVELOPER from the CITY in the cumulative amount of the Maximum Disbursement Amount (defined below); (B) December 31, 20\_\_ (the "Outside Termination Date"), or (C) termination of this Agreement as otherwise provided herein (the "Term").

## ARTICLE III. PROJECT REQUIREMENTS

### A. The Witte Building.

1. Investment. A cumulative amount of approximately SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000.00) (the "Witte Minimum Investment") shall be invested in real and personal property improvements on the Witte Building redevelopment located at 135 E. Commerce (the "Witte Project Site") and more specifically described in Exhibit A. The Witte Minimum Investment shall be made no later than December 31, 2018. The Witte Minimum Investment shall include expenditures in the construction and establishment of: (1) four housing units, (2) approximately 2,500 sq. ft. of river level retail/restaurant space; (3) approximately 1,900 sq. ft. of street level retail space; (4) approximately 1,000 sq. ft. of banquet/event space; and 5) a newly constructed stairway and elevator providing Americans with Disabilities Act compliant public access to the Riverwalk. For purposes of this Agreement, the Witte Minimum Investment shall include expenditures made by DEVELOPER to develop the Witte Project Site, including without limitation: architectural, engineering and surveying expenses, legal fees, development fees, consultant fees, sales and remodeling taxes, financing costs and fees, construction period interest, and other property acquired in connection with the Witte Project Site, closing and settlement expenses, demolition, construction, site preparation, required public improvements, fencing, paving, landscaping, permit fees, title insurance and other Witte Project Site expenses.

### 2. Construction.

(a) DEVELOPER shall commence construction at the Witte Project Site on or before February 15, 2017 and shall use commercially reasonable efforts to complete construction no later than October 31, 2018 (the total construction period being the "Witte Construction Period"), subject to Force Majeure (as defined in this Agreement). The Witte Construction Period commencement date shall be determined by the issuance of a building permit for the Witte Project Site and CITY's receipt of correspondence from the general contractor for the Witte Project Site certifying that construction has commenced (the "Witte Commencement Date"). The Witte Construction Period completion date shall be determined by the issuance of a Certificate of Occupancy (including a temporary Certificate of Occupancy for the Restaurant) for the Witte Project Site by CITY (the "Witte Completion Date").

(b) Upon request by CITY, the DEVELOPER shall prepare and deliver progress reports on the Witte Project Site within fifteen (15) business days, during the construction and



redevelopment of the Witte Project Site.

(c) DEVELOPER agrees to develop the Witte Project Site in conformance with all applicable Federal, State and local laws and regulations.

**B. The Fish Market Building.**

1. Investment. A cumulative amount of approximately SIXTY MILLION DOLLARS (\$60,000,000.00) (the "Fish Market Minimum Investment") shall be invested in real and personal property improvements on the Fish Market Building redevelopment located at 155-161 E. Commerce St. (the "Fish Market Project Site") and more specifically described in Exhibit B. The Fish Market Minimum Investment shall be made no later than December 31, 2019. The Fish Market Minimum Investment shall include expenditures in the construction and establishment of an approximately 18 story, Hilton Canopy Hotel that includes: 1) 195 rooms; 2) a restaurant; and 3) a roof-top pool bar. Developer shall also ensure that historic elements of the Fish Market Building will be preserved in accordance to a plan approved by the Historic Design Review Commission. For purposes of this Agreement, the Fish Market Minimum Investment shall include expenditures made by DEVELOPER to develop the Fish Market Project Site, including without limitation: architectural, engineering and surveying expenses, financing costs and fees, legal fees, development fees, consultant fees, hotel franchise fees and other related fees and expenses, construction period interest, and other property acquired in connection with the Fish Market Project Site, closing and settlement expenses, demolition, construction, site preparation, required public improvements, fencing, paving, landscaping, permit fees, title insurance and other Fish Market Project Site expenses.

2. Construction.

(a) DEVELOPER shall commence construction at the Fish Market Project Site on or before February 15, 2017 and shall use commercially reasonable efforts to complete construction no later than December 31, 2019 (the total construction period being the "Fish Market Construction Period"), subject to Force Majeure (as defined in this Agreement). The Fish Market Construction Period commencement date shall be determined by the earlier of issuance of a building permit for the Fish Market Project Site and/or CITY's receipt of correspondence from the general contractor for the Fish Market Project Site certifying that construction has commenced (the "Fish Market Commencement Date"). The Fish Market Construction Period completion date shall be determined by the issuance of a Certificate of Occupancy (including partial or temporary Certificate of Occupancy) for the Fish Market Project Site by CITY (the "Fish Market Completion Date").

(b) Upon request by CITY, the DEVELOPER shall prepare and deliver progress reports on the Fish Market Project Site within fifteen (15) business days, during the construction and redevelopment of the Fish Market Project Site.

(c) DEVELOPER agrees to develop the Fish Market Project Site in conformance with all applicable Federal, State and local laws and regulations.

3. Wages. During the Term, DEVELOPER shall pay employees of the hotel described in Article III (B)(1) and located on the Fish Market Project Site, wages as follows:

a) Management and Supervisory employees, including but not limited to General Manager, Assistant Manager, Sales Manager, Night Auditor: Market rates as determined by Developer or its affiliates.



- b) Tipped Employees: Tip-eligible employees, as defined by the US Department of Labor "Fair Labor Standards Act" (FLSA), will be paid in accordance to law, as provided by FLSA.
- c) Other employees, including Housekeepers and Laundry Workers: A wage not less than the 75 percentile wage rate, as reported by Wage Watch, Inc., for Limited Service Hotels in San Antonio. The 75 percentile wage for each year will be determined for each covered position, effective as of June 30<sup>th</sup> of each calendar year. Such wage requirements shall only apply after normal probationary initial employment periods. Such wages shall be annually evaluated as of June 30<sup>th</sup> each year for the following twelve (12) month term, except no evaluation shall commence until nine (9) months after certificate of occupancy is issued. In the event that such data no longer becomes commercially available from Wage Watch, Inc., similar data may be substituted by providers of compensation and salary surveys, or other agreed upon entity or organization providing reputable compensation and salary surveys.

In the event that retail and restaurant spaces or valet service in the Project are leased to an unaffiliated third party operator, such operator will not be subject to wage and reporting requirements contained in this Agreement.

4. Labor Relations Law Compliance. DEVELOPER shall comply with all federal and state labor relations laws to include National Labor Relations Act (NLRA) preserving employees' right to unionize. Any finding of non-compliance by DEVELOPER, either by City or a federal or state agency, shall subject the DEVELOPER to the termination provisions of this Agreement as described in Article IX. Compliance with all federal and state labor laws is a material term of this Agreement.

#### **ARTICLE IV. ECONOMIC DEVELOPMENT PROGRAM GRANT AND LOAN; WAIVERS**

A. Economic Development Program Grant. The CITY, through the TIRZ, is providing DEVELOPER with Economic Development Program Incentives in the combined amount of approximately SEVEN MILLION FOUR HUNDRED FORTY THOUSAND NINE HUNDRED AND SEVENTY-THREE DOLLARS AND NO CENTS (\$7,440,973.00) (the "Maximum Disbursement Amount"), which shall be disbursed as follows:

1. Riverwalk Capital Improvements Reimbursement Grant. Contingent upon the approval of the Riverwalk Capital Improvements Board, whose sole discretion shall govern the eligibility of reimbursement for the stairway and elevator improvements required in Article III(A)(1), the CITY shall provide DEVELOPER with a reimbursement grant up to ONE MILLION FORTY-FIVE THOUSAND ONE HUNDRED EIGHTY-SIX DOLLARS AND NO CENTS (\$1,045,186.00) (the "Riverwalk Improvement Grant") for the design and construction of the stairway and elevator at the Witte Project Site in accordance with this Agreement. Eligible costs include all costs related to the design, demolition, and redevelopment of the existing electric vault in the area in question, subsurface excavation for elevator maintenance rooms and related functions, streetscape, landscaping, public art, purchase price of equipment, mechanical, consultant fees related to historic appropriateness of the elevator, stairs, and attached structures, permit fees, development fees, sales taxes, remodeling taxes, and other associated costs. In the event that the estimated cost of the stairway and elevator improvements is less than the total amount of the Riverwalk Improvement Grant, the DEVELOPER shall forego any unused grant funds. The Riverwalk Improvement Grant shall be paid to DEVELOPER in a lump sum in the full amount within 60 days upon the completion of the stairway and elevator improvements at the Witte Project Site



in accordance with the terms and conditions of this Agreement. Once Developer is reimbursed, the parties shall enter into joint easement, operating and maintenance agreements in which Developer oversees operations in exchange for use of public areas.

2. Annual Incremental Property Tax Reimbursement. Subject to the terms and conditions of this Agreement and the Payment Conditions (defined below), for each tax year commencing with the 20\_\_ tax year (January 1 through December 31, 20\_\_) and then annually for a period of fifteen (15) years, the CITY shall provide DEVELOPER a grant (the "Annual Incremental Property Tax Reimbursement") which shall be equal to the sum of (a) and (b) below:

- (a) the actual amount of real property taxes paid by DEVELOPER to CITY and/or TIRZ with respect to the Witte Project Site and Fish Market Project Site for the immediately preceding tax year, *less* \$XXXXXXXXXXXX (which represents the amount of real property taxes paid by DEVELOPER on the Witte Project Site and Fish Market Project Site for the 2015 tax year) (the net amount each tax year being the "Real Property Tax Portion").
- (b) Payment of the Annual Incremental Property Tax Reimbursement to DEVELOPER shall occur no later than sixty (60) business days following submission of a tax invoice by DEVELOPER indicating full payment of all ad valorem taxes owed by DEVELOPER on the Witte Project Site and Fish Market Project Site. Any contesting of tax values which lowers the amount of taxes actually paid by DEVELOPER shall be accounted for by CITY in its disbursement of the Annual Property Tax Reimbursement.
- (c) Provided that the TIRZ has not terminated and the City has not assumed the obligations of the TIRZ pursuant to Section 11(A) of this Agreement, payment of the Annual Incremental Property Tax Reimbursement to DEVELOPER shall occur in accordance with the following conditions (collectively, the "Payment Conditions"):
  - (i) For each tax year during the Term of this Agreement, CITY, through the TIRZ fund, shall pay the Real Property Tax Portion of the Annual Incremental Property Tax Reimbursement to DEVELOPER provided that the CITY or other participating taxing entities have deposited funds into the TIF for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code.
  - (ii) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the TIRZ, then the TIRZ shall defer payment of the Real Property Tax Portion of the Annual Incremental Property Tax Reimbursement that is due to DEVELOPER under this Section, during that particular tax year.
  - (iii) For any particular tax year during the Term of this Agreement, if insufficient tax increment is realized by the TIRZ to permit the full payment of the Real Property Tax Portion of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Section, the TIRZ shall pay as much of the Real Property Tax Portion of the Annual Incremental Property Tax Reimbursement to DEVELOPER, as possible, and the TIRZ shall defer payment of any unpaid balance of the Real Property Tax Portion of the Annual Incremental Property Tax Reimbursement due to DEVELOPER under this Section during that particular tax year.



