

ORDINANCE

2021-12-16-0997

**AUTHORIZING EXECUTION OF A FUNDING AGREEMENT WITH THE MIDTOWN BOARD OF DIRECTORS OF REINVESTMENT ZONE #31 AND THE CITY OF SAN ANTONIO, GRANTING UP TO \$39,500,000 FOR THE OVERSIGHT AND DELIVERY OF THE BROADWAY ST. AND N. ST. MARY'S STREET CAPITAL PROJETS LOCATED IN COUNCIL DISTRICT 1; AND AUTHORIZING THE ACCEPTANCE OF THESE FUNDS AND AMENDING OF THE FY 2020-2025 CAPITAL IMPROVEMENTS PROGRAM WITH FUNDS IN THE AMOUNT NOT TO EXCEED \$39,500,000 PLUS FINANCE COSTS FROM THE MIDTOWN TAX INCREMENT REINVESTMENT ZONE (TIRZ) #31 FUND FOR THESE PROJECTS LOCATED IN DISTRICTS 1 AND 2**

\* \* \* \* \*

**WHEREAS**, in accordance with the Tax Increment Financing Act (the "Act"), Chapter 311 of the Texas Tax Code, the City through Council Ordinance No. 2008-12-11-1134, established Tax Increment Reinvestment Zone Number Thirty-One, known as the Midtown TIRZ, and a Board of Directors ("Board") authorized with all the rights, powers, and duties provided by the Act, in order to promote development and revitalization activities within TIRZ; and

**WHEREAS**, the City and Board recognizes the importance of their continued role in economic development; community development and urban design; and

**WHEREAS**, in 2011, the Board and City adopted the Midtown-Brackenridge Master Plan, a comprehensive set of recommendations and implementation strategy for development and redevelopment of the are in and around the TIRZ, reflecting community input and professional planning expertise; and

**WHEREAS**, on August 31, 2021, the Board established a 4-person subcommittee for the purpose of updating the recommendations contained in the Midtown-Brackenridge Master Plan ("the Master Plan"); and

**WHEREAS**, On September 27 and October 11, 2021, the subcommittee met and proposed that the Board adopt a renewed focus on public infrastructure improvements contained in the Master Plan and commit funding for utility and infrastructure improvements to the Broadway Corridor and North St. Mary's Street that were not covered by the 2017-2022 Bond Program; and

**WHEREAS**, in November 2021, the City's Public Works Department ("PWD") staff applied for funding from the City's Tax Increment Financing Program (TIF") in order to undertake the oversight and delivery of joint-bid utilities, street reconstruction, curbs, sidewalks, traffic improvements, drainage, and pedestrian and bike improvements to Upper Segments of Broadway Street Corridor and North St. Mary's Street to be known as the Broadway St. Capital Project and



the N. St. Mary's Street Capital Project (together the "Project"), within the boundary of the Midtown TIRZ; and

**WHEREAS**, the total cost for the Project is approximately \$39.5 million; and

**WHEREAS**, on November 10, 2021, the Board adopted a resolution authorizing the negotiation and execution of a Funding Agreement with the City in an amount not to exceed Thirty-Nine Million Five Hundred Thousand Dollars and No Cents (\$39,500,000.00) plus associated finance costs in available tax increment from the TIRZ fund to provide reimbursement for eligible public infrastructure improvements for the Project; and

**WHEREAS**, it is now necessary for the City Council to approve the Funding Agreement between the City and the Board of Directors for TIRZ #31 for the Project; **NOW THEREFORE:**

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

**SECTION 1.** The terms and conditions of a Funding Agreement with the Board of Directors of Tax Increment Reinvestment Zone #31, attached hereto in substantial final form as **Exhibit A**, are hereby approved.

**SECTION 2.** The City Manager or designee is authorized to execute this Agreement, which has been incorporated into this Ordinance for all purposes.

**SECTION 3.** TIF Division staff is hereby authorized to amend the Midtown TIRZ Project and Finance Plans to include this Project.

**SECTION 4.** Reimbursement funds not to Exceed \$39,500,000.00 shall be received from Midtown Board of Directors of Tax Increment Reinvestment Zone #31 in accordance with their Funding Agreement with the City of San Antonio.

