



**AGENDA**  
**HIDALGO COUNTY**  
**COMMISSIONERS COURT**  
**MEETING**  
**January 27, 2015**  
**11:00 A.M.**

**NOTICE is hereby given in accordance with Chapter 551, Texas Government Code, that a SPECIAL MEETING of the Commissioners' Court will be held at Edinburg Council Chambers, 415 W. University Drive, Edinburg, Hidalgo County, Texas. Discussion and possible action relating to the following business will be transacted:**

- 1. Roll Call**
- 2. County Judge's Office:**
  - A. AI-48226** 1. Approval of Interlocal Agreement by and among City of Edinburg, Hidalgo County, and Tax Increment Reinvestment Zone Number Four, City of Edinburg, allowing for Hidalgo County to participate in the Tax Increment Reinvestment Zone  
2. Appointment of one (1) board member to represent the County of Hidalgo on the Tax Increment Reinvestment Zone Number Four, City of Edinburg Board of Directors
  - B. AI-48235** Appointment of two (2) Board Members to represent the County of Hidalgo on the Local Government Finance Corporation with the City of Edinburg
  - C. AI-48227** 1. Discussion and possible action on Order approving Agreement to terminate Economic Development Agreement relating to The Shoppes at Rio Grande Valley in Tax Increment Reinvestment Zone Number One, City of Edinburg.  
2. Discussion and possible action on Order approving Amendment to Interlocal Agreement with the City of Edinburg relating to Tax Increment Reinvestment Zone Number One, City of Edinburg
  - D. AI-48234** Discussion and possible action on Order approving Amendment to Interlocal Agreement with the City of Mission relating to Tax Increment Reinvestment Zone Number One, City of Mission
- 3. Budget & Management - Sergio Cruz:**

- A. **AI-48243** Discussion, consideration, and approval to pay the UT System 2014 Support Payment, in the amount of \$1,000,000.00 pursuant to the Chapter 381 Economic Development Agreement between the University of Texas System and Hidalgo County, with authority for County Treasurer to issue payment/check after review, audit, and processing procedures are completed by County Auditor.

**4. Adjourn**

AI-48226

County Judge's Office 2. A.

CC REGULAR

**Meeting Date:** 01/27/2015

**Submitted By:** Monica Badillo,  
EXECUTIVE OFFICE

**Department:** EXECUTIVE OFFICE

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**Information**

**CAPTION**

1. Approval of Interlocal Agreement by and among City of Edinburg, Hidalgo County, and Tax Increment Reinvestment Zone Number Four, City of Edinburg, allowing for Hidalgo County to participate in the Tax Increment Reinvestment Zone
2. Appointment of one (1) board member to represent the County of Hidalgo on the Tax Increment Reinvestment Zone Number Four, City of Edinburg Board of Directors

**BACKGROUND**

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**Fiscal Impact**

**Attachments**

draft

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**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Purchasing Department	Monica Badillo	01/23/2015 04:24 PM
Form Started By: Monica Badillo		Started On: 01/23/2015 10:58 AM
Final Approval Date: 01/23/2015		

THE STATE OF TEXAS  
COUNTY OF HIDALGO

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CITY OF EDINBURG

### INTERLOCAL AGREEMENT

In consideration of the covenants set forth herein, and subject to the terms and conditions herein, the Parties (as defined below) hereby agree to the terms and conditions of this Agreement (as defined below).

#### I. PARTIES & INDEX

##### A. Parties

1. THIS INTERLOCAL AGREEMENT (the "Agreement") is made by and between the CITY OF EDINBURG, TEXAS (hereafter referred to as "City"), a Texas General Law City, acting through its City Manager pursuant to Ordinance 2013-3693 passed and approved by the City Council on November 9, 2013, HIDALGO COUNTY (hereafter referred to as "County"), a political subdivision of the State of Texas, and REINVESTMENT ZONE NUMBER FOUR, CITY OF EDINBURG, TEXAS, a reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code, (hereafter referred to as the "Zone", as hereafter defined) acting by and through its duly authorized Board of Directors, established to administer, manage, and/or operate the Zone pursuant to Sections 311.009(b) and 311.010, Texas Tax Code ("Zone Board"). Collectively, the City, County, and Zone may be referred to as the "Parties". This Agreement is made pursuant to Chapter 791, Texas Government Code and Chapter 311 of the Texas Tax Code for the participation of City and County in the Edinburg City Development Project.

2. The initial addresses of the Parties are listed below. Each party may designate a different address by giving the City, County, Zone Board and County Auditor at least ten (10) days prior written notice.

CITY:

City of Edinburg  
916 S. Mike Chapa  
Edinburg, Texas 78562  
Attention: Richard H. Garcia, Mayor

COUNTY:

County of Hidalgo  
302 W. University Drive  
Edinburg, Texas 78540  
Attention: Ramon Garcia, Hidalgo County Judge

With Copy to:

Zone Board :

City of Edinburg – TIF Reinvestment  
Zone #4  
\_\_\_\_\_  
Edinburg, Texas \_\_\_\_\_  
Attention: Richard H. Garcia, Chairman

With Copy to:

HIDALGO COUNTY AUDITOR:

Hidalgo County Auditor  
2808 South Business Hwy 281  
Edinburg, Texas 78539  
Attention: Attention: Ray Eufrazio, CPA

## B. Index

This Agreement consists of the following sections:

<u>Section</u>	<u>Description</u>	<u>Page</u>
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II.	Definitions	2
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VII.	Miscellaneous	11
Exhibit "A"	Project Plan	
Exhibit "B"	City of Edinburg Ordinances	

## C. Parts Incorporated

All of the above-described exhibits are hereby incorporated into this Agreement by this reference for all purposes.

## II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

1. "Administrative Costs" means reasonable costs directly incurred by a Participating Taxing Entity (as hereinafter defined) related to its agreement to participate in the development of the Zone, as described in this Agreement. These costs include, but are not limited to, costs and expenses for legal review and financial analysis related to the Zone incurred prior to entering into this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective. The aggregate Administrative Costs over the life of the Zone are estimated to be \_\_\_\_\_ dollars (\$\_\_\_\_,000). The only taxing entity to receive administrative expenses is the County.
2. "Agreement" means this Interlocal Agreement.
3. "Agreement Term" has the meaning set forth in Section VI.A. below.
4. "Applicable M&O Tax Rate" means for any given year the lesser of (i) the Base Year County M&O Tax Rate and (ii) the M&O Tax Rate for the given year.
5. "Available Tax Increment" shall mean the "Tax Increment," as defined below, less the Administrative Costs of the County.
6. "Captured Appraised Value" means the captured appraised value of the Zone, as defined by Section 311.012(b), Texas Tax Code (and as said Code may be amended from time to time); e.g., the total appraised value in a given year of all real property taxable by a participating taxing entity and located in the Zone for that year less the total appraised value of that property in 2013, the base year of the Zone.

7. “City” has the meaning set forth in Section I.A.1 above, and includes its successors and assigns.
8. “County” has the meaning set forth in Section I.A.1 above.
9. “County M&O Tax Rate” means that portion of the ad valorem tax rate used by the County for Maintenance and Operation. The County M&O Tax Rate may change from time to time. The County M&O Tax Rate as of January 1, 2013 (the Base Year), was \$0.5225 per \$100 dollars of valuation on the Captured Appraised Value and may be changed by the County during the term of the Zone.
10. “Maximum County Contribution” has the meaning set forth in Section IV.A.1 below.
11. “Participating Taxing Entity” or “Participating Taxing Entities” means, singularly, a taxing unit participating in the Zone, and collectively, two or more taxing units participating in the Zone, and may include City and County.
12. “Parties” has the meaning given such term in Section I.A.1 above.
13. “Project” refers to the City of Edinburg Proposed Public Improvements identified in the Project Plan.
14. “Project Costs” means the items set forth and described in Section 311.002(1), Texas Tax Code, that are included in the Project Plan for the Project. The Project Costs include, but are not limited to, public infrastructure improvements and related capital costs; including streets; streetlights; drainage; gas, water and sewer utilities; sidewalks; landscaping; and related facilities; railroad facilities; fencing; and rights-of-way.
15. “Project Plan” means the Final Project Plan and Financing Plan for Reinvestment Zone Number Four, City of Edinburg, Texas, Edinburg, Texas Arena Development Program January 15, 2015 as adopted by the Board of Directors of the Zone on January \_\_, 2015 and approved by the City Commission of the City on \_\_\_\_\_, 2015 and attached hereto as Exhibit “A”.
16. “Tax Increment” for a Participating Taxing Entity means the total amount of ad valorem taxes levied and collected each year by that Participating Taxing Entity each year on the Captured Appraised Value of taxable real property in the Zone. Further, with respect to the County, this term shall be further limited to the total amount of ad valorem taxes levied and collected only on behalf of the County each year.
17. “Tax Increment Base” means the total appraised value of all real property taxable by a Participating Taxing Entity and located in the Zone as of January 1, 2013, the year in which the Zone was designated.
18. “Tax Increment Fund” means the tax increment fund created by the City for the deposit of Tax Increments for the Zone, entitled “Reinvestment Zone Number One City of Edinburg, Texas Tax Increment Fund”.
19. “Tax Increment Payment” means the amount of the Tax Increment that a Participating Taxing Entity is required to deposit annually into the Tax Increment Fund in accordance

with this Agreement and the Project Plan.

