City of Houston, Texas, Ordinance No. 2002- 496

AN ORDINANCE AMENDING ORDINANCE NO. 2000-358 THAT APPROVED AND AUTHORIZED AN AGREEMENT BETWEEN THE CITY OF HOUSTON, THE CITY PARK REDEVELOPMENT AUTHORITY AND REINVESTMENT ZONE NUMBER TWELVE, CITY OF HOUSTON, TEXAS (CITY PARK ZONE); MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * * *

WHEREAS, the City Council of the City of Houston passed and adopted Ordinance No. 2000-358 on May 10, 2000 (the "Ordinance") that approved and authorized an agreement between the City of Houston, the City Park Redevelopment Authority and Reinvestment Zone Number Twelve, City of Houston, Texas (City Park Zone)(the "Agreement"); and

WHEREAS, the Ordinance referred to an attached contract, which is the Agreement that the Ordinance approved in substantially the form as the attachment; and

WHEREAS, the contract that was attached to the Ordinance inadvertently contained two copies of page five, but had no page six of the Agreement; and

WHEREAS, the City Council finds that it is necessary and appropriate to amend the Ordinance by deleting the second copy of page five and inserting page six, attached hereto as Exhibit "A," in the contract that was attached to the Ordinance;

NOW, THEREFORE:

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

Section 1. That the facts and recitations in the preamble of this ordinance are hereby found and declared to be true and correct and are adopted as part of this ordinance for all purposes.

Section 2. That the City Council hereby amends Ordinance No. 2000-358 by deleting the second copy of page five and inserting page six, attached hereto as Exhibit "A," in the contract that was attached to the Ordinance.

Section 3. That the City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Tex. Gov't Code Ann. ch. 551 (Vernon 2001); and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

Section 4. That 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 12th day of June, 2002.

APPROVED this ____ day of _____, 2002.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 18 2002, 2002.

City Secretary

(Prepared by Legal Dept. DFM _____)
(CSL/csl January 22, 2002)
L.D. No. 0349800387018

Assistant City Attorney

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AYE	NO	2002-496
✓		MAYOR BROWN
••••	••••	COUNCIL MEMBERS
✓		TATRO
✓		GALLOWAY
✓		GOLDBERG
✓		EDWARDS
✓		WISEMAN
✓		ELLIS
✓		KELLER
✓		VASQUEZ
✓		ALVARADO
✓		PARKER
✓		QUAN
✓		SEKULA-RODRIGUEZ
✓		BERRY
✓		ROBINSON
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: JUN 18 2002

AGREEMENT BY AND BETWEEN THE CITY OF HOUSTON, TEXAS, REINVESTMENT ZONE NUMBER TWELVE CITY OF HOUSTON, TEXAS, AND THE CITY PARK REDEVELOPMENT AUTHORITY

THE STATE OF TEXAS §

COUNTY OF HARRIS §

KNOW ALL PERSONS BY THESE PRESENTS:

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

W-I-T-N-E-S-S-E-T-H:

WHEREAS, by Resolution No. 2000-10 of the City Council of the City adopted on March 22, 2000, 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 and proprietary functions with respect to the common good and general welfare of the City Park Area as described in City Ordinance No. 98-1112; and

WHEREAS, by Ordinance No. 98-1112, the City created the Zone pursuant to Chapter 311, Texas Tax Code (the "TIRZ Act") pursuant to a preliminary Reinvestment Zone Financing Plan for the Zone; and

WHEREAS, the Board of Directors of the Zone ("Zone Board") adopted a Project Plan and a Reinvestment Zone Financing Plan for the Zone and by Ordinance No. 1999-

910, dated August 8, 1999, the City approved the Project Plan and Reinvestment Zone Financing plan; and

WHEREAS, Resolution No. 2000-10, which authorized the creation of the Authority, also provided for the creation for a Board of Directors of the Authority ("Authority Board"), which is to be comprised of the same persons who serve on 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 Board:

A. In the preparation and implementation of a Project Plan and a Reinvestment Zone Financing Plan for the Zone and amendments thereto;

B. In the development of a policy to finance development and redevelopment of residential, commercial and park/open space properties in the CITY PARK AREA; and

C. In the development and implementation of a redevelopment policy for the City Park Area, including the acquisition of land for redevelopment purposes; and

D. In the development and implementation of a policy for improving vehicular and pedestrian circulation in the City Park Area including, where appropriate, the acquisition of street rights-of-way.