- (iv) It is expressly agreed that all deferred Annual Incremental Property Tax Reimbursements (the “Deferred Amounts Due”) shall accrue without interest and be payable at the earliest reasonable opportunity to DEVELOPER by the TIRZ upon the availability of tax increment in the Tax Increment Fund during the Term of this Agreement.

(d) Obligation to Pay Taxes. It is understood that DEVELOPER shall continue to pay all ad valorem taxes owed on the Property Site as required by law. Ad valorem taxes owed by DEVELOPER shall be determined by the Bexar County Appraisal District. Prior to the CITY disbursing Annual Incremental Property Tax Reimbursements under this Agreement, DEVELOPER must provide to CITY evidence indicating that all taxes owed by DEVELOPER on the Property Site have been paid in full for the tax year for which payment of the Annual Incremental Property Tax Reimbursement is sought, subject to DEVELOPER's right to protest taxes as permitted by law. If, during the Term of this Agreement, DEVELOPER allows its ad valorem taxes due on the Property Site to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then the CITY and TIRZ's remedies under this Agreement shall apply.

(e) Property Tax Reconciliation. In no case shall the cumulative Annual Incremental Property Tax Reimbursements made to DEVELOPER under this Agreement exceed FIVE MILLION THREE HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED TWENTY-SEVEN DOLLARS AND NO CENTS (\$5,324,827.00) (the “Maximum Tax Reimbursement Amount”). Should such disbursements exceed the Maximum Tax Reimbursement Amount, no further disbursements shall be due to DEVELOPER and any excess funds disbursed to the DEVELOPER shall be repaid by DEVELOPER to CITY within sixty (60) days following written demand from CITY to DEVELOPER.

3. Inner City Incentive Fund Grant. City shall provide DEVELOPER with an Inner City Incentive Fund Grant in the amount of EIGHT HUNDRED THOUSAND DOLLARS AND NO CENTS (\$800,000.00) to be used exclusively for costs directly related to the historic rehabilitation and adaptive reuse of the Fish Market Building on the Fish Market Project Site. City shall provide the grant in a lump sum amount in full within sixty (60) days upon completion of the Fish Market Project. Upon request by City, Developer shall deliver any information reasonably requested by City to document expenditure of funds on historic rehabilitation and adaptive reuse of the Fish Market Building

B. Economic Development Program Loan. In addition to the grants described above, the CITY is providing DEVELOPER with an Economic Development Program Loan in an amount not to exceed ONE HUNDRED AND TWELVE THOUSAND DOLLARS AND NO CENTS (\$112,000.00) (the “Retail/Restaurant Incentive Loan”) for the creation of four housing units and 4,400 sq. ft. of retail/restaurant space described in Article III(A)(1) planned for the Witte Project Site. The purpose of the Retail/Restaurant Incentive Loan is to provide an economic incentive to attract and retain a retail/restaurant operation at the Witte Project Site for the Term of this Agreement, subject to Force Majeure and Permitted Closures (defined below).

1. Disbursement. The Retail/Restaurant Incentive Loan made available to DEVELOPER through this Agreement shall be made solely from lawfully available funds that have been appropriated by the CITY, and shall be disbursed to DEVELOPER in one lump sum within thirty (30) days following DEVELOPER having entered into a lease or similar contractual agreement with a retail or food service



company to locate and operate a retail or restaurant establishment at the Witte Project Site.

2. Finish-Out. The Retail/Restaurant Incentive Loan may be used for the purpose of finish-out to the retail/restaurant space for occupancy and use by a retailer or restaurateur and/or replacement retail/restaurateurs (defined below). For purposes of this Agreement, "finish-out" shall include plumbing work, electrical improvements, the construction of or improvements to interior or exterior walls, painting, interior finishes, any restaurant and bar equipment, wall decoration, art, signage, light fixtures, tables, chair, fixtures, heaters, fans, and other similar types of finishes or equipment.

3. Repayment of Loan. Following the disbursement of the Retail/Restaurant Incentive Loan to DEVELOPER, the DEVELOPER shall take all commercially reasonable measures to ensure that 4,400 sq. ft of space (the "minimum retail/restaurant space") at the Witte Project Site be occupied by a retailer or restaurateur for the Term of this Agreement. Developer shall establish minimum retail/restaurant operational requirements that include signing retail/restaurant tenants to an agreement to operate for at least twelve (12) months and establishing minimum hours of operation. Should an initial retailer/restaurateur close and the lease be terminated for any reason, subject to the resolution of any litigation pertaining to the lease, lease termination or claims made by third parties against the initial restaurateur that delays releasing the retail/restaurant space (a "Claim-Caused Delay"), the DEVELOPER shall exercise all commercially reasonable efforts to enter into subsequent lease(s) or agreement(s) with one or more retail/restaurant companies to occupy and use the retail/restaurant space to fulfill minimum restaurant operational requirement (the "Replacement Restaurateurs"). The DEVELOPER is expressly permitted by the CITY to close the retail/restaurant space for periods of up to six (6) consecutive months during the Term of this Agreement to allow for: (a) renovation by the either the Initial Restaurateur and/or Replacement Restaurateurs, provided that such renovation occurs no more than one time every two years; (b) construction to fix damage due to casualty; or (c) correction of building code deficiencies or similar defect (collectively, the "Permitted Closures"). Subject to the Permitted Closures, Claim-Caused Delays and/or Force Majeure, should DEVELOPER fail to achieve the minimum retail/restaurant space and/or minimum restaurant operational requirement during the Term of this Agreement, then DEVELOPER shall be obligated to repay CITY the Restaurant Incentive Loan as follows in Schedule A. In the event that DEVELOPER fails to achieve the minimum retail/restaurant space and/or minimum restaurant operational requirement during the Term of this Agreement, all other provisions of this Agreement will remain in effect.



