BORDEN PARK PROJECT
DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), pursuant to City Ordinance No. 2019-10-03-0813, 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 Thirty One, City of San Antonio, Texas, and Borden River Road, LP, a for-profit organization registered in the State of Texas and referred to herein as ("Developer"). This agreement refers to the City 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. 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 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 of projects that enhance the value of all the taxable real property in TIRZ and benefit the City; and

WHEREAS, in August 2019, Borden River Road, LP, through its affiliate Embrey Partners, Ltd. applied for funding from the City's Tax Increment Financing ("TIF") Program in order to undertake the oversight and delivery of the Borden Park Project, a mixed use development that includes family housing, office space, commercial uses, beautification and public improvements located at 815 E. Ashby Place, 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 Borden Park Project is approximately $100,000,000.00 with plans to remove billboards, add pedestrian walkways, construct multistory housing with parking, and to restore the existing Borden Milk building for office and commercial businesses; and

WHEREAS, FOUR MILLION DOLLARS AND NO CENTS ($4,000,000.00) in Midtown City TIRZ funds will be utilized for public improvements and eligible project costs necessary to complete the Borden Park Project to include improvements to the River frontage, a trail system connecting the Tobin Hill neighborhood to the River, trails on the River, a River bridge extension, landscaping, beautification, removal of four billboards, E. Ashby Place improvements, and Menefee Park improvements; 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 September 13, 2019, the Board adopted Resolution T31-2019-09-13-_2_R attached and incorporated into this Agreement as **Exhibit B,** authorizing approval of the execution of this Agreement to provide reimbursement for eligible expenses in an amount not to exceed FOUR MILLION DOLLARS AND NO CENTS ($4,000,000.00); 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 II. TERM

2.1 **TERM.** The term of this Agreement shall be from the Effective Date through the earlier of 1) Developer's receipt of the Maximum Reimbursement Amount; or (2) for a period of ten (10) consecutive years, beginning with the tax year immediately following Project Completion; or (3) termination of the TIRZ, or (4) termination of this Agreement as provided for 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** – Means available tax increment above the Project Site's Base Value, contributed by Developer, and distributed in accordance with the order of priority of payment of the TIRZ.

3.6 **Base Value or Base Year** – the Ad Valorem tax value of the Project Site as calculated by Bexar County Appraisal District's 2019 assessment.

3.7 **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.

3.8 **Effective Date** – means the date that is listed on the signature page of this Agreement.

3.9 **Finance Plan** – means the Midtown 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, 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 execution of this Agreement.

3.14 **Project Plan** – means the Project Plan as defined in the **Act** for the Midtown 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 and immediately surrounding 815 E. Ashby Place, including river trail expansion and Menefee Park, San Antonio, Texas and within the TIRZ in City Council District 1.

3.16 **Project Status Report** – means the document the Developer prepared and submitted in accordance with this Agreement's requirements and **Exhibit E,** 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, dog parks, public art, water features, low impact development, flood and drainage facilities, parking facilities, demolition work, fencing and landscaping paid for in whole or in part from public funds, 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** – means the City's portion of the fund created by the City for the deposit of Tax Increment for the Zone, entitled "Reinvestment Zone Number Thirty-One, City of San Antonio, Texas."

3.22 **TIF Unit** – means the division of the City's Neighborhood & Housing Services (or successor) Department responsible for the management of the City's Tax Increment Financing Program.

3.23 **TIRZ** – means Tax Increment Reinvestment Zone Number Thirty One, City of San Antonio, Texas, known as the Midtown 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. 2008-12-11-1134 has the authority, through the Presiding Officer'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 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 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 16.5 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 or its permitted assignee.

ARTICLE V. THE PROJECT

5.1 PROJECT. The Project consists of the design, construction, installation and implementation of Public Improvements and Public Infrastructure located at 815 E. Ashby Place, a 5-acre mixed-use redevelopment that will include the rehabilitation of the historic Borden building for office and commercial use. An existing storage complex will be demolished and replaced with approximately 350 multi-family units and structured parking. Developer shall construct or cause to be constructed the Public Infrastructure and Public Improvements associated with the Project including improvements to the River frontage, a trail system connecting the Tobin Hill neighborhood to the River, trails on the River, a river bridge extension, landscaping, beautification, removal of four billboards, E Ashby Place improvements abutting the Project Site, and Menefee Park improvements. Public Improvements shall further include demolition and restoration, hardscapes, fixtures, landscaping, roadway improvement, and conversion of existing storm water drainage improvements to low impact development. The Project is anticipated to commence on July 1, 2020, and shall be completed no later than December 31, 2023, subject to Force Majeure.

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 loans/lines of credit obtained by Developer. Developer may use all, any or part of the Project Site as collateral for the loan(s) as required for the financing of the Project.