20. The "term of the Zone" has the meaning set forth in Section III.A below.
21. "TIRZ#1" means Reinvestment Zone Number One, City of Edinburg.
22. "Transportation Zone" means Transportation Reinvestment Zone Number Two, Hidalgo County.
23. "Zone" means Reinvestment Zone Number Four, City of Edinburg, the description of which is contained in Exhibit "B", attached hereto.
24. "Zone Board" has the meaning set forth in Section I.A.1 above.

### III. BACKGROUND

A. The City Commission of City OF Edinburg on October 15, 2013, expressed the City's intent to create a tax increment financing reinvestment zone by approving Resolution 2013 -\_\_\_\_\_ to support revitalization activities for the Zone, by entering an "Agreement For Services" with TIF Service of South Texas. On November 19, 2013, the City Council of the City passed and approved Ordinance 2013-3697, which created the Zone and Ordinance 2013-3693 appointing a board of Directors for the Zone. The Zone will provide funding for public improvements within the Zone. The Zone is projected to terminate on December 31, 2045, unless earlier termination occurs under this Agreement (the "term of the Zone"), but the County's participation in the Zone, including all obligations of the County to make Tax Increment Payments will be construed as if the term of the Zone ended on December 31, 2045.

B. The City approved the Project Plan on January \_\_\_, 2015. The City and the County agree to participate in the Zone and to deposit their respective Tax Increment Payments to the Tax Increment Fund, in accordance with the terms, and in consideration for the agreements, set forth herein. The Tax Increment Fund was authorized by Ordinance No. 2015- \_\_\_ attached hereto as Exhibit "B." The County hereby acknowledges receipt of notice of the initial creation of the Zone. The City represents and warrants that it complied with all legal requirements and notice requirements in the creation of the Zone.

C. The Parties hereto agree that, other than bonds or notes issued pursuant to §311.015 of the Texas Tax Code, no tax-supported public debt instrument will be issued by the City or the Zone Board to finance any costs or improvements on the Project.

D. Based on information submitted to the County by the City and the Zone, the County has determined that pursuant to Section VI.3.a.i. the Amended and Restated Tax Increment Reinvestment Participation Policy for Hidalgo County special circumstances exist with respect to the Project and the County in its discretion is opting to participate at 100% of the Applicable M&O Tax Rate, subject to the terms and conditions contained herein.

E. The City previously created TIRZ#1. While the Project is not within TIRZ#1, in accordance with Section 311.010(b) of the Texas Tax Code, TIRZ#1 is authorized to use tax increment revenues generated within TIRZ#1 to pay the costs of providing "areas of public assembly," such as the Project, in or out of the TIRZ#1. Pursuant to authority granted in Section 311.011(e) of the Texas Tax Code, on January 20, 2015, the City Council of the City approved Ordinance No. 2015-\_\_\_\_\_ for the purpose of amending the final project and reinvestment zone financing plan related to TIRZ#1 to incorporate being

able to use tax increment payments generated within TIRZ#1 to support the financing related to the Project in the Zone.

IV. RIGHTS AND OBLIGATIONS OF THE COUNTY

A. Tax Increment Participation by the County

1. Subject to the limitations set out in this Agreement, the County agrees to participate in the Zone by contributing to the Tax Increment Fund an amount equal to 100% of the revenue generated from the Available M&O Tax Rate as assessed and collected on the tax increment for the respective tax year. In no event shall the County contribution to the Tax Increment Fund be greater than \_\_\_\_\_ dollars (\$\_\_\_\_\_) (the "Maximum County Contribution"), over the life of the Zone (which for purposes of this provision will be deemed to end no later than December 31, 2045) beginning with the 2016 tax year (no tax increment shall be payable by the County for any prior tax year).

2. The Parties hereto agree that the County's contribution to the Tax Increment Fund shall be used to fund Project Costs including construction of public infrastructure improvements to support the development and revitalization efforts in the Zone. The County's contributions to the Tax Increment Fund shall end when (a) it has contributed the Maximum County Contribution, or (b) when it has made contributions of all Tax Increment Payments, as specified in the Project Plan, attributable to all periods through the end of the County's fiscal year 2045 (ending on December, 2045), or (c) when the City and County have contributed an aggregate of Twenty Nine Million, Seven Hundred Eighty Five Thousand, Four Hundred Sixteen dollars (\$29,785,416) to the Tax Increment Fund, including any amounts contributed to the Project from TIRZ#1, whichever occurs first.