Schedule A: Repayment Schedule

Actual Number of Months of Restaurant Operations	Percent of Minimum Restaurant Operational Requirement Achieved by DEVELOPER	Amount of Restaurant Incentive Loan Principal to Be Repaid by DEVELOPER
0 to 12 months	0 percent	\$112,000
13 to 24 months	20 percent	\$89,600
25 to 36 months	40 percent	\$67,200
37 to 48 months	60 percent	\$44,800
49 to 60 months	80 percent	\$22,400
60 or more months	100 percent	\$0 (zero dollars)

4. Payment of Principal and Accrued Interest. In addition to the principal amount due to the CITY, DEVELOPER shall also pay interest annually on the outstanding principal balance beginning on the Loan Repayment Commencement Date and then annually on December 31 of each remaining year of the Term (the "Accrued Interest"). Accrued Interest on the outstanding principal balance shall be at a fixed-rate of **three percent (3.0%)** per annum. Repayment of any principal amount and Accrued Interest due to CITY shall be permitted to occur in equal annual payments so that the entire outstanding principal amount is amortized and repaid on or before the expiration of the Outside Termination Date of this Agreement, beginning on the December 31 that follows DEVELOPER's failure to meet the Minimum Restaurant Operational Requirement (the "Loan Repayment Commencement Date"). At any time prior to the Outside Termination Date, the DEVELOPER shall be permitted to pay the remaining balance of the Restaurant Incentive Loan due to the City without penalty or payment of un-accrued interest.

5. Sufficient Amounts. Each payment made by or for DEVELOPER pursuant to Article IV(B)(4) above shall be sufficient to pay the total amount of principal and Accrued Interest due and payable upon that date (the "Loan Payment Amount Due"). The CITY shall be responsible for sending Notice to the DEVELOPER of the Loan Payment Amount Due. Such notice shall indicate that full payment of the Loan Payment Amount Due shall be due within thirty (30) days following receipt of the notice (the "Loan Payment Deadline"). Failure of DEVELOPER to remit the Loan Payment Amount Due by the Loan Payment Deadline shall constitute a default event under this Agreement, subject to Article XIII and Article IX. **It is expressly agreed by the Parties that failure by DEVELOPER to retain a retail/restaurant in the retail/restaurant space for the Minimum Restaurant Operational Requirement shall itself not be deemed a default under this Agreement, and that the sole remedy of CITY in such circumstance shall be the repayment of the Restaurant Incentive Loan.**

6. Acceleration of Loan Repayment. Should CITY terminate the Agreement in accordance with Article IX, then the Retail/Restaurant Incentive Loan shall be due and payable to CITY no later than sixty (60) days following CITY's Notice of Termination to DEVELOPER.

7. Loan Forgiveness. Should DEVELOPER retain a restaurateur at the Project Site for \_\_\_\_ ( ) consecutive months during the Term of this Agreement, with no greater than a three (3) month gap



between occupancy of the retail/restaurant space, subject to Force Majeure and Permitted Closures, then the principal balance of the Retail/Restaurant Incentive Loan shall be zero dollars (\$0.00) and no repayment is required by this Agreement.

8. Default. If Developer complies with the terms of this Loan hereunder for the five (5) year period, a subsequent default or termination of the Agreement unrelated to the Loan shall not require repayment of the Loan.

C. Fee Waivers. In addition to the grants and loan provided to DEVELOPER, the CITY is providing DEVELOPER with fee waivers ON THE Witte Project Site to include: 1) City fee waivers in the amount of TWENTY-ONE THOUSAND DOLLARS AND NO CENTS (\$21,000.00); and 2) SAWS fee waivers in the amount of ONE HUNDRED THIRTY SEVEN THOUSAND NINE HUNDRED AND TEN DOLLARS AND NO CENTS (\$137,910.00) (collectively, the "Fee Waivers"). The Fee Waivers are administrative in nature but are reflected in the attached Fee Waiver Letter, attached hereto as "Exhibit." There shall be no recapture of Fee Waivers as a result of default or termination of this Agreement.

#### **ARTICLE V. CITY OBLIGATIONS**

A. CITY will pay DEVELOPER in accordance with Article IV above, subject to the terms and conditions hereof. Additionally, City will administratively authorize use by Developer without additional costs or fees of areas adjacent to the Project (subterranean, street level, and aerial rights) for encroachments and improvements related to this Project.

B. CITY shall not be liable to DEVELOPER or other entity for any costs incurred by DEVELOPER in connection with this Agreement.

#### **ARTICLE VI. RETENTION AND ACCESSIBILITY OF RECORDS**

A. The DEVELOPER shall maintain the fiscal records and supporting documentation for investments, expenditures and salaries associated with DEVELOPER's obligations under Article III of this Agreement (the "Records"). DEVELOPER shall retain the Records for the greater of: (1) four (4) years from the end of the Term; or (2) the period required by other applicable laws and regulations.

