

# Attachment IV

## Exclusive Negotiating Agreement

This **EXCLUSIVE NEGOTIATING AGREEMENT** (this "Agreement") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and between the Coliseum Advisory Board (the "CAB") acting on behalf of Bexar County, Texas (the "County"), and \_\_\_\_\_, a \_\_\_\_\_ (the "Developer"). The CAB and the Developer are collectively referred to as the "Parties" and individually as a "Party."

### RECITALS

- A. The Developer responded to a Request for Qualifications issued by the CAB under Texas Local Government Code §271.908 on \_\_\_\_\_, 2025 (the "RFQ") to serve as the master developer for the development of a project known as the Agricultural and Livestock Exhibition Buildings and Grounds (the "Project").
- B. In its response to the RFP, as such response was later modified (collectively, the "RFP Response"), the Developer proposed a project more particularly described therein, and the CAB has selected the Developer to execute this Agreement and negotiate a real estate transaction, including but not limited to a Development Agreement, a Ground Lease, or other documents ("Definitive Agreements"), to provide for the development the Project.
- C. The Parties wish to establish a formal relationship between them through which the Developer will perform the development services described in this Agreement, including developing the general design, construction, financial, budgetary, management, maintenance, and scheduling parameters that will serve as a guide for the delivering the Project.
- D. The CAB has determined that it is in CAB's best interests to establish and pursue a Project schedule to enable an estimated Project completion and occupancy by \_\_\_\_\_, with anticipated execution of the Definitive Agreements and Developer financing of the Project ("Financial Close") by \_\_\_\_\_ (the "Project Milestones").
- E. The CAB recognizes that to obtain more detailed Project cost and design information necessary to meet the Project Milestones, Project scoping and design must be further advanced. The CAB further recognizes that it will not achieve Financial Close for the Project unless it can issue necessary debt or equivalent to establish funding for the Project, including interim installment payments, which are predicated on having a final agreed Guaranteed Maximum Purchase Price ("GMPP") for the Project.
- F. Developer is willing to either fund or obtain financing to control the land needed for the Project and pay for professional services and other third-party expenses directly related to developing more detailed Project cost and design information, and the CAB desires Developer to take such actions to further CAB's interests in meeting Project Milestones.
- G. The CAB recognizes that deliverables developed pursuant to this Agreement will be provided to the CAB, per the terms of this Agreement, and that such deliverables represent significant value to the

CAB in advancing the Project because they serve as foundational documents and drawings that will allow the CAB to efficiently pursue advanced Project design without having to begin the design process anew.

- H. The CAB acknowledges that Developer's willingness to self-fund or obtain financing and incur Predevelopment Costs (as further defined below) on behalf of the CAB, in accordance with CAB's interests in response to the RFP, depends on the CAB's willingness to reimburse Developer for such costs as provided in this Agreement, and the CAB desires to provide such assurance of reimbursement to Developer.
- I. The CAB and Developer agree that the costs to be reimbursed to Developer after review and validation by the CAB are costs Developer has actually paid or committed to third-parties during the period from the Effective Date of this Agreement through the date of Financial Close or the earlier termination of this Agreement are those Predevelopment Costs directly related to controlling the land for Project and Project design and development, as reflected in Exhibit B. The CAB and Developer further acknowledge and agree that the estimated total Predevelopment Costs will not be exceeded, except as specifically authorized by the CAB.
- J. The CAB and Developer desire that the CAB will review and approve in advance the scope, deliverables and cost of any Project design and development work Developer proposes to undertake to refine Project costs and to meet the Project Milestones, in accordance with this Agreement.
- K. The CAB and Developer acknowledge and agree that this Agreement is intended to set forth the process by which, and conditions under which, the CAB agrees to be responsible for CAB-approved Predevelopment Costs, pursuant to the terms of this Agreement.
- L. The CAB and Developer agree that Predevelopment Costs to be paid by Developer through Financial Close are estimated at \$\_\_\_\_\_. Notwithstanding anything to the contrary in this Agreement, Developer also will incur interest charges related to the financing of the Development Costs prior to the CAB's reimbursement of the Predevelopment Costs of approximately \$\_\_\_\_\_ and may be required to fund acquisition costs to related to \_\_\_\_\_, which are not included in the Predevelopment Costs that will be reimbursed by the CAB at Financial Close. Therefore, the Developer's total Predevelopment Costs necessary to reach Financial Close are estimated to exceed \$\_\_\_\_\_, which will be paid under the Definitive Agreements (defined below). However, the CAB and Developer agree that the CAB's total liability cap under this Agreement is \$\_\_\_\_\_ with Developer at risk for all amounts above such cap, except as specifically authorized by the CAB.
- M. The CAB and Developer wish to memorialize their agreement regarding these matters by executing this Agreement.
- N. The Bexar County Commissioners Court authorized the CAB to execute this Agreement on \_\_\_\_\_.