WHEREAS, the City created the Zone pursuant to the TIRZ Act with a duration from January 1, 1999 (1) until December 31, 2028 or earlier time designated by subsequent ordinance, or (2) until such time, subsequent to the issuance of tax increment bonds, if any, that all Project Costs, tax increment bonds, and the interest on the bonds, have been paid in full, whichever comes first;

WHEREAS, the City and the Zone Board have determined that it will be advisable to have the Authority assist the Zone Board and act as consultant to the Zone Board in the preparation and implementation of the Project Plan and the Reinvestment Zone Financing Plan and provide the other services set forth in this Agreement;

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 Articles of Incorporation, 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 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 in the Agreement.

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 Increments as provided in this Agreement. Chapter 311 of the TIRZ Act and 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 the services and improvements, and otherwise performing the functions.set forth in this Agreement;

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;

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 is willing 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:

I.

DEFINITIONS

"Agreement" shall mean this Agreement and all attachments hereto between the City, the Zone and the Authority.

"Appraisal District" shall mean the Harris County Appraisal District.

"Authority Board" is defined in the recitals hereto.

"Authority Obligations" shall mean the notes or other contractual obligations that the Authority may incur from time to time pursuant to Article III hereof and includes without limitation Development Agreements and contracts with consultants.

"Bonds" shall mean the bonds of the Authority.

"Budget" shall mean the annual Budget of the Authority which has been reviewed and approved by the Authority Board, the Zone Board, the Planning Director and the City Council.

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

"City" is defined in the recitals hereto.

"City Council" shall mean the City Council of the City.

"City Park Area" shall mean the area comprising the Zone, as it may be enlarged from time to time, and neighboring areas.

"Code" shall mean the Code of Ordinances, Houston, Texas, including without limitation the City's Building Code and Fire Code.

"County" shall mean Harris County, Texas.

"Developer/Builder" shall mean 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, the State of Texas, any other governmental bodies, or any other kind of person.

"Development" shall mean any TIRZ Project.

"Development Agreement" shall mean an agreement between the Authority and a Developer/Builder relating to the development, construction, remodeling, or rehabilitation of a TIRZ Project.

"Director of Affirmative Action" shall mean the Director of the Affirmative Action Division of the City (or the successor equivalent position), or such person as he or she shall designate.

"Disadvantaged Business" as used in § 311.0101 of the Texas Tax Code and this Agreement shall, for the purposes of the Zone and any Project Plan or Financing Plan related thereto, have the same meaning as Minority Business Enterprise or Women-Owned Business Enterprise as set out in Chapter 15 of the Code and certified by the City's Affirmative Action office.

"Financing Plan" shall mean the reinvestment zone financing plan for the Zone as amended from time to time pursuant to the TIRZ Act, as adopted by the Zone Board and approved by the City Council.

"Generally Accepted Accounting Principles" shall mean such accepted accounting practice as, in the opinion of the Authority's accountant, conforms at the time to a body of generally accepted accounting principles.

"Interlocal Agreement" means the Interlocal Agreement between the City, the Zone and the School District approved by City Ordinance No.1999-913, as may be amended from time to time.

"METRO" shall mean the Metropolitan Transit Authority of Harris County.

"Planning and Development Department" shall mean the Department of Planning and Development of the City.

"Planning Director" shall mean the Director of the Planning and Development Department (or such other department as the Mayor may designate) or such person as he or she shall designate.

"Police Department" shall mean the Police Department of the City.

"Project Cost" shall mean 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 Project Plan and Financing Plan.

"Project Plan" shall mean the project plan for the Zone as it may be amended from time to time pursuant to the terms of the TIRZ Act, as adopted by the Zone Board and approved by the City Council.

"Public Works Department" shall mean the Department of Public Works and Engineering of the City.

"Revenue Fund" shall mean the fund established by the Authority into which payments from the Tax Increment Fund are deposited.

"School District" shall mean the Houston Independent School District.

"School District Educational Facilities Costs" means the money to be paid annually to the School District for educational facilities project costs pursuant to the Interlocal Agreement.

"Surplus Fund" shall mean the fund established by the Authority into which excess funds from the Authority's Revenue Fund are deposited.

"Tax Increment" shall mean the amount of property taxes collected each year by each Taxing Unit participating in the Zone (to the extent of their participation) on the Captured Appraised Value.

"Tax Increment Base" shall mean the total appraised value of all real property taxable by the City and located in the Zone as of January 1, 1998, the year in which the Zone was designated as a reinvestment zone, plus the total appraisal 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 1 of the year in which the area was annexed to the Zone.

"Tax Increment Fund" shall mean the Tax Increment Fund created by the City for the Zone including any subaccount therein into which all Tax Increments shall be deposited by the City.

"Taxing Unit" shall mean the School District and any other Taxing Unit that participates in the TIRZ.

"TIRZ Act" is defined in the recitals hereto.

"TIRZ Project" shall mean any project for which moneys in the Tax Increment Fund can be used pursuant to the TIRZ Act and which has been approved in the Project Plan and the Financing Plan.

"Zone" is defined in the recitals hereto, and includes any area added to the boundaries of the Zone.

"Zone Board" is defined in the recitals hereto.

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

1. Provide the staff and administrative services that are 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 the consultants and any work force that the Authority will utilize to furnish services required for the development or redevelopment of the City Park Area;

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 between the Zone, the City, the County, the School District, METRO, other Taxing Units, Zone property owners, and other persons and groups interested in the 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 Planning and Development Department concerning the use of the Zone to complement the City Park Area 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 building permits and 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 the City Park Area; 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 With Respect to the Project Plan and Financing Plan, Enlargement of the Zone, and Amendments to the Project Plan and Financing Plan.

1. The Zone Board has adopted, and the City Council has approved, a Project Plan and a Financing Plan. The Authority will act as consultant to the Zone in the implementation of the Project Plan and the Financing Plan and in the preparation and implementation of any amendments thereto. Any amendments to the Project Plan and Financing Plan shall be prepared in accordance with this subparagraph and in accordance with the requirements of the TIRZ Act. The Authority will complete the Project Plan and Financing Plan in accordance with this subparagraph and in accordance with the requirements of the TIRZ Act. The Authority will engage such consultants and subcontractors as it deems necessary to complete the Project Plan and the Financing Plan and will make them available to the Zone Board and the City at all reasonable times. The Project Plan and the Financing Plan and any amendments thereto will include at a minimum those matters 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 School District, the County, the City, the Zone Board, land owners, and other public and private entities with respect to the preparation of amendments to the Project Plan and the Financing Plan and will take such other actions, and will aid and assist in the conduct of such 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 Project Plan and the Financing Plan and 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 for addition to the Zone as requested by the Zone Board and will provide information with respect to any proposed enlargement that may be required by the Zone Board including, if requested, the information required for a preliminary Project Plan and a preliminary Financing Plan with respect to the enlargement of the Zone.

C. Tax Rolls.

1. The Authority will assist the Zone Board and the City with respect to 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 also will work with the Appraisal District to make certain 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 1998 and each year thereafter. In tax years beginning January 1, 1999, 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 the 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, that will provide a mechanism by which private security directors, City Park Area businesses, and merchants will exchange information to impact crime; and

4. Work to establish a program of crime prevention and safety literature, conduct and hold seminars, and convene meetings with City Park Area business and residential interests to increase public safety awareness.