5.3 REIMBURSEMENT. 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. Tax Increment paid by Developer and any other owner of any part of the Project or Project Site above the 2019 assessed base tax value shall constitute the only source of reimbursement to Developer for construction of Public Improvements and Public Infrastructure, namely improvements to the River frontage, a trail system connecting the Tobin Hill neighborhood to the River, trails on the River, a River bridge extension, landscaping, beautification, removal of four billboards, E. Ashby Place improvements, and Menefee Park improvements. Total reimbursement to Developer from the Tax Increment generated from the Project Site will not exceed FOUR MILLION DOLLARS AND NO CENTS ($4,000,000.00) ("Maximum Reimbursement Amount") or for a period of ten (10) consecutive years, beginning with the tax year immediately following Project Completion, whichever comes first. The Terms by which eligible Project Costs will be reimbursed are further defined in Article VIII. Compensation to Developer,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. However, the Board has agreed to support the Project, provided Developer satisfies certain terms and conditions, as further provided herein. Developer agrees that as of the Effective Date, they have no vested rights under any regulations, ordinances or laws at the Project Site, 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 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.

6.5 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 and Public Infrastructure 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 and Public Infrastructure portion of the Project. Developer shall submit copies of the payment and performance bonds to the City's TIF Unit and its contractors; however, Developer must obtain approval of the bonds by the City's Risk Management Department.

6.6 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. The legal requirements set forth in Prevailing Wage, Chapter 2258 of the Texas Government Code shall apply to work on the Project paid for with TIF funds.

6.7 DELAYS. Developer is responsible for the Project's construction, which shall be completed no later than December 31, 2023. If the commencement or completion of the Project is delayed by reason(s) beyond the Developer's control (including, without limitation, events of Force Majeure), 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 Developer does not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with Article XXII 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.

6.8 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.

6.9 INFRASTRUCTURE MAINTENANCE. As applicable, Developer, at its own expense, 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, unless agreed to otherwise with the City. 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 Infrastructure 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.

6.10 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 Unit Project Status Reports (See Sections 3.16), 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 E**. 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.

6.11 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 Unit 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, provided all walk-throughs and inspections without a minimum of 48 hours written notice to Developer is at the Board or TIF Unit Staff's risk.

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 from increment levied and collected from the Project Site (whether or not owned by Developer), as reimbursement to Developer for approved and eligible Project Costs, up to the Maximum Reimbursement Amount or for ten (10) consecutive tax years starting with the initial Annual Tax Reimbursement (as defined in 8.1 below), 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 Unit; 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 Unit authority also extends to control of the Board Agenda in conjunction with established City policy.

7.4 ELIGIBLE PROJECT COSTS. Following Project Completion, and payment of City taxes on the Project Site by Developer and any other owner of all or any portion of the Project Site for the requested reimbursement year, and following review of the TIF Unit staff, the Board shall consider for approval Developer's request(s) for reimbursement of City taxes paid on the Project Site.

ARTICLE VIII. COMPENSATION TO DEVELOPER

8.1 Annual Real Property Tax Reimbursement. Subject to the terms and conditions of this Agreement and the Payment Conditions (defined below), for each tax year commencing with the Initial Reimbursement Tax Year, and then continuing annually for a total of ten (10) consecutive tax years throughout the remainder of the Term of this Agreement or until the Maximum Reimbursement Amount is disbursed, whichever comes first, City and TIRZ shall provide Developer, following submission of a tax invoice by Developer indicating full payment of all taxes owed by Developer on the Project, an annual grant for the Term of this Agreement.

(a) The amount of the annual grant (the "Annual Incremental Property Tax Reimbursement") shall be equal to one hundred percent (100%) of:

(i) The actual amount of real property taxes paid to City with respect to the Project Site for the immediately preceding Tax Year, *less* the amount of real property taxes paid to City with respect to the Project Site for the tax year ending in 2019 (the "Base Year").

a. The "Initial Reimbursement Tax Year" shall be defined as the first tax year immediately following the tax year in which actual Project completion occurs, for which reimbursement under this section can be sought.

(b) Payment of the Annual Incremental Property Tax Reimbursement to Developer shall occur in accordance with the following conditions (collectively, the "Payment Conditions"):

(i) For each tax year during the Term of this Agreement, City and TIRZ shall pay the Annual Incremental Property Tax Reimbursement to Developer provided the City has deposited funds into the TIF for that particular tax year, pursuant to Section 311.013 of the Texas Tax Code. The City and the Developer recognize that the Annual Incremental Property Tax Reimbursement will be paid to Developer after the tax year in which the taxes were paid. Therefore, if the Agreement is not otherwise terminated for cause or because the Maximum Reimbursement Amount was met, the tenth and final Annual Incremental

Property Tax Reimbursement will be paid following the expiration of ten (10) years.

(ii) For any particular tax year during the Term of this Agreement, if no tax increment is realized within the TIRZ, then the TIRZ shall defer payment of the Annual Incremental Property Tax Reimbursement that is due to Developer under this Article, during that tax year.

