

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other – Contingent on receipt of tax increment *General Fund*

Ch. B. Brown
General Fund

Date: 9-3, 2019 City Controller of the City of Houston

FUND REF: NA AMOUNT: -0- ENCUMB. NO.: RF05103-20

City of Houston, Texas, Ordinance No. 2019 - 665

AN ORDINANCE APPROVING AND AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, THE MONTROSE REDEVELOPMENT AUTHORITY, AND REINVESTMENT ZONE NUMBER TWENTY-SEVEN, CITY OF HOUSTON, TEXAS; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

SCG
MRB

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Section 1. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto as Exhibit A and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement, or other undertaking described in the title of this Ordinance, in the event of changed circumstances. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under such contract, agreement, or other undertaking described in the title of this Ordinance without further authorization from Council.

Section 3. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 4th day of September, 2019.

APPROVED this _____ day of _____, 2019.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is SEP 10 2019.

Atty. J. Maniel

City Secretary **Assistant**

(Prepared by Legal Dept. Mary Burke)
(MFB:mfb August 19, 2019) Senior Assistant City Attorney
(Requested by Andy Icken, Chief Development Officer)
(L.D. File No. 0421900075002)
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AYE	NO	
✓		MAYOR TURNER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
ABSENT		MARTIN
✓		LE
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		LASTER
✓		CASTEX-TATUM
✓		KNOX
✓		ROBINSON
ABSENT		KUBOSH
✓		EDWARDS
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW **SEP 10 2019**
DATE:

Exhibit A

**AGREEMENT BY AND AMONG THE
CITY OF HOUSTON, TEXAS,
REINVESTMENT ZONE NUMBER TWENTY-SEVEN,
CITY OF HOUSTON, TEXAS, AND
THE MONTROSE REDEVELOPMENT AUTHORITY**

THIS AGREEMENT (the "**Agreement**") is made by and among the City of Houston, Texas, a municipal corporation and home-rule city in the State of Texas ("**City**"); Reinvestment Zone Number Twenty-Seven, City of Houston, Texas, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code ("**Zone**"); and the Montrose Redevelopment Authority, a not-for-profit local government corporation organized and existing under the laws of the State of Texas ("**Authority**").

RECITALS

WHEREAS, by Ordinance No. 2015-1257, passed and adopted on December 9, 2015, the City created the Zone pursuant to Chapter 311, Texas Tax Code ("**TIRZ Act**"); and

WHEREAS, by Ordinance No. 2017-940, passed and adopted on November 29, 2017, the City approved the Project Plan and Reinvestment Zone Financing Plan for the Zone (collectively, the "**Plans**"); and

WHEREAS, by Resolution No. 2019-28, passed and approved on August 14, 2019, the City authorized the creation of the Authority to aid, assist and act on behalf of the City in the performance of the City's governmental functions with respect to promoting, developing, encouraging and maintaining housing, employment, commerce and economic development of Zone and neighboring areas, as more particularly described in Ordinance No. 2015-1257; and

WHEREAS, Resolution No. 2019-28, which authorized the creation of the Authority, also approved the certificate of formation ("**Certificate of Formation**") and bylaws thereof, providing for the creation of a Board of Directors of the Authority ("**Authority Board**") to be comprised of the same persons who serve on the Board of Directors of the Zone (the "**Zone Board**"). Among other things, the Authority Board and the Authority are to aid, assist, and act on behalf of the City and the Zone:

- A. In the implementation of the Plans and amendments thereto; and

B. In the development of a policy to finance public infrastructure improvements necessary for the development of the Zone; and

WHEREAS, the City and the Zone Board have agreed to have the Authority assist and act as consultant to the Zone Board in the implementation of the Plans, and provide other assistance as set forth in this Agreement; and

WHEREAS, it is the intention of the parties to this Agreement that, subject to the limitations prescribed in this Agreement and the limitations of its Certificate of Formation, the Authority shall have certain powers and authority to administer the Zone; make recommendations to the Zone Board and the City with respect to the redevelopment of the Zone; perform and engage in activities relating to the acquisition, development, leasing, and sale of land and other properties; engage in development and redevelopment activities; construct and improve infrastructure in the Zone; enter into Development Agreements with Developers/Builders in the Zone; issue, sell, or deliver its bonds, notes, or other obligations; and perform the other activities provided for in this Agreement; and

WHEREAS, it is the further intention of the parties to this Agreement that the City and the Zone will pay for the Authority's activities performed pursuant to this Agreement from Tax Increment as provided herein. The TIRZ Act and Subchapter D of Chapter 431, Texas Transportation Code, authorize the City and the Zone to enter into a contract with the Authority for the purposes of providing management and administration for the Zone, providing services and improvements, and otherwise performing the functions set forth in this Agreement; and

WHEREAS, the City and the Zone desire to contract with the Authority to provide the assistance described in this Agreement during the term of the Zone; and

WHEREAS, the Authority was created in part to aid and assist the City and the Zone in the manner set forth above, and the Authority Board desires to enter into a contract with the City and the Zone setting forth the duties and responsibilities of the Authority, the City, and the Zone;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, it is agreed as follows:

ARTICLE I DEFINITIONS

A. Incorporation of Recitals. The Recitals to this Agreement are incorporated herein for all purposes.

B. Definitions. The terms "Agreement," "Authority," "Authority Board," "Certificate of Formation," "City," "Plans," "TIRZ Act," "Zone," and "Zone Board" have the meanings given to such terms in the Recitals, and the following terms have the following meanings:

"Accounting" has the meaning set forth in ARTICLE V.

"Appraisal District" means the Harris County Appraisal District.

"Authority Obligations" means the contractual obligations that the Authority may incur from time to time pursuant to Article III and includes, without limitation, Development Agreements.

"Bonds" means the bonds of the Authority.

"Budget" means the annual operating Budget of the Authority that has been reviewed and approved by the Authority Board, the Zone Board, and the City Council.

"Captured Appraised Value" means the total appraised value of property in the Zone as of January 1st of any year less the Tax Increment Base of the Zone, all as defined in the TIRZ Act.

"City Council" means the City Council of the City.

"Code" means the Code of Ordinances, City of Houston, Texas, including, without limitation, the City's Construction Code and Fire Code.

"County" means Harris County, Texas.

"Department" means the Mayor's Office of Economic Development, or such other City department designated by the Mayor to administer this Agreement.