**SECTION 5.** The amount of \$37,000,000.00 is appropriated into Fund 29086024 TIRZ Midtown #31, IO# 390000002735, GL account 6102100 Interfund Transfer out entitled Trf fr 29086024 to 23-01561-90-14-03. The amount of \$37,000,000.00 is authorized to be transferred to Fund 45099000.

**SECTION 6.** The budget in SAP Fund 45099000 GO Capital Projects, Project 23-01561 Broadway Street Corridor (E. Houston to E. Hildebrand), shall be revised by increasing WBS 23-01600-90-14-01 with GL 6101100 by \$37,000,000.00 and by increasing the WBS Elements with GL Accounts in the table below by \$37,000,000.00.

WBS	GL	AMOUNT
23-01561-05-02-08-02	5201140	10,000,000.00
23-01561-05-02-08-03	5201140	10,000,000.00
23-01561-05-02-08-04	5201140	17,000,000.00
TOTAL		\$34,000,000.00

**SECTION 7.** The amount of \$2,500,000.00 is appropriated into Fund 29086024 TIRZ Midtown #31, IO# 390000002733, GL account 6102100 Interfund Transfer out entitled Trf fr 29086024 to 23-01600-90-14-01. The amount of \$2,500,000.00 is authorized to be transferred to Fund 45099000.

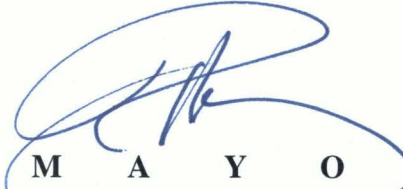
**SECTION 8.** The budget in SAP Fund 45099000 GO Capital Projects, Project 23-01600 N St. Mary's (E Mistletoe Ave-W Josephine), shall be revised by increasing WBS 23-01600-90-14-01 with GL 6101100 and WBS 23-01600-05-02-08 with GL 5201140 each by \$2,500,000.00.

**SECTION 9.** The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 10.** Payment not to exceed the budgeted amount is authorized to the City of San Antonio's Public Works Department and paid solely from the tax increment.

**SECTION 11.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 16<sup>th</sup> day of December, 2021.

  
M A Y O R  
Ron Nirenberg

**ATTEST:**

  
Debbie Racca-Sittre, Interim City Clerk

**APPROVED AS TO FORM:**

  
Andrew Segovia, City Attorney





## City of San Antonio

### City Council Meeting December 16, 2021

44.

2021-12-16-0997

Ordinance authorizing the execution of a Funding Agreement with the Midtown Board of Directors of Tax Increment Reinvestment Zone #31, granting up to \$39,500,000.00 in reimbursable funds from Midtown Tax Increment Reinvestment Zone (TIRZ) Fund for the design and construction of utility and infrastructure improvements for the Upper Segments of Broadway Street Corridor and North St. Mary's Street (E. Mistletoe Street to W. Josephine Street) projects, located within TIRZ boundaries in Council District 1; and, authorizing the appropriation and amending of the FY 2022-2027 Capital Improvements Program with funds in the reimbursable amount not to exceed \$39,500,000.00 from Midtown Tax Increment Reinvestment Zone (TIRZ) #31 Fund to Upper Segments of Broadway Corridor (Mulberry Avenue to Burr Road) and North St. Mary's Street (East Mistletoe to West Josephine Street) projects. [Roderick Sanchez, Assistant City Manager; Razi Hosseini, Director, Public Works]

Councilmember Courage moved to Approve on the Consent Agenda. Councilmember Cabello Havrda seconded the motion. The motion carried by the following vote:

**Aye:** Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

**Exhibit A**



**FUNDING AGREEMENT  
WITH THE CITY OF SAN ANTONIO'S PUBLIC WORKS DEPARTMENT, AND THE BOARD  
OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-ONE, CITY OF SAN  
ANTONIO, TEXAS FOR THE BROADWAY ST. AND N. ST. MARY'S ST CAPITAL  
PROJECTS WITHIN THE MIDTOWN TIRZ**

This Funding Agreement ("Agreement") is entered into by and between the City of San Antonio ("City"), a Texas municipal corporation in Bexar County, Texas, acting by and through its City Manager pursuant to Ordinance No. 2021-\_\_\_\_\_, and the Board of Directors for Tax Increment Reinvestment Zone Number Thirty-One City of San Antonio, Texas, known as the Midtown TIRZ ("Board"), together referred as the "Parties".

