

Individual Item #6

Consideration and possible action to approve negotiation of a funding agreement with Transportation and Capital Improvements for the Avenue B Bike Lane Project, for the reimbursement of eligible public improvements.

Midtown TIRZ Board of Directors Meeting – September 13, 2019

Agenda Item #6

SUBJECT

Consideration and possible action to approve negotiation of a funding agreement with Transportation and Capital Improvements for the Avenue B Bike Lane Project, for the reimbursement of eligible public improvements.

BACKGROUND:

A request has been made for \$6,000,000 from the Midtown TIRZ fund to construct a buffered bike lane along Avenue B and North Alamo Street. The project includes \$5,213,639 in construction costs and \$787,045 in design and environmental studies costs. Avenue B and North Alamo Street were identified as bike routes to compliment the 2017 Broadway Street Corridor Bond project in an effort to lower vehicular traffic volumes, reduce vehicular speeds, and create more public right-of-way accessibility in close proximity to Broadway Street.

FISCAL IMPACT:

There is no fiscal impact to the General Fund at his time. If approved, the City’s contribution of \$6,000,000 will come from the Midtown Tax Increment Reinvestment Zone.

RECOMMENDATION:

Staff recommends approval.



EXHIBIT C
AVENUE B / NORTH ALAMO BIKE LANES PROJECT COST ESTIMATE

MidTown TIRZ Project Funding Proposal Prepared by TCI on 09/10/19

Project Scope: Construct protected, buffered bike lanes along N Alamo from Houston to McCullough, along McCullough from N Alamo to Ave B, along Ave B from McCullough to Roy Smith, and along Roy Smith from Ave B to Broadway. The project includes landscaping, tree planting, pavement mill and overlay, new pavement markings, new signs, sidewalk construction at intersections to create bulbouts and install pedestrian ramps, and minor reconstruction of Avenue B north of Jones to reconfigure the roadway for bike lanes.