"Developer/Builder" means a person who is developing or redeveloping, or proposes to develop or redevelop, a TIRZ Project within the Zone and may include natural persons, private entities, public or private not-for-profit corporations, the City, the School District, the County, HCC, the State of Texas, any other governmental bodies, or any other kind of person.

"Development" means any TIRZ Project.

“Development Agreement” means an agreement between the Authority and a Developer/Builder relating to the development, construction, remodeling, or rehabilitation of a TIRZ Project, which may be secured by a Note.

“Director” means the City’s Chief Development Officer or director of the Department or such person as he or she shall designate in writing to administer this Agreement.

“Director of the Office of Business Opportunity” means the Director of the City’s Office of Business Opportunity (or any successor position), or such person as he or she shall designate in writing.

“Effective Date” means the date on which the City Controller countersigns this Agreement, as reflected on the execution page hereof.

“Generally Accepted Accounting Principles” means, in the opinion of the Authority’s accountant, such accepted accounting practice as conforms at the time to a body of generally accepted accounting principles.

“HCC” means the Houston Community College District.

“METRO” means the Metropolitan Transit Authority of Harris County.

“Montrose” means the area comprising the Zone, as it may be enlarged from time to time, and neighboring areas.

“MWSBE” means a Minority Business Enterprise, a Women Business Enterprise or a Small Business Enterprise as defined in Chapter 15 of the Code and certified by the City’s Office of Business Opportunity.

“Notes” mean the promissory notes issued by the Authority from time to time.

“Police Department” means the Police Department of the City.

“Project Costs” means those costs of public works and improvements and other costs for which payment can be made pursuant to the TIRZ Act that are identified in the Plans.

“Project Plan” means the project plan for the Zone as it may be amended from time to time pursuant to the TIRZ Act, and as adopted by the Zone Board and approved by the City Council.

“Reinvestment Zone Financing Plan” means the financing plan for the Zone as it may be amended from time to time pursuant to the TIRZ Act, and as adopted by the Zone Board and approved by the City Council.

“Revenue Fund” means the fund established by the Authority into which payments from the Tax Increment Fund are deposited.

“School District” means the Houston Independent School District.

“Surplus Fund” means the fund established by the Authority into which excess funds from the Authority’s Revenue Fund are deposited.

“Tax Increment” means the amount of property taxes collected each year by each Taxing Unit participating in the Zone (to the extent of that Taxing Unit’s participation) on the Captured Appraised Value.

“Tax Increment Base” means the total appraised value of all real property taxable by the City and located in the Zone as of January 1, 2015, the year in which the Zone was designated as a reinvestment zone, plus the total appraised value of all real property taxable by the City and the other Taxing Units participating in the Zone and annexed to the Zone, determined as of January 1st of the year in which an area is annexed to the Zone.

“Tax Increment Fund” means the fund created by the City for the Zone, including any subaccount therein, into which the City shall deposit all Tax Increment.

“Taxing Unit” means any taxing unit that levies an ad valorem tax on property in the Zone.

“TIRZ Project” means any project for which funds in the Tax Increment Fund can be used pursuant to the TIRZ Act and which has been approved in the Plans.

ARTICLE II SCOPE OF SERVICES BY AUTHORITY

To the extent of available funds and subject to the limitations of this Agreement, the services that the Authority may furnish consist of, among other things, the following:

A. Management, Administrative Services, Consultants. The Authority will provide management and administrative services for the Zone as requested by the Zone Board. The services may, without limitation, include the following:

1. Provide the staff and administrative services necessary to manage the Zone and provide or supervise the services and TIRZ Projects or improvements to be provided by the Zone;
2. Provide management, financial, and program monitoring systems for the administration of the Zone;
3. Provide any required reports to the City and the Zone concerning the administration of the Zone;
4. Provide office space for the Zone's administrative and management personnel and an operation center for the Authority's employees and equipment, if necessary;
5. Subject to the terms of this Agreement, recruit, hire, pay, and supervise consultants and any work force that the Authority will utilize to furnish services required for the development or redevelopment of Montrose;
6. Provide staff to participate in meetings concerning the administration of the Zone in all its capacities, including the services to the Zone Board when managing the Zone;
7. Provide liaison and coordination among the Zone, the City, the County, the School District, METRO, HCC, other Taxing Units, Zone property owners, and other persons and groups interested in the development and redevelopment activities of the Zone;
8. Supervise and monitor the performance of consultants and subcontractors who are employed by the Authority;
9. Provide assistance to and coordination with the City's Planning and Development Department concerning use of the Zone to complement the Montrose planning process;
10. Assist in briefing Developers/Builders, property owners, and other persons concerning proposed activities and developments that would complement public and private development activities in the Zone;
11. Assist Developers/Builders in the identification of Code requirements concerning a Development;

12. Assist the City in identifying Code and land use control violations and eliminating them;

13. Provide a system of streamlined permit review for development to be constructed, reconstructed, or improved by a Developer/Builder, in order to correct any deficiencies that might delay City approval of such permits;

14. Review plans on behalf of Developers/Builders to attempt to eliminate conflicts with the Code;

15. Function as the information/complaint center for all matters relating to the administration of the Zone and advise the Zone Board and the City in a timely manner of any problems concerning the Zone or with City-owned equipment or facilities in Montrose; and

16. Provide engineering, planning, legal, financial, real estate, and other services through consultants engaged by the Authority as may be requested by the Zone Board or the City.

B. Services Related to the Plans; Enlargement of the Zone; Amendments to the Plans.

1. The Authority will act as consultant to the Zone in the preparation and implementation of the Plans and any amendments thereto. Any amendments to the Plans will be prepared in accordance with this subparagraph and the requirements of the TIRZ Act. The Authority will engage such consultants and subcontractors as it deems necessary to complete the Plans and will make them available to the Zone Board and the City at all reasonable times. The Plans and any amendments thereto will include, at a minimum, the information required by Section 311.011(b) and (c) of the TIRZ Act;

2. The Authority will meet with and receive input from property owners, the public, lenders, the City, the Zone Board, and other public and private entities concerning the preparation of any amendments to the Plans and will take such other actions, and will aid and assist in the conduct of the hearings, as may be required to complete the amendments for presentation to the City for approval;

3. The Authority will prepare such copies of the Plans and any amendments thereto that may be requested by the Zone Board and distribute them as required by the Zone Board; and

4. The Authority will review areas proposed to be added to the Zone as requested by the Zone Board and will provide information concerning any proposed enlargement that may be required by the Zone Board including, if requested, the information required for amendments to the Plans concerning enlargement of the Zone.

