

**FUNDING AGREEMENT**  
**WITH THE CITY OF SAN ANTONIO’S OFFICE OF HISTORIC PRESERVATION AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER THIRTY-ONE, CITY OF SAN ANTONIO, TEXAS FOR A CONSULTANT TO RECONCILE THE BRACKENRIDGE PARK MASTER PLAN, BRACKENRIDGE PARK CONSERVANCY CULTURAL LANDSCAPE PLAN, AND OTHER PLANS RELATED TO BRACKENRIDGE PARK**

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. 2023-\_\_-\_\_, and the Board of Directors for Tax Increment Reinvestment Zone Number Thirty-One City of San Antonio, Texas, known as the Midtown TIRZ (“Board”), together referred as the “Parties”.

**BACKGROUND:**

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

**WHEREAS**, to ensure that the City properly addresses the opportunities and issues relating to the operation of Brackenridge Park, the City seeks to hire a consultant for the approximate amount of \$150,000 to reconcile the Brackenridge Park Master Plan, the Brackenridge Park Conservancy Cultural Landscape Plan, and other plans related to Brackenridge Park and the surrounding area (the “Brackenridge Park Project”); and

**WHEREAS**, in connection with the Brackenridge Park Project, City also seeks to hire administrative support to assist in the reconciliation of the Brackenridge Park Master Plan, the Brackenridge Park Conservancy Cultural Landscape Plan, and other plans related to Brackenridge Park and the surrounding area for \$75,000.00; and

**WHEREAS**, in November 2022, the City of San Antonio’s Office of Historic Preservation applied for funding of \$225,000.00 from the City’s Tax Increment Financing Program (“TIF”) in order to undertake the Brackenridge Park 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 May 6, 2022, the Board approved Resolution T31-2022-12-13-02R, attached as **Exhibit A**, authorizing approval of this Agreement, which provides a funding commitment in an amount not to exceed Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00) in TIF funds in order to undertake the Brackenridge Park Project, and authorizes said commitment to be incorporated into the TIRZ Project Plan; and

**WHEREAS**, pursuant to Ordinance No. 2023-\_\_-\_\_, approved on the \_\_ day of \_\_\_\_ 2023, the Board and the City agree to enter a binding agreement to ensure that the City is given a grant for the Project; 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 a report reconciling the various plans associated with Brackenridge Park; (ii) the date this Agreement is terminated as provided in Article X; or, (iii) termination of the TIRZ.

## **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 Office of Historic Preservation ("OHP").
- 2.7 **EFFECTIVE DATE** - The date that is listed on the signature page of this Agreement.
- 2.8 **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.
- 2.9 **PROJECT** – The City's undertaking of the Brackenridge Park Project as described in Section 4.1 of this Agreement.
- 2.10 **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.
- 2.11 **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.
- 2.12 **TIF** – Tax Increment Financing.
- 2.13 **TIF DIVISION** – The employees of the City of San Antonio's department responsible for the management of the City's Tax Increment Financing Program.

- 2.14 **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.”
- 2.15 **TIRZ** - Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, known as the Midtown TIRZ.

### **ARTICLE III. REPRESENTATIONS**

- 3.1 **CITY’S AUTHORITY.** The City represents to the Board that as of the date of the execution of this Agreement, the City is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.
- 3.2 **BOARD’S AUTHORITY.** The Board represents that as of that date of the Board’s signature to this Agreement, the Board established pursuant to City Ordinance No. 2008-12-11-1134, has the authority to carry out the functions and operations contemplated by this Agreement.
- 3.3 **AUTHORITY AND ABILITY TO PERFORM.** The Parties represent that performance hereunder shall not result in any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIF Fund only from Available Tax Increment Funds to the extent provided herein; and the City shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
- 3.4 **COOPERATE.** The Parties represent that they shall each cooperate and provide each other all necessary information in order to assist determining compliance with this Agreement.

### **ARTICLE IV. THE PROJECT**

- 4.1 **PROJECT.** The Project shall consist of retention of a consultant for an amount not to exceed \$150,000.00 to reconcile the Brackenridge Park Master Plan, the Brackenridge Park Conservancy Cultural Landscape Plan, and other plans related to Brackenridge Park and the surrounding area. Furthermore, the Project shall require hiring administrative staff, in an amount not to exceed \$75,000.00, to support the reconciliation of the plans.

### **ARTICLE V. OBLIGATIONS OF THE CITY**

- 5.1 **PROJECT OVERSIGHT.** The City agrees to monitor activities and provide reasonable oversight of the consultant. OHP shall be the point of contact on all matters regarding the Project.
- 5.2 **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.
- 5.3 **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.
- 5.4 **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.

#### 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 a grant to the City for up to Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00) for the Project, 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 Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00) 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**

OHP  
Attn: Shannon Shea Miller, Director  
PO Box 839966  
San Antonio, TX 78283

**THE BOARD**

Midtown TIRZ #31  
Attn: TIF Division  
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. At the Request of the Board, the City agrees to provide the Board and the TIF Division access to records related to the Project for examination 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 Project, 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 TIRZ paid such overcharges.

#### ARTICLE IX. REIMBURSEMENT

- 9.1 **GRANT REQUEST.** Upon written request by the City, the TIF Division shall pay the Maximum Grant to the City for the Project.
- 9.2 **MAXIMUM GRANT.** Following Board approval and City Council authorization of the Agreement, the City shall receive in accordance with this Agreement, from the TIF Fund a total maximum grant of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$225,000.00) for the Project.
- 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, but only to the extent that reimbursement of such charges and fees shall not cause the Project to exceed the total maximum grant of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$225,000.00).
- 9.4 **SOURCE OF FUNDS.** The Parties agree the sole source of the funds to provide the grant to the 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.

#### 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 Midtown TIRZ within 60 days from the date of Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Midtown TIRZ.
- 10.7 **OTHER REMEDIES AVAILABLE.** The Board shall have the right to seek any remedy in law to which it may be entitled, in addition to termination and repayment of funds, if the City defaults under the material terms of this Agreement.

#### **ARTICLE XI. ASSIGNMENTS, CHANGES AND AMENDMENTS**

- 11.1 **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.
- 11.2 **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.
- 11.3 **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.

#### **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 T31-2022-12-13-02R

*Signatures on the following page*

**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 \_\_\_\_\_, 2023.

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

**BOARD OF DIRECTORS**  
Midtown TIRZ #31

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

\_\_\_\_\_  
Lori Houston  
BOARD CHAIR  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas Rice  
ASSISTANT CITY ATTORNEY