(iii) For any particular tax year during the Term of this Agreement, if insufficient tax increment is realized within the TIRZ to permit the full payment of the Annual Incremental Property Tax Reimbursement due to Developer under this Article, the TIRZ shall pay as much of the Annual Incremental Property Tax Reimbursement to Developer, as possible, and the TIRZ shall defer payment of any unpaid balance of the Annual Incremental Property Tax Reimbursement due to Developer under this Article during that tax year.

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

(v) The Developer acknowledges that unless the TIRZ is extended, payments will cease upon termination of the TIRZ and reconciliation of all accounts. Should the TIRZ terminate, CITY may consider at the request of Developer, to extend the term of the TIRZ. The decision to extend the TIRZ term of the Annual Incremental Property Tax Reimbursement is at the sole discretion of the CITY.

(vi) The Developer understands and agrees that any expenditure made by the Developer in anticipation of reimbursement from tax increments shall not be, nor shall be construed to be, financial obligations of the City or the TIRZ. The Developer shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in state law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and/or unanticipated effects covered under legal doctrine of force majeure.

(vii) Any and all amounts payable by the TIRZ under this Agreement are payable solely from the TIRZ Tax Increment Fund, and no claim for payment of any amount outside of this contribution shall be made, claimed or permitted against any other funds, properties, assets or the general credit of the TIRZ and/or the City.

(viii) Any fees associated with the administration of the TIRZ shall take priority of payment over Developer's reimbursement.

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

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 on eligible improvement amounts. 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 Tax Increment levied and collected on the Project Site.

8.6 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.

8.7 PAYMENTS. For the avoidance of doubt, the parties to this Agreement hereby acknowledge and agree that portions of the Project Site may be owned by parties other than Developer, and notwithstanding the same, the Available Tax Increment attributable to the portion of the Project Site owned by a party other than Developer shall still be paid to Developer.

ARTICLE IX. INSURANCE

9.1 Developer must require that the insurance requirements contained in this Article be included in all of its contracts or agreements for construction of Public Improvements and

Public Infrastructure where Developer seeks payment under this Agreement, unless specifically exempted in writing by the City and/or the Board.

9.2 PROOF OF INSURANCE. Prior to commencement of any work under this Agreement, Developer shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled **"Midtown TIRZ, Borden Park Project"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in Section 17.1 of this Agreement. The City shall have no duty to pay/perform under the Agreement until such certificate(s) and their endorsements has been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

9.3 REQUIRED TYPES AND AMOUNTS. Developer's financial integrity is of the interest to the City and the Board, therefore, subject to the Developer's right to maintain reasonable deductibles in such amounts as approved by the City, Developer, Developer's design consultants, and/or Developer's contractor, shall maintain in full force and effect during the construction of all Public Improvements and Public Infrastructure required and any extension hereof, at the Developer's, Developer's design consultants, or the Developer's contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A– or better by the A.M. Best Company and/or otherwise acceptable to the City, in the following types and for an amount not less than the amounted listed:

TYPE	**AMOUNTS**
	Statutory
1. Workers' Compensation	$1,000,000.00
2. Employers' Liability	

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 Bodily Injury and Property Damage 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
4. Business Automobile Liability: **a.** Owned/leased vehicles **b.** Non-owned vehicles **c.** Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of **$1,000,000.00** per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	**$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.
6. Umbrella or Excess Liability Coverage	**$5,000,000.00** per occurrence combined limit Bodily Injury (including death) and Property Damage.
7. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during

	construction phase of any new or existing structure.

9.4 RIGHT TO REVIEW. The City reserves the right to review the insurance requirements during the effective period of this Agreement and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance shall the City allow modification whereupon the City may incur increased risk.

9.5 REQUESTS FOR CHANGES. The City shall be entitled, upon request and without expense to receive copies of the policies, declaration page and all endorsements as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy term, condition, limitation, or exclusion (except where policy provisions are established by law or regulation binding upon either of the Parties, or the underwriter of any such policies). Developer and/or Developer's contractor shall comply with any such request and shall submit a copy of the replacement certificate of insurance to City within ten (10) days of the requested change. Developer and/or Developer's contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to the City and the Board at the addresses listed under Section 17.1 of this Agreement.

9.6 REQUIRED PROVISIONS AND ENDORSEMENTS. Developer agrees that with respect to the above required insurance, all insurance contract policies, and Certificate(s) of Insurance will contain the following provisions:

a. Name the City and its officers, officials, employees, volunteers, and elected representative as additional insureds as respects operations and activities of, or on behalf of, the named insured subject to this Agreement, with the exception of the workers' compensation and professional liability policies;

b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio if the City is an additional insured shown on the policy;

c. Employers' liability policies will provide a waiver of subrogation in favor of the City; and,

d. Provide thirty (30) calendar days advance written notice directly to City at the same addresses listed in this Article of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for non-payment of premium.

9.7 CANCELLATIONS AND NON-RENEWAL. Within five (5) calendar days of a suspension, cancellation, non-renewal, or material change in coverage, Developer and or Developer's

contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same address listed in Section 17.1 of this Agreement. City shall have the option to suspend Developer or Developer's contractor'(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 breach of this Agreement and the City may exercise any and all available legal remedies.

9.8 CITY'S REMEDIES. In addition to any other remedies the City may have upon Developer and/or Developer's contractor for the failure to provide and maintain insurance or policy endorsements to the extent and within the time required, the City shall have the right, to order Developer to stop work, and/or withhold any payment(s), which become due until Developer and/or Developer's contractor demonstrates compliance with the requirements.

9.9 RESPONSIBILITY FOR DAMAGES. Nothing in the Agreement shall be construed as limiting in any way the extent to which Developer and/or Developer's contactor 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.

9.10 PRIMARY INSURANCE. Developer's insurance, Developer's design consultants' insurance, and/or Developer's contractor's insurance, each as the case may be, shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising under this Agreement.

9.11 DEVELOPER'S OBLIGATION. Developer agrees to obtain all insurance coverage with minimum limits of not less than the limits delineated under Section 9.3 of this Article from each general contractor of Developer and Certificate of Insurance and Endorsements that names the Developer and the City as an additional insured; provided, however, that the professional liability coverage shall be provided by Developer's design consultants. It is understood and agreed that the insurance required is in addition to and separate from any other obligation in the Agreement. Developer and any general contractors are responsible for all damages to their own equipment and/or property. Developer must provide City current proof of insurance for all projects and applicable contracts and agreements executed pursuant to Agreement.

9.12 "ALL RISK". At all times during the performance of construction, Developer and their contractor shall maintain in full force and effect builder's "All Risk" insurance policies covering such construction. The Builder's Risk Policies shall be written on an occurrence basis and on a replacement cost basis, insuring 100% of the insurable value of construction improvements.

ARTICLE X. WORKERS COMPENSATION INSURANCE COVERAGE

10.1 Developer shall comply with applicable Texas law related to worker's compensation.

ARTICLE XI. TERMINATION AND RECAPTURE

11.1 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 11.2, (2) Termination for Cause pursuant to Section 11.3, and (3) Termination by law pursuant to Section 11.4.

11.2 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.

11.3 TERMINATION FOR CAUSE/DEFAULT. Upon written notice (a "Notice of Default") providing adequate identification of Developer's failure to comply with any material term or condition of this Agreement (a "Default"), which must be provided in accordance with **Article XVII. 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: cure such Default within any applicable notice and cure period.

11.3.1 NOTICE OF DEFAULT. After sending a written Notice of Default, the City will not distribute TIRZ funds to Developer until the default is cured.

11.3.2 CURE. Upon written Notice of Default resulting from a Default, such Default will be cured within sixty (60) calendar days from the date of the Notice of Default (the "Cure Period"). 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 (or successor) Department, 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 may also serve as a notice of termination of this Agreement ("Notice of Termination").

11.3.3 FAILURE TO CURE. In the event Developer fails to cure a Default 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.

11.3.4 REMEDIES UPON DEFAULT. In the event of a termination pursuant to Section 11.3 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 11.3 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.

11.4 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.

11.5 RECAPTURE. Only in the event of a termination pursuant to Section 11.3 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 Midtown TIRZ.

11.6 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 XIV. Records. Only in the event of a termination pursuant to Section 11.3 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, or 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 termination. Only in the event of a termination pursuant to Section 11.3 for cause, failure by Developer to submit requests for reimbursements within said ninety (90) calendar days 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 XII. INDEMNIFICATION

12.1 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.

12.2 **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 XIII. LIABILITY

13.1 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.

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

ARTICLE XIV. RECORDS

14.1 RIGHT TO REVIEW. Following reasonable, written notice to the Developer, the City reserves the right to conduct, at its own expense, examinations, during regular business hours, 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.

14.2 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, 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.

14.3 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.

14.4 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 XV. NON-WAIVER

15.1 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.

15.2 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 XVI. ASSIGNMENT

16.1 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.

16.2 ASSIGNMENT BY DEVELOPER. Subject to Section 16.5 hereof, 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.

16.3 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.

16.4 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 Sections 16.2, including any contractor, subcontractor, or consultant of the Developer, for performance of work or services under this Agreement.

16.5 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 provide written notice to 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 or its permitted assignee.

16.6 WRITTEN INSTRUMENT. Each transfer or assignment to which there has been consent, pursuant to Section 16.2 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 Unit. 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. In the event the Board approves the assignment or transfer of this Agreement, Developer shall be released from such duties and obligations.

16.7 NO WAIVER. Except as set forth in Section 16.3 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.

16.8 SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the parties hereto and their permitted successors and assigns.

ARTICLE XVII. NOTICE

17.1 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	**THE BOARD**	**DEVELOPER**
City of San Antonio City Clerk Attn: Risk Management Dept. P.O. Box 839966 San Antonio, TX 78283-3966	Midtown TIRZ Attn: TIF Unit 1400 S Flores San Antonio, TX 78204	Borden River Road, L.P. Attn: Jimmy McCloskey Embrey Partners, Ltd. 1020 NE Loop 410, Suite 700 San Antonio, TX 78209

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 XVIII. CONFLICT OF INTEREST

18.1 CHARTER AND ETHICS CODE PROHIBITIONS. The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

a. a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;

b. an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or

c. an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

18.2 CERTIFICATION. Pursuant to the subsection above, Developer warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Developer does not cause a City employee or officer to have a prohibited financial interest in the Contract. Developer further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 NO AGENCY. All Parties expressly agree that in 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.

19.2 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 XX. TAXES

20.1 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 XXI. PREVAILING WAGES

21.1 The TIF Program is a discretionary program, and it is the policy of the City that the requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," will apply to TIF Development Agreements. Developer agrees that the Developer will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

21.2 In accordance with Chapter 2258, Texas Government Code, and Ordinance No. 2008-11-20-1045, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Agreement for the Public Improvements and Public Infrastructure is included as **Exhibit F**, and made a part of this Agreement. Developer is required, and shall require their subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Developer calls for bids for construction of the Approved TIRZ Work.

21.3 Developer is further required to cause the latest prevailing wage determination decision to be included in bids and contracts for the Public Improvements and Public Infrastructure with the Developer's general contractor for construction of the Project. The Developer shall forfeit as a penalty to the City $60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Developer or any general contractor under the Developer. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Developer from its obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

ARTICLE XXII. CHANGES AND AMENDMENTS

22.1 ORDINANCE AND ORDER REQUIRED. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by the City, the Board and the Developer and evidenced by passage of a subsequent City ordinance.

22.2 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 (or successor) Department or his or her 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 22.1, 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 (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.

22.3 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 XXIII. SEVERABILITY

23.1 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 XXIV. LITIGATION EXPENSES

24.1 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.

24.2 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.

24.3 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 XII. above.

24.4 Nothing contained in this Article XXIV 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 XXV. LEGAL AUTHORITY

25.1 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 XXVI. VENUE AND GOVERNING LAW

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

26.2 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 XXVII. PARTIES' REPRESENTATIONS

27.1 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 XXVIII. CAPTIONS

28.1 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 XXIX. LICENSES/CERTIFICATIONS

29.1 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 XXX. NONDISCRIMINATION AND SECTARIAN ACTIVITY

30.1 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 XXXI. ENTIRE AGREEMENT

31.1 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.

31.2 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 T_____, funding authorization

EXHIBIT B: Resolution T32 2019-09-13-8R, contract execution authorization

EXHIBIT C: *Intentionally Deleted*

EXHIBIT D: Project Site

EXHIBIT E: Project Status Report Form

EXHIBIT F: Prevailing Wages

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. This agreement shall be effective on the date of the last signature below.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Erik Walsh, City Manager
Date: 1/28/20

BOARD OF DIRECTORS
Midtown TIRZ #31

Presiding Officer
Date: 9/13/19

Borden River Road, LP, a Texas limited partnership

By: ASR-GP, LLC, a Texas limited liability company, its general partner

By: JAMES E. McCLOSKEY III
Title: EVP DEVELOPMENT
Date: 10/22/19

ATTEST AND SEAL:

Leticia Vacek, City Clerk
Date: 01/28/20

APPROVED AS TO FORM:

Assistant City Attorney

Exhibit B

VR
09/13/19
Item: 5

T31 2019-09-13-2R

RESOLUTION BY THE BOARD OF DIRECTORS OF TAX INCREMENT ZONE NUMBER THIRTY-ONE CITY OF SAN ANTONIO, TEXAS, KNOWN AS THE MIDTOWN TAX INCREMENT REINVESTMENT ZONE ("TIRZ"), AUTHORIZING APPROVAL AND THE EXECUTION OF A DEVELOPMENT AGREEMENT TO PROVIDE FUNDING IN AN AMOUNT NOT TO EXCEED $4,000,000.00 IN AVAILABLE TAX INCREMENT FROM THE TIRZ FUND TO BORDEN RIVER ROAD, L.P. FOR THE BORDEN PARK PROJECT, LOCATED AT 815 E ASHBY PLACE, 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 August 2019, Borden River Road, L.P., through its contractors Embrey Partners, Ltd. and AREA Real Estate applied for funding from the City's Tax Increment Financing ("TIF") Program in order to undertake the oversight and delivery of the Borden Park Project, a mixed use development that includes family housing, office space, commercial uses, and public and beautification improvements located at 815 E. Ashby Place, 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 Borden Park Project is approximately $100,000,000.00 with plans to construct a trail system connecting the Tobin Hill neighborhood to the River, trails on the River, a river bridge extension, landscaping, beautification, removal of four billboards, Ashby Road improvements, and Menefee Park improvements; and