**BACKGROUND:**

**WHEREAS**, the City recognizes the importance of its continued role in economic development; community development and urban design and in accordance with Chapter 311 of the Texas Tax Code (the "Act"), the City through Ordinance No. 2008-12-11-1174, 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 2011, the Board and City adopted the Midtown-Brackenridge Master Plan, a comprehensive set of recommendations and implementation strategy for development and redevelopment of the are in and around the TIRZ, reflecting community input and professional planning expertise; and

**WHEREAS**, on August 31, 2021, the Board established a 4-person subcommittee for the purpose of updating the recommendations contained in the Midtown-Brackenridge Master Plan ("the Master Plan"); and

**WHEREAS**, On September 27 and October 11, 2021, the subcommittee met and proposed that the Board adopt a renewed focus on public infrastructure improvements contained in the Master Plan and commit funding for utility and infrastructure improvements to the Broadway Corridor and North St. Mary' Street that were not covered by the 2017-2022 Bond Program; and

**WHEREAS**, in November 2021, the City's Public Works Department applied for funding from the City's Tax Increment Financing ("TIF") Program in order to undertake the oversight and delivery of joint-bid utilities, street reconstruction, curbs, sidewalks, traffic improvements, drainage, and pedestrian and bike improvements to Upper Segments of Broadway Street Corridor and North St. Mary's Street (together the "Project"). The total cost for the Project is approximately \$39.5 million; and

**WHEREAS**, the subcommittee recommended funding in an amount not to exceed THIRTY NINE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$39,500,000.00) and associated interest in available tax increment from the TIRZ fund to provide eligible public infrastructure improvements for the Project; and

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

**WHEREAS**, in accordance with Section 311.008 of the Act, on November 10, 2021, the Board approved Resolution T31 2021 11-10-01R, attached as **Exhibit A**, authorizing approval of this Agreement, which



provides a funding commitment in an amount not to exceed Thirty Nine Million Five Hundred Thousand Dollars and No Cents (\$39,500,000.00) in available tax increment from the TIRZ fund to City's Public Works Department to undertake the oversight and delivery of utility and infrastructure improvements to Upper Segments of Broadway Corridor (Mulberry Ave. to Burr Road) and North St. Mary's Street (East Mistletoe to West Josephine St), San Antonio, Texas and within the TIRZ boundaries, in City Council District 1; and

**WHEREAS**, the Board authorized \$39,500,000.00 from unissued self-supporting Certificates of Obligation and associated interest to be reimbursed from the Midtown TIRZ from available tax increment in the TIRZ TIF fund; and

**WHEREAS**, pursuant to Ordinance No. 2021-\_\_\_\_\_, approved on the 16<sup>th</sup> day of December 2021, the Board and the City agree to enter a binding agreement to ensure that the City is reimbursed for the Project costs associated with the oversight and delivery of utility and infrastructure improvements, described and costs incorporated herein in the attached **Exhibit B**; and

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

#### **ARTICLE I. TERM**

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

#### **ARTICLE II. DEFINITIONS**

- 2.1 **ACT** - The Tax Increment Financing Act of Texas Tax Code, Chapter 311, as may be amended from time to time.
- 2.2 **ADMINISTRATIVE COSTS** – Reasonable costs incurred directly and/or indirectly by the City for the administration of the City's Tax Increment Financing Program.
- 2.3 **AGREEMENT** – This document by and among the City and the Midtown TIRZ Board, which may be amended from time to time in accordance with Section 11.4 Amendments.
- 2.4 **AVAILABLE TAX INCREMENT FUNDS** – Is the meaning given in the Act, Section 311.012(a), contributed by each participating taxing entity to the TIF Fund and distributed in accordance with the priority of payment of the TIRZ.
- 2.5 **BOARD** – The Board of Directors of the Midtown TIRZ.
- 2.6 **CITY** – For the purposes of this Agreement and hereinafter shall mean the City of San Antonio's Public Works Department ("PWD").
- 2.7 **COMPLETION** – In order for the Project to achieve a state of "Completion", Public Improvements must be approved and accepted by the Board as "completed" in accordance with Section 2.8 and 4.1 of this Agreement.

