

ROYAL BLUE GROCERY ON COMMERCE PROJECT DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”), pursuant to City Ordinance No. 2024-__ - __ - __ passed and approved on _____, 2024, is entered into by and between the City of San Antonio (“City”), a Texas Municipal Corporation in Bexar County, Texas, the Board of Directors (“Board”) for Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas, and Commerce Street Kitchen LLC, a limited liability company registered in the State of Texas and referred to herein as (“Developer”). This agreement refers to the City, Board and the Developer collectively as the “Parties” and singularly as the “Party.”

ARTICLE I. RECITALS

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the “Act”), the City through Ordinance No. 93101 established Tax Increment Reinvestment Zone Number Eleven, San Antonio, Texas, known as the Inner City Tax Increment Reinvestment Zone (“TIRZ”), to promote development and redevelopment which would not otherwise occur solely through private investment in the reasonably foreseeable future and created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, the City and the Board recognize the importance of their continued role in development activities and actively participate in funding projects that enhance the value of all the taxable real property in the TIRZ and benefit the City; and

WHEREAS, on March 25, 2024, Developer submitted a proposal request for TIRZ funding in the amount of ONE HUNDRED FORTY-TWO THOUSAND THREE HUNDRED THIRTY-ONE DOLLARS and NO CENTS (\$142,331.00) for the Royal Blue Grocery on Commerce Project located at 1431 E. Commerce Street, San Antonio, Texas 78205, in City Council District 2, and within the boundary of the Inner City TIRZ; and

WHEREAS, the Royal Blue Grocery on Commerce Project is the construction of Public Improvements in connection with establishing a Royal Blue Grocery Store, which will include sidewalk and parking area repairs at the Project Site; and

WHEREAS, the total development cost for the Project is approximately \$991,610.00; and

WHEREAS, the TIRZ Funds will be utilized for Public Improvements and Public Infrastructure necessary to complete the 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 pay for eligible project costs that benefit the TIRZ; and

WHEREAS, on _____, 2024, the Board adopted Resolution T11-2024-__-__-__R, which is attached hereto as **Exhibit A**, authorizing the negotiation and execution of this Agreement; and

WHEREAS, pursuant to said authority above, the Parties hereby enter into a binding agreement to develop the Project; **NOW THEREFORE**:

In consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the Parties severally and collectively agree, and by the execution hereof are bound, to the performance and accomplishment of tasks hereinafter described.

ARTICLE I. AGREEMENT PURPOSE

- 1.1 Developer shall undertake the Project which is anticipated to benefit the City, enhance the value of all the taxable real property in the TIRZ, and promote economic development which would not otherwise occur solely through private investment in the reasonably foreseeable future.

ARTICLE II. TERM

- 2.1 TERM. The term of this Agreement shall commence on the Effective Date and end on whichever of the following dates should occur the earliest: (i) the date Developer receives the final reimbursement for completing the Project; (ii) the date this Agreement is earlier terminated as provided in Article X; or (iii) termination of the TIRZ, provided that all existing warranties on the Project shall survive termination of this Agreement for the express time periods provided herein.

ARTICLE III. DEFINITIONS

- 3.1 **Agreement, City, Board, and Developer** – Shall have the meaning specified in the preamble of this document.
- 3.2 **Act** – Means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as may be amended from time to time.
- 3.3 **Administrative Costs** – Means the reasonable costs incurred directly and/or indirectly by the City for the administration of the TIF Program.
- 3.4 **Adversarial Proceedings** – whether or not capitalized, means any cause of action involving this Agreement filed by Developer against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings, including arbitration.
- 3.5 **Available Tax Increment** – Has the meaning given in the Act, Section 311.012 (a), contributed by each participating taxing entity to the TIRZ Fund, and distributed in accordance with the order of priority of payment of the TIRZ.

- 3.6 **Construction Schedule** – The specific timetable for constructing the Project, which Developer shall commence construction at the Project Site as stated in Section 5.1 and shall use commercially reasonable efforts to complete construction, subject to delays caused by Force Majeure and any provision pursuant of this Agreement.
- 3.7 **Contract Progress Payment Request (“CPPR”)** – Request form prepared and submitted by Developer pursuant to the requirements of this Agreement and the CPPR Form, attached hereto as **Exhibit B**. The CPPR shall also include and reflect all waivers granted through any City program or incentives.
- 3.8 **Effective Date** – means the date that the Project is approved by the Board, provided however, that the scope or the funding for the Project is not later amended by the City Council. If the terms of the Project are amended by the City Council, then the Effective Date will be the date upon which the City Council approved the Project.
- 3.9 **Finance Plan** – means the Inner City TIRZ Finance Plan, as defined in the Act, and 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.
- 3.10 **Force Majeure** – means any event beyond the control of a party and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent that event or circumstance, including, without limitation, acts of God, fire, flood, storm, earthquake, accident, war, rebellion, insurrection, riot, pandemic or invasion.
- 3.11 **Person** – means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- 3.12 **Project** – Has the meaning found in Section 5.1 of this Agreement.
- 3.13 **Project Costs** – Has the meaning found in the Act, Section 311.002. Project Costs are limited to Public Improvements and Public Infrastructure approved by the Board within the TIRZ boundary, incurred after the Effective Date.
- 3.14 **Project Plan** – means the Project Plan as defined in the Act for the Inner City TIRZ as approved and periodically amended by the Board and the City and incorporated by reference for all purposes into this document as if set out in its entirety.
- 3.15 **Project Site** – means the real property located at 1431 E. Commerce Street, San Antonio, Texas 78205, City Council District 2, and within the Inner City TIRZ, and described in attached **Exhibit C**.
- 3.16 **Project Status Report** – means the document the Developer prepared and submitted in accordance with this Agreement’s requirements and **Exhibit D**, attached and incorporated herein, for all purposes.

