

ORDINANCE 2021-12-16-0993

APPROVING A FUNDING AGREEMENT WITH THE BOARD OF DIRECTORS FOR WESTSIDE TAX INCREMENT REINVESTMENT ZONE IN AN AMOUNT NOT TO EXCEED \$435,000.00 FOR COSTS RELATED TO HISTORIC MARKET SQUARE CAPITAL IMPROVEMENTS AND REMEDIATION.

* * * * *

WHEREAS, in accordance with the Tax Increment Financing Act (the "Act"), Chapter 311 of the Texas Tax Code, the City through Council Ordinance No. 2008-12-11-1173, established Tax Increment Reinvestment Zone Number Thirty, known as the Westside 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 the Westside TIRZ; and

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

WHEREAS, located in Zona Cultural District and within the boundaries of the Westside TIRZ, Market Square is a culturally vibrant destination in downtown San Antonio. Traditionally a produce market, Market Square has progressed over history to become a Southwestern, Native American, San Antonian, Mexican and Latin American themed marketplace full of art, food, entertainment, events, and unique retail offerings. Market Square is comprised of various city-owned buildings and assets including Farmers Market and El Mercado, which house over 90 locally owned businesses and attract thousands of visitors throughout the year; and

WHEREAS, Market Square has identified two critical projects including drainage repairs and mold remediation; and

WHEREAS, on October 15, 2021, the Westside TIRZ board approved a Resolution authorizing a Funding Agreement between the Westside TIRZ Board of Directors and the City of San Antonio, for an amount not to exceed \$435,000 for the Market Square Project located within the Westside TIRZ, in City Council District 1; and

WHEREAS, it is now necessary for the City Council to approve the Funding Agreement between the City of San Antonio and the Board for the public improvements at the Market Square. **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 by and between the City of San Antonio and the Board of Directors of Tax Increment Reinvestment Zone #30, attached hereto as **Exhibit A**, are hereby approved.

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

SECTION 3. TIF Department staff is hereby authorized to amend the Westside TIRZ Project and Finance Plans to include this Project.

SECTION 4. The amount of \$250,000.00 is appropriated in SAP Fund 29086026 TIRZ Westside #30, IO# 39000000xxxx, GL account 6102100 Interfund Transfer out entitled Trf fr 29086026 to 23-01863-90-xx-xx. The amount of \$250,000.00 is authorized to be transferred to Fund 40099000.

SECTION 5. The budget in SAP Fund 40099000 GO Capital Projects, Project 23-01863 Farmers Market Building Floor Drain, shall be revised by increasing WBS 23-01863-90-xx-xx with GL 6101100 and WBS 23-01863-05-02-02 with GL 5201140 each by \$250,000.00.


SECTION 6. The amount of \$185,000.00 is appropriated in SAP Fund 29086026 TIRZ Westside #30, IO# 39000000xxxx, GL account 6102100 Interfund Transfer out entitled Trf fr 29086026 to 19-00034-90-xx-xx. The amount of \$185,000.00 is authorized to be transferred to Fund 40099000.

SECTION 7. The budget in SAP Fund 40099000 GO Capital Projects, Project 19-00034 El Mercado Mold Remediation, shall be revised by increasing WBS 19-00034-90-xx-xx with GL 6101100 and WBS 23-19-00034-05-02-02 with GL 5201140 each by \$185,000.00.

SECTION 8. 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 9. This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

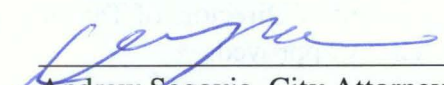
PASSED AND APPROVED this 16th day of December, 2021.


M A Y O R
Ron Nirenberg

ATTEST:


Debbie Racca-Sittre, Acting City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting December 16, 2021

40.

2021-12-16-0993

Ordinance approving a Funding Agreement with the Board of Directors for Westside Tax Increment Reinvestment Zone in an amount not to exceed \$435,000.00 for costs related to Historic Market Square capital improvements and remediation. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development and Operations Department]

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
BETWEEN THE CENTER CITY DEVELOPMENT OFFICE AND
THE BOARD OF DIRECTORS OF REINVESTMENT ZONE #30,
CITY OF SAN ANTONIO, TEXAS FOR CAPITAL IMPROVEMENTS AND REMEDIATION
AT HISTORIC MARKET SQUARE**

This Funding Agreement ("Agreement") is entered into by and between the City of San Antonio's Center City Development Office ("CCDO"), 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, City of San Antonio, Texas, known as the Westside TIRZ ("Board"), together referred as the "Parties".