WHEREAS, staff recommends funding to Borden River Road, L.P. for up to Four Million Dollars and No Cents ($4,000,000.00) in reimbursable TIF for eligible public improvements and/or public infrastructure requirements related to the Borden Park Project; and

WHEREAS, the sole source of reimbursable TIF funds shall be the available tax increment levied and collected on the Borden Park Project site, for approved and eligible project costs, not to exceed the maximum reimbursable amount or for a period of ten (10) years, whichever comes first; and

VR
09/13/19
Item: 5

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 Development Agreement between River Road, L.P. and the Board, attached hereto in substantially final form as **Exhibit A**, to provide available tax increment funding from increment levied and collected from the Borden Park Project site not to exceed FOUR MILLION DOLLARS AND NO CENTS ($4,000,000.00) or for a period of ten (10) years, whichever comes first, for eligible project costs for the Borden Park Project located at 815 E. Ashby Place, 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 Borden Park Project.

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

Louis Fox
Presiding Officer

ATTEST:

APPROVED AS TO FORM:

Venessa Rodriguez
Assistant City Attorney

Exhibit D

PAPE-DAWSON ENGINEERS

METES AND BOUNDS DESCRIPTION
FOR

A 5.113 acre, or 222,730 square feet more or less, tract of land, being comprised of a called 4.635-acre tract, a called 0.142-acre tract and a called 0.3304-acre tract, all described in deed to SSGT Borden Park, LLC, recorded in Volume 17637, Pages 1966-1975 of the Official Public Records of Bexar County, Texas, in New City Block 3053 of the City of San Antonio, Bexar County, Texas. Said 5.113-acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00:

BEGINNING: At a found ½" iron rod, on the north right-of-way line of East Ashby Place, a 60-foot public right-of-way, the southeast corner of Lot 10, of the Schumann Subdivision recorded in Volume 105, Page 82 of the Deed and Plat Records of Bexar County, Texas, same being the southwest corner of said called 4.635-acre tract;

THENCE: N 22°31'22" E, with the east line of said Lot 10, same being the west line of said called 4.635-acre tract, a distance of 239.45 feet to a found ½" iron rod, on the south line of an eleven foot alley, the northeast corner of said Lot 10, same being the northwest corner of said 4.635-acre tract;

THENCE: S 66°45'45" E, with the south line of said eleven foot alley, same being the north line of said called 4.635-acre tract, at a distance of 10.28 feet passing the southeast corner of said eleven foot alley, same being an angle point in the south right-of-way line of U.S. Highway 281, a variable width public right-of-way, continuing with the north line of said called 4.635-acre tract, same being the south right-of-way line of said U.S. Highway 281, at a distance of 767.84 feet passing a found ½" iron rod, at the northwest corner of the aforementioned 0.142-acre tract, same being the northeast corner of said called 4.635-acre tract, continuing with the south right-of-way line of said U.S. Highway 281, same being the north line of said called 0.142-acre tract, at a distance of 825.18 feet passing the northwest corner of the aforementioned 0.3304-acre tract, same being the northeast corner of said called 0.142-acre tract, continuing with the south right-of-way line of said U.S. Highway 281, same being the north line of said called 0.3304-acre tract, for a total distance of 858.78 feet to a found ½" iron rod, a common angle point in the south right-of-way line of said U.S. Highway 281 and the north line of said called 0.3304-acre tract;

TBPE Firm Registration #470 I TBPLS Firm Registration #10028800
San Antonio I Austin I Houston I Fort Worth I Dallas
Transportation I Water Resources I Land Development I Surveying I Environmental
2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 www.Pape-Dawson.com

THENCE: S 49°38'40" E, continuing with the south right-of-way line of said U.S. Highway 281, same being the north line of said called 0.3304-acre tract, a distance of 8.33 feet to a found ½" iron rod, the northwest corner of a called 4.391-acre tract recorded in Volume 4220, Pages 152-187 of the Official Public Records of Bexar County, Texas, same being the northeast corner of said called 0.3304-acre tract;

THENCE: Departing the south right-of-way line of said U.S. Highway 281, with the west line of said called 4.391-acre tract, same being the east line of said called 0.3304-acre tract, the following bearings and distances:

S 00°13'34" E, a distance of 100.07 feet to a found mag nail;