- 3.17 **Public Improvements** – means improvements on the Project Site that provide a public benefit, including but not limited to utilities, streets, street lights, water and sewer facilities, walkways, parks and park furniture, public art, water features, low impact development, 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.
- 3.18 **Public Infrastructure** – means 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.
- 3.19 **Tax Increment** – Has the meaning found in the **Act**, Section 311.012. Tax Increment applies only to taxable real property within the TIRZ.
- 3.20 **TIF** – means Tax Increment Financing.
- 3.21 **TIRZ Fund** – the fund created by the City for the deposit of Tax Increment for the Zone, entitled “Reinvestment Zone Number Eleven, City of San Antonio, Texas.”
- 3.22 **TIF Division** – means the division of the City’s Neighborhood & Housing Services Department (or successor) responsible for the management of the City’s Tax Increment Financing Program.
- 3.23 **TIRZ** – means Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas, known as the Inner City TIRZ.

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

ARTICLE IV. REPRESENTATIONS

When an improvement has both private and public benefits, only that portion that has a public benefit may be reimbursed by the City, such as, but not limited to, capital costs, including the actual costs of public improvements, alteration, remodeling, repair, or reconstruction of existing buildings and structures.

- 4.1 CITY’S AUTHORITY. City represents that it is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.
- 4.2 BOARD’S AUTHORITY. The Board represents that the TIRZ, as established pursuant to City Ordinance No. 93101, has the authority, through the Board Chair’s affixed signature to this Agreement, to carry out the functions and operations contemplated by this Agreement.

- 4.3 DEVELOPER'S AUTHORITY. Developer represents that it has the right to enter into this Agreement and perform the requirements set forth herein. The Developer's performance under this Agreement shall be lawful and shall not violate any applicable judgment, order, or regulation nor result in the creation of any claim against the City for money or performance, 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 TIRZ Fund only from Available Tax Increment to the extent provided herein. Developer shall have sufficient capital, from one or more sources selected by Developer, including but not limited to the financing of the Project, to perform all of its obligations under this Agreement when it needs to have said capital.
- 4.4 NO INCREMENT REVENUE BONDS. Neither the City nor the Board will issue any tax increment revenue bonds to cover any costs directly or indirectly related to Developer's improvement of the TIRZ under this Agreement.
- 4.5 REASONABLE EFFORTS. Each party to this Agreement will cooperate and make reasonable efforts to expedite the subject matter hereof and acknowledge that successful performance of this Agreement requires their continued cooperation.
- 4.6 CONSENTS. Each party to this Agreement represents that the execution, delivery, and performance of this Agreement requires no consent or approval of any person that has not been obtained.
- 4.7 DUTY TO COMPLETE IMPROVEMENTS. Each party to this Agreement understands and agrees that Developer shall ensure the successful completion of all required improvements related to this agreement at no additional cost to the City and/or the TIRZ beyond the maximum TIRZ funding, in accordance with the terms of this Agreement.
- 4.8 NO INTERLOCAL AGREEMENTS. Each party to this Agreement understands and agrees that the City is the only participating taxing entity contributing 100% of the tax increment to the TIRZ Fund for this Project, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.
- 4.9 DEVELOPER BEARS THE RISK. Developer understands and agrees that any expenditure made by Developer in anticipation of reimbursement of TIRZ Funds shall not be, nor shall be construed to be, the financial obligations of the City and/or the TIRZ. Developer bears 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 Public Improvements and Public Infrastructure, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and unanticipated effects covered under the legal doctrine of force majeure. Any contribution made by Developer in anticipation of reimbursement from the TIRZ Fund shall never be an obligation of the City's General Fund, but are only obligations of the TIRZ Fund, and are subject to limitations herein.

- 4.10 RIGHT TO ASSIGN PAYMENT. Developer may rely upon the payments to be made to Developer out of the TIRZ Fund as specified in this Agreement and Developer may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement as per Section 15.5 hereof, but the Developer's right to such payments is subject to the other limitations of this Agreement. Notwithstanding the foregoing, the City shall issue a check or other forms of payment made payable only to Developer.

ARTICLE V. THE PROJECT

- 5.1 PROJECT. The Project consists of the design, construction, installation and implementation of Public Improvements located at the Project Site, namely the construction of ADA compliant sidewalks, ADA ramps, curbs, and the repair of the parking area. The Project is anticipated to commence on September 15, 2024, and shall be completed no later than January 31, 2025. Developer shall provide a detailed budget for the Project, which shall be attached hereto as **Exhibit F**.
- 5.2 PRIVATE FINANCING. The cost of Public Infrastructure and all other improvement expenses associated with the Project shall be funded by Developer's own capital or through commercial or private construction loans/lines of credit secured solely by Developer. Developer may use all, any or part of the Project Site as collateral for the construction loan(s) as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication.
- 5.3 REIMBURSEMENT FROM TIRZ FUNDS. Reimbursement of TIRZ Funds are subject to availability and priority of payment and are not intended to reimburse all costs incurred in connection with the Project or expenses incurred by Developer for performance of the obligations under this Agreement. Neither the City nor the Board can guarantee that Available Tax Increment shall completely reimburse Developer. **Available Tax Increment shall constitute a source of reimbursement to Developer for construction of the Public Improvements and Public Infrastructure at the Project Site. Total reimbursement to Developer from the TIRZ Fund shall not exceed ONE HUNDRED FORTY-TWO THOUSAND THREE HUNDRED THIRTY-ONE DOLLARS AND NO CENTS (\$142,331.00).** Developer is eligible for reimbursement of eligible Project Costs as of the Effective Date. The Terms by which eligible Project Costs will be reimbursed are further defined in Article VIII. Compensation to Developer and **Exhibit E**, attached hereto and incorporated herein for all purposes.

ARTICLE VI. DUTIES AND OBLIGATIONS OF DEVELOPER

- 6.1 DISCRETIONARY PROGRAM. Developer agrees that the TIF program is a discretionary program and that the City and the Board have no obligation to extend TIF to Developer. Developer agrees that they have no vested rights as a result of this Agreement under any regulations, ordinances or laws, and waive any claim to be exempt from applicable provisions of the current City Charter, City Code, City Ordinances, and state or federal laws and regulations.

- 6.2 COMPLIANCE. Developer, Developer's designees or development consultants agree to exercise supervision over the construction of the Public Infrastructure and Public Improvements associated with the Project. Developer shall retain overall responsibility for the Project. Developer shall comply and cause its contractors and subcontractors to comply with all applicable provisions of the City Charter, the City Code (including, but not limited to, the Unified Development Code such as Universal Design and Construction requirements), and all applicable federal, state and local laws. Developer shall cooperate with the City and the Board in providing all necessary information in order to assist the City in determining Developer's compliance with this Agreement.
- 6.3 DUTY TO COMPLETE. Developer agrees to complete, or cause to be completed, the improvements described in Section 5.1 above. Developer agrees to provide, or cause to be provided, all materials, labor and services for completing the Project. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of improvements on the Project Site.
- 6.4 OMITTED.
- 6.5 COMMENCEMENT OF CONSTRUCTION. From the Effective Date of this Agreement forward, Developer shall not commence any construction on the Project receiving funding under this Agreement, until the plans and specifications have been approved by the appropriate City department and the requirements of all applicable federal, state, and local laws have been met.
- 6.6 PAYMENT BONDS AND PERFORMANCE BONDS. To the extent required by Chapter 2253 of the Texas Government Code, Developer shall cause its general contractor(s) to obtain payment and performance bonds naming the City as beneficiary or obligee of the bonds for construction of the Public Improvements at the Project Site. Said bonds shall be in an amount sufficient to cover only the cost of the construction and completion of the Public Improvements portions of the Project, detailed in Section 5.3 Reimbursement. Developer shall submit copies of the payment and performance bonds to the City TIF Division and its contractors; however, Developer must obtain approval of the bonds by the City's Risk Management Department.
- 6.7 SUPERVISION OF CONSTRUCTION. Developer retains overall responsibility for the Project; subject to this retention, Developer may delegate supervision duties over the construction of all Public Improvements and Public Infrastructure, and cause said construction to be performed, at a minimum, in accordance with all legal requirements detailed in Section 6.2 above, the City Code, and the plans and specifications approved by the appropriate City department, notwithstanding any other provision of this Agreement.
- 6.8 DELAYS. Developer is responsible for the Project's construction, which shall be completed no later than January 31, 2025. If the commencement or completion of the Project is delayed by reason(s) beyond the Developer's control, then at the reasonable discretion of

the Director of the City's Neighborhood & Housing Services Department (or successor), the commencement and completion deadlines set forth in this Agreement may be extended by no more than six (6) months. In the event that Developer does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with Article XXI 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 Developer 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.

- 6.9 PAYMENT OF APPLICABLE FEES. Developer is responsible for paying Project construction costs of all applicable permit fees and licenses which have not been lawfully waived to the City and all governmental agencies.
- 6.10 INFRASTRUCTURE MAINTENANCE. At its own expense, Developer shall maintain or cause to be maintained all Public Infrastructure, broadly defined to include a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, until said dedication to the City and for one year (1) after completion. Upon acceptance of a street or drainage improvement for maintenance by the City, Developer shall deliver to the City a one-year extended warranty bond naming the City as the obligee in conformity with Chapter 35, the City's Unified Development Code. The cost of repair, replacement, reconstruction and maintenance for defects in the Public Infrastructure discovered during the first year after Completion disclosed to Developer by the City within a reasonable period of time, but no more than 30 days from the time of discovery, shall be paid by the bond company and shall not be paid out of the TIRZ Fund. After the expiration of the one-year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of Public Improvements dedicated to the City shall be the responsibility of the City.
- a. Following completion of any Public Infrastructure or Public Improvements so dedicated to the public (if any), Developer, their agents, employees, and contractors will not interfere with reasonable use of all such public works by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, Developer shall use their best efforts to dedicate (or grant a public easement to) to such Public Infrastructure or Public Improvements where applicable to the appropriate taxing entity (as determined by the City), at no additional expense to the City or TIRZ.
 - b. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee, or City official or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a city employee or agent do not work an estoppel against the City under this contract or the Unified Development Code.

- 6.11 QUARTERLY STATUS AND COMPLIANCE REPORTS. Upon the commencement and throughout the duration of the construction of the Project, Developer shall submit to the City's TIF Division Project Status Reports (See Section 3.16 above), on a quarterly basis or, as requested by the City, in accordance with the requirements of this Agreement and of the Status Report Form, attached hereto as **Exhibit D**. If Project Status Reports are not submitted on the assigned dates, the Developer understands that no available tax increment funds will be reimbursed to the Developer until after the reports are provided.
- 6.12 PROJECT SITE INSPECTION. Developer shall allow the City and the Board reasonable access to the Project Site owned or controlled by Developer for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project and Developer's compliance with this Agreement. The Board and TIF Division Staff shall be provided a right of entry onto the Project Site during business hours to conduct random walk-through inspections of the Project's Development.
- 6.13 REQUESTS FOR REIMBURSEMENT. Developer shall initiate reimbursement requests of eligible Project Costs by submitting to the City's TIF Division applicable invoices and a Contract Progress Payment Request Form, as detailed in attached **Exhibit B**. Multiple invoices may be submitted within one request, and on an annual basis if so desired.

ARTICLE VII. DUTIES AND OBLIGATIONS OF CITY AND BOARD

- 7.1 NO BONDS. Neither the City nor the Board shall sell or issue any bonds to pay or reimburse Developer or any third party for any improvements to the Project Site performed under the Project Plan, Finance Plan or this Agreement.
- 7.2 PLEDGE OF FUNDS. The City and the Board pledge to use available Tax Increment funding, as reimbursement to Developer for approved and eligible Project Costs, subject to the terms and conditions herein, priority of payment schedule, and termination of the TIRZ.
- 7.3 COORDINATION OF BOARD MEETINGS. The City and the Board hereby agree that 1) all meetings of the Board as well as all administrative functions shall be coordinated and facilitated by the TIF Division; and 2) all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with the City Code and state law. TIF Division authority also extends to control of the Board Agenda in conjunction with established City policy.

ARTICLE VIII. COMPENSATION TO DEVELOPER

- 8.1 CPPR APPROVAL. Upon completion by Developer of eligible project costs, Developer should submit to the TIF Division a completed CPPR. Should there be discrepancies in the CPPR or if more information is required, Developer will have thirty (30) calendar days upon notice by the City and/the Board 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 Developer's requested expense reimbursement.