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

1. To increase residential, business, retail, restaurants, and entertainment establishments for the City Park Area;

2. To 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 the City Park Area;

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

4. To increase the enjoyment and public use of sidewalks, parks, and plazas; and

5. To establish a planning, design, and streetscape group that will bring people together to plan and make improvements to create a more vital City Park Area.

F. Marketing and Public Relations. The Authority will assist the Zone Board in establishing a marketing and public relations program to attempt to:

1. Create a positive image of the City Park Area;

2. Increase leasing and business activity;

3. Encourage residential development;

4. Increase retail, restaurants, entertainment, and other commercial activities;

5. Make the City Park Area more hospitable and friendly;

6. Endeavor to create an image to promote the City Park Area; and

7. Attract Developers/Builders to the City Park Area in order to encourage economic development and redevelopment in the City Park Area.

G. Development Programs. The Authority will assist the Zone Board:

1. In identifying those rights-of-way the use of which may be modified to encourage development in the City Park Area;

2. In identifying all public parks in the City Park Area and developing a program for the restoration and development of those parks for public use; and

3. In enhancing mobility and public transportation in the City Park Area.

H. Infrastructure Construction and Construction of TIRZ Projects. The Authority may construct infrastructure, buy equipment and supplies, and deal in real estate as necessary to implement the Project Plan and Financing Plan 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 Project Plan and Financing Plan that meet the qualifications of the TIRZ Act and use money to provide, or provide in the future, such TIRZ Projects pursuant to this Agreement; and

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

I. Land Acquisition and Redevelopment. Subject to the availability of funds, the Authority will provide appraisals, surveys, and title policies for any properties that need to be acquired pursuant to the Project Plan and Financing Plan. The Authority may acquire any property or land that is permitted to be acquired pursuant to the Project Plan and Financing Plan with the proceeds of its Bonds, notes or other obligations or with Tax Increments 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 Project Plan and Financing Plan 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.

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

III.

CONTRACTUAL OBLIGATIONS OF THE AUTHORITY

A. General Statement. The parties have agreed that the Authority has the authority to issue Bonds, notes, or enter into other Authority Obligations with Developers/Builders and consultants to be repaid from moneys to be paid by the City and the Zone to the Authority from Tax Increments pursuant to this Agreement and may issue Bonds with the consent of the City; provided, however, the Authority shall have the authority to issue Bonds only upon the approval of the City Council; and provided further that 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 upon such terms and conditions as the Authority Board and the Zone Board shall determine to be necessary or desirable to implement the Project Plan and Financing Plan. The Authority Obligations may be in the form of a (1) note, (2) a contract with a consultant to the Zone or the Authority, or (3) a Development Agreement with the Developer/Builder of a Development who agrees to construct works, improvements, or other facilities included in the Project Plan and Financing Plan, or provide services consistent with the Project Plan and Financing Plan in exchange for the obligation of the Authority to repay the Developer/Builder for such costs from future payments made by the

City and the Zone to the Authority pursuant to this Agreement. All Development Agreements shall be subject to the approval of the Planning Director, and shall 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 shall repay the Authority for any payment made by the Authority to the Developer/Builder for any TIRZ Project that is determined to be an ineligible Project Cost. All consultant contracts shall be subject to the approval of the Planning 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.

C. Approval of Authority Obligations. No Authority Obligation shall 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 Planning Director.

D. Approval of Bonds, Notes and Other Obligations. 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 in an amount not to exceed $1,000,000 that will be repaid by the Authority from payments made by the City and the Zone pursuant to this Agreement. The Authority may not have notes outstanding in a principal amount in excess of $1,000,000 without further approval of the Zone Board and the City Council.

E. Use of Tax Increments. The Authority shall use the moneys in the Revenue Fund as follows: first, 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 or resolutions pursuant to which the Bonds or notes are issued by the Authority; and second, 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 shall transfer any excess funds in the Revenue Fund to the Surplus Fund and shall use the excess funds to perform the services, provide improvements, or to pay any other Project Costs, including amounts to be paid pursuant to contracts with consultants, permitted by this Agreement and by the TIRZ Act.

F. Pledge of Tax Increments.. 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 if the Zone Board and the Planning Director consents to the assignment and pledge and approve the terms and conditions of the instruments assigning or pledging the proceeds to be received by the Authority pursuant to this Agreement.

G. Approval of TIRZ Projects. The Authority shall obtain the prior approval of the Director of Public Works for any TIRZ Project constructed, caused to be constructed, or financed by the Authority.

IV.

DUTIES AND RESPONSIBILITIES OF THE CITY AND THE ZONE

A. Duties of City. The City agrees to maintain the existing level of services that the City currently provides in the City Park Area 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 the City Park Area after receiving the Authority's advice and assistance.

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

C. Limitation of Source of Payment. The City and the Zone shall 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 Increments that are collected by the City. This Agreement shall create no obligation on the City or the Zone that is payable from taxes or other moneys of the City other than the Tax Increments that are collected by the City. The obligation of the City and the Zone to the Authority under this Agreement shall be subject to the rights of any of the holders of Bonds, notes or other obligations that have heretofore or are hereafter issued by the City, County, the School District and any other Taxing Units 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. The payments herein provided for shall be the entire and complete compensation of the Authority for its services and expenses in connection herewith.

E. Collection and Payment of Tax Increments 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 under the TIRZ Act and other applicable laws, continuously collect the Tax Increments from the Taxing Units whose participation in the Zone is reflected in the Project Plan and Financing Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. To the extent the City and the Zone may legally do so, the City and the Zone also covenant and agree that they will not permit a reduction in the Tax Increments paid by the Taxing Units except to the extent provided in the 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 Increments will not be effective until all the Bonds, notes, or other Authority Obligations of the Authority have been paid in full or until they 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 Increments and minus any amount retained pursuant to the provisions set forth in Article V below.

F. Obligations of 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 Increments shall be absolute and unconditional, and until such time as this Agreement, Bonds or notes, and the contractual obligations of the Authority incurred pursuant to this Agreement have been fully paid or provision 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 limiting the generality of the foregoing, 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 connected with this Agreement except as provided in Articles XV and XXIV. Nothing contained in this section 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 shall fail to perform any such agreement on its part, the City may institute such action against the Authority as the City may deem necessary to compel performance so long as this action does not abrogate the obligations of the City and the Zone to make the payments set forth in this Agreement to pay the Bonds and notes of the Authority or to meet its Authority Obligations to Developers/Builders; provided, however, that the City shall have the right to offset annually any amount paid by the Authority to a Developer/Builder, consultant or vendor that is not authorized by and consistent with this Agreement or the terms of the contract pursuant to which it was incurred.

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 July in which a current, approved Budget is in effect for the Authority, all monies then available in the Tax Increment Fund, subject to the retention by the City of (i) a reserve up to five percent of the monies then available in the Tax Increment Fund and (ii) the School District Educational Facilities Costs; provided, however, that the City and the Zone shall never be obligated to pay to the Authority an amount that exceeds the amount of the approved Budget for the then-current fiscal year. The Authority shall

deposit the payments received pursuant to this Section into the Revenue Fund and use the monies in the Revenue Fund for payment of its budget-approved expenditures, its obligations to the holders of its Bonds and notes, its obligations to Developers/Builders pursuant to a Development Agreement, or its other contractual obligations, all in accordance with an approved Budget. Notwithstanding the foregoing, however, in the event that the budget has not been 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, and upon request by the Authority, the City shall pay to the Authority the amount of available monies in the Tax Increment Fund otherwise payable to the Authority under this Agreement in an amount not to exceed the amount necessary for the payment of principal and interest due to the holders of the Authority's outstanding Bonds next due, and the obligation to make these payments shall survive a termination of this Agreement as provided by Article VI hereof.