B. DEVELOPER shall, following at least ten (10) days advance, written notice from CITY, give CITY, its designee, or any of their duly authorized representatives, access to the Records at the Project Sites during normal business hours. CITY's access to the Records will be limited to reviewing information needed to verify that DEVELOPER is and has been complying with the terms of this Agreement. CITY may not copy or otherwise take control of such Records. Any information that is not required by law to be made public shall be kept confidential by CITY. DEVELOPER shall not be required to disclose to CITY any information that by law DEVELOPER is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, CITY reserves the right to require DEVELOPER to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of DEVELOPER. The rights to access the Records shall continue through the Term of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give CITY the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

#### **ARTICLE VII. MONITORING**

A. The CITY reserves the right to confirm DEVELOPER's compliance with the terms and conditions of this Agreement. The CITY will provide DEVELOPER with a written report of the monitor's findings. If the monitoring report notes deficiencies in DEVELOPER's performance obligations under the terms of this



Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by DEVELOPER. Should DEVELOPER fail to fulfill those requirements for DEVELOPER to meet its obligations under this agreement, CITY may pursue its remedies provided herein including for suspension or termination of this Agreement.

B. Upon request by the CITY, DEVELOPER shall provide to the CITY a statement with reasonable supporting information evidencing satisfaction of the job-creation requirements under Article III of this Agreement.

#### **ARTICLE VIII. DEFAULT/CURE PERIOD/SUSPENSION**

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event DEVELOPER fails to comply with its obligations herein, such non-compliance shall be deemed a default. The CITY shall provide DEVELOPER with written notice as to the nature of the default (the "Notice of Default") and grant DEVELOPER a sixty (60) day period from the receipt of Notice of Default to cure such default (the "Cure Period"). Should DEVELOPER fail to cure the default within the Cure Period, CITY may, upon written notice (the "Notice of Suspension"), suspend grant and/or loan payments made to DEVELOPER under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

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

C. A suspension under this Article VIII shall be lifted by the City upon a showing of compliance by the DEVELOPER or written waiver by CITY of the deficiency in question.

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

#### **ARTICLE IX. TERMINATION/RECAPTURE OF FUNDS**

A. Termination.

1. The CITY shall have the right to terminate this Agreement in whole or in part should DEVELOPER fail to perform under the terms and conditions herein and fails to cure a default in accordance with Article VIII above. Such Termination may occur at any time prior to the end of the Term of this Agreement. CITY may, upon issuance to DEVELOPER of written notice (the "Notice of Termination"), terminate this Agreement and withhold further payments to GRANTEE. A Notice of Termination shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

2. In addition to the above, this Agreement may be terminated in whole or in part as follows:

- a) By the CITY (with the consent of DEVELOPER) in which case the two parties shall agree upon the termination conditions, including the repayment of funds, if any, the effective date and in the case of partial termination, the portion to be terminated; or



- b) By the DEVELOPER upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, CITY determines in its sole discretion that the remaining portion of the Agreement will not accomplish the purpose for which the Agreement was made, then CITY may terminate the Agreement in its entirety.

B. Recapture of Funds.

1. Riverwalk Capital Improvements Reimbursement Grant. The stairway and elevator improvements required by Article III(A)(1) shall be allowed to be used by the general public and shall be maintained in good repair and condition by DEVELOPER. Should DEVELOPER fail to allow public use of the stairway and elevator and/or fail to keep the stairway and elevator in good repair and condition; then the City shall be entitled to take any and all necessary steps to enforce the public use and maintenance requirements herein.
2. Annual Incremental Property Tax Reimbursement. Should DEVELOPER, during the Term of this Agreement, fail to comply with the salary requirements of Article III(B)(3) of this Agreement, or fail to pay ad valorem taxes on the Witte Project Site and/or Fish Market Project Site; then the City shall be entitled to recapture all Annual Incremental Property Tax Reimbursement funds disbursed to DEVELOPER during the Term of the Agreement following the delivery of a Notice of Default and expiration of the Cure Period.
3. Inner City Incentive Fund Grant. Should DEVELOPER, during the Term of this Agreement, fail to comply with the salary requirements of Article III(B)(3) of this Agreement, or fail to pay ad valorem taxes on the Witte Project Site and/or Fish Market Project Site; then the City shall be entitled to recapture all Inner City Incentive Fund Grant funds disbursed to DEVELOPER during the Term of the Agreement following the delivery of a Notice of Default and expiration of the Cure Period.
4. Economic Development Program Loan. Should DEVELOPER fail to comply with the housing requirement of Article III(A); then the City shall be entitled to recapture fifty-percent (50%) of disbursed Economic Development Program Loan funds following the delivery of a Notice of Default and expiration of the Cure Period.
5. Fee Waivers. City shall have no right to recapture Fee Waivers as described by Article IV(C).

C. Notwithstanding any exercise by the CITY of its right of suspension under Article VIII of this Agreement, or of early termination pursuant to this Article IX, DEVELOPER shall not be relieved of its obligation to repay unpaid loan amounts due under this Agreement or any liability to CITY for actual damages due to CITY by virtue of any breach by DEVELOPER of any terms of this Agreement, as determined by a court of competent jurisdiction.