C. Tax Rolls.

1. The Authority will assist the Zone Board and the City regarding the preparation of special tax rolls relating to the Zone. The Authority will analyze property uses in the Zone, compare them to the records of the Appraisal District, and attempt to reconcile the tax rolls of the Appraisal District with the actual land uses.

2. The Authority will also work with the Appraisal District to ensure that tax values as shown on the tax rolls will, to the greatest extent possible, accurately reflect true market value of all property in the Zone.

3. The Authority will assist the City in securing a tax roll for the Zone for the year 2020 and each year thereafter. In tax years beginning January 1st 2020 and thereafter, the Authority will assist the Zone Board, the City, and the Appraisal District in having the Zone tax rolls correctly reflect the total appraised value of real property in the Zone for that year and showing separately the Tax Increment Base and the Captured Appraised Value. The Authority will assist the Zone Board and the City in advising all Taxing Units participating in the Zone with respect to the Captured Appraised Value and the amount of Tax Increment of each Taxing Unit which is to be paid into the Tax Increment Fund as required by the TIRZ Act.

D. Public Safety Program. The Authority will assist the Zone Board in establishing a program to increase the level of safety within the Zone. If requested by the Zone Board, the Authority will:

1. Communicate public safety concerns among the Police Department, METRO Transit Police, and private interests.

2. Communicate needs for additional waste management and cleaning services to METRO and the City.

3. Work to establish a public safety network, including private property owners, METRO Transit Police, and the Police Department, which will provide a mechanism by which private security directors, Montrose businesses, and merchants will exchange information to impact crime.

4. Work to establish a program of crime prevention and safety literature, conduct and hold seminars, and convene meetings with Montrose businesses and residents to increase public safety awareness.

5. Annually evaluate the feasibility of entering into a contract with the City to defray incremental costs of providing municipal services, including public safety costs, due to development or redevelopment in Montrose.

E. Montrose Planning, Design, Infrastructure Improvements. The Authority will assist the Zone Board in preparing a development plan and will provide technical assistance to encourage public and private property owners to make improvements or provide services to:

1. Increase residential, business, retail, restaurant, and entertainment establishments in Montrose.

2. Encourage private and public entities to make any improvements that are necessary to the streets, utilities, drainage and flood control facilities, curbs, sidewalks, signage, landscaping, lighting, and other infrastructure in Montrose.

3. Design and select streetscape elements such as benches, flower pots, tables and chairs, umbrellas, fountains, lighting, trees, shrubs, and other pedestrian amenities.

4. Increase the enjoyment and public use of sidewalks, trails, parks, and plazas.

5. Establish a planning, design, and streetscape group that will bring people together to plan and make improvements to create a more vital Montrose.

F. **Construction of Infrastructure and TIRZ Projects.** The Authority may construct infrastructure, buy equipment and supplies, and deal in real estate as necessary to implement the Plans and as permitted by the TIRZ Act:

1. To the extent funds are available, the Authority may design and construct TIRZ Projects identified in the Plans that meet the qualifications of the TIRZ Act and use money to fund such TIRZ Projects pursuant to this Agreement.

2. To the extent funds are available, the Authority may buy, sell, lease and otherwise deal in real estate.

G. **Land Acquisition, Development and Redevelopment.** Subject to the availability of funds, the Authority will provide appraisals, surveys, and title policies for any properties to be acquired pursuant to the Plans. The Authority may acquire any property or land that is permitted to be acquired pursuant to the Plans with the proceeds of its Bonds, Notes, or other Authority Obligations or with Tax Increment paid to the Authority by the City and the Zone pursuant to this Agreement. The Authority may lease, sell, or otherwise dispose of and deal in any land or property that it acquires. At the request of the City, the Authority will provide legal counsel and other consultants and advisors for land or improvements that may be required by the Plans as directed by the Zone Board, including those required to acquire property pursuant to the exercise of eminent domain by the City for implementation of the Project Plan.

H. **Subcontractors.** The Authority may provide the services required by this Agreement through staff, subcontractors, and/or consultants subject to the conditions of this Agreement.

I. **City Administrative Assistance.** The parties acknowledge that the Zone has received substantial assistance from City staff in the administration of the Zone and the implementation of the Project Plan. Such assistance shall continue in the same fashion provided for the Zone, until any party gives the others written notice that such assistance will not continue in the future. The parties agree that should the Authority close a meeting under the authority granted under Subchapter D of the Texas Open Meetings Act, any person serving as an ex-officio, non-voting member of the Authority

Board (or that member's designee) pursuant to Article VI of the Certificate of Formation may remain present and will not be excluded from any closed meeting.

ARTICLE III CONTRACTUAL OBLIGATIONS OF THE AUTHORITY

A. General Statement. The parties have agreed that the Authority is authorized to issue Bonds or Notes, or enter into other Authority Obligations with third parties to be repaid from funds to be paid by the City and the Zone to the Authority from Tax Increment pursuant to this Agreement, and may issue Bonds with the consent of the City; provided, however, the Authority is authorized to issue Bonds only upon the approval of the City Council. Nothing in this Agreement shall be construed to authorize the Authority to expend any of the funds received pursuant to this Agreement for any costs other than Project Costs.

B. Power to Incur Authority Obligations. Subject to the provisions of this Article, the Authority shall have the power from time to time to issue and incur Authority Obligations and enter into contracts with third parties upon such terms and conditions as the Authority Board and the Zone Board determine to be necessary or desirable to implement the Plans. The Authority Obligations may be in the form of (i) a Note or (ii) a Development Agreement with the Developer/Builder of a Development who agrees to construct one or more TIRZ Projects in exchange for the obligation of the Authority to repay the Developer/Builder for the costs of the TIRZ Project from future payments made to the Authority by the City and the Zone pursuant to this Agreement or (iii) any other contract with a third party to be repaid from funds to be paid by the City and the Zone to the Authority from Tax Increment pursuant to this Agreement. All Development Agreements are subject to approval by the Director, who may approve such contracts if they are consistent with the Plans, and must provide that (i) the Authority will not reimburse any Developer/Builder for any TIRZ Project that is determined to be an ineligible Project Cost under the TIRZ Act, and (ii) the Developer/Builder must repay the Authority for any payment made by the Authority to the Developer/Builder that is determined to be an ineligible Project Cost. All other contracts between the Authority and a third party, including contracts for consulting, accounting, engineering, legal and

planning services, are subject to the approval of the Director, who shall approve such contracts if they conform to the terms and conditions of City contracts of substantially the same or similar scope for similar services, and must provide that (i) the Authority will not pay any third party for services that are determined to be an ineligible Project Cost under the TIRZ Act, and (ii) the third party must repay the Authority for any payment made by the Authority to the third party that is determined to be an ineligible Project Cost.

C. Approval of Authority Obligations. No Authority Obligation will be issued or incurred by the Authority that cannot be paid from funds budgeted for expenditures in the Authority's current Budget unless the Authority Obligation is approved by the Zone Board and the Director.

D. Approval of Bonds and Notes. The Authority may issue Bonds and Notes secured by payments made pursuant to this Agreement with the approval of City Council. To secure funds to begin providing the services required by this Agreement, the City Council hereby approves the Authority's issuance of its Notes secured by payments made to the Authority by the City and the Zone pursuant to this Agreement for the purposes specified in the Budget; provided, however, that not more than Fifteen Million Dollars (\$15,000,000) in principal amount of such Notes can be outstanding at any given time unless additional authorization is granted by the City Council. Prior to the issuance of any Bonds or Notes, the Authority will consult with the Director to determine the most cost effective means to issue debt. If the City determines that it can issue debt at a lower cost and has the capacity to do so, the City may issue bonds, notes or other obligations and pay the proceeds to the Authority, in which case the City shall retain from the payments made to the Authority pursuant to ARTICLE IV the amount necessary to pay debt service, plus fees and expenses on the City issued bonds, notes or other obligations.

E. Use of Tax Increment. The Authority will use the moneys in the Revenue Fund as follows: (1) to pay all principal, all interest, and all paying agent/registrar charges on the Bonds and Notes of the Authority at the respective times and in the respective amounts as fixed and prescribed in the resolution(s) pursuant to which the Bonds or Notes are issued by the Authority; and (2) to make payments on other Authority Obligations with Developers/Builders as required by the Development Agreements entered into with such

Developers/Builders. Thereafter, the Authority must transfer any excess funds in the Revenue Fund to the Surplus Fund and must use the excess funds to perform services, provide improvements, or to pay any other Project Costs, including amounts to be paid pursuant to contracts with third parties as permitted by this Agreement and the TIRZ Act.

The Authority and the Zone Board may pledge and assign all or a part of the Revenue Fund under this Agreement to (1) the owners and holders of Bonds and Notes of the Authority; and (2) Developers/Builders pursuant to a Development Agreement.

The City consents to any such assignment and pledge to which the Zone Board and the Director also consent. The City shall also have the right to approve the terms and conditions of the instruments assigning or pledging the proceeds to be received by the Authority pursuant to this Agreement.

F. Approval of TIRZ Projects. The Authority must obtain the prior approval of the Director of the appropriate City department for any TIRZ Project constructed, caused to be constructed, or financed by the Authority and must require any Developer/Builder to obtain all necessary permits for the construction of a TIRZ Project and comply with all rules and regulations of the City applicable to the TIRZ Project.

ARTICLE IV DUTIES AND RESPONSIBILITIES OF THE CITY AND THE ZONE

A. Duties of the City. The City agrees to maintain the existing level of services that the City currently provides in Montrose subject to the provision of funds for these services in the City budget. The City agrees to consider the promulgation of ordinances or resolutions pertaining to policies relating to the development of Montrose upon the Authority's advice and assistance.

B. Tax Increment Fund. The City has established and will maintain a separate fund, including any necessary subaccounts, in the City treasury into which the Tax Increment shall be deposited. During the term of this Agreement, the Tax Increment will be paid to the Authority as provided herein.

C. Limitation of Source of Payment. The City and the Zone will have no financial obligation to the Authority other than as provided in this Agreement or in other agreements between the City, the Zone, and the Authority. The obligation of the City and

the Zone to the Authority under this Agreement is limited to the Tax Increment that is collected by the City. This Agreement creates no obligation of the City or the Zone payable from taxes or other City funds other than the Tax Increment that is collected by the City. The obligation of the City and the Zone to the Authority under this Agreement is subject to the rights of any holders of Bonds, Notes, or other obligations that have been or will be issued by the City, the County, the School District, and any other Taxing Units participating in the Zone that are payable from or secured by a general levy of ad valorem taxes throughout the taxing jurisdiction of the City, the County, the School District, and the other Taxing Units.

D. Allocated Funds: Limitation of Duties. The duty of the City and the Zone to pay money to the Authority for any purpose under this Agreement is limited in its entirety by the provisions of this Article and ARTICLE V. The payments herein provided are to be the entire and complete compensation to the Authority for its services and expenses as set forth in this Agreement.

E. Collection and Payment of Tax Increment by the City and the Zone. In consideration of the services and TIRZ Projects to be provided by the Authority, the City and the Zone covenant and agree that they will, as authorized by the TIRZ Act and other applicable laws, continuously collect the Tax Increment from the Taxing Units whose participation in the Zone is reflected in the Plans during the term of this Agreement in the manner and to the extent permitted by applicable law. To the extent they may legally do so, the City and the Zone also covenant and agree that they will not permit a reduction in the Tax Increment paid by the Taxing Units participating in the Zone except as provided in an agreement with the Taxing Unit executed at the time the Taxing Unit agrees to participate in the Zone. In addition, the City covenants and agrees that it will not dissolve the Authority, and that any repeal of the right and power to collect the Tax Increment will not be effective, until all of the Authority Bonds, Notes, or other Authority Obligations have been paid in full or are legally defeased. The City and the Zone further covenant and agree that they will make all payments as set forth in ARTICLE V below, by a direct deposit into the Revenue Fund, without counterclaim or offset, but minus any expenses incurred by the City in connection with the collection of the Tax Increment and less any amount retained pursuant to the provisions set forth in ARTICLE V below.

F. Obligations of the City and the Zone to be Absolute. The obligation of the City and the Zone to make the payments set forth in this Agreement from Tax Increment is absolute and unconditional, and until such time as the Bonds, Notes, Authority Obligations and other contractual obligations of the Authority incurred pursuant to this Agreement have been fully paid or provision made for payment thereof shall have been made in accordance with their terms or the date of expiration of the Zone, whichever comes first, the City and the Zone will not suspend or discontinue any payments provided for in this Agreement and will not terminate this Agreement for any cause, including, without limitation, the failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or in connection with this Agreement except as provided in ARTICLE XXIV. Nothing contained in this Article shall be construed to release the Authority from performance of any of the agreements on its part contained in this Agreement, and in the event the Authority fails to perform any such agreement, the City may institute such action against the Authority as the City deems necessary to compel performance so long as the action does not abrogate the obligations of the City and the Zone to pay the Bonds and Notes of the Authority or to meet its Authority Obligations.

G. Annual Offset. Notwithstanding Sections IV.E and IV.F, the City has the right to offset from its annual payment, in accordance with ARTICLE V, any amount the Authority pays to a Developer/Builder or other third party that is not authorized by and consistent with this Agreement or the terms of the contract pursuant to which it was incurred. Nothing in this Article will affect the obligation of the City and the Zone to pay from Tax Increment an amount that will permit the Authority to pay its Bonds, Notes, or Authority Obligations issued or incurred pursuant to and consistent with this Agreement.

ARTICLE V CITY PAYMENT TO AUTHORITY

The City, on behalf of itself and the Zone, will pay the Authority, not later than the first business day of each September in which a current, approved Budget is in effect for the Authority, all funds then available in the Tax Increment Fund, subject to the retention by the City of (i) a reserve up to five percent (5%) of the funds then available in the Tax

Increment Fund, and (ii) any amounts retained pursuant to Section IV.E or Section IV.G. The Authority will deposit the payments received pursuant to this Article into the Revenue Fund and use the funds in the Revenue Fund for payment of its budget-approved expenditures, its obligations to holders of its Bonds and Notes, its obligations to Developers/Builders pursuant to a Development Agreement, or other contractual obligations, all in accordance with an approved Budget. Notwithstanding the foregoing, in the event that the Budget is not approved in accordance with ARTICLE VI of this Agreement by the thirtieth (30th) day before the date of a principal or interest payment on the Authority's Bonds or Notes, and upon request by the Authority, the City will pay to the Authority the amount of available funds in the Tax Increment Fund otherwise payable to the Authority under this Agreement, and the obligation to make these payments will survive a termination of this Agreement as provided by ARTICLE VI.

A quarterly accounting of expenditures and revenues of the Authority, including its operating statements and balance sheets, are to be submitted to the Director by the thirtieth (30th) day of the quarter following such expenditure or receipt of revenue ("**Accounting**"). The City's review of the Accounting will be limited to determining whether the expenditures are (i) authorized by the Budget, and (ii) consistent with the terms of the contract pursuant to which they were incurred and this Agreement, and not a review to determine whether the Authority Board properly exercised its discretion in making the expenditure.

ARTICLE VI BUDGET, ACCOUNTING, AND AUDITS

A. Budget, Books, and Records. During the term of this Agreement, the Authority will prepare and submit to the City and the Zone Board, in the form required by the City, by April 1st of each year during the term of this Agreement, its annual Budget setting forth the Authority's proposed expenditures during the ensuing fiscal year, including the Authority's administrative costs incurred in connection with providing services under this Agreement, and its obligations payable to the holders of its Bonds or Notes, to Developers/Builders pursuant to a Development Agreement, and to third parties pursuant to contract. Administrative costs may include reasonable employee salaries, travel, insurance, and other benefits expenses. The annual Budget also must disclose

the amount of all revenues available to the Authority for purposes of funding the services and paying the obligations of the Authority and is subject to the review and approval of the Zone Board and City Council. The Authority may only transfer funds from one line item of approved Project Costs to another (1) as needed for debt service, and (2) provided that the aggregate of such transfer does not exceed the lesser of Four Hundred Thousand Dollars (\$400,000) or five percent (5%) of the Project Costs. Any changes in excess of the foregoing must be approved by the Zone Board and the City Council. In the event that the Zone Board or the City Council fails to approve the Authority's proposed Budget for the ensuing year by July 1st of that year, the Authority may continue to operate under the Budget for the previous fiscal year for a period not to exceed twelve (12) months. If, at the end of that period, no Budget has been approved by City Council, either the City or the Authority may terminate this Agreement as provided in ARTICLE XXIV, subject to payment of all Bonds, Notes, and other Authority Obligations. Termination of this Agreement will constitute the sole remedy of the parties under this circumstance.

B. Accounts, Records, and Accounting Reports. The Authority will maintain books of records and accounts in which full, true, and proper entries will be made on all dealings, transactions, business, and matters that in any way affect or pertain to the operation of the Zone and the allocation and application of the Tax Increment. All such records are to be maintained in accordance with Generally Accepted Accounting Principles and must be clearly identified and readily accessible. The Authority must provide free access to the books and records at all times to the City and the Zone or their representatives and must permit them to examine, audit, and make copies thereof. The Authority must further allow the City and the Zone and their representatives to make inspections of all work data, documents, proceedings, and activities related to this Agreement. Such right of access and audit is to continue for a period of three (3) years from the date of final payment under this Agreement. The Authority will operate on the basis of a fiscal year that begins July 1st.

C. Audit. At the end of each fiscal year (beginning with fiscal year ended June 30, 2020), the Authority will have at its own expense a final audit prepared by an independent Certified Public Accountant for that fiscal year that is to be submitted to the

Authority, the Zone, and the City within sixty (60) days after the end of the fiscal year. The Authority must furnish copies of the audit without cost to the City and the Zone Board.

D. Construction Audit. At the end of each fiscal year (beginning with the fiscal year ended June 30, 2020), the Authority will have at its own expense an audit of the construction activities undertaken by a Developer/Builder or other third party (except for the City) that has entered into a Development Agreement with the Authority prepared by an independent consultant approved by the Director for that fiscal year that shall be submitted to the Authority, the Zone, and the City within a reasonable period after the end of the fiscal year. The scope of the audit must include an analysis of all expenditures for reasonableness and a review to ensure that they conform with the approved Plans and any Development Agreements. The Authority must furnish copies of this audit without cost to the City and the Zone Board; provided that such construction audit is only required for construction activities undertaken by a Developer/Builder or third party (except for the City) other than the Authority or the Zone.

E. Authority Depository. The Authority's Revenue Fund is the account into which all payments made by the City and the Zone pursuant to this Agreement are to be deposited. Any funds received from investing and reinvesting funds paid by the City and the Zone to the Authority are to remain in the Revenue Fund until used by the Authority for one of the purposes permitted by this Agreement, and may be commingled with other revenue of the Authority; provided, however, these funds must be accounted for separately. Funds in the Revenue Fund may be invested and reinvested by the Authority only in investments that would be eligible for investment by the City pursuant to the provisions of the Public Funds Investment Act (Chapter 2256, Texas Government Code). Funds on deposit in the Revenue Fund will be secured by the depository bank in the same manner as City funds are required to be secured at the City depository and in accordance with the provisions of the Public Funds Investment Act.

ARTICLE VII PUBLIC CONVENIENCE AND SAFETY

A. Observance of City Ordinances. The Authority must observe City ordinances relating to street obstruction, maintaining open access to alleys or other rights-

of-way and protecting same, and must obey all laws and City ordinances controlling or limiting those engaged in the work.

B. Performance of Duties. The Authority will perform its duties in a manner that will cause the least inconvenience and annoyance to the general public and property owners, and will exercise every necessary precaution for the safety of the property and protection of all persons and property located adjacent to or making passage through said property.

ARTICLE VIII RIGHT OF OWNERSHIP

All permanent public facilities and equipment owned by the City within the Zone will remain the property of the City, and the Authority may not dispose of this property. All property and improvements purchased by the Authority will be the property of the Authority and must be maintained by the Authority throughout the term of this Agreement, and the Authority may lease, sell, or otherwise dispose of its property upon such terms and conditions as the Authority deems desirable, or if the TIRZ Project is integrated in and used as part of the City's infrastructure, the property may be conveyed to the City at the time of such integration, at the City's discretion; however, all water and sewer utilities, stormwater drainage facilities, public street improvements, sidewalks, and light fixtures are to be conveyed to the City subject to City policy. Upon termination of this Agreement, title to all Authority property will immediately vest in the City without the need for further action by the City. The Authority must attach to its annual Budget an up-to-date inventory of all of its property and improvements.

ARTICLE IX EQUAL EMPLOYMENT OPPORTUNITY

The Authority agrees to comply fully with the provisions of the City's current Equal Employment Opportunity Ordinance, as set forth in Exhibit "A" hereto, and as they may be amended from time to time.

ARTICLE X MWSBE PARTICIPATION

It is the City's policy to stimulate the growth of MWSBEs by encouraging their full participation in all phases of its procurement activities and by affording them a full and fair opportunity to compete for all City contracts and/or agreements.

The Authority agrees to use its best efforts to carry out this policy through award of contracts, subcontracts, and aid to MWSBEs to the extent consistent with the efficient performance of this Agreement.

Without limiting the foregoing, the Authority agrees to make Good Faith Efforts (as defined by Chapter 15 of the Code) to award the percentage of the value of contracts, pursuant to this Agreement, to MWSBEs at the same rate as the City's MWSBE Program, as it may be in effect from time to time. While it is not a requirement of this Agreement that the Authority meet or exceed these goals, it is a requirement that the Authority objectively demonstrate to the City that it has made Good Faith Efforts to meet these goals. To this end, the Authority must maintain records showing (i) its subcontracts, supply agreements, and support with and to MWSBEs, and (ii) its specific efforts to identify and award subcontracts, supply agreements, and support with and to MWSBEs. The Authority is to submit reports of its Good Faith Efforts under this Article to the Director of the Office of Business Opportunity in such form and manner as the Director may prescribe.

ARTICLE XI PERSONAL LIABILITY OF PUBLIC OFFICIALS

To the extent permitted by State law, no director of the Authority, nor any employee or agent of the Authority, no director of the Zone, nor any employee or agent of the Zone, and no employee of the City, nor any agent of the City, will be personally responsible for any liability arising out of or in connection with the Agreement, or operations of the Authority under the terms of this Agreement.

**ARTICLE XII
CITY AND ZONE NOT LIABLE FOR DELAY**

It is expressly agreed that in no event will the City or the Zone be liable or responsible to the Authority or any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings, or from or by or on account of any delay for any cause over which the City or the Zone has no control.

**ARTICLE XIII
INDEMNITY AND RELEASE**

A. INDEMNITY FOR PERSONAL INJURIES. THE AUTHORITY COVENANTS AND AGREES TO AND DOES HEREBY DEFEND, INDEMNIFY, AND HOLD THE CITY, THE ZONE, AND THEIR OFFICERS, EMPLOYEES AND AGENTS (THE "INDEMNIFIED PERSONS") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS INJURIES, INCLUDING DEATH, TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO ANY PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

1. THE AUTHORITY'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', CONSULTANTS', SUBCONTRACTORS' OR SUBCONSULTANTS (COLLECTIVELY IN LETTERED PARAGRAPHS 1-3, "AUTHORITY'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

2. THE INDEMNIFIED PERSONS' AND THE AUTHORITY'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER THE AUTHORITY IS IMMUNE FROM LIABILITY OR NOT; AND

3. THE INDEMNIFIED PERSONS' AND THE AUTHORITY'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER THE AUTHORITY IS IMMUNE FROM LIABILITY OR NOT. THE AUTHORITY SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE

INDEMNIFIED PERSONS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES. THE AUTHORITY'S INDEMNIFICATION IS LIMITED TO FIVE HUNDRED THOUSAND DOLLARS (\$500,000) PER OCCURRENCE. THE AUTHORITY SHALL NOT INDEMNIFY THE INDEMNIFIED PERSONS FOR THE INDEMNIFIED PERSONS' SOLE NEGLIGENCE.

B. INDEMNITY TO CITY PROPERTY. THE AUTHORITY SHALL LIKEWISE INDEMNIFY AND HOLD HARMLESS THE CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSION OF THE AUTHORITY, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES.

C. RELEASE. THE AUTHORITY AGREES TO AND SHALL RELEASE THE INDEMNIFIED PERSONS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EXCEPT WHERE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE INDEMNIFIED PERSONS' SOLE OR CONCURRENT NEGLIGENCE AND/OR THE INDEMNIFIED PERSONS' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

THE AUTHORITY SHALL REQUIRE ALL CONTRACTORS ENGAGED BY IT TO CONSTRUCT TIRZ PROJECTS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE INDEMNIFIED PERSONS TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE OF AND INDEMNITY TO THE INDEMNIFIED PERSONS HEREUNDER.

D. Indemnification Procedures.

1. Notice of Claims. If the Indemnified Persons or the Authority receive notice of any claim or circumstances that could give rise to an indemnified loss, the receiving party must give written notice to the other party within ten (10) days. The notice must include the following:

- a. A description of the indemnification event in detail;
- b. The basis on which indemnification may be due; and
- c. The anticipated amount of the indemnified loss.

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B. INDEMNITY TO CITY PROPERTY. THE AUTHORITY SHALL LIKEWISE INDEMNIFY AND HOLD HARMLESS THE CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSION OF THE AUTHORITY, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES.

C. RELEASE. THE AUTHORITY AGREES TO AND SHALL RELEASE THE INDEMNIFIED PERSONS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EXCEPT WHERE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE INDEMNIFIED PERSONS' SOLE OR CONCURRENT NEGLIGENCE AND/OR THE INDEMNIFIED PERSONS' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

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- a. A description of the indemnification event in detail;
- b. The basis on which indemnification may be due; and
- c. The anticipated amount of the indemnified loss.

This notice does not estop or prevent the Indemnified Persons from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the Indemnified Persons do not provide this notice within the ten (10) day period, they do not waive their right to indemnification except to the extent that the Authority is prejudiced, suffers loss, or incurs expense because of the delay.

2. Defense of Claims.

a. Assumption of Defense. The Authority may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the Indemnified Persons. The Authority must then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, the Authority must advise the Indemnified Persons as to whether or not it will defend the claim. If the Authority does not assume the defense, the Indemnified Persons will assume and control the defense, and all defense expenses constitute an indemnification loss.

b. Continued Participation. If the Authority elects to defend the claim, the Indemnified Persons may retain separate counsel at their own expense to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The Authority may settle the claim without the consent or agreement of the Indemnified Persons, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Persons to comply with restrictions or limitations that adversely affect the Indemnified Persons; (ii) would require the Indemnified Persons to pay amounts that the Authority does not fund in full; or (iii) would not result in the Indemnified Persons' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

E. Insurance Requirements. Insurance coverage specified herein constitutes the minimum requirements and will in no way reduce or limit the liability of the

Authority under the terms of this Agreement. The Authority must procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance that, in its own judgment, may be necessary in connection with its performance of its obligations under this Agreement.

F. Subordinate Obligation. The obligations of the Authority imposed by this Article are subordinate to the Authority's obligation to pay the principal of and interest on its Bonds and Notes.

G. Payment from Tax Increment. All costs of obligations of the Authority imposed by this Article may be paid from proceeds from insurance or, to the extent provided by law, from Tax Increment.

ARTICLE XIV INDEPENDENT CONTRACTOR

It is expressly understood and agreed that the Authority will perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the City or the Zone; that except as herein provided, the Authority will have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same, and will be solely responsible for the acts and omissions of its officers, agents, employees, contractors, consultants, subcontractors and subconsultants; that the doctrine of respondeat superior will not apply as between the City or the Zone and the Authority, its officers, agents, employees, contractors, consultants, subcontractors and subconsultants; and that nothing herein is to be construed as creating a partnership or joint enterprise between the City or the Zone and the Authority. No person performing any work or services described hereunder will be considered an officer, agent, servant, or employee of the City or the Zone.

ARTICLE XV INSURANCE

The Authority must obtain and maintain insurance coverage continuously during the term of this Agreement, and the Authority must contract with each contractor engaged by it to maintain (and to cause each of its subcontractors to maintain) insurance coverage

during the term of its contract, in each case in accordance with the terms of this Article through any combination of primary and excess coverage.

A. Risks and Limits of Liability. The insurance required by this Article must insure against the following risks in at least the following amounts:

<u>Coverage</u>	<u>Limit of Liability</u>
Workers' Compensation:	Statutory
Employer's Liability (each accident)	Bodily Injury by Accident \$100,000
(policy limit)	Bodily Injury by Disease \$500,000
(each employee)	Bodily Injury by Disease \$100,000
Commercial General Liability	Each Occurrence Limit of \$1,000,000 Personal and Advertising Limit of \$1,000,000 General Aggregate Limit of \$2,000,000 Products - Completed Operations Aggregate Limit of \$2,000,000
Automobile Liability Insurance (for vehicles used in performing under this Agreement, including Employer's Non Ownership and Hired Auto Coverage)	\$1,000,000 Combined Single Limit per Occurrence
Professional Liability Coverage (for professional service contract only)	\$500,000 per occurrence \$1,000,000 aggregate

Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated. If the amount of any contract awarded by the Authority to construct a TIRZ Project exceeds One Million Dollars (\$1,000,000), the Authority must contract with the contractor to maintain Commercial General Liability coverage for at least twice the combined minimum limits specified above.

B. Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves the Authority of its obligation to provide the required coverage under this Agreement. The actions or inactions of the Director do not waive the City's rights under this Agreement.

C. Issuers of Policies. The issuer of each policy must be a carrier authorized or eligible to do business in the State of Texas by the Texas Department of Insurance or

a legally established self-insurance pool in the State of Texas. As applicable, carriers must have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.

D. Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as additional insured parties on the original policy and all renewals or replacements.

E. Deductibles. The Authority will be responsible for and bear (or will contract with each applicable contractor to bear and assume) any claims or losses to the extent of any deductible amounts and waives (and will contract with each contractor to waive) any claim it may have for the same against the City, its officers, agents, or employees.

F. Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director thirty (30) days' advance written notice. The Authority will (and will contract with each contractor to) give written notice to the Director within five (5) days of the date on which total claims by any party against such person reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

G. Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

H. Primary Insurance Endorsement. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the additional insured with respect to claims arising under this Agreement.

I. **Liability for Premium.** The Authority will pay from Tax Increment or other available funds (or will contract with contractors to pay) all insurance premiums for coverage required by this Article, and the City will not be obligated to pay any premiums.

J. **Subcontractors.** Notwithstanding the other provisions of this Article, the amount of coverage contracted to be provided by subcontractors must be commensurate with the amount of the subcontract, but in no case less than One Hundred Thousand dollars (\$100,000) per occurrence. The Authority must provide to the Director (or must contract with contractors to provide) copies of insurance certificates.

K. **Proof of Insurance.** Promptly after the execution of this Agreement and from time to time during the term of this Agreement, at the request of the Director, the Authority must furnish the Director with certificates of insurance maintained by the Authority in accordance with this Article along with an affidavit from the Authority confirming that the certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, the Authority must furnish the City certified copies of the Authority's actual insurance policies. Failure of the Authority to comply with the requirements of this Article constitutes an event of default and the Director, at his or her sole discretion, may (1) suspend performance by the City and the Zone hereunder and begin procedures to terminate this Agreement for default pursuant to Article XXIV, or (2) purchase the required insurance with City or Zone funds and, notwithstanding the provisions of Article V, deduct the cost of the premiums from amounts due to the Authority under this Agreement. The City will never waive or be estopped to assert its right to terminate this Agreement pursuant to Article XXIV because of its acts or omissions regarding its review of insurance documents.

L. **Other Insurance.** If requested by the Director, the Authority must furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to the Authority's operations under this Agreement.

ARTICLE XVI LAW TO BE OBSERVED

The Authority must at all times observe and comply with all federal and state laws, local laws, ordinances, orders, and regulations of the federal, state, county, or city

governments. The federal, state and local laws, ordinances, and regulations that affect those engaged or employed in the work, or the equipment used in the work, or that in any way affect the conduct of the work, will be in effect at all times, and no pleas of misunderstanding will be considered on account of ignorance thereof.

ARTICLE XVII PERMITS

Before proceeding with the work hereunder, the Authority must obtain and pay for any necessary permits and licenses, whether issued by the State, County, or City, and furnish proof thereof upon the request of the Director.

ARTICLE XVIII INFORMATION

The Authority must, at such times and in such form as the City may require, furnish information concerning the status of the Authority, the Zone, and the performance of its obligations under the Agreement, and such other statements, certificates, and approvals related to the Authority and the Zone as the City may request.

ARTICLE XIX COORDINATION WITH CITY OFFICIALS

The Authority will coordinate its activities with the City departments involved or providing services to Montrose through the Director. At the request of the Authority, the Director will assist the Authority in coordinating with other City departments as necessary and appropriate from time to time.

Nothing in this Agreement is intended to confer upon the Authority the right to use, improve, or service any City property without the approval of the director of the affected City department.

ARTICLE XX ADDRESS AND NOTICE

Any and all notices and communications under this Agreement are to be mailed by first-class mail, or delivered, to the Authority at the following address:

Montrose Redevelopment Authority

c/o Allen Boone Humphries Robinson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

Any and all notices and communications under this Agreement are to be mailed by first-class mail, or delivered, to the City at the following address:

Chief Development Officer
Mayor's Office of Economic Development City of Houston
P.O. Box 1562
Houston, Texas 77251

Any and all notices and communication under this Agreement are to be mailed by first-class mail, or delivered, to the Zone at the following address:

Reinvestment Zone Number Twenty-Seven, City of Houston, Texas
c/o Allen Boone Humphries Robinson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

ARTICLE XXI APPLICABLE LAWS

This Agreement is made subject to the Constitution and laws of the State of Texas and the Charter of the City. The City, the Authority, and the Zone hereby submit to and consent to the jurisdiction of the State of Texas and agree that any litigation relating to this Agreement shall be conducted in the courts of Harris County, Texas, or the federal courts for the United States for the Southern District of Texas.

ARTICLE XXII CAPTIONS

The captions at the beginning of the Articles of this Agreement are guides and labels to assist in locating and reading such Articles and will be given no effect in construing this Agreement and do not restrict the subject matter of any article, section, paragraph, or part of this Agreement.

**ARTICLE XXIII
SUCCESSORS AND ASSIGNS**

This Agreement binds and benefits the respective parties and their legal successors, and is not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other parties. Nothing herein is to be construed as creating any personal liability on the part of any officer or agency of the City, of the Zone, or of the Authority.

**ARTICLE XXIV
TERM AND TERMINATION, DISSOLUTION OF AUTHORITY**

A. In General. This Agreement becomes effective and its initial term begins on the Effective Date and will terminate upon termination of the Zone.

B. Termination for Cause. A party may terminate its performance under this Agreement only upon default by the other party. Default by a party will occur if the party fails to perform or observe any of the terms and conditions of this Agreement required to be performed or observed by that party. Should such a default occur, the party against whom the default has occurred will have the right to terminate all or part of its duties under this Agreement as of the thirtieth (30th) day following the receipt by the defaulting party of a notice describing such default and intended termination, provided: (i) such termination will be ineffective if within the thirty (day) period the defaulting party cures the default, or (ii) such termination may be stayed, at the sole option of the party against whom the default has occurred, pending cure of the default. No termination of this Agreement will affect the obligation of the City and the Zone to pay from Tax Increment an amount that will permit the Authority to pay its Bonds, Notes, or Authority Obligations issued or incurred pursuant to and consistent with this Agreement prior to termination.

C. Dissolution of Authority. The City agrees not to dissolve the Authority or the Zone unless it makes satisfactory arrangements to provide for the payments of the Authority's Bonds, Notes, or other Authority Obligations incurred prior to the Authority's dissolution.

**ARTICLE XXV
AMENDMENT OR MODIFICATIONS**

Except as otherwise provided in this Agreement, this Agreement is subject to change, amendment, or modification only by the mutual written consent of the parties hereto.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the Authority, the Zone, and the City in multiple originals which are considered of equal force and effect.

[The remainder of this page intentionally left blank.]

CITY OF HOUSTON, TEXAS

Mayor

ATTEST/SEAL:

City Secretary

COUNTERSIGNED:

COUNTERSIGNATURE DATE:

City Controller

APPROVED AS TO FORM:

Senior Assistant City Attorney
LD No. 0421900075002

APPROVED:

Chief Development Officer

MONTROSE REDEVELOPMENT AUTHORITY

Chairman, Board of Directors

ATTEST:

Secretary, Board of Directors

REINVESTMENT ZONE NUMBER TWENTY-SEVEN, CITY OF HOUSTON, TEXAS

Chairman, Board of Directors

ATTEST:

Secretary, Board of Directors

EXHIBIT A

Provisions of City's Equal Employment Opportunity Ordinance

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor,

subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.