B. Tax Increment Payment

1. a. County's obligation to contribute its Tax Increment Payment to the Tax Increment Fund, as provided in Section IV.A of this Agreement, shall accrue as the County collects its Tax Increment. The Parties hereto agree that all ad valorem property taxes collected each year by the County that are attributable to real property in the Zone shall first constitute taxes on the Tax Increment Base and after the total amount of taxes on the Tax Increment Base have been collected, then the remaining ad valorem taxes collected shall constitute the Tax Increment.

b. County agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2015 by the later of (i) all tax accounts having been coded by the Hidalgo County Appraisal District, the Hidalgo County Tax Office having received the list of tax accounts, collection reports having been provided to the Hidalgo County Auditor's Office, and the information required under Section 311.016 of the Tax Code having been provided to the County, (ii) May 1st, 2016, and (iii) 30 days after the full execution and delivery of this Agreement by all Parties. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received up to January 31, 2016, but only for tax year 2015.

c. For subsequent payments, the County agrees to contribute its yearly Tax Increment Payment to the Tax Increment Fund annually not later than the 90th day after the delinquency date for the County's property taxes (or the first business day thereafter) following the end of each tax year. The amount of each Tax Increment Payment shall be based on the Tax Increments that are

received up to January 31st following the end of the tax year, but which have not been previously deposited in the Tax Increment Fund, during the annual periods preceding each deposit date.

d. Under no circumstances shall the County be required to participate in the Zone with taxes attributable to periods after 2045.

e. Administrative Costs in the amount of one thousand dollars (\$1,000) per year will be reimbursed to the County by deduction from the annual payment made to the Tax Increment Fund (with any Administrative Costs in excess of such amount being reimbursed to the County pursuant to Section V.3. below, not to exceed an aggregate amount of \_\_\_\_\_ thousand dollars (\$\_\_,000).

f. The City shall request collection reports from the Hidalgo County Tax Assessor Collector and provide a copy of these reports along with a payment request detailing the payment calculation as illustrated in the chart in subsection g. below to the County one month prior to a payment required to be made under this Agreement.

g. The chart below is an example of the calculation of the County's Tax Increment Reinvestment Zone payment amount.

<b>Tax Increment Reinvestment Zone (TIRZ) Payment Calculation</b>	<b>EXAMPLE</b>
TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD))	\$ 100,000.00
<i>(Multiplied by)</i> Hidalgo County Current (GHD) Tax Rate (.59/100)	0.0059
GHD Actual Tax Levy for all real property tax accounts located within the TIRZ	<b>\$ 590.00</b>
TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD))	\$ 100,000.00
<i>(Less)</i> Base Year Real Property Certified Appraised Value for Tax Accounts located within the TIRZ (Provided by HCAD)	\$ 10,000.00
<b>Captured Appraised Value</b>	<b>\$ 90,000.00</b>
Captured Appraised Value	\$ 90,000.00
<i>(multiplied by)</i> Contribution Rate (Available M&O Tax Rate) (.51/100)	0.0051
<b>Tax Levy Due to TIRZ</b>	<b>\$ 459.00</b>
TIRZ Collections (for February 1 through January 31) as per Collections Reports provided by Hidalgo County Tax Office	\$ 300.00
<i>(divided)</i> GHD Actual Tax Levy for all Real Property tax accounts located within the TIRZ	\$ 590.00
<b>Percent Collected of Actual Levy</b>	<b>50.85%</b>
Tax Levy Due to TIRZ	\$ 459.00
<i>(Multiplied by)</i> Percent Collected of Actual Levy	50.85%
<b>TIRZ PAYMENT AMOUNT</b>	<b>\$ 233.39</b>

2. One month prior to a payment required under Section IV.B. of this Agreement, the City shall provide to the County an updated fact sheet that includes detail as to what portion of the Project has been completed to date, a schedule of what portion of the Project is to be completed in the following year and a current roster of the Zone's board members, including the term of each board member, the entity that appointed the board member, the date for the next annual meeting and a formal request for payment. In addition to and as part of the City's fact sheet, the City shall supply the County with all information as required under Section 311.016 of the Texas Tax Code on or before the 90th day following the end of the fiscal year of the City.

3. In the event there is a conflict between the Parties in regards to the amount of the Tax Increment owed by the County, the Hidalgo County Auditor will make the final determination as to the amount of any Tax Increment owed by the County under this Agreement. The annual Captured Appraised Value for the real property contained within the Zone shall be determined by the Hidalgo County Appraisal District on the assessed appraised values and the Hidalgo County Tax Offices' verification of collections in regards to the real property contained with the Zone. If the certified taxable value changes after the initial tax increment payment has been made, the change in value will not be included in the tax payment in the upcoming years.