## ARTICLE X. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail



with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified (a "Notice"). Any Notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

If intended for CITY, to:

City of San Antonio  
Attn: Director  
Center City Development Office  
P.O. Box 839966  
San Antonio, TX 78283-3966

If by delivery, to:

Director of Central City Development Office  
City Clerk  
City of San Antonio  
100 Military Plaza  
San Antonio, TX 78205

If intended for DEVELOPER, to:

Crockett Urban Ventures, LLC  
Attn: Chris Hill  
5111 Broadway  
San Antonio, TX 78209

With copy to:

Frank B. Burney  
Martin & Drought, P.C.  
300 Convent, Suite 2500  
San Antonio, TX 78205

#### **ARTICLE XI. SPECIAL CONDITIONS AND TERMS**

A. Termination of TIRZ. The CITY agrees that, in the event that the TIRZ terminates, the CITY shall assume all rights and obligations of the TIRZ hereunder, including duties to pay Annual Property Tax Reimbursements.

B. Non-Performance of TIRZ. The Parties agree that, in the event that the TIRZ does not realize any tax increment for a period of three (3) consecutive years following the Effective Date thereby precluding any payment of Annual Property Tax Increment Reimbursements by the CITY and TIRZ to DEVELOPER in accordance with Article IV(A)(2) of this Agreement, the DEVELOPER may petition the CITY to (i) modify the boundaries of the TIRZ to exclude the Property from the TIRZ, and (ii) amend this Agreement to provide for the payment of Annual Property Tax Increment Reimbursements by the CITY directly to DEVELOPER in accordance with the material terms and conditions of this Agreement. The decision to either (i) or (ii) shall be solely that of CITY, in its sole discretion.

C. Employment. DEVELOPER, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any undocumented workers at the Project during the Term of this Agreement.



If DEVELOPER is convicted of a violation under 8 U.S.C. Section 1324a (f), then DEVELOPER shall repay the CITY and/or TIRZ the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date DEVELOPER is notified by the CITY of such violation. The CITY, in its sole discretion, may extend the period for repayment herein. Additionally, DEVELOPER shall pay interest on the amounts due to CITY and/ or TIRZ at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the CITY) as its prime or base commercial lending rate, from the date of such violation notice until paid.

### **ARTICLE XIII. CONFLICT OF INTEREST**

A. DEVELOPER shall use reasonable business efforts to ensure that no person shall participate in the selection, award or administration of a Project Contract when: (1) the Project Contract calls for payments to be made to such contractor on terms that are greater than those which are customary in the industry for similar services on similar terms, and (2) any of the following have a financial interest in the firm or person selected to perform the Project Contract:

- (1) that person
- (2) any immediate family member of that person;
- (3) any business partner of that person;
- (4) any organization which employs, or is about to employ, any of the above.

B. To the extent DEVELOPER hires any former or current official or employee of CITY who would be subject to the CITY's Code of Ethics, as same exists from time to time, DEVELOPER shall take reasonable efforts to ensure that such person complies with all applicable requirements of the said Code of Ethics in dealings between CITY and DEVELOPER.

### **ARTICLE XIV. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. DEVELOPER shall use reasonable commercial efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under this Agreement.

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

C. DEVELOPER shall, to the best of its knowledge and belief, include the substance of this Section in its agreements with general contractors responsible for improvements funded in whole or in part under this Agreement.

### **ARTICLE XV. LEGAL AUTHORITY**

A. Each party assures and guarantees to the other that they possess the legal authority to enter into this



Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

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

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

#### **ARTICLE XVI. LITIGATION AND CLAIMS**

A. DEVELOPER shall give CITY prompt notice in writing of any formal legal action, including any proceeding before an administrative agency, filed against DEVELOPER directly arising out of: (1) this Agreement during the Term of this Agreement; or (2) landlord-tenant disputes between DEVELOPER and any lessee of the Restaurant Space prior the completion of the Minimum Restaurant Operational Requirement. DEVELOPER shall notify the CITY promptly of any legal action or of any proceeding filed under the federal bankruptcy code by DEVELOPER. DEVELOPER shall submit a copy of such notice to CITY within thirty (30) calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. Notwithstanding the above notice requirements, it is expressly agreed by the Parties that DEVELOPER is not required to notify CITY of any claim or litigation that may arise out of DEVELOPER's business operations including without limitation personal injury actions (slip and fall claims), employer-employee disputes, product-related claims or other operational activities or relationships.

B. DEVELOPER acknowledges that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

#### **ARTICLE XVII. ATTORNEY'S FEES**

A. In the event DEVELOPER should default under any of the provisions of this Agreement and the CITY should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of DEVELOPER herein contained, DEVELOPER agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the CITY.

B. In the event CITY should default under any of the provisions of this Agreement and the DEVELOPER should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of CITY herein contained, CITY agrees to pay to the DEVELOPER reasonable fees of such attorneys and such other expenses so incurred by the DEVELOPER.



#### **ARTICLE XVIII. CHANGES AND AMENDMENTS**

- A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both Parties to this Agreement.
- B. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.
- C. Any alterations, additions, or deletions to the terms of this Agreement retroactively required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

#### **ARTICLE XIX. SUBCONTRACTING**

- A. DEVELOPER shall use reasonable business efforts to ensure that the performance rendered under subcontracts entered into by DEVELOPER for the construction activities funded by funds under this Agreement complies with all terms and provisions of this Agreement as if such performance were rendered by DEVELOPER, except as expressly provided to the contrary herein.
- B. DEVELOPER, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, neither CITY nor TIRZ is liable to DEVELOPER's subcontractor(s).

#### **ARTICLE XX. DEBARMENT**

By signing this Agreement, DEVELOPER certifies that it will not award any funds provided under this Agreement to any party which **it knows to be** debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the CITY.