ITEM NO.	BID ITEM DESCRIPTION	UNIT OF MEASURE	APPROX. QUANTITIES	UNIT BID PRICE	AMOUNT
103.31	REMOVE CONCRETE SIDEWALKS & DRIVEWAYS	SF	7,000	\$2.00	\$14,000.00
205.3	HOT MIX ASPHALTIC PAVEMENT, TYPE D (2" COMP. DEPTH) (PG 70-22)	SY	21,300	\$11.61	\$247,293.00
208.1	SALVAGING, HAULING & STOCKPILING RECLAIMABLE ASPHALTIC PAVEMENT(2" DEPTH)	SY	21,300	\$10.00	\$213,000.00
307.2	CONCRETE STRUCTURE (ELEVATED SIDEWALKS)	CY	5	\$1,200.00	\$6,000.00
307.12	CONCRETE STRUCTURE (MISCELLANEOUS)	CY	5	\$2,000.00	\$10,000.00
500.1	CONCRETE CURBING	LF	13,800	\$18.00	\$248,400.00
502.11	CONCRETE SIDEWALKS	SY	1,375	\$65.00	\$89,375.00
	PEDESTRIAN RAMP	EA	60	\$2,400.00	\$144,000.00
502.3	SIDEWALK DRAIN (1' WIDE)	EA	10	\$2,000.00	\$20,000.00
505.1	CONCRETE MEDIAN (4" THICK)	SY	1,400	\$75.50	\$105,700.00
	PAVEMENT MARKINGS / SIGNS	STA	47	\$6,000.00	\$282,000.00
	GREEN BIKE LANE MARKINGS	STA	47	\$6,000.00	\$282,000.00
	TRAFFIC SIGNAL MODIFICATIONS	EA	2	\$120,000.00	\$240,000.00
	LANDSCAPE/STREETSCAPE	STA	47	\$24,000.00	\$1,128,000.00
ROADWAY CONSTRUCTION SUBTOTAL (EXCLUDING JONES TO ROY SMITH)					\$3,029,768.00
103.12	REMOVE CONCRETE CURB	LF	1,100	\$3.00	\$3,300.00
103.31	REMOVE CONCRETE SIDEWALKS & DRIVEWAYS	SF	13,200	\$2.00	\$26,400.00
103.4	REMOVE MISCELLANEOUS CONCRETE	SF	1,980	\$2.00	\$3,960.00
104.1	STREET EXCAVATION	CY	185	\$19.45	\$3,601.85
205.3	HOT MIX ASPHALTIC PAVEMENT, TYPE D (2" COMP. DEPTH) (PG 70-22)	SY	3,500	\$11.61	\$40,635.00
	HOT MIX ASPHALTIC PAVEMENT, TYPE B (6" COMP. DEPTH) (PG 64-22)	SY	560	\$45.00	\$25,200.00
	LIME TREATED SUBGRADE (6" COMP. DEPTH) (INCLUDES LIME)	SY	560	\$10.00	\$5,600.00
208.1	SALVAGING, HAULING & STOCKPILING RECLAIMABLE ASPHALTIC PAVEMENT(2" DEPTH)	SY	3,500	\$10.00	\$35,000.00
500.1	CONCRETE CURBING	LF	2,200	\$18.00	\$39,600.00
502.11	CONCRETE SIDEWALKS	SY	2,200	\$65.00	\$143,000.00
	PEDESTRIAN RAMP	EA	10	\$2,500.00	\$25,000.00
502.3	SIDEWALK DRAIN (1' WIDE)	EA	10	\$2,000.00	\$20,000.00
503.11	PORTLAND CEMENT CONCRETE DRIVEWAYS (COMMERCIAL)	SY	250	\$100.00	\$25,000.00
	PAVEMENT MARKINGS / SIGNS	STA	10	\$6,000.00	\$60,000.00
	GREEN BIKE LANE MARKINGS	STA	10	\$6,000.00	\$60,000.00
	LANDSCAPE/STREETSCAPE	STA	10	\$17,000.00	\$170,000.00
ROADWAY CONSTRUCTION SUBTOTAL (JONES TO ROY SMITH)					\$686,296.85
100.1	MOBILIZATION	LS	1	\$408,767.13	\$408,767.13
100.2	INSURANCE & BOND	LS	1	\$111,481.95	\$111,481.95
101.1	PREPARING RIGHT OF WAY	LS	1	\$148,642.59	\$148,642.59
	SWPPP	LS	1	\$37,160.65	\$37,160.65
	TRAFFIC CONTROL	LS	1	\$111,481.95	\$111,481.95
	CONTINGENCIES (15%)	LS	1	\$680,039.87	\$680,039.87
CONSTRUCTION TOTAL					\$5,213,638.99
	Design Budget (15% of Construction)	LS	1	\$782,045.85	\$782,045.85
	Environmental Clearances	LS	1	\$5,000.00	\$5,000.00
TOTAL PROJECT COST ESTIMATE					\$6,000,684.84

**FUNDING AGREEMENT
WITH THE CITY OF SAN ANTONIO'S TRANSPORTATION AND CAPITAL
IMPROVEMENTS DEPARTMENT, AND
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-ONE,
CITY OF SAN ANTONIO, TEXAS FOR THE
AVENUE B BIKE LANE PROJECT**

This Funding Agreement ("Agreement") is entered into by and between the City of San Antonio ("City"), a Texas municipal corporation in Bexar County, Texas, acting by and through its Transportation and Capital Improvements Department ("TCI") and its City Manager pursuant to Ordinance No. 2019-_____, and the Board of Directors for Tax Increment Reinvestment Zone Number Thirty-One City of San Antonio, Texas, known as the Midtown TIRZ ("Board"), together referred as the "Parties".