4. Any delinquent deposit by the County of a Tax Increment Payment under this Agreement shall be administered as provided in Sections 311.013(c) and 311.013(c-1) of the Texas Tax Code, which states as follows:

"(c) Notwithstanding any termination of the reinvestment zone under Section 311.017(a) and unless otherwise specified by an agreement between the taxing unit and the municipality or county that created the zone, a taxing unit shall make a payment required by Subsection (b) [Tax Increment Payment] not later than the 90th day after the later of:

(1) the delinquency date for the unit's property taxes; or

(2) the date the municipality or county that created the zone submits to the taxing unit an invoice specifying the tax increment produced by the taxing unit and the amount the taxing unit is required to pay into the tax increment fund for the zone.

(c-1) A delinquent payment incurs a penalty of five percent of the amount delinquent and accrues interest at an annual rate of 10 percent."

The Parties expressly agree that the County shall not owe any penalty or interest on Tax Increments attributable to taxes that have been levied, but not received by the County. Further, the County shall not be liable for the payment of any penalties or interest if the fact sheet and payment request required under Section IV.B.2 and the report required under Section 311.016 of the Texas Tax Code are not timely submitted to the County or in any situation in which the City is not obligated to pay penalties and interest.

5. The City and the Zone agree to comply with the Project Plan. The City and the Zone agree to provide prior written notice to all Participating Taxing Entities of a proposed material change (by which is meant any change that would constitute at least a twenty percent (20%) increase or decrease in either the Project Cost or the scope and scale of the Project) to the Project Plan; provided that any

change that is not approved by the County shall not change the amount of Tax Increment Payments due from the County. The City shall have the right to amend and modify the Project Plan without providing prior written notice to the Participating Taxing Entities so long as such amendment or modification does not constitute a material change.

6. If the City materially breaches this Agreement, then a Participating Taxing Entity may provide written notice to the City and the Zone (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) stating its intent to terminate its participation in the Zone and detailing its objection(s) or concern(s). If the objections and/or concerns, as set out in the notice, are not resolved within 90 business days from the date of such notice, then County may discontinue its Tax Increment Payments and terminate its participation in the Zone.

7. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the County shall not have any obligation or responsibility for any costs or expenses associated with the development of the Zone or the implementation of the Project Plan, including, without limitation, any obligation to pay or repay any bond or other debt issued by another Participating Taxing Entity, the Zone or the Zone Board relating to the Zone or any costs associated with the operation of Zone, the Project or any other projects relating thereto.

8. Notwithstanding anything herein to the contrary, the County's total Tax Increment Payment to the Tax Increment Fund over the term of the Zone shall not the Maximum County Contribution, plus any applicable penalty, which penalties are, to the extent permitted by applicable law and/or interest allowed in Section 311.013 of the Tax Code, subject to the limitations in Section IV.B.4.

9. a. *General Provisions.* Subject to the provisions of this Agreement,, the County agrees to participate at one hundred percent (100%) of the Applicable M&O Tax Rate per \$100 valuation on the Captured Appraised Value) of real property in the Zone. [The City represents and warrants that none of the real property in the Zone is in the Transportation Zone.]

b. *Transportation Zone Overlap.* Notwithstanding anything to the contrary contained herein, in the event any of the property within the Zone is also within the Transportation Zone, during any period with respect to which the County is obligated to pay part of the tax increment on such real property in the Zone to the Transportation Zone, in lieu of the 100% of Applicable M&O Tax Rate specified above, the County contribution to the Zone with respect to real property that is within the overlap between the Transportation Zone and the Zone shall not exceed fifty percent (50%) of the Applicable M&O Tax Rate.

c. *Greater County M&O Tax Rate.* If the County M&O Tax Rate for any given year is greater than the Applicable M&O Tax Rate per \$100 valuation on the Captured Appraised Value during any year during the term of the Zone, the County shall retain all taxes collected in excess of the Applicable M&O Tax Rate per \$100 valuation on the Captured Appraised Value and to the extent any such excess has been contributed into the Tax Increment Fund, such excess shall be promptly refunded to the County.

10. County taxes that are delinquent for more than five years will be considered uncollectible and shall not be included in the tax increment payment.

11. Upon the occurrence of any event that allows the City to terminate hereunder, the County shall have the right to withhold tax increment payments under this Agreement until such time as such event is cured, and the County shall not incur any penalties or interest with respect to any such withheld payments notwithstanding any provision herein to the contrary.

C. Management of the Zone

1. The Zone shall in all respects be managed by the Zone Board, including the Director appointed by the County. The Zone Board shall have all powers allowed under Chapter 311 of the Texas Tax Code to manage the Zone and carry out the Project and Finance Plan. The Participating Taxing Entities, during the term of this Agreement, may inspect the Project site and review Project plans and drawings at times and intervals that will not interfere with ongoing operations.

2. The Zone Board shall be composed of five (5) members, as allowed under Section 311.009(b) of the Texas Tax Code. The County shall have the right to appoint \_\_\_\_\_ members of the Zone Board.

D. Expansion of the Zone

Notwithstanding anything to the contrary contained herein, the obligation of the County to participate in the Zone is limited to the description of the Zone in Exhibit "B" attached hereto and is subject to the terms of this Agreement. The County's participation shall not extend to the Tax Increment on any additional real property added to the Zone by the City unless the County approves such participation in writing.

V. RIGHTS AND OBLIGATIONS OF CITY AND ZONE

A. Tax Increment Participation by the City

Subject to the terms of this Agreement and the City agrees to participate in the Zone by contributing to the Tax Increment Fund \_\_\_\_\_ percent (\_\_\_\_) of its Tax Increment each year during the term of this Agreement, beginning with the 2015 tax year. The City's contributions to the Tax Increment Fund shall end when the City has contributed the all Tax Increments attributable to periods before the Zone termination date in 2045.

B. Tax Increment Payment

1. The City's obligation to contribute its Tax Increment Payment to the Tax Increment Fund as provided above in Section V of this Agreement shall accrue as the City collects its Tax Increment. The City agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2015 by May 1, 2016. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received through January 31, 2016, but only for the tax year 2015 beginning January 1, 2015. For subsequent Tax Increment Payments, the City agrees to contribute its Tax Increment Payment to the Tax Increment Fund semi-annually on or before March 10th and August 10th (or the first business day thereafter) of each tax year. Any delinquent deposit of a Tax Increment Payment by the City under this Agreement shall be administered as provided in Sections 311.013(c) and (c-1) of the Texas Tax Code (or its successor provision).

2. The County, the City and the Zone expressly agree that the County and the City shall not owe any interest on Tax Increments that have been levied, but not received by the County or the City by the delinquency dates specified herein.

C. Financing of Project Costs

Each Participating Taxing Entity shall participate in the payment of Project Costs only to the extent described herein. The City and the Zone shall be entitled to enter into any other agreements for the City or the Zone to pay Project Costs and other reasonable expenses from the Tax Increments paid into the Tax Increment Fund without the consent of any other Participating Taxing Entity, but they will provide notice of such agreement(s) to each Participating Taxing Entity.

D. Disbursement of Funds in the Tax Increment Fund

1. Each Participating Taxing Entity agrees the Zone Board shall administer the Tax Increment Fund on behalf of the Zone, pursuant to Ordinance No. 2015-\_\_\_\_ passed and approved by City Commission of the City on \_\_\_\_\_, 2015, and the Project Plan approved pursuant to Ordinance 2015-\_\_\_\_ passed and approved by City Commission of the City January \_\_\_\_\_, 2015. No funds shall be disbursed from the Tax Increment Fund without the prior written approval of the Zone Board, and notice of use and disbursement of funds by the Zone shall be given at least annually to the County.

2. The parties agree and understand that under no circumstances shall reimbursable Administrative Costs exceed, in the aggregate, the amount set out and described in Section 11.1 above over the term of the Zone.

3. In addition to Project Costs and any other allowable costs, the City and Zone represent and warrant that they will use funds in the Tax Increment Fund to pay annual expenditures in the following order or priority of payment: (i) payment of any debt service on any Bonds issued with respect to the Zone under Section 311.015 of the Texas Tax Code; and (ii) to reimburse Administrative Costs incurred by the County to the extent not previously recouped by the County as a reduction to the annual Tax Increment Payment. City acknowledges that the only entity to receive Administrative Costs is County.

E. Implementation of Project Plan.

The City and Zone agree to implement the Project Plan in accordance with the terms thereof, including without limitation that the Project be implemented in such a way as to constitute an “[area] of public assembly out of TIRZ#1 pursuant to Section 311.010(b) of the Texas Tax Code.

## VI. TERM AND TERMINATION

A. Agreement Term and Termination

This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect until December 31, 2045 unless earlier terminated as provided herein (the "Agreement Term"). Subject to the terms of this Agreement, the County agrees to participate under this Agreement, beginning with the 2015 tax year and ending in accordance with the terms provided herein. Notwithstanding the term of the Zone extending until December 31, 2045, nor anything to the contrary contained in this Agreement, the Parties agree and understand that the County's Tax Increment Payments will not be made after December 31, 2045.

B. Early Termination

Neither the City nor the Zone Board shall take any action to terminate the Zone earlier than the duration of the Zone as specified herein.