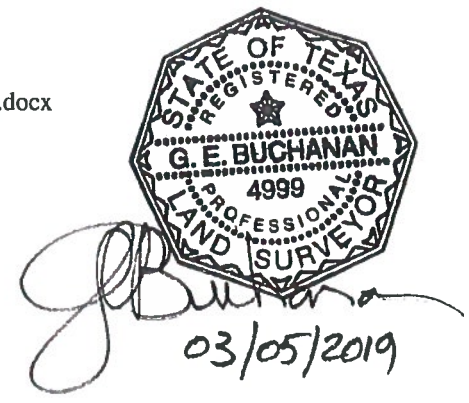
S 30°09'08" W, a distance of 116.61 feet to a found iron rod with an unknown cap;

S 02°31'19" W, a distance of 26.30 feet to a found ½" iron rod, and;

THENCE: S 32°23'00" W, a distance of 25.26 feet to a set ½" iron rod with a yellow cap marked "Pape Dawson", at the intersection of the east right-of-way line of River Street, a variable width public right-of-way and the south right-of-way line of the aforementioned East Ashby Place, same being the southeast corner of said called 0.3304-acre tract;

THENCE: N 65°28'30" W, departing the west line of said called 4.391-acre tract, with the north right-of-way line of said East Ashby Place, same being the south line of said called 0.3304-acre tract, at a distance of 50.65 feet passing a found "+" in concrete, for the southeast corner of the aforementioned called 4.635-acre tract, same being the southwest corner of said called 0.3304-acre tract, continuing with the north right-of-way line of said East Ashby Place, same being the south line of said called 4.635-acre tract, for a total distance of 895.07 feet to the POINT OF BEGINNING and containing 5.113 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in conjunction with a survey made on the ground and a survey map prepared under job number 11792-00 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: March 5, 2019
JOB NO. 11792-00
DOC. ID. N:\CIVIL\11792-00\Word\11792-00-FN_5.113_Acres.docx



PAPE-DAWSON ENGINEERS

Exhibit E

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: Click here to enter text.	**TIRZ #:** Click here to enter text.
Progress Report #: Click here to enter text.	**TIRZ Term:** **From:** Click here to enter a date. **To:** Click here to enter a date.
Period Covered by this Report: **From:** Click here to enter a date. **To:** Click here to enter a date.	

The number of Private Improvements completed during the Reporting Period

			Private Improvements							
Reporting Period			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										
11										
12										

Progress towards completion of the Public Improvements during the Reporting Period:

Public Improvements			
	Description of Public Improvement	**Estimate of % Complete**	**Estimated Completion Date**
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

- 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]

	Original Project Plan			Actual/Projected		
Year	Single-Family	Multi -Family	Other	Single -Family	Multi -Family	Other

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

Exhibit F

CORRECTED (7-15-2010)

WAGE AND LABOR STANDARD PROVISIONS

CITY OF SAN ANTONIO FUNDED CONSTRUCTION

Contents

Attachment I

1. GENERAL STATEMENT

For all City of San Antonio funded public works construction contracts, the City of San Antonio, in accordance with Texas Government Code Section 2258, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. These wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas and authority of Ordinance Nos. 60110 and 71312 as amended and passed by the City Council of the City of San Antonio.

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

2. LABOR COMPLIANCE OFFICE, CAPITAL IMPROVEMENTS MANAGEMENT SERVICES DEPARTMENT RESPONSIBILITIES

Labor Compliance Office, Capital Improvements Management Services Department, City of San Antonio, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the Director of Capital Improvements Management Services Department that:

a. Appropriate weekly compliance statements and payroll records are submitted to the City by the contractor/subcontractors and that such are reviewed for compliance with the Wage and Labor Standard Provisions.

b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.

c. Applicable Wage Determination Decisions, including any applicable modifications and related statements must be posted at the work-site by the contractor and that proper job classification and commensurate minimum hourly base and fringe wage rates are paid.

d. Employees are periodically interviewed (at random) to assure proper work classification and wage rates.

e. The Labor Compliance Office will investigate all allegations that no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

f. That any and all periodic administrative directives to the Labor Compliance Office from the Director of Capital

Improvements are being implemented. For purpose of these Wage and Labor Standard Provisions, the Director of Capital Improvements Management Services means the Director, his successor, or his designee.

3. CLAIMS & DISPUTES PERTAINING TO WAGE RATES

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

4. BREACH OF WAGE & LABOR STANDARD PROVISIONS

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

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

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determinations decision contained in the original contract documents, contractor/subcontractors will make prompt inquiry

(before bidding, if possible) to the Labor Compliance Office identifying that class of laborer/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract. Using his best judgment and information resources available to him at the time, and any similar prior decisions, the Director of Capital Improvements Management Services Department, City of San Antonio shall classify said laborers/mechanics by issuing a special local wage determination decision to the contractor/subcontractor, which shall be enforced by the Labor Compliance Office.