BACKGROUND:

WHEREAS, the City recognizes the importance of its continued role in economic development; community development and urban design and in accordance with Chapter 311 of the Texas Tax Code (the "Act"), the City through Ordinance No. 2008-12-11-1134, established Tax Increment Reinvestment Zone Number Thirty-One, San Antonio, Texas, known as the Midtown TIRZ ("TIRZ"), to promote development and redevelopment which would not otherwise occur solely through private investment; and

WHEREAS, in September 2019, TCI applied for funding from the City's Tax Increment Financing Program ("TIF") in order to undertake the construction of bicycle lanes along Avenue B and Alamo streets in San Antonio, Texas, City Council District 1, and within the Midtown TIRZ; and

WHEREAS, the total cost for the Project is approximately \$6 million with plans to reconstruct a section of Avenue B and neighboring streets, reconfigure the roadways, mark buffered lanes, create curb extensions, install pedestrian ramp; and

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

WHEREAS, in accordance Section 311.008 of the Act, on September 13, 2019, the Board approved Resolution T31-2019-97-13- R, described in attached **Exhibit A**, authorizing approval of this Agreement, which provides a funding commitment for the Avenue B Bike Lane Project in an amount not to exceed Six Million Dollars and No Cents (\$6,000,000.00) in reimbursable TIF funds for necessary public infrastructure and public improvements associated with the recon and authorizes said commitment to be incorporated into the TIRZ Project Plan; and

WHEREAS, pursuant to Ordinance No. 2019-_____, approved on the ____ day of _____ 2019, the Board and the City agree to enter a binding agreement to ensure that the City is reimbursed for the public infrastructure and public improvement costs associated with the Project, described and incorporated herein in the attached **Exhibit B**; and

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

ARTICLE I. TERM

- 1.1 **TERM.** This term of this Agreement shall commence on the Effective Date of this Agreement and end on whichever of the following dates should occur the earliest: (i) the date the City receives the final reimbursement for completing the Project; (ii) the date this Agreement is terminated as provided in Article X; or, (iii) termination of the TIRZ, provided that all existing warranties and warranty bonds on the Project shall survive termination of this Agreement.

ARTICLE II. DEFINITIONS

- 2.1 **ACT** - The Tax Increment Financing Act of Texas Tax Code, Chapter 311, as may be amended from time to time.
- 2.2 **ADMINISTRATIVE COSTS** – Reasonable costs incurred directly and/or indirectly by the City for the administration of the City's Tax Increment Financing Program.
- 2.3 **AGREEMENT** – This document by and among the City and the Midtown TIRZ Board, which may be amended from time to time in accordance with Section 11.4 Amendments.
- 2.4 **AVAILABLE TAX INCREMENT FUNDS** – Is the meaning given in the Act, Section 311.012(a)Tax, contributed by each participating taxing entity to the TIF Fund and distributed in accordance with the priority of payment of the TIRZ.
- 2.5 **BOARD** - The Board of Directors of the Midtown TIRZ.
- 2.6 **CITY** – For the purposes of this Agreement and hereinafter shall mean the City of San Antonio's Transportation and Capital Improvements Department ("TCI").
- 2.7 **COMPLETION** – In order for the Project to achieve a state of "Completion", Public Improvements must be approved and accepted by the Board as "completed" in accordance with Section 2.8 and 4.1 of this Agreement.
- 2.8 **CONSTRUCTION SCHEDULE** - The specific timetable for constructing the improvements specified in this Agreement, which timetable is more particularly set forth in **Exhibit C**, attached hereto and incorporated herein for all purposes and which timetable may be amended from time to time pursuant to the provisions of this Agreement.
- 2.9 **CONTRACT PROGRESS PAYMENT REQUEST ("CPPR")** – Request form prepared and submitted by City pursuant to the requirements of this Agreement and the CPPR Form, attached hereto as **Exhibit F**. The CPPR shall also include and reflect all waivers granted through any City program or incentives.
- 2.10 **EFFECTIVE DATE** - The date that is listed on the signature page of this Agreement.
- 2.11 **FINANCE PLAN** – The Midtown TIRZ Financing Plan, as defined in the Act, and as approved and amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.
- 2.12 **PHASE(S)** – The specific timeline and schedule for the Project's construction and completion, as described in the Construction Schedule incorporated and attached as **Exhibit C**.

- 2.13 **PROJECT** – The City’s Avenue B Bike Lane Project, described in Section 4.1 of this Agreement and in attached **Exhibit B**.
- 2.14 **PROJECT COSTS** - Shall have the meaning provided by the Act, and limited to Public Infrastructure and Public Improvements as approved by the Board within the TIRZ boundary, incurred after execution of this Agreement.
- 2.15 **PROJECT PLAN** – The Project Plan as defined in the Act, for the Midtown TIRZ as approved and amended from time to time by the Board and the City, and incorporated by reference into this document as if set out in its entirety, for all purposes.
- 2.16 **PROJECT SITE** - The real property to be developed by the City and located within the TIRZ on Roy Smith Street from Broadway Street to Avenue B, Avenue B from Roy Smith Street to McCullough Avenue, McCullough Avenue from Avenue B to North Alamo, and North Alamo from McCullough Avenue to East Houston Street, San Antonio, Texas, 78215 and 78205, described in attached **Exhibit D** (Map).
- 2.17 **PROJECT STATUS REPORT** – Statement(s) prepared and submitted by the City in accordance with the requirements of this Agreement, including quarterly updates and reports of compliance with laws, ordinances, and contractual requirements, and as described and attached in **Exhibit E**, attached and incorporated herein, for all purposes.
- 2.18 **PUBLIC IMPROVEMENTS** - Improvements that provide a public benefit, including but not limited to utilities, streets, street lights, water and sewer facilities, walkways, parks, flood and drainage facilities, parking facilities, demolition work, fencing and landscaping, without regard to location in or outside of the public right of way, and the categories of work included in the definition of Project in this Agreement.
- 2.19 **PUBLIC INFRASTRUCTURE** – A building, highway, road, excavation, and repair work or other project development or public improvement on the Project Site, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, and the categories of work included in the definition of Project in this Agreement.
- 2.20 **TAX INCREMENT** – Shall have the meaning provided by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the TIRZ.
- 2.21 **TIF** – Tax Increment Financing.
- 2.22 **TIF FUND** - The fund created by the City of San Antonio for the deposit of Tax Increments for the Zone, entitled “Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas.”
- 2.23 **TIF UNIT** – The employees of the City of San Antonio’s department responsible for the management of the City’s Tax Increment Financing Program.
- 2.24 **TIRZ** - Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, known as the Midtown TIRZ.

ARTICLE III. REPRESENTATIONS

- 3.1 **CITY'S AUTHORITY.** The City represents to the Board that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.
- 3.2 **BOARD'S AUTHORITY.** The Board represents that as of that date of the Board's signature to this Agreement, the Board established pursuant to City Ordinance No. 2008-12-11-1134, has the authority to carry out the functions and operations contemplated by this Agreement.
- 3.3 **AUTHORITY AND ABILITY TO PERFORM.** The Parties represent that performance hereunder shall not result in any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and the City shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
- 3.4 **COOPERATE.** The Parties represent that they shall each cooperate and provide each other all necessary information in order to assist determining compliance with this Agreement.
- 3.5 **DUTY TO COMPLETE IMPROVEMENTS.** The Parties represent that they understand and agree that even after the TIRZ terminates, the City shall ensure the successful completion of all required improvements at no additional cost to the TIRZ beyond the maximum TIRZ funding, in accordance with the terms of this Agreement.
- 3.6 **CITY BEARS RISK OF REIMBURSEMENT.** The City understands and agrees that any expenditure made in anticipation of reimbursement from the TIF Fund shall not be, nor shall be construed to be, the financial obligation of the TIRZ. The City shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and unanticipated effects covered under legal doctrine of force majeure.

ARTICLE IV. THE PROJECT

- 4.1 **PROJECT.** The Project shall consist of the development of public infrastructure and public improvements necessary to reconstruct a section of Avenue B, reconfigure the roadways, mark buffered lanes, create curb extensions, install pedestrian ramp along N Alamo from Houston to McCullough, along McCullough from N Alamo to Ave B, along Ave B from McCullough to Roy Smith, and along Roy Smith from Ave B to Broadway San Antonio, Texas, City Council District 1, and within the TIRZ. The City will provide Project oversight and complete or cause the completion of the Project, in accordance with this Agreement and no later than December 31, 2021.

ARTICLE V. OBLIGATIONS OF THE CITY

- 5.1 **PROJECT OVERSIGHT.** The City agrees to monitor activities and provide reasonable oversight of the Project, including the management of construction of Public Infrastructure and Public Improvements. TCI shall be the point of contact on all matters regarding the Project.
- 5.2 **COMMENCEMENT.** The City agrees and shall ensure that construction on any Phase of the

Project: (i) has been approved in writing by the appropriate City department; and, (ii) the requirements of all local, State and Federal laws have been met from the effective date of the commencement of construction on the Project.

- 5.3 **WRITTEN AGREEMENT.** The City agrees that any work or services contracted under this Agreement shall be contracted only by written contract and, unless specific waiver is granted in writing by the Board, such contract shall be subject to this Agreement.
- 5.4 **COMPLIANCE.** The City agrees to ensure compliance by Project contractors and subcontractors of all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City Code, (including the Unified Development Code such as Universal Design and Construction requirements), Chapter 2258 of the Texas Government Code, and all applicable local, state, and federal laws and regulations as amended.
- 5.5 **PROJECT INSPECTION.** The City agrees to provide the Board and TIF Unit access to the Project Site for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project. The Board and TIF Unit shall be provided a right of entry onto the Project Site to conduct random walk-through inspections.
- 5.6 **SUPERVISION OF CONSTRUCTION.** The City agrees to cause the performance of all construction of all Public Infrastructure and Public Improvements, at a minimum, in accordance with all Federal, State and local laws, including, but not limited to the current TIF Guidelines, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City. The City also agrees to provide reports including inspections of such construction and of compliance with such laws, ordinances, and contractual requirements.
- 5.7 **COMPLETION.** The City agrees to complete, or cause to be completed, the Public Infrastructure and Public Improvements, in accordance with Section 2.8 and Section 4.1 of this Agreement and no later than December 31, 2021.
- 5.8 **DELAYS AND EXTENSION(S).** City is responsible for the Project's construction, which shall be completed no later than December 31, 2021. If the commencement of completion of the Project is delayed by reason(s) beyond the City's control, then at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the commencement and completion deadlines set forth in this Agreement may be extended by no more than six (6) months. In the event that City does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with ARTICLE XI. ASSIGNMENTS, CHANGES AND AMENDMENTS of this Agreement, the Parties may extend the deadlines in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reasonably reach an agreement on the extension of the Construction Schedule, or if City fails to complete the Project in compliance with the revised Construction Schedule, other than as a result of force majeure, this constitutes a material breach.
- 5.9 **FORCE MAJEURE.** The Board may also grant temporary relief from any deadline for performance of any term of this Agreement if the City is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault of the City. The burden of proof for the need of such relief shall rest on the City. To obtain relief based on force majeure, the City must file a written request with the Board. Then, at the TIF Economic Development Manager's reasonable discretion, the deadlines set forth

in this Agreement may be extended without subsequent City Ordinance.

- 5.10 **QUARTERLY STATUS AND COMPLIANCE REPORTS.** The City agrees to submit to the TIF Unit written and signed Project Status Reports (see Sections 2.17 and 5.4 above) containing all required information, on the 15th day of January, April, July and October throughout the duration of the Project, or more often if requested by the Board or the TIF Unit, using the form attached as **Exhibit E**.
- 5.11 **MAINTENANCE.** The City shall, at its own cost and expense, maintain or cause to be maintained all Public Infrastructure and Public Improvements, to the extent required by this Agreement.

ARTICLE VI. OBLIGATIONS OF THE BOARD

- 6.1 **ELIGIBLE PROJECT COSTS.** Costs shall be considered eligible only if approved by the Board, incurred directly and specifically in the performance of, and in compliance with this Agreement and all applicable laws.
- 6.2 **PLEDGE OF FUNDS.** The Board hereby pledges Available TIF Funds, as reimbursement to the City for approved Project Costs, up to Six Million Dollars and No Cents (\$6,000,000.00) for the development and design of the Project, located at the Project Site, subject to the terms and conditions in this Agreement, priority of payment schedule, and termination of the TIRZ.

ARTICLE VII. NOTICE

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

THE CITY

TCI
Attn: Razi Hosseini

San Antonio, TX 78205

THE BOARD

Midtown TIRZ #31
Attn: TIF Unit
1400 S Flores
San Antonio, TX 78204

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

ARTICLE VIII. RECORDS

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

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

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

ARTICLE IX. REIMBURSEMENT

- 9.1 **CPPR APPROVAL.** Upon completion by City of eligible project costs, City may submit to the TIF Unit a completed CPPR. Should there be discrepancies in the CPPR or if more information is required, City will have thirty (30) calendar days upon notice by TIF staff to correct any discrepancy or submit additional requested information. Failure to timely submit the additional information requested by the City may result in the delay of City's requested expense reimbursement.
- 9.2 **MAXIMUM REIMBURSEMENT.** Following Board approval and City Council authorization, the City shall receive in accordance with this Agreement, from the TIF Fund a total maximum reimbursement of SIX MILLION DOLLARS AND NO CENTS (\$6,000,000.00) for eligible Project Costs.
- 9.3 **AVAILABLE TAX INCREMENT FUNDS.** The sole source of the funds to reimburse the City for Project Costs shall be the Available TIF Funds levied and collected on the TIRZ and contributed by the Participating Taxing Entities participating in the TIRZ to the fund, created and maintained by the City for the purpose of implementing the Public Improvements of the Project.
- 9.4 **REQUESTS FOR REIMBURSEMENT.** The Parties agree that all requests for reimbursement from the City shall be in accordance to Section 2.19 of this Agreement and **Exhibit F**, attached hereto.
- 9.5 **PROCESSING OF PAYMENT REQUESTS.** Board authorized reimbursements shall be made available to the City within 60 days after the deposit of the City's Tax Increment Payment to the TIF Fund, subject to availability, priority of payment and the requirements herein.
- 9.6 **PRIORITY OF PAYMENT.** The Parties agree that TIF Funds will be used to reimburse City for eligible Projects Costs in the order of priority of payment for the TIRZ.
- 9.7 **SOURCE OF FUNDS.** The Parties agree the sole source of the funds to reimburse City shall be the Available Tax Increment levied and collected on the real property located in the TIRZ and contributed by the participating taxing entity to the TIRZ Fund.
- 9.8 **PARTIAL PAYMENTS.** If TIF Funds are not available in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority required by section 8.4 above, and the remainder shall be paid as TIF Funds become available. No fees, costs, expenses or penalties shall be paid on any partial or late payment.