- 8.2 MAXIMUM REIMBURSEMENT OF DEVELOPER. Following the Board's authorization, Developer shall receive total reimbursements for Public Improvements and Public Infrastructure, as specified in Section 5.3 of this Agreement, up to the Maximum Reimbursement Amount to eligible Project costs. Developer understands that any amendments to the Maximum Reimbursement Amount herein are prohibited and any request for further incentives beyond this set amount shall require a new application.
- 8.3 PROCESSING OF PAYMENT REQUESTS. Board-authorized reimbursements of Available Tax Increment shall be made solely to Developer, and shall not be unreasonably denied provided that the City has no active claim for reimbursement under this section.
- 8.4 PRIORITY OF PAYMENT. The Parties agree that the TIRZ Fund will reimburse Developer for Projects Costs in the order of priority of payment for the TIRZ.
- 8.5 SOURCE OF FUNDS. The sole source of the funds to reimburse Developer 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, as outlined in the Project Plan and/or Finance Plan.
- 8.6 PARTIAL PAYMENTS. If Available Tax Increment does not exist in an amount sufficient to reimburse Developer in full when the reimbursements 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 Tax Increment becomes available. No fees, costs, expenses or penalties shall be paid to any party on any late or partial payment.
- 8.7 INVALID PAYMENTS. If any payment to Developer is held invalid, ineligible, illegal or unenforceable under applicable federal, state or local laws, then and in that event, Developer shall repay such payment in full to the City for deposit into the TIRZ Fund.

ARTICLE IX. INSURANCE

- 9.1 The use of the word “scheduled event” throughout this Article IX, shall refer to September 15, 2024, the projected commencement date of the Project. No later than one day before the scheduled event, Developer must provide a completed Certificate(s) of Insurance to the TIF Division. The certificate must be:
- clearly labeled with the legal name of the event in the Description of Operations block;
 - completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and
 - properly endorsed and have the agent’s signature, and phone number.
- 9.2 Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the TIF Division. No officer or employee, other than City’s Risk Manager, shall have authority to waive this

requirement.

- 9.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, Developer certifies and represents that its endorsements do not materially alter or diminish the insurance coverage.
- 9.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.
- 9.5 Developer shall obtain and maintain in full force and effect for the duration of construction of all Public Improvements, at Developer's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If Developer claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	<i>Statutory</i> \$1,000,000.00
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Personal/Advertising Injury c. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. d. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of: \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage Coverage must include per project aggregate

<p>4. Business Automobile Liability:</p> <p>a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles</p>	<p><u>C</u>ombined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000.00 per occurrence</p>
<p>5. Professional Liability (Claims-made basis)</p> <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>	<p>\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.</p>
<p>6. Umbrella or Excess Liability Coverage</p>	<p>\$5,000,000.00 per occurrence combined limit <u>B</u>odily <u>I</u>njury (including death) and <u>P</u>roperty <u>D</u>amage.</p>
<p>7. Builder's Risk</p>	<p>All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.</p>

- 9.4 Developer must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain similar insurance coverages as required of Developer and provide a certificate of insurance and endorsement that names Developer and City as additional insureds. Developer shall provide City with subcontractor certificates and endorsements before the subcontractor starts work.
- 9.7 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements.

Developer must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

City of San Antonio
Attn: TIF Division
100 W. Houston St.
6th Floor
San Antonio, TX 78205

9.8 Developer's insurance policies must contain or be endorsed to contain the following provisions:

- Name City and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with City. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim.
- Developer shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and
- Provide 30 days advance written notice directly to City of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

9.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, Developer shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Developer's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.10 In addition to any other remedies City may have upon Developer's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, City may order Developer to stop work and/or withhold any payment(s) which become due to Developer under this Agreement until Developer demonstrates compliance with requirements.

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

- 9.12 Developer's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 9.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 9.14 Developer and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE X. TERMINATION AND RECAPTURE

- 10.1 TERMINATION. For purposes of this Agreement, termination means the expiration of the term as provided by Article II, 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 WITHOUT CAUSE. This Agreement may 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, any proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 10.3 TERMINATION FOR CAUSE/DEFAULT. Upon written notice, which must be provided in accordance with **Article XVI. Notice of this Agreement**, the City and/or the Board shall have the right to terminate this Agreement for cause, in whole or in part, if Developer fails to: (1) comply with any material term or condition of this Agreement, which shall be deemed a default; and, (2) cure such default.
- 10.3.1 NOTICE OF DEFAULT. After sending a written Notice of Default, the City will not distribute TIRZ funds to Developer until the default is cured.
- 10.3.2 CURE. Upon written Notice of Default resulting from a breach of this Agreement, such default will be cured within sixty (60) calendar days from the date of the Notice of Default. In the case of default, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the Director of the City's Neighborhood & Housing Services Department (or successor), the Cure Period may be extended provided that Developer will immediately upon receipt of Notice of Default advise the City and the Board of Developer's intent to cure such default within the extended period granted. If there are no reasonable means to cure the default, Developer shall be informed of that conclusion and the facts leading to that conclusion in the Notice of Default. Said Notice of Default shall also serve as a notice of termination of this Agreement ("Notice of Termination").

- 10.3.3 FAILURE TO CURE. In the event Developer fails to cure any default of this Agreement within the Cure Period (or extended period), the City and the Board may, upon issuance to Developer of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.
- 10.3.4 REMEDIES UPON DEFAULT. In the event of a termination pursuant to Section 10.3 for cause, the Parties shall have the right to seek any remedy in law to which they may be entitled, in addition to termination and repayment of funds, if a Party defaults under the material terms of this Agreement. Only in the event of a termination pursuant to this Section 10.3 for cause, the City and Board shall have the right to recapture all the disbursed funds pursuant to this Agreement and the Developer shall repay all disbursed funds to the TIRZ Fund.
- 10.4 TERMINATION BY LAW. If any applicable state or federal law or regulation is enacted or promulgated which prohibits the performance of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 10.5 RECAPTURE. Only in the event of a termination pursuant to Section 10.3 for cause, the City and/or the Board, shall have the right to recapture all disbursed funds made under this Agreement and Developer shall repay disbursed funds as requested by the City and/or the Board in the said Notice of Termination within sixty (60) days from the effective date of the Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Inner City TIRZ.
- 10.6 CLOSE-OUT. Regardless of how this Agreement is terminated, Developer will effect an orderly transfer to City or to such person or entity as the City may designate, at no additional cost to the City, copies of all completed or partially completed documents, records, or reports, produced as a result of or pertaining to this Agreement, regardless of storage medium, if so requested by the City, or shall otherwise retain such documents, records or reports in accordance with Article XIII. Records. Only in the event of a termination pursuant to Section 10.3 for cause, reimbursements due to Developer will be conditioned upon delivery of all such documents, records, or reports, if requested by the City. Within ninety (90) calendar days of the effective date of completion, termination, or expiration of this Agreement, Developer shall submit to City and/or the Board all requests for reimbursements in accordance with Section 6.12 above through the effective date of completion, termination, or expiration. Failure by Developer to submit requests for reimbursements within ninety (90) calendar days of completion, termination, or expiration shall constitute a waiver by Developer of any right or claim to collect Available Tax Increment that Developer may be otherwise eligible for pursuant to this Agreement.