6. MINIMUM WAGE

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

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

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

7. OVERTIME COMPENSATION

No contractor/subcontractor contracting for any part of the City of San Antonio funded contract work (except for worksite related security guard services) which may require or involve the employment of laborers/mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he or she is employed on such work to work in excess of 40 hours in such work period unless said laborer/mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in

excess of 40 hours in a seven (7) calendar day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

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

9. WORK CONDUCTED ON HOLIDAYS

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

10. UNDERPAYMENT OF PREVAILING WAGES OR SALARIES

a. When a "full investigation" (as called for in and as construed under Texas Government Code Section 2258) establishes underpayment of wages by contractor/ subcontractor to laborers/mechanics employed upon the work covered by a contract with the City of San Antonio, the City shall withhold an amount from the contractor, out of any payments (Interim progress and/or final) due the contractor, the City of San Antonio may also consider it necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages plus possible penalty (see b. below). The amount withheld, excluding any possible penalty to be retained by City, may be disbursed at an appropriate time after "full investigation" by the City of San Antonio, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.

b. Texas Government Code Section 2258, states that the contractor shall forfeit as a penalty to the City of San Antonio the sum of sixty dollars ($60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the City of

San Antonio and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar ($60.00) statutory penalty shall be construed by and between the City of San Antonio and the contractor/subcontractor as liquidated damages and will apply to any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.

c. If unpaid or underpaid workers cannot be located by the Contractor or the City after diligent efforts to accomplish same, the contractor shall report the wages as "unclaimed property" in accordance to Texas State law.

The City of San Antonio requires that the prime contractor send to the Labor Compliance Office a copy of the supporting documentation for the unclaimed property submitted to the State.

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

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

NOTICE TO LABORERS/MECHANICS

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

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

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

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the City of San Antonio Labor Compliance Office, Capital Improvements Management Services Department, P.O. Box 839966, San Antonio, Texas 78283-3966. It is mandatory that the worker promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of San Antonio, Labor Compliance Office within the sixty (60) calendar day period so that they do not waive your potential right of recovery under the provisions of the City of San Antonio Project Management Office contract that governs this project.

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

12. PAYROLLS & BASIC PAYROLL RECORDS

a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Labor Compliance Office of the City of San Antonio. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Labor Compliance Office, City of San Antonio. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Labor Compliance Office and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to Capital Improvements Management Services, Labor Compliance Office, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

b. All City of San Antonio construction contracts are subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any stated and/or requested contract compliance-related data electronically in the Labor Compliance Electronic Certified Payrolls System. The prime contractor and all subcontractors are required to respond not later than the stated response date or due date to any instructions or

request for information from the Labor Compliance Office. All prime contractors and subcontractors shall periodically review the City of San Antonio labor Compliance Electronic Certified Payrolls System to manage contact information and the contract records. The prime contractor shall ensure that all subcontractors have completed all requested forms and that all contact information is accurate and up-to-date. The City of San Antonio Labor Compliance Office may require additional information related to the contract to be provided through the San Antonio Labor Compliance Electronic Certified Payrolls System at any time before, during, or after contract award.

c. A designated point of contact for contractor access to the San Antonio Labor Compliance Electronic Certified Payrolls System shall be provided for each prime contractor upon award of the contract.

d. Copies of payroll submittals and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U. S. Department of Labor, U.S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

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

f. All certified payrolls submitted to the Labor Compliance Office are deemed true and accurate. If upon review of the certified payrolls, wage underpayment violations are identified and noted, restitution will be calculated and penalties will be issued to the prime contractor of the project. In order to refute a wage violation, the contractor/subcontractor must provide supporting documentation to the Labor Compliance Office for review and consideration.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Project Management Office or designated representative of any actual or impending contractor/subcontractor labor dispute

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

14. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

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

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

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

16. "ANTI-KICKBACK" PROVISION

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

17. "FALSE OR DECEPTIVE INFORMATION PROVISION"

Any person employed by the contractor/subcontractor in the construction or repair of any City of San Antonio public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any

false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the jobsite by contractor/subcontractor. The City of San Antonio reserves the right to terminate this contract for cause as a result of serious and uncured violations of this provision.

18. EMPLOYMENT OF APPRENTICES/TRAINEES

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

b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates

prescribed in the program, along with the payroll record that the employee is first listed on, to the Labor Compliance Office of the City of San Antonio. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

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

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

When a "full investigation" (as called for in, and as construed under, Texas Government Code Section 2258) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/subcontractor employees working on this contract, the City of San Antonio, in addition to such other rights as may be afforded it under state and/or federal law and/or other sections of this contract, shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars ($75.00) for each calendar day, or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/ Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. JOBSITE CONDITIONS

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

20. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of

required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by the Texas Child Labor Law, Chapter 51 of the Texas Labor Code "Child Labor" and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling law on this subject. The contractor/subcontractor should seek clarification from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.

b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the Director of Capital Improvements Management Services is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or federal correctional agencies.

c. The Contractor/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

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

22. CONTRACTOR'S RESPONSIBILITY

The prime contractor shall be responsible for ensuring that its subcontractors comply with the Wage and Labor Standards Provisions.