#### **ARTICLE XXI. RIGHTS UPON DEFAULT**

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

#### **ARTICLE XXII. NON-ASSIGNMENT**

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. However, DEVELOPER may assign this Agreement to (i) a related entity formed for the purposes of owning part of the Project or (ii) a parent, subsidiary, affiliate entity or newly created entity resulting from a merger, acquisition or other corporate restructure or reorganization of DEVELOPER. In either of such cases, DEVELOPER shall give CITY no less than thirty (30) days prior written notice of the assignment or other transfer. Any and all future assignees must be bound by all terms and/or provisions and representations of this Agreement as a condition of assignment. Developer shall have no further obligation under this Agreement upon assignment. Any attempt to assign the Agreement without the notification and consent of CITY shall release CITY from performing any of the terms, covenants and conditions herein.

#### **ARTICLE XXIII. ORAL AND WRITTEN AGREEMENTS**



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

#### **ARTICLE XIV. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)**

The CITY may grant temporary relief from any deadline for performance of any term of this Agreement if the DEVELOPER is prevented from compliance and performance by any unavoidable cause not attributed to the fault or negligence of the DEVELOPER, including without limitation: an act of war, action or order of legal authority, act of God, or regulatory delay. The burden of proof for the need for such relief shall rest upon the DEVELOPER. To obtain relief based upon *force majeure*, the DEVELOPER must file a written request with the CITY. CITY will not unreasonably withhold its consent.

#### **ARTICLE XV. INCORPORATION OF EXHIBITS**

Each of the Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties.

Exhibit A:

Exhibit B:

Exhibit C:

Exhibit D:

Exhibit E:

Exhibit F:

Exhibit G:

*[Signatures on Following Page]*

**WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 2016 (the "Effective Date"):**

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2016-06-30-\_\_\_\_\_, dated June 30, 2016, and DEVELOPER pursuant to the authority of its owners.

**City of San Antonio,**  
a Texas municipal corporation

**Developer:**

Crocket Urban Ventures, LLC  
A limited liability corporation,

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

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

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**Acknowledgement by TIRZ BOARD OF DIRECTORS:**

The Board of Tax Increment Reinvestment Zone (TIRZ) #9, also known as the Houston Street TIRZ, acknowledge Houston Street Tax Increment Financing Fund ("TIF Fund") as the funding source for the financial incentives in this Chapter 380 Master Economic Development Agreement. The TIRZ Board has directed the City of San Antonio, which acts as the fiduciary agent of the Houston Street TIF Fund, to make payment to DEVELOPER in accordance with the terms and conditions of this Agreement.

\_\_\_\_\_  
Chairman



# WITTE / FISH MARKET INCENTIVE AGREEMENT

City Council A Session

Agenda Item #28

John Jacks  
Interim Director

Center City Development and Operations Department  
June 30, 2016



## REDEVELOPMENT SUMMARY

- Total investment of \$68 million
- Restoration and adaptive reuse of two historic buildings
- 4 new housing units
- New retail and restaurant space
- New Riverwalk stairway and elevator access
- Activation of two prominent downtown corners