ARTICLE XI. INDEMNIFICATION

11.1 DEVELOPER covenants and agrees TO FULLY INDEMNIFY AND HOLD

HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), and the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, and/or upon the BOARD, directly or indirectly arising out of, resulting from or related to DEVELOPER, any agent, officer, director, representative, employee, consultant or subcontractor of DEVELOPER, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY and/or the BOARD, under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.

- 11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by DEVELOPER to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, and the BOARD, from the consequences of the CITY'S and/or the Board's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City and/or Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City and/or the Board is the sole cause of the resultant injury, death, or damage. DEVELOPER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND/OR THE BOARD AND IN THE NAME OF THE CITY AND IN THE NAME OF THE BOARD, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

ARTICLE XII. LIABILITY

- 12.1 DEVELOPER. As between the City, the Board, and Developer, Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of Developer's employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City or the Board as a result of the Agreement.**

- 12.2 CITY AND BOARD. To the extent permitted by Texas law, no director, officer, employee or agent of the City or the Board shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIII. RECORDS

- 13.1 RIGHT TO REVIEW. Following notice to the Developer, the City reserves the right to conduct, at its own expense, examinations, during regular business hours, of the books and records related to this Agreement including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Developer's services hereunder. The City also reserves the right to perform any additional audits relating to Developer's services, provided that such audits are related to those services performed by Developer under this Agreement. These examinations shall be conducted at the offices maintained by Developer.
- 13.2 PRESERVATION OF RECORDS. All applicable records and accounts of the Developer relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Developer throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred for retention to the City at no cost to the City upon request. During this time, at Developer's own expense, the City may require that any or all of such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within thirty (30) days following written request.
- 13.3 DISCREPANCIES. Should the City discover errors in the internal controls or in the record keeping associated with the Project, Developer shall be notified of such errors and the Parties shall consult on what steps may be necessary to correct such discrepancies within a reasonable period of time, not to exceed sixty (60) days after discovery. The Board shall be informed of the action taken to correct such discrepancies.
- 13.4 OVERCHARGES. If it is determined as a result of such audit that Developer has overcharged for the cost of the Public Improvements and Public Infrastructure, then such overcharges shall be immediately returned to the TIRZ Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than 2% of the greater of the budget or payments to Developer for the year in which the discrepancy occurred, and the TIRZ Fund is entitled to a refund as a result of such overcharges, then Developer shall pay the cost of such audit.

ARTICLE XIV. NON-WAIVER

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

- 14.2 RECEIPT OF SERVICES. The receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenant(s) in this Agreement against assignment or an acceptance of the assignee or a release of the Developer from further performance by Developer of the covenant(s) contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City through an ordinance passed and approved by its City Council.

ARTICLE XV. ASSIGNMENT

- 15.1 ASSIGNMENT BY CITY. The City and/or Board may assign their rights and obligations under this Agreement to any governmental entity the City creates, without prior consent of Developer. If the City and/or Board assign their rights and obligations under this Agreement then the City and/or the Board shall provide Developer written notice of assignment within thirty (30) days of such assignment.
- 15.2 ASSIGNMENT BY DEVELOPER. Developer may transfer its interest in the Project at any time to an entity that is an Affiliate of Developer without the written consent of the Inner City TIRZ Board and City. For the purpose of this Agreement, Affiliate means an entity that (a) is directly or indirectly controlling, controlled by, or under common control with, the Developer; or (b) Developer owns directly or indirectly twenty-five percent (25%) or more of the equity or voting interests of an entity that owns the Project site.

Otherwise, this Agreement is not assignable without written consent by the Board, as evidenced by Board Resolution, nor without written consent of City, as evidenced by the passage of a City Ordinance approving such assignment. This Agreement shall only be assigned after a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developer under this Agreement. Any other attempt to assign the Agreement shall not relieve Developer from liability under this Agreement and shall not release Developer from performing any of the terms, covenants and conditions herein. Developer shall be held responsible for all funds received under this Agreement.

- 15.3 WORK SUBJECT TO AGREEMENT. Any work or services referenced herein shall be by written contract or agreement and, unless the City grants specific waiver in writing, such written contract or agreement shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by Developer's contractor and/or subcontractors with this Agreement shall be the responsibility of Developer.
- 15.4 NO THIRD PARTY OBLIGATION. The City and/or the Board shall in no manner be obligated to any third party except for permitted assignments pursuant to Section 15.2, including any contractor, subcontractor, or consultant of the Developer, for performance of work or services under this Agreement.
- 15.5 LENDING INSTITUTIONS. Any restrictions in this Agreement on the transfer or assignment of the Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the Project. Developer shall notify the City of all such assignments

to a lending or other provider of capital. In no event, shall the City and/or the Board be obligated in any way to the aforementioned financial institution or other provider of capital. The City shall only issue a check or other form of payment to Developer.

- 15.6 WRITTEN INSTRUMENT. Each transfer or assignment to which there has been consent, pursuant to Section 15.2 above, shall be by instrument in writing, in form reasonably satisfactory to the Board, and shall be executed by the transferee or assignee who shall agree in writing, for the benefit of the City and the Board, to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the TIF Division. Failure to obtain, the Board's consent by resolution, or failure to comply with the provisions herein first, shall prevent any such transfer or assignment from becoming effective.
- 15.7 NO WAIVER. Except as set forth in Section 15.3 of this Agreement, the receipt by the City of services from an assignee of the Developer shall not be deemed a waiver of the covenants in this Agreement against assignment or an acceptance of the assignee or a release of further observance or performance by Developer of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing and approved by City Council in the form of a duly passed ordinance.
- 15.8 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the parties hereto and their permitted successors and assigns.

ARTICLE XVI. NOTICE

- 16.1 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

City of San Antonio
City Clerk
Attn: Risk Management Dept.
P.O. Box 839966
San Antonio, TX 78283-3966

THE BOARD

Inner City TIRZ
Attn: TIF Division
City Tower
100 W. Houston St.,
6th Floor
San Antonio, Texas 78205

DEVELOPER

Commerce Street Kitchen LLC
Attn: Christopher Provost
152 E. Elmview Place
San Antonio, Texas 78209

- 16.2 CHANGE OF ADDRESS. Notice of change of address by any Party must be made in writing and mailed to the other Parties within fifteen (15) business days of such change. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to

a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XVII. INDEPENDENT CONTRACTORS

- 17.1 NO AGENCY. All Parties expressly agree that in performing their services, the Board and Developer at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or Developer respectively shall be independent contractors of the Board and/or the Developer. The Parties hereto understand and agree that the City and the Board shall not be liable for any claim that may be asserted by any third party occurring in connection with services performed by Developer, under this Agreement unless any such claim is due to the fault of the City.
- 17.2 NO AUTHORITY. The Parties further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XVIII. TAXES

- 18.1 DUTY TO PAY. Developer shall pay, on or before the respective due dates, to the appropriate collecting authority all applicable Federal, State, and local taxes and fees which are now or may be levied upon the TIRZ Property, the Developer or upon the Developer's business conducted on the TIRZ Property or upon any of the Developer's property used in connection therewith, including employment taxes; subject to Developer's right to protest taxes in accordance with applicable law. Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developer.

ARTICLE XIX. CHANGES AND AMENDMENTS

- 19.1 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 a Board Resolution and subsequent City Council 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 the City's Neighborhood & Housing Services Department or designee shall have the authority to execute such amendments without further action by the San Antonio City Council. Amendments requiring no additional funding commitment that are not material must be in writing and can be executed by the Director of the City's Neighborhood & Housing Services

Department or designee without further action from the Board.

- 19.2 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 Department (or successor) or designee. In the event an amendment to the Construction Schedule as stated in Section 5.1 will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 21.1, above. No change under this section may result in an increase in the maximum contribution of the City. Developer may rely on the determination of the Director of the City's Neighborhood & Housing Services Department (or successor) or 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.
- 19.3 AUTOMATIC INCORPORATION OF LAWS. Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developer's services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part as of the effective date of the rule, regulation or law.

ARTICLE XX. SEVERABILITY

- 20.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, then said clause or provision shall not affect any other clause or provision, and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable provision, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXI. LITIGATION EXPENSES

- 21.1 City policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation or adversarial proceedings related to TIF against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIRZ contracts or agreements with, or authorize or make any TIRZ payment to persons engaged in litigation or adversarial proceedings related to TIF with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIRZ projects during the term of their litigation.
- 21.2 During the term of this Agreement, if Developer files or pursues an **adversarial proceeding** regarding this Agreement against the City and/or the Board, without first engaging in good faith mediation of the dispute, then all access to funding provided hereunder shall be withheld and Developer will be ineligible for consideration to receive

any future tax increment funding while any adversarial proceedings remains unresolved.

- 21.3 Under no circumstances will the Available Tax Increment received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any **adversarial proceeding** against the City, the Board or any other public entity. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XI above.
- 21.4 Nothing contained in this Article XXIII shall be deemed to apply to the right to protest taxes in accordance with applicable law, and, Developer and its partners, affiliates, sponsors, payroll employees, and relatives of the first degree of consanguinity shall have the right to protest taxes in accordance with applicable law as to the Project Site or any other property without violating the terms, provisions and conditions of this Agreement.

ARTICLE XXII. LEGAL AUTHORITY

- 22.1 Each person executing this Agreement on behalf of each Party, represents, warrants, assures, and guarantees that s/he has full legal authority to execute this Agreement on behalf of the City, the Board, and/or Developer, respectively and to bind the City, the Board, and/or Developer, to all the terms, conditions, provisions, and obligations of this Agreement.

ARTICLE XXIII. VENUE AND GOVERNING LAW

- 23.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.
- 23.2 Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively 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 XXIV. PARTIES' REPRESENTATIONS

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

ARTICLE XXV. CAPTIONS

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

ARTICLE XXVI. LICENSES/CERTIFICATIONS

- 26.1 Developer warrants and certifies that, to their knowledge, any person providing services hereunder has the requisite training, license, and/or certification to provide said services and meets the competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXVII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

- 27.1 Developer understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that 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 Agreement.

ARTICLE XXVIII. ENTIRE AGREEMENT

- 28.1 NO CONTRADICTIONS. This written Agreement embodies the final and entire Agreement between the Parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.
- 28.2 INCORPORATION OF EXHIBITS. Each exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties, 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 T11 2024-__ - __ - __ R, contract execution authorization

EXHIBIT B: Contract Progress Payment Request Form

EXHIBIT C: Project Site

EXHIBIT D: Project Status Report Form

EXHIBIT E: Project Costs Eligible for Reimbursement

EXHIBIT F: Project Budget

REST OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of each signature below.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation


BOARD OF DIRECTORS
Inner City TIRZ #11

Erik Walsh, City Manager

Date: _____

Jalen McKee-Rodriguez
Board Chair
Date: _____

COMMERCE STREET KITCHEN LLC



By: Christopher Provost
Title: Member
Date: 9/6/2024

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

Resolution T11 2024-__ - __ - __ R, contract execution authorization

EXHIBIT B
Contract Progress Payment Request Form



CITY OF SAN ANTONIO Contract Progress Payment Request (CPPR) Form and Requirements

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

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

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

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

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

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

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

*** All invoice Payments must be accompanied by:**

- **Receipt or Cancelled Check**
- **Must Reference the Project**

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

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

Financing Cost does not accrue interest

**The Balance Column is used for Tracking purposes only

All Invoice Payments must be accompanied by:

Receipt or Cancelled Check

Must Reference the Project

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

CERTIFICATION:	Signature of Certifying Financial Official	Signature of Certifying Engineer
	Typed or printed Name and Title	Typed or printed Name & Title
	<u>John Doe, CPA</u>	<u>John Smith, Engineer</u>
	DATE: _____	DATE: _____

I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and that payment is due and has not been previously reimbursed.

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

Financing Cost does not accrue interest
 **The Balance Column is used for Tracking purposes only
 All Invoice Payments must be accompanied by:
 Receipt or Cancelled Check
 Must Reference the Project

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

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

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

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

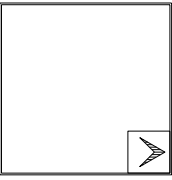
(SAMPLE) Reimbursement for TIRZ Expenses						
Project Name: NAD Residential TIRZ				Period covered by this invoice: 12/02---8/03		
Invoice #: One (1)				Phase covered by this invoice: Phases 1,2, & 3		
Section 2 Streets & Approaches	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice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

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

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

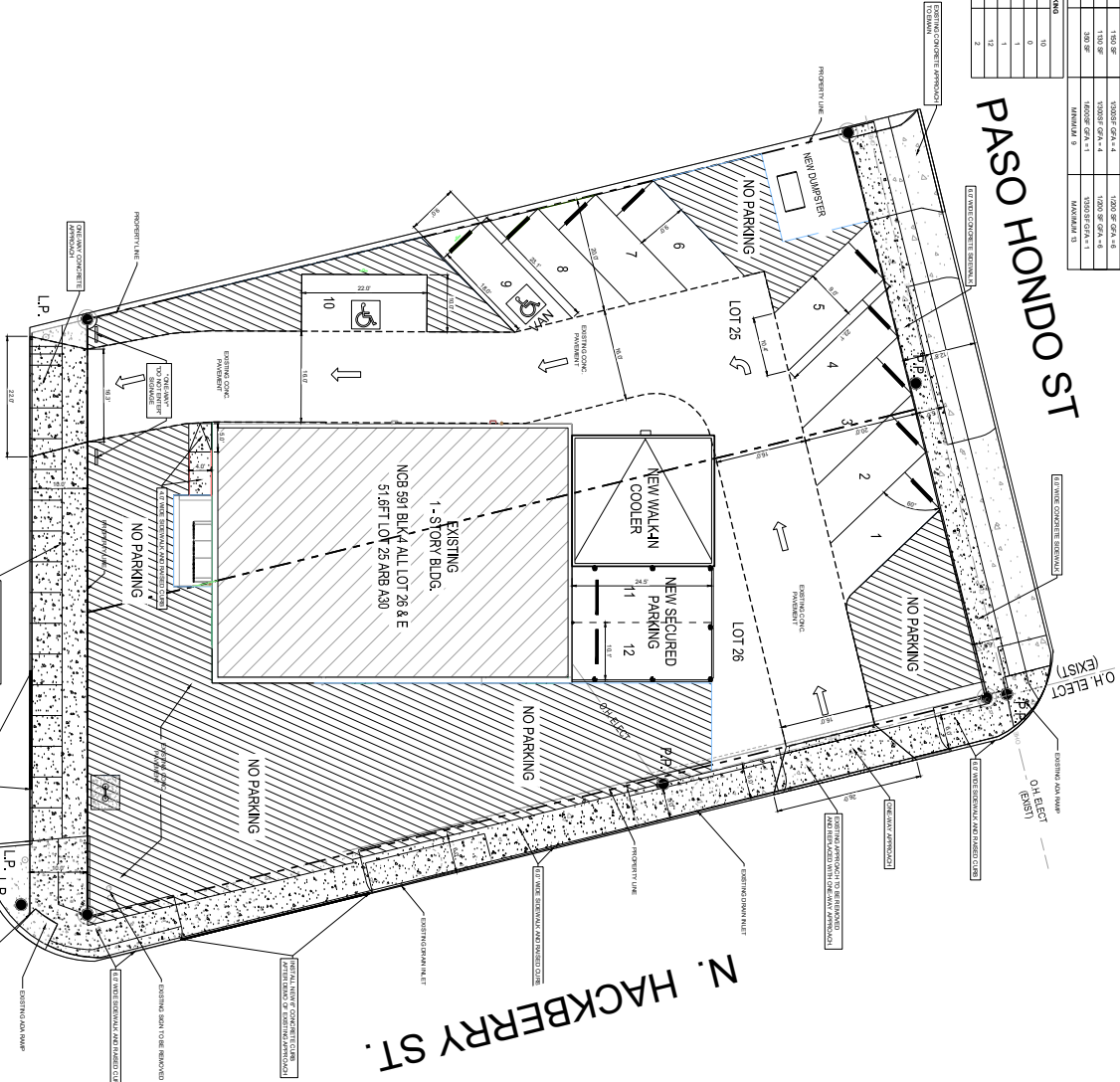
Reimbursement for TIRZ Expenses						
Project Name: NAD Residential TIRZ				Period covered by this invoice: 12/02---8/03		
Invoice #: One (1)				Phase covered by this invoice: Phases 1,2, & 3		
Section 3 Parkway	Plat and/or MDP #	Maximum Allowable from Final Finance Plan	Invoice #(s)	Invoice Amount(s)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

EXHIBIT C
Project Site

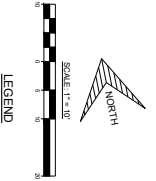


PROVIDED PARKING	
REGULAR SPACES	10
COMPACT SPACES	0
VA/ACCESSIBLE SPACES	1
ACCESSIBLE SPACES	1
TOTAL PARKING PROVIDED	12
VEHICLE PARKING PROVIDED	2

PASADENA ELEMENTARY				
LUTHER B. BUCKS (1923-1981)				
	PROPOSED BIRTH	GPA	REMARKS	REMARKS
OFFICE COORDINATOR	1950-51	100.00	100.00	100.00
OFFICE COORDINATOR	1952-53	100.00	100.00	100.00
TOTAL AVERAGE	1950-53	100.00	100.00	100.00
REMARKS				
REMARKS	10			
COMMUNITY SERVICE	0			
UNACCOMPLISHED SERVICE	1			
ACCOMPLISHED SERVICE	1			
REMARKS	2			