A quarterly accounting of expenditures and revenues of the Authority, including its operating statements and balance sheets, shall be submitted to the Planning Director by the thirtieth (30th) day of the quarter following such expenditure or receipt of revenue (the "Accounting"). The City's review of the Accounting shall 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 not a review to determine whether the Authority Board properly exercised its discretion in making the expenditure.

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, by January 1 of each year during the term of this Agreement, its annual Budget setting forth the Authority's proposed expenditures during the ensuing fiscal year which will include 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 consultants pursuant to contract. Administrative costs may include reasonable employee salaries, travel, insurance, and other benefits expenses. The annual Budget also shall 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 amend (increase, decrease, or adjust) its Budget but must advise the Zone Board and the Planning Director of any Budget amendment. Provided, however, that Budget amendments that involve an increase, decrease, or adjustment of $400,000 or more must be approved by the Zone Board and the City Council. In the event that the Zone Board or the City Council fails or refuses to approve the proposed Budget of the Authority for the ensuing year by July 1 of that year, the Authority may continue to operate on 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 hereof, subject to the payment of the Bonds, notes, and other Authority Obligations. Termination of this Agreement shall 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 Increments. All such records shall be maintained in accordance with Generally Accepted Accounting Principles and shall be clearly identified and readily accessible. The Authority shall provide free access to the books and records at all times to the City and the Zone or their representatives and shall permit them to examine and audit the same and make copies thereof. The Authority shall 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 shall 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 which begins July 1.

C. Audit. At the end of each fiscal year (beginning with the fiscal year or fraction thereof during which this Agreement is executed), the Authority will have at its own expense an audit prepared by an independent Certified Public Accountant for that fiscal year that shall be submitted to the Authority, the Zone and the City within one hundred twenty (120) days after the end of the fiscal year. The Authority shall 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 or fraction thereof during which this Agreement is executed), the Authority will have at its own expense an audit of construction activities prepared by an independent consultant approved by the Planning 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 shall include an analysis of all expenditures for reasonableness and a review to insure that they conform with both the approved Project Plan and Financing Plan and any Development Agreements. The Authority shall furnish copies of this audit without cost to the City and the Zone Board.

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 shall be deposited. Any moneys received from investing and reinvesting the moneys paid by the City and the Zone to the Authority shall remain in this fund until used by the Authority for one of the purposes permitted by this Agreement, and may be commingled with other moneys of the Authority; provided, however, that these funds shall be accounted for separately. Moneys 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). Moneys 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 Subchapter C and D of Section 105 of the Code.

VII.

PUBLIC CONVENIENCE AND SAFETY

A. Observance of City Ordinances. The Authority shall observe City ordinances relating to obstructing streets, keeping alleys or other rights-of-way open and protecting same, and shall obey all laws and City ordinances controlling or limiting those engaged in the work.

B. Performance of Duties. The Authority shall perform its duties in a manner that will cause the least inconvenience and annoyance to the general public and the

property owners, and will exercise every necessary precaution for the safety of the property and the protection of any and all persons and property located adjacent to or making passage through said property.

VIII.

RIGHT OF OWNERSHIP

All permanent public facilities and equipment owned by City within the Zone shall remain the property of City, and such property shall not be disposed of by Authority. All property and improvements purchased by the Authority shall be the property of the Authority and shall be maintained by the Authority throughout the term of this Agreement and the Authority may lease, sell or otherwise dispose of such 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, it may be conveyed to the City at the time of such integration, at the City's discretion; however, all utilities, drainage facilities, public street improvements, sidewalks, and light fixtures shall be conveyed to the City subject to City policy. Upon termination of this Agreement, title to all such Authority property shall immediately vest in the City without the need for further action on the part of the City. The Authority shall provide an up-to-date inventory of all of its property and improvements as an attachment to its annual Budget.

IX.

EQUAL EMPLOYMENT OPPORTUNITY

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

X.

PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the City to stimulate the growth of minority and women-owned business 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 Disadvantaged Business enterprises to the extent consistent with the efficient performance of this Agreement.

Without limiting the generality of the foregoing, the Authority agrees that it will make Good Faith Efforts (as defined by the Director of Affirmative Action) to award the percentage of the value of contracts, pursuant to this Agreement, to Disadvantaged Businesses at the same rate as set forth in the City's Affirmative Action Program, as it may be in effect from time to time. While it is not a requirement of this Agreement that the Authority, in fact, meet or exceed these goals, it is a requirement that the Authority objectively demonstrate to the City that it has exerted Good Faith Efforts to meet these goals. To this end, the Authority shall maintain records showing (i) its subcontracts, supply agreements and support with and to Disadvantaged Business enterprises, (ii) subcontracts, supply agreements, and support with and to Disadvantaged Business enterprises, and (iii) specific efforts to identify and award subcontracts, supply agreements, and support with and to minority and women-owned business enterprises. The Authority shall submit quarterly reports of its Good Faith Efforts under this Article to the Director of Affirmative Action in such form and manner as the Director of Affirmative Action may prescribe.

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, shall be personally responsible for any liability arising under or growing out of the Agreement, or operations of the Authority under the terms of this Agreement.

XII.

CITY AND ZONE NOT LIABLE FOR DELAY

It is expressly agreed that in no event shall 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.

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 AND EMPLOYEES (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', OR SUBCONTRACTORS' (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 THE INDEMNIFIED PERSONS HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE AUTHORITY'S INDEMNIFICATION IS LIMITED TO $500,000 PER OCCURRENCE. THE AUTHORITY SHALL NOT INDEMNIFY THE INDEMNIFIED PERSONS FOR THE INDEMNIFIED PERSONS' SOLE NEGLIGENCE.

B. <u>INDEMNITY TO CITY PROPERTY</u>. 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. <u>RELEASE.</u> **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, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE INDEMNIFIED PERSONS' SOLE OR CONCURRENT NEGLIGENCE.**

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. <u>Indemnification Procedures.</u>

1. <u>Notice of Claims</u>. If the Indemnified Persons or the Authority receives notice of any claim or circumstances that could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

a. A description of the indemnification event in reasonable 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 10 day period, they do not waive any 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 shall then control the defense and any negotiations to settle the claim. Within 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 shall 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 said requirements shall in no way lessen or limit the liability of the Authority under the terms of this Agreement. The Authority shall 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.

XIV.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that the Authority shall 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 shall 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 shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between the City or the Zone and the Authority, its officers, agents, employees, contractors, and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the City or the Zone and the Authority. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant, or employee of the City or the Zone.

XV.

INSURANCE

The Authority shall obtain and maintain insurance coverage continuously during the term of this Agreement, and the Authority shall contract with each contractor engaged by it hereunder to maintain (and 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 and, in the case of "claims made" coverage, for an additional two years thereafter.

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

Coverage	Limit of Liability
Workers' Compensation	Statutory
Employer's Liability accident)	Bodily Injury by Accident $100,000 (each Bodily Injury by Disease $500,000 (policy limit) Bodily Injury by Disease $100,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations (for a period of one year after completion of work)	Bodily Injury and Property Damage, Combined Limits of $500,000 each Occurrence and $1,000,000 Aggregate
Automobile Liability Insurance (for vehicles used in performing under this Agreement, including Employer's Non-Ownership and Hired Auto Coverage)	$500,000 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 shall exceed $1,000,000, the Authority shall 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 Planning Director may approve the form of the insurance policies, but nothing the Planning 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 Planning Director do not waive the City's rights under this Agreement.

C. Issuers of Policies. The issuer of each policy shall have a certificate of authority to transact insurance business in Texas or 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 *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 shall be responsible for and bear (or shall contract with each applicable contractor to bear and assume) any claims or losses to the extent of any deductible amounts and waives (and shall 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 Planning Director 30 days' advance written notice. The Authority shall (and shall contract with each contractor to) give written notice to the Planning Director within five 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 shall pay (or shall contract with contractors to pay) all insurance premiums for coverage required by this Section, and the City shall not be obligated to pay any premiums.

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

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 Planning Director, the Authority shall furnish the Planning Director with certificates of insurance maintained by the Authority in accordance with this Section along with an affidavit from the Authority confirming that the certificates accurately reflect the insurance coverage maintained. If requested in writing by the Planning Director, the Authority shall furnish the City with certified copies of the Authority's actual insurance policies. If the Authority does not comply with the requirements of this Section, the Planning 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 or (2) purchase the required insurance with City or Zone funds and, notwithstanding the provisions of Article V of this Agreement, deduct the cost of the premiums from amounts due to the Authority under this Agreement. The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

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

XVI.

LAW TO BE OBSERVED

The Authority at all times shall 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 affects the conduct of the work, shall be at all times in effect, and no pleas of misunderstanding shall be considered on account of ignorance thereof.

XVII.

PERMITS

Before proceeding with the work hereunder, the Authority shall obtain and pay for any necessary permits and licenses, whether issued by the state, county, or city, and upon the request of the Planning Director furnish proof thereof.

XVIII.

INFORMATION

The Authority shall, at such times and in such form as City may require, furnish periodic 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 relative to the Authority and the Zone as may be requested by the City.

XIX.

COORDINATION WITH CITY OFFICIALS

The Authority will coordinate its activities with the City departments involved or providing services to the City Park Area through the Planning and Development Department at the request of the Planning Director. At the request of the Authority, the Planning 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.

XX.

ADDRESS AND NOTICE

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

City Park Redevelopment Authority
c/o Neal Rackleff
Coats, Rose, Yale, Ryman & Lee, P.C.
800 First City Tower
1001 Fannin
Houston, Texas 77002-6707

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

Director
Department of Planning and Development
City of Houston
P.O. Box 1562
Houston, Texas 77251

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

Reinvestment Zone Number Twelve
c/o Neal Rackleff
Coats, Rose, Yale, Ryman & Lee, P.C.
Houston, Texas 77002-6707

XXI.

APPLICABLE LAWS

This Agreement is made subject to the Constitution and laws of the State of Texas and the Charter of the City.

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, therefore, will be given no effect in construing this Agreement and shall not be restrictive of the subject matter of any article, section, or part of this Agreement.

XXIII.

SUCCESSORS AND ASSIGNS

This Agreement shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party. Nothing herein shall 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.

XXIV.

TERM AND TERMINATION, DISSOLUTION OF AUTHORITY

A. In General. This Agreement shall become effective, and its initial term shall begin, on the date of countersignature of the City Controller and end 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 shall 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 shall 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 shall be ineffective if within said 30-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 Increments 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.

XXV.

AMENDMENT OR MODIFICATIONS

Except as otherwise provided in this Agreement, this Agreement shall be 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 duplicate originals which shall be considered of equal force and effect.

(The remainder of this page intentionally left blank)

DATED this _____ day of _____, 2000.

CITY OF HOUSTON

_____
Mayor Date

ATTEST/SEAL:

_____
City Secretary Date

COUNTERSIGNED:

_____
City Controller Date

APPROVED:

_____
Director Date
Planning and Development Department

APPROVED AS TO FORM:

_____
Senior Assistant City Attorney
L. D. File No. _____

(The remainder of this page intentionally left blank)

CITY PARK REDEVELOPMENT AUTHORITY

_____

Chairman, Board of Directors

ATTEST:

_____

Secretary, Board of Directors

REINVESTMENT ZONE NUMBER TWELVE, CITY OF HOUSTON, TEXAS

_____

Chairman, Board of Directors

ATTEST:

_____

Secretary, Board of Directors

EXHIBIT A

Provisions of City's Equal Employment Opportunity Ordinance

EQUAL EMPLOYMENT OPPORTUNITY

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 n every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued ›ursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon ›ach subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as he contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, owever, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor s a result of such direction by the contracting agency, the contractor may request the United States to enter into such tigation 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 ty in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed all contain information as to the practices, policies, programs, and employment policies and employment statistics of the ntractor and each subcontractor.