- 2.8 **CONSTRUCTION SCHEDULE** – The specific timetable for constructing the improvements specified in this Agreement, which timetable is more particularly set forth in **Exhibit C**, attached hereto and incorporated herein for all purposes and which timetable may be amended from time to time pursuant to the provisions of this Agreement.
- 2.9 **EFFECTIVE DATE** - The date that is listed on the signature page of this Agreement.
- 2.10 **FINANCE PLAN** – The Midtown TIRZ Financing Plan, as defined in the Act, and as approved and amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.
- 2.11 **PHASE(S)** – The specific timeline and schedule for the Project’s construction and completion, as described in the Construction Schedule incorporated and attached as **Exhibit C**.
- 2.12 **PROJECT** – The City’s public improvements along the Broadway corridor, described in Section 4.1 of this Agreement and in attached **Exhibit B**.
- 2.13 **PROJECT COSTS** - Shall have the meaning provided by the Act and limited to Public Infrastructure and Public Improvements as approved by the Board within the TIRZ boundary, incurred after execution of this Agreement.
- 2.14 **PROJECT PLAN** – The Project Plan as defined in the Act, for the Midtown TIRZ as approved and amended from time to time by the Board and the City, and incorporated by reference into this document as if set out in its entirety, for all purposes.
- 2.15 **PROJECT STATUS REPORT** – Statement(s) prepared and submitted by the City in accordance with the requirements of this Agreement, including quarterly updates and reports of compliance with laws, ordinances, and contractual requirements, and as described and attached in **Exhibit D**, attached and incorporated herein, for all purposes.
- 2.16 **PUBLIC IMPROVEMENTS** - Improvements that provide a public benefit, including but not limited to utilities, streets, street lights, water and sewer facilities, walkways, parks, flood and drainage facilities, parking facilities, demolition work, fencing and landscaping, without regard to location in or outside of the public right of way, and the categories of work included in the definition of Project in this Agreement.
- 2.17 **PUBLIC INFRASTRUCTURE** – A building, highway, road, excavation, and repair work or other project development or public improvement on the Project Site, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, and the categories of work included in the definition of Project in this Agreement.
- 2.18 **TAX INCREMENT** – Shall have the meaning provided by Section 311.012 of the Texas Tax Code, and applies only to taxable real property within the TIRZ.
- 2.19 **TIF** – Tax Increment Financing.
- 2.20 **TIF DEPARTMENT** – The employees of the City of San Antonio’s department responsible for the management of the City’s Tax Increment Financing Program.



- 2.21 **TIF FUND** - The fund created by the City of San Antonio for the deposit of Tax Increments for the Zone, entitled "Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas."
- 2.22 **TIRZ** - Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, known as the Midtown TIRZ.

### ARTICLE III. REPRESENTATIONS

- 3.1 **CITY'S AUTHORITY.** The City represents to the Board that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.
- 3.2 **BOARD'S AUTHORITY.** The Board represents that as of that date of the Board's signature to this Agreement, the Board established pursuant to City Ordinance No. 2008-12-11-1174, has the authority to carry out the functions and operations contemplated by this Agreement.
- 3.3 **AUTHORITY AND ABILITY TO PERFORM.** The Parties represent that performance hereunder shall not result in any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and the City shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
- 3.4 **COOPERATE.** The Parties represent that they shall each cooperate and provide each other all necessary information in order to assist determining compliance with this Agreement.
- 3.5 **DUTY TO COMPLETE IMPROVEMENTS.** The Parties represent that they understand and agree that even after the TIRZ terminates, the City shall ensure the successful completion of all required improvements at no additional cost to the TIRZ beyond the maximum TIRZ funding, in accordance with the terms of this Agreement.
- 3.6 **CITY BEARS RISK OF REIMBURSEMENT.** The City understands and agrees that any expenditure made in anticipation of reimbursement from the TIF Fund shall not be, nor shall be construed to be, the financial obligation of the TIRZ. The City shall bear all risks associated with reimbursement, including, but not limited to: incorrect estimates of tax increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and unanticipated effects covered under legal doctrine of force majeure.