C. Disposition of Tax Increments

Upon expiration or termination of the Zone and after all bonds have been paid and all reimbursements have been made, any money remaining in the Tax Increment Fund shall be paid to the Participating Taxing Entities on a pro rata basis in accordance with Section 311.014(d) of the Texas Tax Code, or any successor thereto. Accounting to determine the pro rata distribution of remaining funds to the respective taxing entities shall be conducted according to generally accepted accounting principles, and shall be subject to review and audit by the County upon reasonable request. In the event a discrepancy occurs between the reviews conducted by the City and County, said dispute will be resolved by the respective audit offices of the City and County. In the event the dispute cannot be resolved it shall be submitted to mediation under the rules of the American Mediation Association with a mediator agreed upon by the County Judge of the County and the Mayor of the City.

## VII. MISCELLANEOUS

### A. Understanding

Any and all costs incurred by the City are not, and shall never become, general obligations or debt of any Participating Taxing Entity other than City. With respect to the City's costs, only eligible Project Costs and other allowable expenses under applicable law, if any, incurred by the City shall be payable from the Tax Increment Fund in the manner and priority provided in this Agreement and only to the extent that funds become available in the Tax Increment Fund. The Parties agree and understand that under no circumstance shall the eligible costs exceed the maximum specified in the final finance plan passed and approved in accordance with Ordinance 2015 - \_\_\_ dated January \_\_, 2015. The City and the County are not obligated above and beyond what is actually collected as tax increment funds.

### B. Severability

In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained.

### C. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties hereto and embodies the entire agreement of the Parties. There are no other agreements, assurances, conditions, covenants (express or implied), or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous with the execution hereof.

With respect to the County's obligations, to the extent there is any discrepancy between this Agreement and any exhibit hereto, the terms of this Agreement shall control.

### D. Written Amendment

This Agreement may be changed or amended only by a written instrument duly executed on behalf of each Party hereto. All Parties to this Agreement understand and recognize that only the City Commission of City and only the Commissioners Court of the County have authority to approve a change or amendment to this Agreement on behalf of the City or the County, respectively.

### E. Notices

All notices required or permitted hereunder shall be in writing and delivered by personal delivery, facsimile or United States Postal Service (certified mail, return receipt requested) and

addressed to the respective other Party at the address prescribed in Section I of this Agreement, or at such other address as the receiving Party may have theretofore prescribed by notice to the sending Party. Such notices shall be deemed delivered the earlier of: (i) when actually received by personal delivery or facsimile if received during normal business hours and on the next business day if received after normal business hours; or (ii), if sent by the United States Postal Service, on the date indicated by the United States Postal Service on the return receipt as the date on which it was received by the respective other Party.

F. Non-Waiver

Failure of any Party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, or to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

G. Assignment

All Parties to this Agreement understand and recognize that only the City Council of the City and only the Commissioners Court of the County have authority to approve a delegation or assignment of the County's or the City's rights in this Agreement on behalf of the City or the County, respectively.

H. Successors

This Agreement shall bind and benefit the Parties and their legal successors or assigns. This Agreement does not create any personal liability on the part of any trustee, officer, owner, partner, principal, employee, elected official or agent of a Party to this Agreement.

I. Project Plan

The Parties agree a material change to the Project Plan shall not apply to the County unless the County approves the amendment as provided herein if such amendment to the Project Plan (i) has the effect of directly or indirectly increasing the percentage or amount of Tax Increment to be contributed by the County to the Tax Increment Fund; or (ii) increases or reduces the geographical area of the Zone set forth in the Project Plan or (iii) otherwise materially changes the Project.

J. Access to Financial Information

The Zone agrees to conduct or to cause to be conducted, at a minimum, an annual financial review, a copy of which will be provided to the County. Furthermore, each Party to this Agreement shall have reasonable access to financial information and audit reports regarding the operation of the Zone, contribution of Tax Increment Payments to the Tax Increment Fund, and expenditures from the Tax Increment Fund for Project Costs. In addition, the City agrees, during the term of this Agreement, to prepare and deliver an annual report to the County in accordance with Section 311.016 and 311.0101(c), Texas Tax Code. The County shall have the right to withhold or delay payments to the Tax Increment Fund until such time as it has received the financial or other report from the City for the applicable tax year, and shall not incur any penalties or interest with respect to any such withheld or delayed payments notwithstanding any provision herein to the contrary.

K. Zone Designation

The City represents that its designation of the Zone meets the criteria of Section 311.005(a),

Texas Tax Code.

IN WITNESS HEREOF, the CITY OF EDINBURG; HIDALGO COUNTY AND REINVESTMENT ZONE NUMBER FOUR, CITY OF EDINBURG, TEXAS have made and executed this Agreement in triplicate originals on this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2015.