## AGREEMENT

1. Exclusivity. In consideration of the mutual covenants and agreements herein, the sufficiency of which is hereby acknowledged, the Parties agree to work together in an exclusive and cooperative manner to undertake and pursue the successful development of the Project. Specifically, the Parties agree that during the Term of this Agreement, they shall not negotiate the sale, lease or development of the Property with any other person or entity.
  
2. General Description of Collaborative Process.
  - a. The Parties contemplate that:
    - i. the CAB shall own, operate, and maintain the completed Project;
    - ii. the Developer and the Development Team, as defined in Section 2.b, will provide all of the services required to control the land necessary for the Project and for the planning, programming, design, development, permitting, and funding of the Project necessary to achieve Financial Close (“Predevelopment Costs”);
    - iii. the Developer will initially pay all Predevelopment Costs for those services and the CAB will make an initial installment payment to the Developer to reimburse those costs upon Financial Close; and
    - iv. the Parties will negotiate and agree on the final maximum development cost of the Project and the timing of subsequent periodic installment payments to acquire completed capital components of the Project in the GMPP, all of which will be reflected in a final development business terms and operating pro forma (the “Final Real Estate Deal Terms”) that will provide the basis for negotiating and executing the Definitive Agreements needed to consummate the real estate transaction.
  - b. The Developer will work in a highly collaborative manner with the CAB, employing and leading its team of architectural and engineering consultants, specialists, lenders, and contractors (“Development Team”) through the planning, programming, design, funding, and construction phases of the development process for the Project.
  - c. The Developer will be responsible for the selection, contractual engagement, and supervision of the Development Team. The CAB shall have the right to approve the selection, engagement, and or replacement of the individual members of Development Team, which approval shall not be unreasonably withheld. Thereafter, the Developer and the Development Team will perform the planning, programming, design, development, funding, and construction of the Project.
  - d. Upon the completion of preliminary design, plans, cost estimates, and specifications for the Project, Developer will submit Final Real Estate Deal Terms and the GMPP to the CAB for approval. The Final Real Estate Deal Terms and GMPP will provide the basis for execution of the Definitive Agreements, which will establish the final maximum acquisition and development cost of the Project.

- e. Developer will secure and/or provide 100% of the funding for the Project costs, oversee and administer all aspects of the final development and construction of the Project, subject to installment payments by the CAB, and facilitate the CAB's acquisition of unencumbered title to the Property and the Project.

### 3. Pre-Development Costs.

- a. The Predevelopment Costs to be reimbursed by the CAB, either upon Financial Close in the first installment payment or as otherwise provided in this Agreement, means those costs incurred by Developer that are direct expenses incurred by Developer for controlling the land for the Project and for services or materials provided by a third party that are not increased by any dollar or percentage amount representing added profit, fee, or administrative or other charge and which have been documented by the Developer and approved by the CAB's representative. For purposes hereof, Predevelopment Costs shall be limited to and include only those costs related to the Project and incurred by Developer for contractors (and their subcontractors), design professionals, consultants (and their subconsultants), attorneys, other architectural and engineering design professionals (including costs of preconstruction services of third party project contractor(s)), land option payments, loan principal, interest, and fees as described below, related financing costs and legal fees, and other approved costs related to the Project.
- b. An estimate of the total Predevelopment Costs anticipated to be incurred under this Agreement is attached hereto as Exhibit B, which provides detailed costs outlays by month within each of the categories described in the accompanying narrative. No costs for Developer's labor are included as reimbursable expenses.

### 4. Consideration.

- a. Upon execution of this Agreement, the CAB shall pay the Developer the sum of One Thousand Dollars (\$1,000.00) (the "Contract Consideration") which amount has been bargained for and agreed to as consideration for Developer's exclusive right to negotiate a real estate transaction with the CAB to provide for the development of the Project. The Contract Consideration is in addition to and independent of all other consideration provided in this Agreement and is nonrefundable in all events.
- b. As further consideration for this Agreement, if this Agreement is terminated for any reason, other than as set forth in Section 4.c below, CAB shall reimburse Developer not to exceed \$ \_\_\_\_\_, subject to any agreed increase, in Predevelopment Costs incurred by Developer from and after the Effective Date of this Agreement through either termination under Section 5 or any earlier date CAB notifies Developer that it will terminate this Agreement pursuant to a right set forth herein.
  - i. Unless the Developer is in default under this Agreement, reimbursement of any and all CAB-approved Predevelopment Costs shall not be subject to set-off, deductions, abatement, reduction or withholding for any reason by the CAB, provided the CAB receives all Instruments of Service (defined below) in accordance with Section 4.b.ii.

Payment by CAB under this Section 4 shall be made to Developer within thirty (30) calendar days after Developer furnishes to CAB the Instruments of Service and any other documents required under Section 4.b.ii, provided that the CAB may in its discretion defer payment of up to 50% of the Predevelopment Costs until the first day of its subsequent fiscal year.

- ii. Upon receipt of payment from the CAB in accordance with this Agreement, Developer shall grant or cause to be granted to the CAB ownership and all rights to use, reproduce and distribute the instruments of service prepared by Developer's architect or other design professionals in connection with the Project (the "Instruments of Service"). Instruments of Service shall include any drawings, specifications, models, renderings or other materials prepared in connection with the Project, as well as any other documents related to the Project for which the CAB has an obligation to reimburse the Developer, as prepared by Developer's contractors, consultants, attorneys, and other such entities.
- c. The CAB shall have no obligation to reimburse Developer for Predevelopment Costs under this Section 4 in the event the Project fails to achieve Financial Close because of the following:
  - i. Developer's fraudulent act or willful misconduct;
  - ii. Developer is in default under this Agreement.

5. Term of this Agreement.

- a. The term of this Agreement (the "Term") shall commence on the Effective Date and, except with respect to any liabilities or obligations contained herein that expressly survive the termination of this Agreement, shall terminate upon the earlier of:
  - i the date on which the Parties have both executed the Definitive Agreements;
  - ii the date this Agreement is terminated by either party pursuant to a right set forth herein; or
  - iii \_\_\_\_\_ (the "Outside Date").
- b. If the Parties have both executed the Final Real Estate Deal Terms on or before the Outside Date, the Term shall be automatically extended to \_\_\_\_\_, or any other date the Parties agree on, to allow time for the Parties to finalize and execute the Definitive Agreements. If the Parties have not both executed the Final Real Estate Deal Terms on or before the Outside Date or executed the Definitive Agreements on or before \_\_\_\_\_, as the same may be extended hereunder, for any reason other than a default by either Party, then this Agreement shall automatically terminate on such date, except with respect to any liabilities or obligations contained herein that expressly survive the termination or expiration of this Agreement.

6. Designated Representatives of Each Party.

- a. For ease and clarity of communication and accountability, \_\_\_\_\_, will serve as designated representative and "point person" for the CAB. \_\_\_\_\_ will serve as the designated representative and "point person" for the Developer, for communication/interaction with each Party's Project team. All official communication about material issues related to the development of the Project must flow through these designated representatives responsible for the further dissemination of information to other members of their respective teams.
- b. The Parties agree that in order to facilitate an efficient working relationship throughout the Project planning, design, and construction periods, Developer will be the single point-of-contact and responsible to the CAB for the development of the Project. Developer will actively involve and make available other members of the Development Team to participate in regularly scheduled planning and progress meetings with the CAB and its designated project team ("CAB Project Team") to be held regularly through the design and construction phases of the Project. The Development Team will present ideas, concepts, and ultimately plans, specifications, a budget, and other proposals to the CAB Project Team, in an effort to provide updates on progress and to solicit input, feedback, and when appropriate, decisions and/or approvals on material matters pertaining to the development and delivery of the Project.

7. Basis for Negotiating Terms, Conditions, Plans, and Definitive Agreements.

- a. The Parties' negotiations under this Agreement will be based on:
  - i. the terms of the RFP and the RFP Response, which are incorporated herein by reference, subject to any revisions made by or under this Agreement;
  - ii. the terms of this Agreement;
  - iii. the initial real estate and development business terms, attached hereto as Exhibit C and incorporated herein by reference; and
  - iv. such other terms the Parties may agree on.
- b. The aforementioned documents collectively highlight the key terms, conditions, and plans for the Project as they are known or envisioned by the Parties as of the date of this Agreement. The Parties anticipate the terms of this Agreement may be expanded and made more specific as the Project development plans progress and as key assumptions are vetted. Such changes will be made as amendments to this Agreement or as terms included in the Definitive Documents.

- c. The Parties anticipate the final terms of their relationship will be finalized and effectuated through one or more real estate transactions, including without limitation the Definitive Agreements. The Definitive Agreements will contain the contractual terms for the final planning, programming, design, development, funding, construction, and acquisition of the Project. The number and breadth of the Definitive Agreements will be expanded and/or reduced during the term of this Agreement as Project assumptions are vetted and refined. The Definitive Agreements shall replace this Agreement upon execution of the same by each Party in its sole and absolute discretion.
- d. The Parties shall use their best efforts and act in good faith to negotiate and enter into the Definitive Agreements required to effect the real estate transaction described above, together with any other agreements the Parties agree to enter into that are advantageous to the development of the Project.
- e. Following good faith efforts between CAB and Developer to establish the cost estimates for the Project, if the CAB reasonably deems the Developer's cost estimates for the Project to be unacceptable for any reason, then CAB may terminate this Agreement for its convenience by providing the Developer five (5) Business Days' (defined herein) prior written notice.

8. Contemplated Project Scope and Phasing.

- a. It is contemplated that the Project will involve the development of a master planned district around the Frost Arena, including mixed-use development and parking to make it an activated community and destination for the citizens of and tourists coming to Bexar County.
- b. The target date for commencement of final programming, planning, design, and obtaining all necessary government permits and approvals for the Project is \_\_\_\_\_. The target date for execution of Final Real Estate Deal Terms, including the final agreed GMPP, is \_\_\_\_\_. The target date for execution of the Definitive Agreements is \_\_\_\_\_. The target date for occupancy of the Project is \_\_\_\_\_. These dates may be amended by mutual agreement of the parties.
- c. The Developer shall not be in default for failing to substantially complete the construction and occupancy of the Project by the target date, as amended, to the extent any delay resulting in such failure is caused by the CAB, including but not limited to the CAB's failure to provide timely approvals on a mutually agreed upon review schedule.
- d. Developer shall keep the CAB apprised of any delays in the planning, programming, design, development, funding, and construction of the Project. The Developer shall include time of the essence provisions in and strictly enforce all such provisions in all third party contracts.

9. Preliminary Development Activities. During the term of this Agreement and in consultation with the CAB, the Developer shall perform or cause to be performed all of the following preliminary development activities (collectively, the "Preliminary Development Activities"). All work products of the Predevelopment Activities will be submitted to the CAB's for review, comments, and approval,

as appropriate. Such approvals shall not be unreasonably withheld and will adhere to a mutually upon review schedule.

- a. Preparing a detailed development schedule, including a date by which the Parties will agree on the Final Real Estate Deal Terms;
  - b. Agreement with the CAB on the final real estate transaction structure that will be established in the Definitive Agreements.
  - c. Preparing contracts with any such professionals, consultants, and contractors for the performance of such planning, design, engineering, development, and construction services necessary for the completion of the Project.
  - d. Preparing detailed assessments of the Project site, including boundary/topographical surveys, soil borings and geotechnical testing, landscape drawings, water analysis, civil engineering analysis, and/or environmental site assessment.
  - e. Preparing preliminary drawings, conceptual designs, schematic designs, specifications, design development, and construction documents for the Project (collectively referred to as the "Plans"), and preliminary construction pricing and preliminary development analysis for the Project.
  - f. Further refinement of the Plans, including without limitation confirmation of the size of the Project in gross square feet, the number of parking spaces, value engineering of the Project based upon and necessary to satisfy any budget constraints and/or Project site constraints, and preliminary activities related to obtaining all government permits and approvals for the Project.
  - g. Life cycle cost analysis of the operational impacts of material and systems select in the design of the Project.
  - h. Periodically preparing and refining cost estimates for the Project.
  - i. Pro forma analysis related to the development, construction, and funding of the Project.
  - j. Arranging and negotiating the terms of the Developer's financing required for the Project.
10. Updates. The Developer shall keep the CAB informed as to the progress of all Preliminary Development Activities, weekly, at minimum. The Developer and the CAB agree to reasonably and timely cooperate with one another in connection with the Project, the performance of the Preliminary Development Activities, and the granting of any required approvals by the CAB or the County.
11. Funding of Preliminary Development Activities. The Developer has secured and budgeted \$ \_\_\_\_\_ for Predevelopment Costs to fund the Preliminary Development Activities during the term of this Agreement as set forth in Exhibit B. The Preliminary Development Activities shall be

performed directly by the Developer or by third parties engaged by the Developer. All actual and reasonable third party costs and expenses incurred or paid by the Developer in connection with the Preliminary Development Activities shall be funded by the Developer and shall be subject to approval by the CAB.

12. Termination of Agreement for Default. If either Party fails to comply with any of its material obligations under this Agreement, the other Party may provide the defaulting Party written notice setting out the default. The Party providing the notice may terminate this Agreement if the default continues for thirty (30) days after the defaulting Party's receipt of the written notice, provided that if such failure is not reasonably capable of being cured within such thirty (30) day period, the defaulting Party shall have such additional time as is reasonably necessary to cure such failure so long as the defaulting Party promptly commences curative actions and thereafter diligently pursues such curative actions. If the Developer terminates this Agreement under this section, the Developer's damages shall be limited to the amount of the Predevelopment Costs incurred prior to termination.
13. Termination of the Agreement for Other Reasons. If the CAB determines in its sole discretion to terminate this Agreement for its convenience at any time prior to Financial Close on the Project, it shall have the right, with thirty (30) days written notice to Developer, to terminate this Agreement with no obligation other than payment of Developer's Predevelopment Costs incurred prior to giving notice of such termination. If the Developer reasonably determines that it is unable to achieve one or more of the conditions in Section 4.c., Developer may terminate this Agreement for its convenience and shall receive no payment of its Predevelopment Costs incurred under this Agreement.
14. Representations and Warranties. Each Party represents and warrants to the other Party all of the following:
  - a. The Party has all requisite power and authority to enter into this Agreement and consummate the transactions set forth herein, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transaction set forth herein, and no permission, approval, or consent by any additional third parties or governmental authorities is required in order for the Party to enter into and consummate this Agreement.
  - b. This Agreement is a valid obligation of the Party and is binding upon and enforceable against the Party in accordance with its terms.
  - c. The consummation by the Party of this Agreement and the real estate transaction set forth herein do not, and will not, constitute a violation of any order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over the Party.
15. Assignment. The Developer shall not assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale, pledge or other hypothecation or transfer of stock or ownership interests in any other form of business entity interests or sale of assets), mortgage, pledge or otherwise transfer their respective interests in this Agreement without

the prior written consent of the CAB, which consent may be withheld in the CAB's sole and absolute discretion; provided, however, the Developer may assign its interest in this Agreement to an entity that directly or indirectly controls, is controlled by, or is under common control with the Developer ("Affiliate") without such prior written consent, so long as such Affiliate has comparable or greater financial standing, professional expertise and development capabilities as the Developer as of the Effective Date. The CAB shall not assign or transfer its interest in this Agreement without the prior written consent of the Developer, which consent may be withheld in the sole and absolute discretion of the Developer, nor may the CAB assign or transfer its interest in this Agreement to an authority or corporation created by the Bexar County Commissioners Court under statute whose governing board is comprised of the same persons as the Bexar County Commissioners Court without such prior written consent, provided however, such consent shall not be unreasonably withheld, delayed or conditioned by the Developer. Each Party who assigns this Agreement shall provide the other Party with a copy of the assignment.

16. Key Personnel.

- a. The Developer (and its Affiliate, if applicable) and CAB shall use their commercially reasonable efforts to have the Key Personnel perform their respective responsibilities identified in the RFP Response. In the event of any changes regarding any of the Key Personnel, other individuals of substantially equivalent seniority, experience and qualifications will be assigned to fulfill such responsibilities. The Developer shall provide written notice to the CAB of changes in its Key Personnel and their respective responsibilities and shall furnish to the CAB information on the seniority, experience and qualifications of any additional or substituted individuals.
- b. "Key Personnel" for the Developer means \_\_\_\_\_, the Manager of the Developer and \_\_\_\_\_, the project lead for the Architect's overall design of the Project and their respective successors from time to time

17. Confidentiality of Information and Negotiations.

- a. If the Developer provides information to the CAB, in whatever form or medium, concerning the operations or affairs of the Developer or an Affiliate or subsidiary thereof, whether developed prior to or on or after the Effective Date, that is generally considered under the law to be of a confidential or privileged nature, the CAB agrees that it will keep confidential and not disclose any such information submitted by the Developer in the course of the negotiations ("Confidential Information") except for disclosures:
  - i. in the process of discussions, meetings or conferences with its officers, agents, employees and representatives who reasonably need to know this information for purposes of evaluating, approving or effecting the transactions contemplated hereby;
  - ii. in response to a legal process or as otherwise required by law, including the Texas Public Information Act (the "Act") with prompt written notice being delivered to the Developer regarding such disclosure; or

- iii. in any manner to which the Developer consents in writing (or otherwise).
- b. Subject to any third-party rights under the Act, the CAB and the Developer agree that neither shall have the right to require the other to disclose attorney-client privileged communications or work product.
- c. The CAB and the County shall use reasonable efforts to provide prompt written notice to the Developer of any request received by them pursuant to the Act requesting Confidential Information or information collected, assembled or maintained for the Project and to which the CAB has contractual access, for the purpose of providing the Developer an opportunity to seek to protect such information from disclosure. Under the Act, documents collected, assembled or maintained for the CAB or the County and to which they access under the terms of a contract may be deemed public information, subject to the exceptions in the Act. The CAB makes no representation as to how the Attorney General of Texas will rule on any public information request, but agrees to reasonably cooperate with the Developer in asserting exemption claims under the Act, provided any extensive briefing or analysis of documentation will be the responsibility of the Developer.
- d. Upon reasonable request of the Developer, CAB shall provide reasonable assistance to the Developer with respect to any litigation, arbitration or any other dispute with a third party concerning the unauthorized use or disclosure by such third party of any Confidential Information.
- e. The terms of this Section 17 will survive the expiration or earlier termination of this Agreement, but will be superseded by the terms of the Definitive Agreements, if fully executed.

18. Right of Entry.

- a. During the term of this Agreement, the CAB or the County shall have the right to enter the Property upon twenty-four (24) hours' prior written notice to Developer for the sole and limited purpose of conducting inspections, tests, examinations, surveys, studies, and appraisals (the "Authorized Purposes") during the Term (the "Right of Entry"), subject to the terms, conditions, and covenants set forth herein and the reasonable requirements of the Developer's agreements with any land owners, which has been provided to the CAB.
- b. All inspections, tests, examinations, surveys, and appraisals performed by or for the CAB on the Property shall be at the CAB's sole expense and in accordance with applicable laws.
- c. If, for any reason, the Parties do not execute the Definitive Agreements, the CAB shall repair any damage to the Property caused by the CAB, or its agents, contractors or employees, arising out of or concerning this Right of Entry, and restore the Property to substantially the same condition it was in prior to the occurrence of damage. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

19. Limitations of this Agreement. The execution of this Agreement by the Parties shall not be construed as an offer or an acceptance by either Party to sell, purchase, or lease the Property. Execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations

according to the terms hereof, reserving final discretion to each Party. Terms for the sale, purchase, or lease the Property shall be established only in Definitive Agreements executed by the Parties.

20. The CAB 's Right to Obtain Information and to Consult with Others. The CAB reserves the right to obtain information concerning the transaction described by this Agreement from any person, entity, or group.
21. Notices. Formal notices, demands and communications between the Parties will be sufficiently given if, and will not be deemed given unless delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

Developer:

with a copy to:

CAB:

with a copy to:

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of registered mail four (4) Business Days following deposit of such instrument in the United States Mail. "Business Day" means Monday through Friday, except for state or federal holidays.

22. Injunctive Relief. The Parties represent and acknowledge that the covenants in this Agreement are reasonably necessary for the protection of the interests of the either Party. The Parties agree that any breach of these covenants by the breaching Party may result in irreparable damage and injury to the non-breaching Party, and that the non-breaching Party may be entitled, in addition to monetary damages and to any other remedies available to such Party under this Agreement and at law, to injunctive relief in any court of competent jurisdiction. Each Party also agrees that he, she or it may be responsible for all damages incurred by the non-breaching Party proximately caused by any breach of the restrictive covenants contained in this Agreement. For any claim alleging a breach of this Agreement by the breaching Party, the non-breaching Party to this Agreement shall be entitled to recover all costs and attorneys' fees incurred by it from such breaching Party if it prevails in such claim. The Parties agree to waive any requirement for the security or posting of any bond in connection with such remedy.
23. Capacity. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE CAB IS EXECUTING THIS AGREEMENT ON BEHALF OF THE COUNTY IN ITS GOVERNMENTAL FUNCTION AND CAPACITY SOLELY AS THE PURCHASER OF THE PROJECT AND NOT AS AN EXERCISE OF ITS REGULATORY POWERS (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY OF THE COUNTY). FURTHER, THE DEVELOPER TEAM SPECIFICALLY ACKNOWLEDGES THAT

NEITHER THE CAB NOR THE COUNTY CAN CONTRACT IN ANY MANNER REGARDING THE EXERCISE, AND NOTHING CONTAINED IN THIS AGREEMENT CONSTITUTES THE COUNTY'S EXERCISE OF ITS REGULATORY POWERS OR WAIVER OF ITS SOVEREIGN IMMUNITIES.

24. Amendment or Modification to this Agreement. This Agreement may be amended, modified and/or restated from time to time only by a written instrument adopted by all of the Parties.
25. Interpretation. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties executing this Agreement hereby agree to the terms and conditions contained herein, as it may from time to time be amended according to its terms.
26. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The obligations of the Parties are performable in Bexar County, Texas, and venue for any dispute arising hereunder will lie exclusively in the state courts located in Bexar County, Texas.
27. Entire Agreement. This Agreement contains the entire agreement of the Parties. This Agreement may be modified only by written agreement signed by the duly authorized representatives of the Parties hereto.
28. Captions. Captions at the beginning of each Section of this Agreement are for reference only and will in no way define or interpret any provision hereof.
29. Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of a Party, the other Party shall execute such reasonable additional instruments and take such additional actions as the requesting Party may deem necessary to effectuate this Agreement.
30. Construction. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine, non-binary, or neuter gender, singular or plural, as the identity of the person, persons or other reference in the context requires. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. Any reference to the Act or other statutes, laws, or regulations, forms or schedules shall include the amendments, modifications, supplements, or replacements thereof. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Whenever used herein, "or" shall include both the conjunctive and disjunctive, "any" shall mean "one (1) or more," and "including" shall mean "including without limitation."
31. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement.

32. Waivers. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any agreement or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
33. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one (1) right or remedy by any Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.
34. Successor and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.
35. Severability. If any provision of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable to any extent, the application of such provision to other persons or circumstances and the remainder of this Agreement will not be affected thereby and will be enforced to the greatest extent permitted by law.
36. Relationship of Parties; No Third Party Beneficiaries. The CAB and the Developer are not partners or joint venturers, nor is either the principal or agent of the other, and nothing herein will be construed to create any such relationship between the CAB and the Developer, or to render either the CAB or the Developer liable for any obligations of the other. The only beneficiaries of this Agreement are the CAB and the Developer. There are no third-party beneficiaries.
37. Time of Essence. Time is of the essence with respect to the performance of each of the obligations and deadlines contained in this Agreement.
38. Attorneys' Fees. If any legal action is brought to enforce or interpret this Agreement or recover for its breach, the prevailing Party shall be entitled to recover from the other Party the reasonable attorneys' fees and costs incurred by the prevailing Party in the action, in addition to any other relief to which the prevailing Party is entitled.
39. Subject to Appropriations. If at any time during the term of this Agreement the Bexar County Commissioners Court fails to provide funding or adequate funding for this Agreement, the CAB may, upon giving the Developer written notice of such failure to fund and termination, terminate this Agreement without any further liability, other than the CAB's obligations set forth in Section 13 of this Agreement.

**IN WITNESS HEREOF**, this Agreement has been duly executed by the Parties hereto on the respective dates appearing opposite each Party's signature, to be effective as of the Effective Date.

DEVELOPER:

COLISEUM ADVISORY BOARD

Date: \_\_\_\_\_, 2018

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

EXHIBIT "A"

PROPERTY DESCRIPTION

DRAFT

**EXHIBIT "B"**

**PREDEVELOPMENT COST SCHEDULE**

DRAFT

**EXHIBIT "C"**

**INITIAL REAL ESTATE AND DEVELOPMENT BUSINESS TERMS**

**DRAFT**