### ARTICLE IV. THE PROJECT

- 4.1 **PROJECT.** The Project shall consist of the oversight and delivery of the joint-bid utilities, street reconstruction, curbs, sidewalks, traffic improvements, drainage, and pedestrian and bike improvements to Upper Segments of Broadway Street Corridor and North St. Mary's Street in accordance with the Master Plan as well as associated interest.

### ARTICLE V. OBLIGATIONS OF THE CITY

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

- 5.2 **COMMENCEMENT.** The City agrees and shall ensure that construction on any Phase of the Project: (i) has been approved in writing by the appropriate City department; and, (ii) the requirements of all local, State and Federal laws have been met from the effective date of the commencement of construction on the Project.
- 5.3 **WRITTEN AGREEMENT.** The City agrees that any work or services contracted under this Agreement shall be contracted only by written contract and, unless specific waiver is granted in writing by the Board, such contract shall be subject to this Agreement.
- 5.4 **COMPLIANCE.** The City agrees to ensure compliance by Project contractors and subcontractors of all applicable provisions of the Act, the TIF Guidelines, the City Charter, the City Code, (including the Unified Development Code such as Universal Design and Construction requirements), Chapter 2258 of the Texas Government Code, and all applicable local, state, and federal laws and regulations as amended.
- 5.5 **PROJECT INSPECTION.** The City agrees to provide the Board and TIF Department access to the Project Site for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project. The Board and TIF Department shall be provided a right of entry onto the Project Site to conduct random walk-through inspections.
- 5.6 **SUPERVISION OF CONSTRUCTION.** The City agrees to cause the performance of all construction of all Public Infrastructure and Public Improvements, at a minimum, in accordance with all Federal, State and local laws, including, but not limited to the current TIF Guidelines, the Unified Development Code, Universal Design, Prevailing Wage, Chapter 2258 of the Texas Government Code, the City Code, and the plans and specifications approved by the appropriate department of the City. The City also agrees to provide reports including inspections of such construction and of compliance with such laws, ordinances, and contractual requirements.
- 5.7 Reserved.
- 5.8 Reserved.
- 5.9 **FORCE MAJEURE.** The Board may also grant temporary relief from any deadline for performance of any term of this Agreement if the City is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault of the City. The burden of proof for the need of such relief shall rest on the City. To obtain relief based on force majeure, the City must file a written request with the Board. Then, at the TIF Economic Development Manager's reasonable discretion, the deadlines set forth in this Agreement may be extended without subsequent City Ordinance.
- 5.10 **QUARTERLY STATUS AND COMPLIANCE REPORTS.** The City agrees to submit to the TIF Department written and signed Project Status Reports (see Sections 2.17 and 5.4 above) containing all required information, on the 15th day of January, April, July and October throughout the duration of the Project, or more often if requested by the Board or the TIF Department, using the form attached as **Exhibit D**.
- 5.11 **MAINTENANCE.** The City shall, at its own cost and expense, maintain or cause to be maintained all Public Infrastructure and Public Improvements, to the extent required by this Agreement.



## ARTICLE VI. OBLIGATIONS OF THE BOARD

- 6.1 **ELIGIBLE PROJECT COSTS.** Costs shall be considered eligible only if approved by the Board, incurred directly and specifically in the performance of, and in compliance with this Agreement and all applicable laws.
- 6.2 **PLEDGE OF FUNDS.** The Board hereby pledges Available TIF Funds, as reimbursement to the City for approved Project Costs, up to Thirty Nine Million Five Hundred Thousand Dollars and No Cents (\$39,500,000.00) for the oversight and delivery of the Project, located at the Project Site, subject to the terms and conditions in this Agreement, priority of payment schedule, and termination of the TIRZ.
- 6.3 **RELEASE OF PLEDGED FUNDS.** In the event the City completes the Project for less than Thirty Nine Million Five Hundred Thousand Dollars and No Cents (\$39,500,000.00) prior to termination of the TIRZ, then such funds will become available for further use by the TIRZ, as subsequently approved by the Board.

## ARTICLE VII. NOTICE

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

**THE CITY**

Public Works Department

Attn:

San Antonio, Texas 78205

**THE BOARD**

Midtown TIRZ #31

Attn: TIF Department

City Tower

100 W. Houston St., 6<sup>th</sup> Floor

San Antonio, Texas 78205

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

## ARTICLE VIII. RECORDS

- 8.1 **RIGHT TO REVIEW.** The Board shall have the right to access records related to the Project, including but not limited to the Project's construction schedule and expenditures. At the Request of the Board, the City agrees to provide the Board and the TIF Department access to records related to the Project for examinations during regular business hours.
- 8.2 **PRESERVATION OF RECORDS.** The City shall retain, preserve, and make available to the Board all records and accounts relating to the Project and this Agreement throughout the term of this Agreement and for 12 months after the termination of this Agreement.
- 8.3 **DISCREPANCIES.** Should errors be discovered in internal controls or in record keeping associated with the Project, such discrepancies shall be corrected upon discovery or within a reasonable period of time, not to exceed 60 days after discovery. The Board shall be informed of the action

taken to correct such discrepancies.

- 8.4 **OVERCHARGES.** If it is determined that the TIRZ has been overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIF Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges.

## ARTICLE IX. REIMBURSEMENT

- 9.1 **REIMBURSEMENT INVOICE.** Upon completion by City of eligible Project Costs, City may submit to the TIF Department an invoice for reimbursement of the eligible Project Costs. Should there be discrepancies in the invoice or if more information is required, City will have thirty (30) calendar days upon notice by the TIF Department to correct any discrepancy or submit additional requested information. Failure to timely submit the additional information requested by the City may result in the delay of City's requested expense reimbursement.
- 9.2 **MAXIMUM REIMBURSEMENT.** Following Board approval and City Council authorization, the City shall receive in accordance with this Agreement, from the TIF Fund a total maximum reimbursement of THIRTY NINE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$39,500,000.00) for eligible Project Costs.
- 9.3 **REIMBURSEMENT OF CITY FEES.** Departments of the City may seek reimbursement for their customary service charges and fees for management of the Project as eligible Project Costs, but only to the extent that reimbursement of such charges and fees shall not cause the Project to exceed the total maximum reimbursement of THIRTY NINE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$39,500,000.00).
- 9.4 **AVAILABLE TAX INCREMENT FUNDS.** The sole source of the funds to reimburse the City for Project Costs shall be the Available TIF Funds levied and collected on the TIRZ and contributed by the Participating Taxing Entities participating in the TIRZ to the fund, created and maintained by the City for the purpose of implementing the Public Improvements of the Project.
- 9.5 **REQUESTS FOR REIMBURSEMENT.** The Parties agree that all requests for reimbursement from the City shall be in accordance to Section 9.1 of this Agreement.
- 9.6 **PROCESSING OF PAYMENT REQUESTS.** Board authorized reimbursements shall be made available to the City within 60 days after the deposit of the City's Tax Increment Payment to the TIF Fund, subject to availability, priority of payment and the requirements herein.
- 9.7 **PRIORITY OF PAYMENT.** The Parties agree that TIF Funds will be used to reimburse City for eligible Projects Costs in the order of priority of payment for the TIRZ.
- 9.8 **SOURCE OF FUNDS.** The Parties agree the sole source of the funds to reimburse City shall be the Available Tax Increment levied and collected on the real property located in the TIRZ and contributed by the participating taxing entity to the TIRZ Fund.
- 9.9 **PARTIAL PAYMENTS.** If TIF Funds are not available in an amount sufficient to make payments in full when the payments are due under this Agreement, partial payment shall be made in the order of priority required by section 9.6 above, and the remainder shall be paid as TIF Funds become available. No fees, costs, expenses or penalties shall be paid on any partial or late payment.



## ARTICLE X. TERMINATION

- 10.1 **TERMINATION.** For purposes of this Agreement, termination shall mean the expiration of the term as provided by Article I. Section 1.1 Term, herein. In addition, the City and/or the Board may terminate this Agreement in the following manners: (1) Termination by Mutual Consent pursuant to Section 10.2 and (2) Termination for Cause pursuant to Section 10.3.
- 10.2 **TERMINATION BY MUTUAL CONSENT.** This Agreement may also be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, the proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 10.3 **TERMINATION FOR CAUSE.** Each Party shall have the right to terminate this Agreement in whole or in part for cause if the City fails to perform the terms and conditions herein or, if the City fails to cure a default within 60 days after receiving written notice of Default from the Board, requesting that the failure be cured.
- 10.4 **CURE.** Upon written Notice of Default resulting from a breach of this Agreement, such default may be cured within 60 days from the date of the Notice of Default.
- 10.5 **NOTICE OF TERMINATION.** In the event that either Party fails to comply with this Agreement, such non-compliance shall be deemed a default and this Agreement may summarily be terminated upon the issuance of a written Notice of Termination, which shall include: (1) the reasons for termination; and (2) the effective date of Termination.
- 10.6 **RECAPTURE.** If the Board terminates this Agreement for cause, then the TIRZ shall have the right to recapture all the disbursed TIF Funds made under this Agreement and the City shall repay and deposit all TIF Funds disbursed to the City under this Agreement to the TIF Fund of the Inner City TIRZ within 60 days from the date of Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Inner City TIRZ.
- 10.7 **OTHER REMEDIES AVAILABLE.** The Board shall have the right to seek any remedy in law to which it may be entitled, in addition to termination and repayment of funds, if the City defaults under the material terms of this Agreement.

## ARTICLE XI. ASSIGNMENTS, CHANGES AND AMENDMENTS

- 11.1 Reserved.
- 11.2 **AUTOMATIC INCORPORATION OF LAWS.** Changes in Federal, State and local laws, rules, or regulations may occur during the term of this Agreement and any such change(s) shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part of this Agreement as of the effective date of the rule, regulation or law.
- 11.3 **INVALID PROVISION.** If any provision of this Agreement is held invalid, ineligible, illegal or unenforceable under City, State, or Federal laws, then said provision and the remainder of this Agreement shall be construed as if such provision was never contained in this Agreement.
- 11.4 **AMENDMENTS.** Except when the terms of this Agreement expressly provide otherwise, any alteration, addition, or deletion that constitutes a material change to the terms of this Agreement

shall be effectuated by an amendment, in writing, executed by the passage of Board Resolution and subsequent City Ordinance. For amendments that provide additional funding commitments of less than \$50,000, only Board approval shall be required. Following Board approval, the Director of Neighborhood Housing or his or her designee shall have authority to execute such amendments without further action by the San Antonio City Council.

11.5 Reserved.

## **ARTICLE XII. NON-DISCRIMINATION**

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

## **ARTICLE XIII. GOVERNING LAW**

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

## **ARTICLE XIV. CAPTIONS**

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

## **ARTICLE XV. ENTIRE AGREEMENT**

- 15.1 **FINAL AGREEMENT.** This written Agreement embodies the final and entire agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.
- 15.2 **INCORPORATION AND EXHIBITS.** Exhibits referenced below are incorporated herein and shall be considered a part of this Agreement, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

EXHIBIT A - Resolution T31-2021-11-10-01R

EXHIBIT B - The Project

EXHIBIT C - Construction Schedule

EXHIBIT D - Project Status Report Form

*Signature Page to Follow*



**EXECUTED BY THE PARTIES IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original on this the \_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**BOARD OF DIRECTORS**  
Midtown TIRZ #11

\_\_\_\_\_  
Erik Walsh  
CITY MANAGER  
Date: \_\_\_\_\_

\_\_\_\_\_  
PRESIDING OFFICER  
Date: \_\_\_\_\_

**ATTEST/SEAL:**

**ATTEST**

\_\_\_\_\_  
Debbie Racca-Sittre  
ACTING CITY CLERK

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

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Andrew Segovia  
CITY ATTORNEY