BACKGROUND:

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City through Ordinance No. 2008-12-11-1173 established Tax Increment Reinvestment Zone Number Thirty, San Antonio, Texas, known as the Westside 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, in September 2021, CCDO applied for funding from the City's Tax Increment Financing Program ("TIF") to undertake necessary capital improvements and remediation at Historic Market Square, which houses over 90 locally owned businesses that attract thousands of visitors locally, and is located in Council District 5 and within the boundaries of the TIRZ; and

WHEREAS, this funding will provide for critical safety improvements at the site, including drainage system repairs to the Farmer's Market building and mold remediation at the El Mercado building; 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 October 15, 2021, the Board approved Resolution T30-2021-10-15-02R, attached as **Exhibit A**, authorizing approval of this Agreement, which provides a funding commitment in an amount not to exceed FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$435,000.00) in TIF funds for costs related to Historic Market Square capital improvements and remediation, 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 into a binding agreement to ensure that the City is able to fund the public infrastructure and public improvement costs associated with the Project, described and 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 City completes 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 City and the Westside 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 Westside TIRZ.
- 2.6 **CITY** – For the purposes of this Agreement and hereinafter shall mean the City of San Antonio's Center City Development Office ("CCDO").
- 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 **RESERVED**
- 2.10 **EFFECTIVE DATE** - The date that is listed on the signature page of this Agreement.
- 2.11 **FINANCE PLAN** – The Westside 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.
- 2.12 **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**.
- 2.13 **PROJECT** – The City's improvements described in Section 4.1 of this Agreement and in attached **Exhibit B**.

- 2.14 **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.
- 2.15 **PROJECT PLAN** – The Project Plan as defined in the Act, for the Westside 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.
- 2.16 **PROJECT SITE** - The real property to be developed by the City, located at 514 W. Commerce, San Antonio, Texas 78207, within the TIRZ and described in attached **Exhibit D** (Map).
- 2.17 **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 E**, attached and incorporated herein, for all purposes.
- 2.18 **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.
- 2.19 **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.
- 2.20 **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.
- 2.21 **TIF** – Tax Increment Financing.
- 2.22 **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, City of San Antonio, Texas.”
- 2.23 **TIF DIVISION** – The employees of the City of San Antonio’s department responsible for the management of the City's Tax Increment Financing Program.
- 2.24 **TIRZ** – Tax Increment Reinvestment Zone Number Thirty, City of San Antonio, Texas, known as the Westside 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. 2008-12-11-1173, 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.** The City understands and agrees that any expenditure made in anticipation of payment 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 payment from the TIRZ, 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 capital improvements at Historic Market Square, located at 514 W. Commerce, San Antonio, Texas 78207. The improvements shall include the repair of approximately six floor drains at the back of house area in the Farmer's Market building into a sanitary sewer main. The Project shall also consist of mold remediation at the El Mercado building. The City will provide Project oversight and complete or cause the completion of the Project, in accordance with this Agreement.
- 4.2 **SOURCE OF FUNDS.** Payment of TIRZ Funds is subject to availability and priority of payment and are not intended to provide for all costs incurred in connection with the project or expenses incurred by City for performance of the obligations under this Agreement. Available Tax Increment shall constitute the source of payment to City for costs related to capital improvements and remediation at the Project site. Total payment to City from the TIRZ Fund shall not exceed FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$435,000.00). City is eligible for payment as of the effective date of this Agreement. The Terms by which payment will be provided for eligible Project Costs are further defined in Article IX. Payment.

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. Public Works 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 **COMPLETION.** The City agrees to complete, or cause to be completed, the Public Infrastructure and Public Improvements, in accordance with Section 2.8 and Section 4.1 of this Agreement.
- 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 E**.
- 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 for approved Project Costs, up to FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$435,000.00) for the design, undertaking, 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.

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

Center City Development Office
Attn: John Jacks
PO Box 839966
San Antonio, Texas 78283

THE BOARD

Westside TIRZ #30
Attn: TIF Division
City Tower
100 W. Houston Street, 6th Floor
San Antonio, TX 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 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 was paid such overcharges.

ARTICLE IX. PAYMENT

- 9.1 **INVOICE.** Following execution of the Agreement, City may submit to the TIF Division an invoice for payment disbursement. Should there be discrepancies in the invoice or if more information is required, City will have thirty (30) calendar days upon notice by TIF Division staff 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 payment.
- 9.2 **MAXIMUM PAYMENT.** Following City Council authorization, City may receive in accordance with this Agreement, from the TIF Fund a total maximum disbursement of FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$435,000.00) to be utilized 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 FOUR HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$435,000.00).
- 9.4 **AVAILABLE TAX INCREMENT FUNDS.** The sole source of the funds 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 PAYMENT.** The Parties agree that all requests for payment from the City shall be in accordance to Section 9.1 of this Agreement.
- 9.6 **PROCESSING OF PAYMENT REQUESTS.** Payment shall be made available to the City within 60 days, 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 provide City funding 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 provided to 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.** The Board 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 City 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 Westside TIRZ within 60 days from the date of Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Westside 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 **ASSIGNMENTS.** The Parties shall not transfer, pledge or assign their rights and obligations under this Agreement without first procuring written approval by the Board as evidenced by Resolution passed and approved by the Board.
- 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, 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.

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 T30-2021-10-15-02R

EXHIBIT B - Historic Market Square Project

EXHIBIT C - Construction Schedule

EXHIBIT D - Project Site (Map)

EXHIBIT E - Project Status Report Form

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 _____, 2021.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BOARD OF DIRECTORS
Westside TIRZ #30

Erik Walsh
CITY MANAGER
Date: _____

Councilwoman Teri Castillo
BOARD CHAIR
Date: _____

ATTEST/SEAL:

CITY CLERK

Date: _____

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY