TRAVIS GARAGE REHABILITATION PROJECT DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), pursuant to City Ordinance No. 2019-_____, is entered into by and between the City of San Antonio ("City", a Texas Municipal Corporation in Bexar County, Texas, the Board of Directors ("Board") for Tax Increment Reinvestment Zone Number Nine, City of San Antonio, Texas, and GrayStreet Travis Garage, LLC ("Travis Garage") and GrayStreet Travis Office, LLC ("Travis Office"), for-profit organizations registered in the State of Texas. Travis Garage and Travis Office are collectively referred to as "Developers." This agreement refers to the City and the Developers collectively as the "Parties" and singularly as the "Party."

RECITALS

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City through Ordinance No. 90969 established Tax Increment Reinvestment Zone Number Nine, San Antonio, Texas, known as the Houston Street Tax Increment Zone ("TIRZ"), to promote development and redevelopment which would not otherwise occur solely through private investment in the reasonably foreseeable future and created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, the City and the Board recognize the importance of their continued role in development activities and actively participate in funding of projects that enhance the value of all the taxable real property in TIRZ and benefit the City; and

WHEREAS, on September 17, 2018, Travis Garage submitted a proposal request for TIRZ funding for the Travis Garage Rehabilitation project located at 213 E Travis Street, in City Council District 1, and within the boundary of the Houston Street TIRZ; and

WHEREAS, the Travis Garage Rehabilitation project consists of the beautification of Travis Park Plaza, an eight story office building and its garage, with plans for streetscape improvements to create an "urban oasis" of green space out of the surface lot between the office building and the garage. Landscaping, the addition of canopies, and general beautification of the area surrounding Travis Park Plaza and its garage represent public space improvements that will enhance visitor and pedestrian experience; and

WHEREAS, the total development cost for the Travis Garage Rehabilitation Project is approximately $13,426,500.00; and

WHEREAS, in accordance with Section 311.010 (b) of the Act, the Board is authorized to enter into agreements to dedicate revenue from the tax increment fund to pay for eligible project costs related to the construction of public infrastructure and eligible project costs that benefit the TIRZ; and

WHEREAS, on October 22, 2018, the Board adopted Resolution T9 2018-10-22-05R, attached and incorporated in this Agreement as **Exhibit A,** authorizing Staff to negotiate an agreement to provide funding in available tax increment for the Travis Garage Rehabilitation Project; and

WHEREAS, on May 20, 2019, the Board adopted Resolution T9 2019-05-20-01R, attached and incorporated into this Agreement as **Exhibit B,** authorizing approval of the execution of this Agreement to provide reimbursement for eligible project costs in an amount not to exceed ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($1,250,000.00); and

WHEREAS, the Board has agreed that $1,250,000.00 in Houston Street TIRZ funds portion will be utilized to provide reimbursement for eligible expenses, namely façade and glazing, landscaping, and low impact development features; and

WHEREAS, pursuant to said authority above, the Parties hereby enter into a binding agreement to develop the Project; **NOW, THEREFORE,**

In consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the Parties severally and collectively agree, and by the execution hereof are bound, to the performance and accomplishment of tasks hereinafter described.

ARTICLE I. AGREEMENT PURPOSE

Developers shall undertake the Project which is anticipated to benefit the City, enhance the value of all the taxable real property in the TIRZ, and promote economic development which would not otherwise occur solely through private investment in the reasonably foreseeable future.

ARTICLE II. TERM

TERM. The term of this Agreement shall commence on the Effective Date and end on whichever of the following dates should occur the earliest: (i) the date Travis Garage receives the final reimbursement for completing the Project; (ii) the date this Agreement is earlier terminated as provided in Article XI; or (iii) termination of the TIRZ, provided that all existing warranties on the Project shall survive termination of this Agreement for the express time periods provided herein.

ARTICLE III. DEFINITIONS

3.1 **Agreement, City, Board, and Developers** – Shall have the meaning specified in the preamble of this document.

3.2 **Act** – Means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as may be amended from time to time.

3.3 **Administrative Costs** – Means the reasonable costs incurred directly and/or indirectly by the City for the administration of the TIF Program.

3.4 **Adversarial Proceedings** – whether or not capitalized, means any cause of action involving this Agreement filed by Developers against the City in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.

3.5 **Available Tax Increment** – Has the meaning given in the Act, Section 311.012 (a), contributed by each participating taxing entity to the TIRZ Fund, and distributed in accordance with the order of priority of payment of the TIRZ.

3.6 **Construction Schedule** –The specific timetable for constructing the Project, which Developers shall commence construction at the Project Site as stated in section 5.1 and shall use commercially reasonable efforts to complete construction, subject to force majeure and any provision pursuant of this Agreement.

3.7 **Contract Progress Payment Request ("CPPR")** – Request form prepared and submitted by Travis Garage pursuant to the requirements of this Agreement and the CPPR Form, attached hereto as **Exhibit C**. The CPPR shall also include and reflect all waivers granted through any City program or incentives.

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

3.9 **Finance Plan** – means the Houston Street TIRZ Finance Plan, as defined in the **Act**, and approved and amended from time to time by the Board and the City, which is incorporated by reference into this document as if set out in its entirety, for all purposes.

3.10 **Person** – means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

3.11 **Project** – Has the meaning found in section 5.1 of this Agreement.

3.12 **Project Costs** – Has the meaning found in the **Act**, Section 311.002. Project Costs are limited to expenses approved by the Board within the TIRZ boundary, incurred after execution of this Agreement.

3.13 **Project Plan** – means the Project Plan as defined in the **Act** for the Houston Street TIRZ as approved and periodically amended by the Board and the City and incorporated by reference for all purposes into this document as if set out in its entirety.

3.14 **Project Site** – means the real property located at 213 East Travis Street and 711 Navarro Street, San Antonio, Texas, City Council District 1, and within the Houston Street TIRZ, and described in attached **Exhibit D**.

3.15 **Project Status Report** – means the document the Developers prepared and submitted in accordance with this Agreement's requirements and **Exhibit E,** attached and incorporated herein, for all purposes.

3.16 **Public Improvements** – means improvements on the Project Site that provide a public benefit, including but not limited to utilities, streets, street lights, water and sewer facilities, walkways, parks, 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.

3.17 **Public Infrastructure** – means a building, highway, road, excavation, and repair work or other project development or public improvement on the Project Site, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, and the categories of work included in the definition of Project in this Agreement.

3.18 **Tax Increment** – Has the meaning found in the **Act**, Section 311.012. Tax Increment applies only to taxable real property within the TIRZ.

3.19 **TIF** – means Tax Increment Financing.

3.20 **TIRZ Fund** – means the City's portion of the fund created by the City for the deposit of Tax Increment for the Zone, entitled "Reinvestment Zone Number Nine, City of San Antonio, Texas."

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

3.22 **TIRZ** – means Tax Increment Reinvestment Zone Number Nine, City of San Antonio, Texas, known as the Houston Street TIRZ.

Singular and Plural: Words used in the singular, where the content so permits, also include the plural and vice versa, unless otherwise specified.

ARTICLE IV. REPRESENTATIONS

When an improvement has both private and public benefits, only that portion that has a public benefit may be reimbursed by the City, such as, but not limited to, capital costs, including the actual costs of public improvements, alteration, remodeling, repair, or reconstruction of existing buildings and structures.

4.1 CITY'S AUTHORITY. City represents that it is a home rule municipality located in Bexar County, Texas, and has authority to carry out the obligations contemplated by this Agreement.

4.2 BOARD'S AUTHORITY. The Board represents that the TIRZ, as established pursuant to City Ordinance No. 93101 has the authority, through the Presiding Officer's affixed signature to this Agreement, to carry out the functions and operations contemplated by this Agreement.

4.3 DEVELOPERS' AUTHORITY. Developers represent that they each have the right to enter into this Agreement and perform the requirements set forth herein. The Developers' performance shall be lawful and shall not violate any applicable judgment, order, or regulation nor result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City or the Board, except that this Agreement shall constitute a claim against the TIRZ Fund only from Available Tax Increment to the extent provided herein. Developers shall have sufficient capital, from one or more sources selected by Developers, including but not limited to financing of the Project, to perform all of their obligations under this Agreement when it needs to have said capital.

4.4 NO INCREMENT REVENUE BONDS. Neither the City nor the Board will issue any tax increment revenue bonds to cover any costs directly or indirectly related to Developers' improvement of the TIRZ under this Agreement.

4.5 REASONABLE EFFORTS. Each party to this Agreement will cooperate and make reasonable efforts to expedite the subject matter hereof and acknowledge that successful performance of this Agreement requires their continued cooperation.

4.6 CONSENTS. Each party to this Agreement represents that the execution, delivery, and performance of this Agreement requires no consent or approval of any person that has not been obtained.

4.7 DUTY TO COMPLETE IMPROVEMENTS. Each party understands and agrees that Developers shall ensure the successful completion of all required improvements at no additional cost to the City and/or the TIRZ beyond the maximum TIRZ funding, in accordance with the terms of this

Agreement.

4.8 NO INTERLOCAL AGREEMENTS. Each party understands and agrees that the City is the only participating taxing entity contributing 100% of the tax increment to this Project, and therefore, no other agreements are necessary with any other public entity to make this Agreement effective.

4.9 DEVELOPERS BEAR THE RISK. Developers understand and agree that any expenditure made by Developers in anticipation of reimbursement of TIRZ Funds shall not be, nor shall be construed to be, the financial obligations of the City and/or the TIRZ. Developers 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 Approved TIRZ Work, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, and unanticipated effects covered under legal doctrine of force majeure. Any contribution made by Developers in anticipation of reimbursement from the TIRZ Fund shall never be an obligation of the City's General Fund, but are only obligations of the TIRZ Fund, and are subject to limitations herein.

4.10 RIGHT TO ASSIGN PAYMENT. Developers may rely upon the payments to be made to Travis Garage out of the TIRZ Fund as specified in this Agreement and Travis Garage may assign its rights to such payments, either in full or in trust, for the purposes of financing its obligations related to this Agreement, but the Developers' right to such payments is subject to the other limitations of this Agreement. Notwithstanding the foregoing, the City shall issue a check or other forms of payment made payable only to Travis Garage.

ARTICLE V. THE PROJECT

5.1 PROJECT. The Project consists of the design, construction, installation and implementation of public improvements located at 213 East Travis Street and 711 Navarro Street, namely the construction of streetscape improvements to create an "urban oasis" of green space out of what is currently the surface lot between the Travis Park Plaza and its garage, as well as the addition of landscaping and canopies surrounding the building. Developers shall construct or cause to be constructed public infrastructure and public improvements associated with the Project to include items such as, without limitation, demolition, geotechnical work and archaeological work, facade and glazing, building canopies, garage lighting, landscaping and paving, and low impact development features. The Project is anticipated to commence on December 31, 2019 (provided, however, that Developers may commence sooner), and shall be completed no later than June 30, 2020.

5.2 PRIVATE FINANCING. The cost of Public Infrastructure and all other improvement expenses associated with the Project shall be funded by Developers' own capital or through commercial or private construction loans/lines of credit secured solely by Developers. Developers may use all, any or part of the Project Site as collateral for the construction loan(s) as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication.

5.3 REIMBURSEMENT. Reimbursement of TIRZ Funds are subject to availability and priority of payment and are not intended to reimburse all costs incurred in connection with the project or expenses incurred by Developers for performance of the obligations under this Agreement. Neither the City nor the Board can guarantee that Available Tax Increment shall completely

reimburse Developers. Available Tax Increment shall constitute a source of reimbursement to Developers for construction of the Public Improvements, namely façade and glazing, landscaping, and low impact development features at the Project site. Total reimbursement to Developers from the TIRZ Fund will not exceed ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($1,250,000.00). Developers are eligible for reimbursement of eligible Project Costs as of the effective date of this Agreement. The Terms by which eligible Project Costs will be reimbursed are further defined in Article VIII. Compensation to Developers and **Exhibit G**, attached hereto and incorporated herein for all purposes.

ARTICLE VI. DUTIES AND OBLIGATIONS OF DEVELOPER

6.1 DISCRETIONARY PROGRAM. Developers agree that the TIF program is a discretionary program and that the City and the Board have no obligation to extend TIF to Developers. Developers agree that they have no vested rights under any regulations, ordinances or laws, and waives any claim to be exempt from applicable provisions of the current City Charter, City Code, City Ordinances, and state or federal laws and regulations.

6.2 COMPLIANCE. Developers, Developers' designees or development consultants agree to exercise supervision over the construction of the public infrastructure and public improvements associated with the Project. Developers shall retain overall responsibility for the Project. Developers shall comply and cause its contractors and subcontractors to comply with all applicable provisions of the City Charter, the City Code (including, but not limited to, the Unified Development Code such as Universal Design and Construction requirements), and all applicable federal, state and local laws. Developers shall cooperate with the City and the Board in providing all necessary information in order to assist the City in determining Developers' compliance with this Agreement.

6.3 DUTY TO COMPLETE. Developers agree to complete, or cause to be completed, the improvements described in Section 5.1 above. Developers agree to provide, or cause to be provided, all materials, labor and services for completing the Project. Developers also agree to obtain or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of improvements.

6.4 COMMENCEMENT OF CONSTRUCTION. From the Effective Date of this Agreement forward, Developers shall not commence any construction on the Project receiving funding under this Agreement, until the plans and specifications have been approved by the appropriate City department and the requirements of all applicable federal, state, and local laws have been met.

6.5 PAYMENT BONDS AND PERFORMANCE BONDS. To the extent required by Chapter 2253 of the Texas Government Code, Developer shall cause its general contractor(s) to obtain payment and performance bonds naming the City as beneficiary or obligee of the bonds for construction of the Public Improvements at the Project Site. Said bonds shall be in an amount sufficient to cover only the cost of the construction and completion of the Public Improvements portions of the Project, detailed in Section 5.3 Reimbursement. Developer shall submit copies of the payment and performance bonds to the City TIF Unit and its contractors; however, Developer must obtain approval of the bonds by the City's Risk Management Department.

6.6 SUPERVISION OF CONSTRUCTION. Developers retain overall responsibility for the Project; subject to this retention, Developers may delegate supervision duties over the construction of all public improvements and public infrastructure, and cause said construction to be performed, at a

minimum, in accordance with all legal requirements detailed in Section 6.2 above, the City Code, and the plans and specifications approved by the appropriate City department, notwithstanding any other provision of this Agreement. The legal requirements set forth in Prevailing Wage, Chapter 2258 of the Texas Government Code shall apply to work on the Project paid for with TIF funds.

6.7 DELAYS. Developers are responsible for the Project's construction, which shall be completed no later than June 30, 2020. If the commencement or completion of the Project is delayed by reason(s) beyond the Developers' control, then at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the commencement and completion deadlines set forth in this Agreement may be extended by no more than six (6) months. In the event that Developers do not complete the Project substantially in accordance with the Construction Schedule (or extended schedule), then, in accordance with Article XXII. Changes and Amendments of this Agreement, the Parties may extend the deadlines in the Construction Schedule, but not past the expiration of the TIRZ. If the parties cannot reasonably reach an agreement on the extension of the Construction Schedule, or if Developers fail to complete the Project in compliance with the revised Construction Schedule, other than as a result of force majeure, this constitutes a material breach.

6.8 PAYMENT OF APPLICABLE FEES. Developers are responsible for paying project construction costs of all applicable permit fees and licenses which have not been lawfully waived to the City and all governmental agencies.

6.9 INFRASTRUCTURE MAINTENANCE. At its own expense, Developers shall maintain or cause to be maintained all public works, broadly defined to include a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction, until said public works' dedication to the City and for one year (1) after Completion. Upon acceptance of a street or drainage improvement for maintenance by the City, Developers shall deliver to the City a one-year extended warranty bond naming the City as the obligee in conformity with Chapter 35, the City's Unified Development Code. The cost of repair, replacement, reconstruction and maintenance for defects discovered during the first year after Completion disclosed to Developers by the City within a reasonable period of time, but no more than 30 days from the time of discovery, shall be paid by the bond company and shall not be paid out of the TIRZ Fund. After the expiration of the one-year extended warranty bond, the cost of the repair, replacement, reconstruction and maintenance of Public Improvements dedicated to the City shall be the responsibility of the City.

a. Following completion of any public works so dedicated to the public (if any), Developers, their agents, employees, and contractors will not interfere with reasonable use of all such public works by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, Developers shall use their best efforts to dedicate (or grant a public easement to) to such public works where applicable to the appropriate taxing entity (as determined by the City), at no additional expense to the City or TIRZ.

b. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee, or City official or its subordinate agency with responsibility for inspecting or certifying public infrastructure. The actions of a city employee or agent do not work an estoppel against the City under this contract or the Unified Development Code.

6.10 QUARTERLY STATUS AND COMPLIANCE REPORTS. Upon the commencement and throughout the duration of the construction of the Project, Developers shall submit to the City's TIF Unit Project Status Reports (See Sections 3.15 and 6.6 above), on a quarterly basis or, as requested by the City, in accordance with the requirements of this Agreement and of the Status Report Form, attached hereto as **Exhibit E**. If project status reports are not submitted on the assigned dates, the Developers understands that no available tax increment funds will be reimbursed to the Developers until after the reports are provided.

6.11 PROJECT SITE INSPECTION. Developers shall allow the City and the Board reasonable access to the Property Site owned or controlled by Developers for inspections during and upon completion of construction of the Project, and access to documents and records considered necessary to assess the Project and Developers' compliance with this Agreement. The Board and TIF Unit Staff shall be provided a right of entry onto the Project Site to conduct random walk-through inspections of the Project's Development.

6.12 REQUESTS FOR REIMBURSEMENT. Travis Garage shall initiate reimbursement requests of eligible Project Costs by submitting to the City's TIF Unit applicable invoices and a Contract Progress Payment Request Form, as detailed in attached **Exhibit C.**

ARTICLE VII. DUTIES AND OBLIGATIONS OF CITY AND BOARD

7.1 NO BONDS. Neither the City nor the Board shall sell or issue any bonds to pay or reimburse Developers or any third party for any improvements to the Project Site performed under the Project Plan, Finance Plan or this Agreement.

7.2 PLEDGE OF FUNDS. The City and the Board pledge to use Available Tax Increment, as reimbursement to Developers for approved and eligible Project costs, up to the maximum total amount specified herein, excluding tax revenue collected after September 30, 2034, subject to the terms and conditions herein, priority of payment schedule, and termination of the TIRZ.

7.3 COORDINATION OF BOARD MEETINGS. The City and the Board hereby agree that 1) all meetings of the Board as well as all administrative functions shall be coordinated and facilitated by the TIF Unit; and 2) all notices for meetings of the Board shall be drafted and posted by City staff, in accordance with the City Code and state law. TIF Unit authority also extends to control of the Board Agenda in conjunction with established City policy.

7.4 ELIGIBLE PROJECT COSTS. Upon review of the TIF Unit staff, the Board shall consider for approval Travis Garage's request(s) for reimbursement of eligible Project Costs. Project 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 with all applicable laws.

ARTICLE VIII. COMPENSATION TO DEVELOPERS

8.1 CPPR APPROVAL. Upon completion by Developers of eligible project costs, Travis Garage may, on behalf of Developers, submit to the TIF Unit a completed CPPR. Should there be discrepancies in the CPPR or if more information is required, Travis Garage will have thirty (30) calendar days upon notice by the City and/the Board 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 Travis Garage's requested expense reimbursement.

Developers understand and agree that no expenses shall be submitted by Travis Office nor be payable by City to Travis Office.

8.2 MAXIMUM REIMBURSEMENT OF DEVELOPER. Following the Board's authorization, Travis Garage shall receive on behalf of Developers total reimbursements for Public Improvements, as specified in Section 5.3 of this Agreement, of a maximum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($1,250,000.00) on eligible Project Costs. Developers understand that payments made to Travis Garage shall represent reimbursement for work performed by either Travis Garage or Travis Office and that Travis Office shall not have a separate claim for reimbursement. Developers further understand that any amendments to the maximum amount of reimbursement herein are prohibited and any request for further incentives beyond this set amount shall require a brand new application.

8.3 PROCESSING OF PAYMENT REQUESTS. Board-authorized reimbursements of Available Tax Increment Funds shall be made solely to Travis Garage, and shall not be unreasonably denied provided that the City has no active claim for reimbursement under this section.

8.4 PRIORITY OF PAYMENT. The Parties agree that the TIRZ Fund will reimburse Developers for Projects Costs in the order of priority of payment for the TIRZ.

8.5 SOURCE OF FUNDS. The sole source of the funds to reimburse Developers 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.

8.6 PARTIAL PAYMENTS. If Available Tax Increment does not exist 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 8.4 above, and the remainder shall be paid as tax increment becomes available. No fees, costs, expenses or penalties shall be paid to any party on any late or partial payment.

8.7 INVALID PAYMENTS. If any payment to Travis Garage is held invalid, ineligible, illegal or unenforceable under applicable federal, state or local laws, then and in that event, Developers shall repay such payment in full to the City for deposit into the TIRZ Fund.

ARTICLE IX. INSURANCE

9.1 Developers must require that the insurance requirements contained in this Article be included in all of its contracts or agreements for construction of Public Improvements where Developers seek payment under this Agreement, unless specifically exempted in writing by the City and/or the Board.

9.2 PROOF OF INSURANCE. Prior to commencement of any work under this Agreement, Developers shall furnish copies of all required endorsements and Certificate(s) of Insurance to the City's TIF Unit, which shall be clearly labeled **"Houston Street TIRZ, Travis Garage Rehabilitation Project"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind coverage on its behalf. The City shall not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed with copies of all applicable endorsements, directly from the insurer's authorized representative to the City at the same addresses listed in Section 17.1 of this Agreement. The

City shall have no duty to pay/perform under the Agreement until such certificate(s) and their endorsements has been received and approved by the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement for the City.

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

TYPE	**AMOUNTS**
1. Workers' Compensation **2.** Employers' Liability	***Statutory*** $1,000,000.00
3. Commercial General Liability Insurance to include coverage for the following: **a.** Premises/Operations **b.** Personal/Advertising Injury **c.** Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. **d.** Explosion, Collapse, Underground	For Bodily Injury and Property Damage of: **$1,000,000.00** per occurrence; **$2,000,000.00** General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage Coverage must include per project aggregate
4. Business Automobile Liability: **a.** Owned/leased vehicles **b.** Non-owned vehicles **c.** Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of **$1,000,000.00** per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of	**$1,000,000.00** per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error,

the professional service.	or omission in professional services. Coverage to be maintained and in effect for no less than seven years subsequent to the completion of the professional service.
6. Umbrella or Excess Liability Coverage	**$5,000,000.00** per occurrence combined limit Bodily Injury (including death) and Property Damage.
7. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

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

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

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

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

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

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

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

9.7 CANCELLATIONS AND NON-RENEWAL. Within five (5) calendar days of a suspension, cancellation, non-renewal, or material change in coverage, Developers and or Developers' contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City at the same address listed in Section 17.1 of this Article. City shall have the option to suspend Developers or Developers' contractor'(s) performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a breach of this Agreement and the City may exercise any and all available legal remedies.

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

9.9 RESPONSIBILITY FOR DAMAGES. Nothing in the Agreement shall be construed as limiting in any way the extent to which Developers and/or Developers' contactor may be held responsible for payments of damages to persons or property resulting from Developers' or its subcontractors' performance of the work covered under this Agreement.

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

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

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

ARTICLE X. WORKERS COMPENSATION INSURANCE COVERAGE

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

ARTICLE XI. TERMINATION AND RECAPTURE

11.1 TERMINATION. For purposes of this Agreement, termination means the expiration of the term as provided by Article II, herein. In addition, the City and/or the Board may terminate this Agreement in the following manners: (1) Termination without Cause pursuant to Section 11.2, (2) Termination for Cause pursuant to Section 11.3, and (3) Termination by law pursuant to Section 11.4.

11.2 TERMINATION WITHOUT CAUSE. This Agreement may be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, any proposed pay-back plan of disbursed funds, and the proposed effective date of such termination.

11.3 TERMINATION FOR CAUSE/DEFAULT. Upon written Notice, which must be provided in accordance with **Article XVII. Notice of this Agreement**, the City and/or the Board shall have the right to terminate this Agreement for cause, in whole or in part, if Developers fail to: (1) comply with any material term or condition of this Agreement, which shall be deemed a default; and, (2) cure such default.

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

11.3.2 CURE. Upon written Notice of Default resulting from a breach of this Agreement, such default will be cured within sixty (60) calendar days from the date of the Notice of Default. In the case of default, which cannot with due diligence be cured within such Cure Period, at the reasonable discretion of the Director of the City's Neighborhood & Housing Services (or successor) Department, the Cure Period may be extended provided that Developers will immediately upon receipt of Notice of Default advise the City and the Board of Developers' intent to cure such default within the extended period granted. If there are no reasonable means to cure the default, Developers shall be informed of that conclusion and the facts leading to that conclusion in the Notice of Default. Said Notice of Default shall also serve as Notice of Termination.

11.3.3 FAILURE TO CURE. In the event Developers fail to cure any default of this Agreement within the Cure Period (or extended period), the City and the Board may, upon issuance to Developers of a written Notice of Termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.

11.3.4 REMEDIES UPON DEFAULT. In the event of a termination pursuant to Section 11.3 for cause, the Parties shall have the right to seek any remedy in law to which they may be entitled, in addition to termination and repayment of funds, if a Party defaults under the material terms of this Agreement. Only in the event of a termination pursuant to this Section 11.3 for cause, the City and Board shall have the right to recapture all the disbursed funds pursuant to this Agreement and the Developers shall repay all disbursed funds to the TIRZ Fund.

11.4 TERMINATION BY LAW. If any applicable state or federal law or regulation is enacted or promulgated which prohibits the performance of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

11.5 RECAPTURE. Only in the event of a termination pursuant to Section 11.3 for cause, the City and/or the Board, shall have the right to recapture all disbursed funds made under this Agreement and Developers shall repay disbursed funds as requested by the City and/or the Board in the said Notice of Termination within sixty (60) days from the effective date of the Notice of Termination. All recaptured funds made under this Agreement shall be deposited into the Houston Street TIRZ.

11.6 CLOSE-OUT. Regardless of how this Agreement is terminated, Developers will effect an orderly transfer to City or to such person or entity as the City may designate, at no additional cost to the City, copies of all completed or partially completed documents, records, or reports, produced as a result of or pertaining to this Agreement, regardless of storage medium, if so requested by the City, or shall otherwise retain such documents, records or reports in accordance with Article XIV. Records. Only in the event of a termination pursuant to Section 11.3 for cause, reimbursements due to Developers will be conditioned upon delivery of all such documents, records, or reports, if requested by the City. Within ninety (90) calendar days of the effective date of completion, or termination or expiration of this Agreement, Travis Garage shall submit to City and/or the Board all requests for reimbursements in accordance with Section 6.12 above through the effective date of termination. Only in the event of a termination pursuant to Section 11.3 for cause, failure by Travis Garage to submit requests for reimbursements within said ninety (90) calendar days shall constitute a Waiver by Developers of any right or claim to collect Available Tax Increment that Developers may be otherwise eligible for pursuant to this Agreement.

ARTICLE XII. INDEMNIFICATION

12.1 **DEVELOPERS covenant and agree TO FULLY INDEMNIFY AND HOLD HARMLESS, the CITY (and the elected officials, employees, officers, directors, and representatives of the CITY), and the BOARD (and the officials, employees, officers, directors, and representatives of the BOARD), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, and/or upon the BOARD, directly or indirectly arising out of, resulting from or related to DEVELOPERS, any agent, officer, director, representative, employee, consultant or subcontractor of DEVELOPERS, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY and/or the BOARD, under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.**

12.2 **It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY**

provided for in this section, is an INDEMNITY extended by DEVELOPERS to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, and the BOARD, from the consequences of the CITY'S and/or the Board's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City and/or Board is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City and/or the Board is the sole cause of the resultant injury, death, or damage. DEVELOPERS further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND/OR THE BOARD AND IN THE NAME OF THE CITY AND IN THE NAME OF THE BOARD, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

ARTICLE XIII. LIABILITY

13.1 DEVELOPERS. As between the City, the Board, any Participating Taxing Entity, and Developers, Developers shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developers, and none of Developers' employees, contractors, or subcontractors will be deemed to be employees, contractors, or subcontractors of the City, the Board, or any Participating Taxing Entity, as a result of the Agreement.

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

ARTICLE XIV. RECORDS

14.1 RIGHT TO REVIEW. Following notice to the Developers, the City reserves the right to conduct, at its own expense, examinations, during regular business hours, the books and records related to this Agreement including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Developers' services hereunder. The City also reserves the right to perform any additional audits relating to Developers' services, provided that such audits are related to those services performed by Developers under this Agreement. These examinations shall be conducted at the offices maintained by Developers.

14.2 PRESERVATION OF RECORDS. All applicable records and accounts of the Developers relating to this Agreement, together with all supporting documentation, shall be preserved and made available in Bexar County, Texas by the Developers throughout the term of this Agreement and for twelve (12) months after the termination of this Agreement, and then transferred for retention to the City at no cost to the City upon request. During this time, at Developers' own expense, may require that any or all of such records and accounts be submitted for audit to the City or to a Certified Public Accountant selected by the City within thirty (30) days following written request.

14.3 DISCREPANCIES. Should the City discover errors in the internal controls or in the record keeping associated with the Project, Developers shall be notified of such errors and the Parties shall consult on what steps may be necessary to correct such discrepancies within a reasonable period

of time, not to exceed sixty (60) days after discovery. The Board shall be informed of the action taken to correct such discrepancies.

14.4 OVERCHARGES. If it is determined as a result of such audit that Developers have overcharged for the cost of the Public Improvements, then such overcharges shall be immediately returned to the TIRZ Fund and become due and payable with interest at the maximum legal rate under applicable law from the date the City paid such overcharges. In addition, if the audit determined that there were overcharges of more than 2% of the greater of the budget or payments to Travis Garage for the year in which the discrepancy occurred, and the TIRZ Fund is entitled to a refund as a result of such overcharges, then Developers shall pay the cost of such audit.

ARTICLE XV. NON-WAIVER

15.1 ACTIONS OR INACTIONS. No course of dealing on the part of the City, the Board, or the Developers nor any failure or delay by the City, the Board, or the Developers in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

15.2 RECEIPT OF SERVICES. The receipt by the City of services from an assignee of the Developers shall not be deemed a waiver of the covenant(s) in this Agreement against assignment or an acceptance of the assignee or a release of the Developers from further performance by Developers of the covenant(s) contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by the City through an ordinance passed and approved by its City Council.

ARTICLE XVI. ASSIGNMENT

16.1 ASSIGNMENT BY CITY. The City and/or Board may assign their rights and obligations under this Agreement to any governmental entity the City creates, without prior consent of Developers. If the City and/or Board assign their rights and obligations under this Agreement then the City and/or the Board shall provide Developers written notice of assignment within thirty (30) days of such assignment.

16.2 ASSIGNMENT BY DEVELOPERS. This Agreement is not assignable without written consent by the Board, as evidenced by Board Resolution, nor without written consent of City, as evidenced by the passage of a City Ordinance approving such assignment. The agreement shall only be assigned after a qualified purchaser or assignee specifically agrees to assume all of the obligations of the Developers under this Agreement. Any other attempt to assign the Agreement shall not relieve Developer from liability under this Agreement and shall not release Developer from performing any of the terms, covenants and conditions herein. Developer shall be held responsible for all funds received under this Agreement.

However, no City Council consent is required for an assignment or transfer to a parent of Developer, a subsidiary of Developer, an affiliate entity of Developer, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of Developer. In such case, Developer shall give the City prior written notice of any potential assignments or other transfers that Developer concludes is compliant with this Section 21, and shall submit such notice for City to review and confirm that such assignment is compliant with this Section 21. For the purposes of this Agreement, an "affiliate entity of Developer", shall include any entity where Caliburn Capital, LLC, directly or indirectly, has the ability to direct the

day-to-day operations of such entity. Final determination shall be made by the City Manager's Office in consultation with the City Attorney's Office. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

16.3 WORK SUBJECT TO AGREEMENT. Any work or services referenced herein shall be by written contract or agreement and, unless the City grants specific waiver in writing, such written contract or agreement shall be subject by its terms, insofar as any obligation of the City is concerned, to each and every provision of this Agreement. Compliance by Developers' contractor and/or subcontractors with this Agreement shall be the responsibility of Developers.

16.4 NO THIRD PARTY OBLIGATION. The City and/or the Board shall in no manner be obligated to any third party except for permitted assignments pursuant to Sections 16.2, including any contractor, subcontractor, or consultant of the Developers, for performance of work or services under this Agreement.

16.5 LENDING INSTITUTIONS. Any restrictions in this Agreement on the transfer or assignment of the Developers' interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a lending institution or other provider of capital in order to obtain financing for the project. Developers shall notify the City of all such assignments to a lending or other provider of capital. In no event, shall the City and/or the Board be obligated in any way to the aforementioned financial institution or other provider of capital. The City shall only issue a check or other form of payment to Developers or permitted assignee.

16.6 WRITTEN INSTRUMENT. Each transfer or assignment to which there has been consent, pursuant to paragraph 16.2 above, shall be by instrument in writing, in form reasonably satisfactory to the Board, and shall be executed by the transferee or assignee who shall agree in writing, for the benefit of the City and the Board, to be bound by and to perform the terms, covenants and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the TIF Unit. Failure to obtain, the Board's consent by resolution, or failure to comply with the provisions herein first, shall prevent any such transfer or assignment from becoming effective. In the event the Board approves the assignment or transfer of this Agreement, Developers shall be released from such duties and obligations.

16.7 NO WAIVER. Except as set forth in Section 16.3 of this Agreement, the receipt by the City of services from an assignee of the Developers shall not be deemed a waiver of the covenants in this Agreement against assignment or an acceptance of the assignee or a release of further observance or performance by Developers of the covenants contained in this Agreement. No provision of this Agreement shall be deemed waived by the City unless such waiver is in writing, and approved by City Council in the form of a duly passed ordinance.

ARTICLE XVII. NOTICE

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

THE CITY	THE BOARD	DEVELOPERS
City of San Antonio City Clerk	Houston Street TIRZ Attn: TIF Unit	GrayStreet Travis Garage , LLC 4515 San Pedro Avenue

Attn: Risk Management Dept.
P.O. Box 839966
San Antonio, TX 78283-3966

1400 S Flores
San Antonio, TX 78204

San Antonio, Texas, 78212

GrayStreet Travis Office, LLC
4515 San Pedro Avenue
San Antonio, Texas, 78212

Kruger Carson PLLC
711 Navarro, Suite 230
San Antonio, Texas 78205
Attn: Brad Carson

17.2 CHANGE OF ADDRESS. Notice of change of address by any Party must be made in writing and mailed to the other Parties within fifteen (15) business days of such change. All notices, requests or consents under this Agreement shall be (a) in writing, (b) delivered to a principal officer or managing entity of the recipient in person, by courier or mail or by facsimile or similar transmission, and (c) effective only upon actual receipt by such person's business office during normal business hours. If received after normal business hours, the notice shall be considered received on the next business day after such delivery. Whenever any notice is required to be given by applicable law or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XVIII. CONFLICT OF INTEREST

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

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

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

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

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

ARTICLE XIX. INDEPENDENT CONTRACTORS

19.1 NO AGENCY. All Parties expressly agree that in in performing their services, the Board and Developers at no time shall be acting as agents of the City and that all consultants or contractors engaged by the Board and/or Developers respectively shall be independent contractors of the Board and/or the Developers. The Parties hereto understand and agree that the City and the Board shall not be liable for any claim that may be asserted by any third party occurring in connection with services performed by Developers, under this Agreement unless any such claim is due to the fault of the City.

19.2 NO AUTHORITY. The Parties further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

ARTICLE XX. TAXES

20.1 DUTY TO PAY. Developers shall pay, on or before the respective due dates, to the appropriate collecting authority all applicable Federal, State, and local taxes and fees which are now or may be levied upon the TIRZ Property, the Developers or upon the Developers' business conducted on the TIRZ Property or upon any of the Developers' property used in connection therewith, including employment taxes; subject to Developers' right to protest taxes in accordance with applicable law. Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Developers.

ARTICLE XXI. PREVAILING WAGES

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

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

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

ARTICLE XXII. CHANGES AND AMENDMENTS

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

22.2 CONSTRUCTION SCHEDULE. Notwithstanding the above, the Construction Schedule may be amended, as evidenced by approval of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee. In the event an amendment to the Construction Schedule as stated in section 5.1 will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 22.1, above. No change under this section may result in an increase in the maximum contribution of the City or any other Participating Taxing Entity. Developers may rely on the determination of the Director of the City's Neighborhood & Housing Services (or successor) Department or his or her designee, in coordination with the Office of the City Attorney, whether a change in the Construction Schedule would result in a material change to the overall Project requirements.

22.3 AUTOMATIC INCORPORATION OF LAWS. Changes in local, state and federal rules, regulations or laws applicable to the Board's and the Developers' services under this Agreement may occur during the term of this Agreement and any such changes shall be automatically incorporated into this Agreement without written amendment to this Agreement, and shall become a part as of the effective date of the rule, regulation or law.

ARTICLE XXIII. SEVERABILITY

23.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, then said clause or provision shall not affect any other clause or provision, and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable provision, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXIV. LITIGATION EXPENSES

24.1 City policy on litigation is that, except to the extent prohibited by law, persons who are engaged in litigation or adversarial proceedings related to TIF against the City are ineligible to obtain or continue the use of TIF as principals or participants for the duration of the litigation. A principal or participant includes the TIF applicants and the TIF applicant's developers, partners, affiliates, sponsors, payroll employees, or relatives of the first degree of consanguinity. Accordingly, the City shall not consider a project proposing the use of TIF, designate a TIRZ, enter into any TIRZ contracts or agreements with, or authorize or make any TIRZ payment to persons engaged in litigation or adversarial proceedings related to TIF with the City. Ineligible persons shall be excluded from participating as either participants or principals in all TIRZ projects during the term of their litigation.

24.2 During the term of this Agreement, if Developers file or pursue an **adversarial proceeding** regarding this Agreement against the City and /or the Board, without first engaging in good faith mediation of the dispute, then all access to funding provided hereunder shall be withheld and

Developers will be ineligible for consideration to receive any future tax increment funding while any adversarial proceedings remains unresolved.

24.3 Under no circumstances will the Available Tax Increment received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any **adversarial proceeding** against the City, the Board or any other public entity. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XII. above.

24.4 Nothing contained in this Article XXIV shall be deemed to apply to the right to protest taxes in accordance with applicable law, and, Developers and their partners, affiliates, sponsors, payroll employees, and relatives of the first degree of consanguinity shall have the right to protest taxes in accordance with applicable law as to the Project Site or any other property without violating the terms, provisions and conditions of this Agreement.

ARTICLE XXV. LEGAL AUTHORITY

25.1 Each person executing this Agreement on behalf of each Party, represents, warrants, assures, and guarantees that s/he has full legal authority to execute this Agreement on behalf of the City, the Board, and/or Developers, respectively and to bind the City, the Board, and/or Developers, to all the terms, conditions, provisions, and obligations of this Agreement.

ARTICLE XXVI. VENUE AND GOVERNING LAW

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

26.2 Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

ARTICLE XXVII. PARTIES' REPRESENTATIONS

27.1 This Agreement has been jointly negotiated by the City, the Board and Developers and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXVIII. CAPTIONS

28.1 All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

ARTICLE XXIX. LICENSES/CERTIFICATIONS

29.1 Developers warrant and certify that, to their knowledge, any person providing services hereunder has the requisite training, license, and/or certification to provide said services and meets the competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXX. NONDISCRIMINATION AND SECTARIAN ACTIVITY

30.1 Developers understand and agree to comply with the Non-Discrimination Policy of the City of

San Antonio contained in Chapter 2, Article X of the City Code, and further shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, gender (to include transgender), sexual orientation, veteran status or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part under Agreement.

ARTICLE XXXI. ENTIRE AGREEMENT

31.1 NO CONTRADICTIONS. This written Agreement embodies the final and entire Agreement between the Parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

31.2 INCORPORATION OF EXHIBITS. Each exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the parties, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

EXHIBIT A: Resolution T09 2018-10-22-05R, funding authorization

EXHIBIT B: Resolution T9 2019-05- 20-01R, contract execution authorization

EXHIBIT C: Contract Progress Payment Request Form

EXHIBIT D: Project Site

EXHIBIT E: Project Status Report Form

EXHIBIT F: Prevailing Wages

EXHIBIT G: Project costs eligible for Reimbursement

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IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of each signature below. This agreement shall be effective on the date of the last signature below.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Erik Walsh, City Manager for
Date: 7/8/19

BOARD OF DIRECTORS
Houston Street TIRZ #9

Roberto Trevino, Presiding Officer
Date: _____

GRAYSTREET TRAVIS GARAGE, LLC,
a Deleware limited liability company

By: GrayStreet TPP, LP,
a Texas limited partnership, its Sole Member and Manager

By: GrayStreet TPP Management, LLC,
a Texas limited liability company, its General Partner

By: Caliburn Capital, LLC,
a Nevada limited liability company, its Sole Member and Manager

By:

Date: _____

GRAYSTREET TRAVIS OFFICE, LLC,
a Deleware limited liability company

By: GrayStreet TPP, LP,
a Texas limited partnership, its Sole Member and Manager

By: GrayStreet TPP Management, LLC,
a Texas limited liability company, its General Partner

By: Caliburn Capital, LLC,
a Nevada limited liability company,

By:

Date: _____

ATTEST AND SEAL:

Leticia Vacek, City Clerk
Date: _____

APPROVED AS TO FORM:

Assistant City Attorney