ARTICLE X. TERMINATION

- 10.1 **TERMINATION.** For purposes of this Agreement, termination shall mean the expiration of the term as provided by Article I. Section 1.1 Term, herein. In addition, the City and/or the Board may terminate this Agreement in the following manners: (1) Termination without Cause pursuant to Section 10.2, (2) Termination for Cause pursuant to Section 10.3, and (3) Termination by law pursuant to Section 10.4.
- 10.2 **TERMINATION FOR WITHOUT CAUSE.** This Agreement may also be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, the proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 10.3 **TERMINATION FOR CAUSE.** Each Party shall have the right to terminate this Agreement in whole or in part for cause if the City fails to perform the terms and conditions herein or, if the City fails to cure a default within 60 days after receiving written notice of Default from the Board, requesting that the failure be cured.
- 10.4 **CURE.** Upon written Notice of Default resulting from a breach of this Agreement, such default may be cured within 60 days from the date of the Notice of Default.
- 10.5 **NOTICE OF TERMINATION.** In the event that Party fails to comply with this Agreement, such non-compliance shall be deemed a default and this Agreement may summarily be terminated upon the issuance of a written Notice of Termination, which shall include: (1) the reasons for termination; and (2) the effective date of Termination.
- 10.6 **RECAPTURE.** If the Board terminates this Agreement for cause, then the TIRZ shall have the right to recapture all the disbursed TIF Funds made under this Agreement and the City shall repay and deposit all TIF Funds disbursed to the City under this Agreement to the TIF Fund of the Midtown TIRZ within 60 days from the date of Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Midtown TIRZ.
- 10.7 **OTHER REMEDIES AVAILABLE.** The Board shall have the right to seek any remedy in law to which it may be entitled, in addition to termination and repayment of funds, if the City defaults under the material terms of this Agreement.

ARTICLE XI. ASSIGNMENTS, CHANGES AND AMENDMENTS

- 11.1 **ASSIGNMENTS.** The Parties shall not transfer, pledge or assign their rights and obligations under this Agreement without first procuring written approval by the Board as evidenced by Resolution passed and approved by the Board.
- 11.2 **AUTOMATIC INCORPORATION OF LAWS.** Changes in Federal, State and local laws, rules, or regulations may occur during the term of this Agreement and any such change(s) shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.
- 11.3 **INVALID PROVISION.** If any provision of this Agreement is held invalid, ineligible, illegal or

unenforceable under City, State, Federal laws, then said provision and the remainder of this Agreement shall be construed as if such provision was never contained in this Agreement.

- 11.4 **AMENDMENTS.** Except when the terms of this Agreement expressly provide otherwise, any alteration, addition, or deletion that constitutes a material change to the terms of this Agreement shall be effectuated by an amendment, in writing, executed by the passage of Board Resolution and subsequent City Ordinance. For amendments that provide additional funding commitments of less than \$50,000, only Board approval shall be required. Following Board approval, the Director of Neighborhood Housing or his or her designee shall have authority to execute such amendments without further action by the San Antonio City Council.
- 11.5 **CONSTRUCTION SCHEDULE.** Notwithstanding the above, the Construction Schedule may be amended, as evidenced by approval of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee. In the event an amendment to the Construction Schedule as stated in section 5.8 will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 11.4, above. City may rely on the determination of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee, in coordination with the Office of the City Attorney, whether a change in the Construction Schedule would result in a material change to the overall Project requirements.

ARTICLE XII. NON-DISCRIMINATION

- 12.1 **NON-DISCRIMINATION.** In accordance with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under this Agreement.

ARTICLE XIII. GOVERNING LAW

- 13.1 **TEXAS LAW.** This Agreement shall be construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in with this in Bexar County, Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar, County Texas.

ARTICLE XIV. CAPTIONS

- 14.1 **CAPTIONS.** All captions herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to this Agreement.

ARTICLE XV. ENTIRE AGREEMENT

- 15.1 **FINAL AGREEMENT.** This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.
- 15.2 **INCORPORATION AND EXHIBITS.** Exhibits referenced below are incorporated herein and shall

be considered a part of this Agreement, 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.

EXHIBIT A - Resolution T32-2019-09-13-__R

EXHIBIT B – Avenue B Bike Lane Project

EXHIBIT C - Construction Schedule

EXHIBIT D - Project Site (Map)

EXHIBIT E - Project Status Report Form

EXHIBIT F - Contract Progress Payment Request Form

Signatures on the following page

DRAFT

EXECUTED BY THE PARTIES IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original on this the ____ day of _____, 2019.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BOARD OF DIRECTORS
Midtown TIRZ #31

Erik Walsh
CITY MANAGER
Date: _____

Louis Fox
PRESIDING OFFICER
Date: _____

ATTEST/SEAL:

ATTEST

Leticia Vacek
CITY CLERK

Date: _____

Date: _____

APPROVED AS TO FORM:

Andrew Segovia
CITY ATTORNEY

T31 2019-09-13-__R

RESOLUTION BY THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-ONE, CITY OF SAN ANTONIO, TEXAS, KNOWN AS THE MIDTOWN TAX INCREMENT REINVESTMENT ZONE (“TIRZ”), AUTHORIZING THE EXECUTION OF A FUNDING AGREEMENT IN AN AMOUNT NOT TO EXCEED \$6 MILLION IN AVAILABLE TAX INCREMENT FROM THE TIRZ FUND TO SAN ANTONIO’S DEPARTMENT OF TRANSPORTATION AND CAPITAL IMPROVEMENTS FOR THE AVENUE B BIKE LANE PROJECT LOCATED IN SAN ANTONIO, TEXAS AND WITHIN THE TIRZ, IN CITY COUNCIL DISTRICT 1.

* * * * *

WHEREAS, the City of San Antonio (“City”) and the Midtown TIRZ Board of Directors (“Board”) support programs which allow for economic development within its boundaries; and

WHEREAS, the City recognizes the importance of its continued role in economic development; community development and urban design and in accordance with Chapter 311 of the Texas Tax Code (the “Act”), the City through Ordinance No. 2008-12-11-1134 established Tax Increment Reinvestment Zone Number Thirty-One, San Antonio, Texas, known as the Midtown TIRZ (“TIRZ”), to promote development and redevelopment which would not otherwise occur solely through private investment; and

WHEREAS, in September 2019, San Antonio’s Transportation and Capital Improvements Department (“TCI”) applied for funding from the City’s Tax Increment Financing (“TIF”) Program in order to undertake the oversight and delivery of reconfiguring the roadway for distinguished and continuous bicycle path along N Alamo from Houston to McCullough, along McCullough from N Alamo to Ave B, along Ave B from McCullough to Roy Smith, and along Roy Smith from Ave B to Broadway, in San Antonio, Texas, in City Council District 1, and within the boundary of the Midtown TIRZ; and

WHEREAS, the total development cost for the Avenue B Bike Lane Project is approximately \$6 million with plans to reconstruct Avenue B and neighboring streets, reconfigure the roadways, mark buffered lanes, create curb extensions, install pedestrian ramp; and

WHEREAS, staff recommends funding to TCI for up to Six Million Dollars and No Cents (\$6,000,000.00) in reimbursable TIF funds from the Midtown TIRZ to make the necessary public improvements and/or public infrastructure requirements related to the Avenue B Bike Lane Project; and

WHEREAS, in accordance with Section 311.010(b) of the Act, the Board is authorized to enter into agreements to dedicate revenue from the tax increment fund to reimburse for eligible project costs that benefit the TIRZ; and

WHEREAS, the Board desires to provide financial incentives for development and revitalization projects that benefit the City and the Midtown TIRZ, and authorize negotiation of an agreement to effectuate that; **NOW THEREFORE**,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER THIRTY-ONE, THE MIDTOWN TIRZ, CITY OF SAN ANTONIO, TEXAS:

SECTION 1. The recitals set out above are adopted in their entirety.

SECTION 2. The Board hereby authorizes the execution of a Funding Agreement between TCI and the Board, attached hereto in substantially final form as Exhibit A, to provide available tax increment funding in an amount not to exceed SIX MILLION DOLLARS AND NO CENTS (\$6,000,000.00) for eligible project costs for the Avenue B Bike Lane Project located on Avenue B, Alamo, and Roy Smith Street in San Antonio, Texas and within the TIRZ in City Council District 1.

SECTION 3. The Board hereby authorizes the City to make necessary amendments to the Project Plan and Finance Plan to add the Avenue B Bike Lane Project.

PASSED AND APPROVED this 13th day of September, 2019.

Louis Fox
Presiding Officer

ATTEST:

APPROVED AS TO FORM:

Venessa Rodriguez
Assistant City Attorney