3

## WITTE BUILDING

Built in 1893

Neglected and underutilized

Adjacent to substandard River access point

4





5



6









## WITTE BUILDING PROPOSED REDEVELOPMENT















## FISH MARKET BUILDING

Built circa  
1860

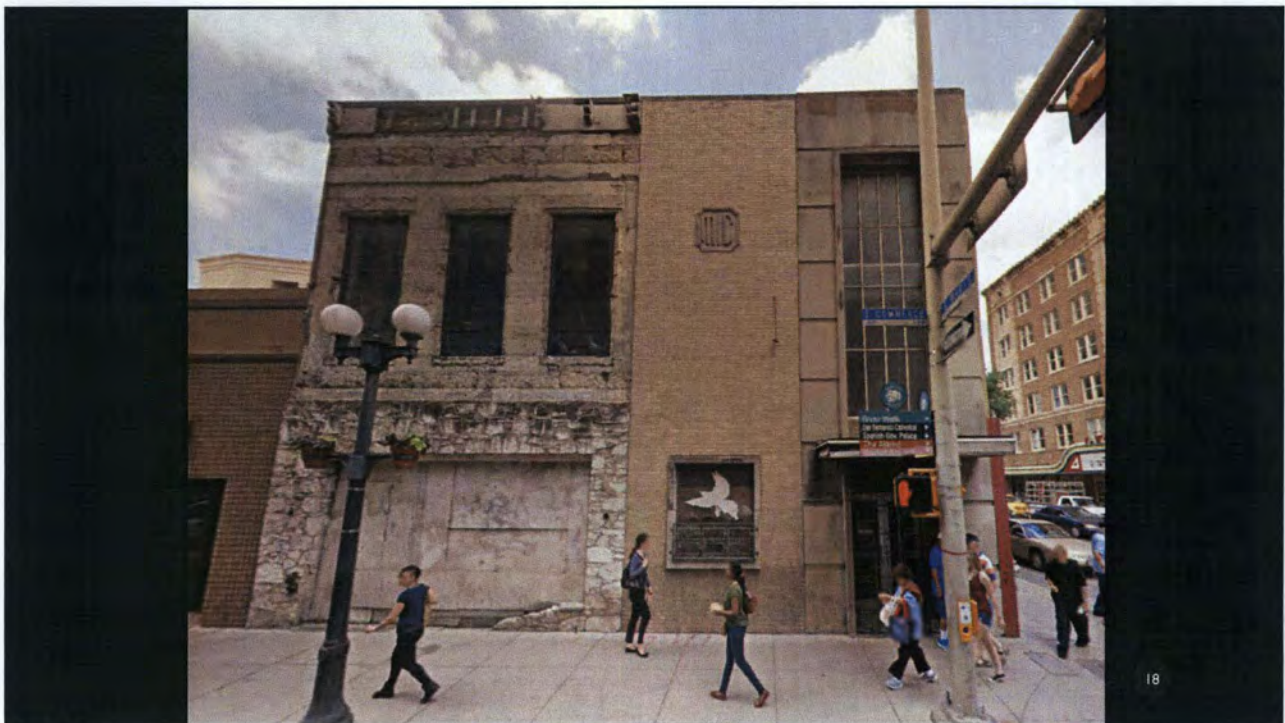
Vacant over  
30 years

Severe  
disrepair

Attracts  
vagrancy

Riverfront  
blight

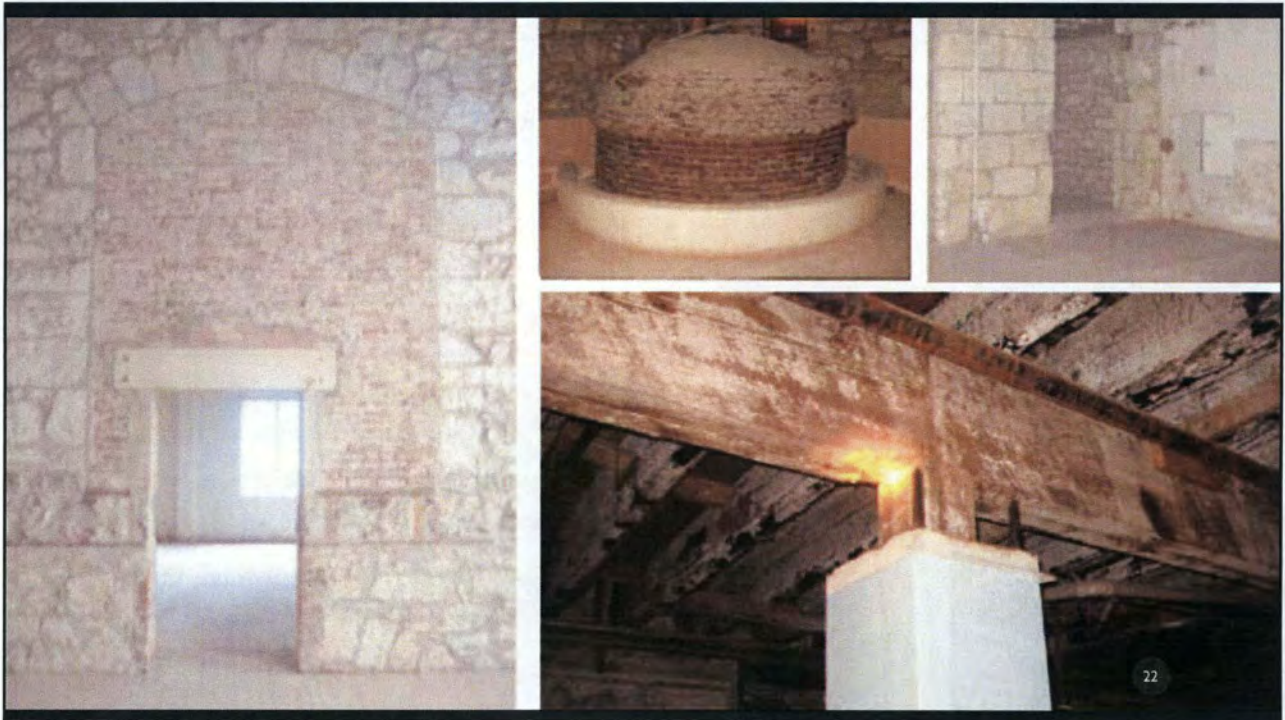














## DEVELOPMENT CHALLENGES

Site  
Constraints

Historic  
Rehabilitation

Parking

Market  
Conditions

23



## FISH MARKET BUILDING PROPOSED REDEVELOPMENT

\$60 million investment

18-story Hilton Canopy Hotel

195 rooms

Restaurant, coffee shop, rooftop pool bar

Historic rehabilitation

24





25

## INCENTIVE RECOMMENDATION

### Witte

- \$21,000 City Fee Waiver
- \$137,910 SAWS Impact Fee Waiver
- \$1,045,186 RW Capital Improvements Grant
- \$112,000 Forgivable loan

### Fish Market

- \$800,000 Historic Rehabilitation Grant

### Houston Street TIRZ

- 15-year grant of up to \$5,324,877

26



## AGREEMENT TERMS

### Employee Compensation

- Annual report to demonstrate employee compensation in the top quartile among similar hotels

### Compliance with NLRA

- Will preserve employees' right to unionize

### Stairway and elevator maintenance

- Developer will maintain and operate
- Developer will grant public easement for public use

### 15-Year Recapture

- Right to recapture certain incentives for non-compliance over 15-year term

27

## PROJECT SCHEDULE

### Witte Building

- Project to begin in fall of 2016 and open in summer 2017

### Fish Market Building

- Project to begin in fall of 2016 and open in summer of 2018

28



# WITTE / FISH MARKET INCENTIVE AGREEMENT

City Council A Session

Agenda Item #28

John Jacks

Interim Director

Center City Development and Operations Department

June 30, 2016