

**FUNDING AGREEMENT
WITH THE CITY OF SAN ANTONIO'S PUBLIC WORKS DEPARTMENT, AND THE BOARD
OF DIRECTORS OF REINVESTMENT ZONE NUMBER NINE, CITY OF SAN ANTONIO,
TEXAS FOR PUBLIC IMPROVEMENTS IN CONNECTION WITH THE
FLORES STREET PROJECT**

This Funding Agreement ("Agreement") is entered into by and between the City of San Antonio ("City"), a Texas municipal corporation in Bexar County, Texas, acting by and through its City Manager pursuant to Ordinance No. 2021-_____, and the Board of Directors for Tax Increment Reinvestment Zone Number Nine, City of San Antonio, Texas, known as the Houston Street 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. 90969, established Tax Increment Reinvestment Zone Number Nine, San Antonio, Texas, known as the Houston Street TIRZ ("TIRZ"), to promote development and redevelopment which would not otherwise occur solely through private investment; and

WHEREAS, the City of San Antonio's Public Works Department ("PWD") has identified certain Public Infrastructure and Public Improvements for Flores Street in City Council District 1; and

WHEREAS, the Flores Street Project requires the construction of Public Infrastructure and Public Improvements for a total budgeted cost of \$14,000,000.00; and

WHEREAS, the City of San Antonio has identified a benefit from public art installations and therefore, an amount not to exceed \$210,000.00 in available tax increment from the TIRZ Fund for public art associated with the Flores Street Project; and

WHEREAS, in November 2021, the PWD applied for funding of \$14,210,000.00 plus financing costs from the City's Tax Increment Financing Program ("TIF") to construct the requested Public Infrastructure and Public Improvements for the Flores Street 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 16, 2021, the Board approved Resolution T9-2021-11-16-02R, attached as **Exhibit A**, authorizing approval of this Agreement, which provides a funding commitment in an amount not to exceed Fourteen Million Two Hundred Ten Thousand Dollars and No Cents (\$14,210,000.00) plus financing costs in reimbursable TIF funds for capital improvements and infrastructure for the Flores Street Project, and authorizes said commitment to be incorporated into the TIRZ Project Plan; and

WHEREAS, pursuant to Ordinance No. 2021-_____, approved on the ____ day of _____ 2021, the Board and the City agree to enter a binding agreement to ensure that the City is reimbursed for the Public Infrastructure and Public Improvement costs associated with the Project; 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 Houston Street 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 Houston Street 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 **EFFECTIVE DATE** - The date that is listed on the signature page of this Agreement.
- 2.8 **FINANCE PLAN** – The Houston Street 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 construction of Public Infrastructure and Public Improvements on Flores Street, described in Section 4.1 of this Agreement.
- 2.10 **PROJECT COSTS** - Shall have the meaning provided by the Act and limited to Public Infrastructure and Public Improvements as approved by the Board, incurred after execution of this Agreement.
- 2.11 **PROJECT PLAN** – The Project Plan as defined in the Act, for the Houston Street 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.
- 2.12 **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 B**, attached and incorporated herein, for all purposes.

- 2.13 **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.
- 2.14 **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.
- 2.15 **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.
- 2.16 **TIF** – Tax Increment Financing.
- 2.17 **TIF DIVISION** – The division of the City’s Neighborhood & Housing Services (or successor) Department responsible for the management of the City’s Tax Increment Financing Program.
- 2.18 **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 Nine, City of San Antonio, Texas.”
- 2.19 **TIRZ** - Tax Increment Reinvestment Zone Number Nine, City of San Antonio, Texas, known as the Houston Street 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. 90969, 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 construction of Public Infrastructure and Public Improvements to Flores Street in City Council District 1, within the TIRZ for a total budgeted cost of \$14,000,000.00. The Project will also include an amount not to exceed \$210,000.00 for public art associated with the Project.

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. PWD 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 Division 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 Division 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 Division 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 Division, using the form attached as **Exhibit B**.
- 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 Fourteen Million Two Hundred Ten Thousand Dollars and No Cents (\$14,210,000.00) plus financing costs for the design and construction 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 Fourteen Million Two Hundred Ten Thousand Dollars and No Cents (\$14,210,000.00) plus financing costs 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
 PWD
 Attn: _____

 San Antonio, Texas 78205

THE BOARD
 Houston Street TIRZ #9
 Attn: TIF Division
 City Tower
 100 W. Houston St., 6th Floor

- 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 Division 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.** City may submit to the TIF Division 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 Division 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 FOURTEEN MILLION TWO HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$14,210,000.00) plus financing costs 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 FOURTEEN MILLION TWO HUNDRED TEN THOUSAND DOLLARS AND NO CENTS (\$14,210,000.00) plus financing costs.
- 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

Houston Street TIRZ within 60 days from the date of Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Houston Street 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 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 T9-2021-11-16-02R

EXHIBIT B - Project Status Report Form

Signature Page to Follow

DRAFT

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

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BOARD OF DIRECTORS
Houston Street TIRZ #9

Erik Walsh
CITY MANAGER
Date: _____

Councilman Mario Bravo
BOARD CHAIR
Date: _____

ATTEST/SEAL:

ATTEST

Debbie Racca-Sittre
ACTING CITY CLERK
Date: _____

Date: _____

APPROVED AS TO FORM:

Andrew Segovia
CITY ATTORNEY