E. COMMERCE ST.



BICYCLE RACK DETAIL

NOT TO SCALE

2 20mm Ø HSS ROD

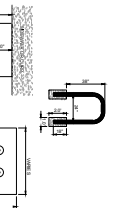
0.9m

0.45m

1.45m

4 SPACED HSS TUBE

0.9m



- [illegible]

EXHIBIT D

Project Status Report Form



CITY OF SAN ANTONIO

TAX INCREMENT REINVESTMENT ZONE

Project Status Report

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

January 15th, for the first quarter,
April 15th, for the second quarter,
July 15th, for the third quarter and
October 15th, for the fourth quarter

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

Each quarterly report must include the following information:

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

In addition, for the City to monitor compliance with insurance requirements of the Development Agreement, the Developer must submit annually the Certificate of Insurance reflecting proof that:

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

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

TIRZ Project Progress Report (Construction)			
Name of Project:		TIRZ #:	
Click here to enter text.		Click here to enter text.	
Progress Report #:		TIRZ Term:	
Click here to enter text.		From: Click here to enter a date.	
Period Covered by this Report:		To: Click here to enter a date.	
From: Click here to enter a date.		To: Click here to enter a date.	

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

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

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

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

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

➤ [Type a description of the current project status]

[illegible]

<p>Certification:</p> <p>I certify that to the best of my knowledge and belief, the data above is correct and that all outlays were made in accordance with the terms of the Development Agreement.</p>	
<p>Signature of Certifying Individual:</p>	
<p>Type or printed Name and Title:</p>	<p>Date:</p>
<p>Click here to enter name</p>	<p>Click here to enter a date.</p>
<p>E-mail Address:</p>	<p>Telephone #:</p>
<p>Click here to enter E-mail</p>	<p>Enter phone number</p>

EXHIBIT E

Project Costs Eligible for Reimbursement

Project Costs Eligible for Reimbursement include actual and ancillary costs related to the following:

- Demolition
- Sidewalks
- Signage
- ADA compliant ramps, handrails, and other improvements
- External façade and exterior public accommodations
- Concrete Approaches and Driveways
- Improvements to existing Sewer Cleanouts
- Storm Drain Inlet & Line Cleanouts
- Installation of Wheel Stops
- Striping/Fire Lane
- Installation of New Bollards
- Traffic Control/Barricades
- Asphalt Repairs
- Spoils Haul Off

EXHIBIT F
Project Budget

PROPOSAL FOR ROYAL BLUE COMMISSARY



CONTRACTOR:

ADDRESS:

POC:

CLIENT:

PROJECT ADDRESS:

PROJECT DESCRIPTION:

RYNO General Contractors, LLC

1026 W. Ashby Pl, San Antonio, TX 78212

David Moreno (210) 630-8742

Chris & Jessica Provost

1431 E. Commerce, S.A., TX

Site Improvements

Bid Date: 3/1/2024

Revision 1:

DESCRIPTION	TOTAL
MISC. CONCRETE & ASPHALT	\$122,245.09
Demo Existing Concrete Sidewalks & Approaches Per COSA Inspector & Attached Sketch	
Demo Existing Concrete Entrance at Front of Building	
Sawcut & Demo & Street For New Sidewalks	
Adjust / Remove, & Re-Install Existing Signage (2) As Required For Proposed Work	
Install New Concrete Sidewalks & Curbs (Per COSA Specs & Meeting w/ COSA Inspector), ADA Ramp @ Corner of Hackberry & Paso Hondo	
Install New Concrete ADA Ramp 12 ft @ Front of Building w/ Steps	
Install New ADA Handrail (Painted) @ Building Entrance	
Install New Concrete ADA Sidewalk From Front Of Building To ADA Parking Space	
Install New Concrete Approaches / Driveways - 6" Concrete, #4 Rebar @ 12" o.c.e.w., 2" Compacted Base	
Adjust (2) Existing Sewer Clean Outs At Commerce Side For New 10 ft Pedestrian Sidewalk	
Storm Drain Inlet & Line Cleanout	Allow \$3,000
Install New Wheel Stops Per Plan	
Striping / Fire Lane	
Install (3) New Bollards Along Paso Hondo	
Traffic Control / Barricades	Allow \$4,000
Asphalt Repair @ New Concrete Areas	
Haul Off All Spoils	
Sub Total Construction	\$ 122,245.09
Tax	8.25% \$ 10,085.22
GRAND TOTAL:	\$ 132,330.31

ALTERNATE BID 1: New outdoor patio - Build new tables, supply/install synthetic turf, build and install new planter boxes and landscape materials. Total \$10,000.00

Notes:

- 1) RYNO will furnish all equipment, labor, and material as required
- 2) Pricing is per the outlined above. Note no soils report or geotechnical analysis / pavement recommendation was provided.
- 3) Client to wait 1 week (minimum) before driving or placing any loads on newly poured concrete.

Exclusions/Assumptions: Client / Owner Responsibilities

No engineering fees
 No 3rd party testing / engineering - materials, soils, asphalt, etc
 Not responsible for any unravelling of degraded asphalt next to repair sections.
 Dumpster
 No subsurface utility investigations. Not responsible for damage to any underground lines that are not otherwise disclosed by Owner/Client
 SWPPP / Erosion Control
 No rock excavation
 TDLR/Accessibility Review/Inspections/Fees
 Surveying / Construction Surveying
 No landscape / irrigation
 Concrete temperatures between 45 degrees F - 95 degrees F
 No sealers or concrete hardners
 Special curing compound
 No special protection of slab after pour day. Safety tape barricade will be provided only.
 Not responsible for any minor cracking of concrete, stucco, or cementitious products which is normal and may occur outside of control joints (if present)
 This scope does not intend to repair any issues with the existing drainage
 Exclude any items not specifically identified above

All material & work to be completed according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be done upon written orders only, and will become an extra charge over and above this estimate. All work and materials to be guaranteed for a period of one year from date of completion - For Cost-Plus, to the extent provided by any Subs/Labor Crews.

This estimate is good for 30 days.

Owner Approval:

Christopher Provost

Name/Title (Print)



Name (Sign)