CITY OF EDINBURG

HIDALGO COUNTY

By: \_\_\_\_\_  
Richard H. Garcia  
Mayor

By: \_\_\_\_\_  
Ramon Garcia  
County Judge

ATTEST/SEAL:

ATTEST/SEAL:

\_\_\_\_\_  
Myra L. Ayala Garza  
City Secretary

\_\_\_\_\_  
Arturo Guajardo, Jr.  
County Clerk

APPROVED AS TO FORM FOR  
CITY OF EDINBURG

APPROVED AS TO FORM FOR  
HIDALGO COUNTY:

PALACIOS, GARZA & THOMPSON P.C

ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Stephen L. Crain

REINVESTMENT ZONE NUMBER FOUR, CITY  
OF EDINBURG, TEXAS

By: \_\_\_\_\_  
Richard H. Garcia  
Chairperson

Exhibit A

Project Plan

Exhibit B

City of Edinburg Ordinances

AI-48235

County Judge's Office 2. B.

**CC REGULAR**

**Meeting Date:** 01/27/2015

**Submitted By:** Monica Badillo,  
EXECUTIVE OFFICE

**Department:** EXECUTIVE OFFICE

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**Information**

**CAPTION**

Appointment of two (2) Board Members to represent the County of Hidalgo on the Local Government Finance Corporation with the City of Edinburg

**BACKGROUND**

City of Edinburg has allocated two (2) seats on the LGFC Board to allow representation from the County Judge and Commissioner Pct. 4 or their proxys.

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**Fiscal Impact**

**Attachments**

*No file(s) attached.*

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**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Purchasing Department	Monica Badillo	01/23/2015 04:24 PM
Form Started By: Monica Badillo		Started On: 01/23/2015 02:07 PM
Final Approval Date: 01/23/2015		

AI-48227

County Judge's Office 2. C.

**CC REGULAR**

**Meeting Date:** 01/27/2015

**Submitted By:** Monica Badillo,  
EXECUTIVE OFFICE

**Department:** EXECUTIVE OFFICE

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**Information**

**CAPTION**

1. Discussion and possible action on Order approving Agreement to terminate Economic Development Agreement relating to The Shoppes at Rio Grande Valley in Tax Increment Reinvestment Zone Number One, City of Edinburg.
2. Discussion and possible action on Order approving Amendment to Interlocal Agreement with the City of Edinburg relating to Tax Increment Reinvestment Zone Number One, City of Edinburg

**BACKGROUND**

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**Fiscal Impact**

**Attachments**

1st amend  
order  
termination

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**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Auditor's Office	Monica Badillo	01/23/2015 04:24 PM
Form Started By: Monica Badillo		Started On: 01/23/2015 10:59 AM
Final Approval Date: 01/23/2015		

**FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF EDINBURG, TEXAS AND HIDALGO  
COUNTY, TEXAS RELATING TO REINVESTMENT ZONE NUMBER  
ONE, CITY OF EDINBURG, TEXAS**

**THE STATE OF TEXAS  
COUNTY OF HIDALGO**

§  
§

***THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF EDINBURG, TEXAS AND HIDALGO COUNTY, TEXAS RELATING TO REINVESTMENT ZONE NUMBER ONE, CITY OF EDINBURG, TEXAS*** (this "***First Amendment***"), dated as of January 27, 2015, is made by and between the **CITY OF EDINBURG, TEXAS** (the "***City***"), a municipal corporation of the State of Texas, acting by and through its governing body, the City Council, and **HIDALGO COUNTY, TEXAS** (the "***County***"), acting by and through its governing body, the Commissioners Court.

**RECITALS**

***WHEREAS***, pursuant to Ordinance No. 07-3211 adopted by the City Council of the City on September 4, 2007, the City approved the creation of **REINVESTMENT ZONE NUMBER ONE, CITY OF EDINBURG, TEXAS** (the "***Reinvestment Zone***") in accordance with the provisions of Chapter 311, Texas Tax Code, as amended (the "***Act***"); and

***WHEREAS***, the Reinvestment Zone originally was created by the City, and the County agreed to participate in the Reinvestment Zone, to provide funds to reimburse a private developer for costs incurred to construct certain public infrastructure improvements related to the development and construction of a new major shopping center complex located generally near the intersection of East Trenton Road and South U.S. Highway 281 in the City, which is now known as "***The Shoppes at Rio Grande Valley***" (the "***Shoppes Project***"); and

***WHEREAS***, the City and the County entered into that certain *Interlocal Agreement*, dated as of November 8, 2011 (the "***Interlocal Agreement***"), which provides, among other things, that by no later than May 1 of each year (i) the City is obligated to contribute and transfer annually into the "Tax Increment Fund" established and maintained by the City relating to the Reinvestment Zone (the "***Tax Increment Fund***") an amount equal to 100% of the City's "Tax Increment" generated within the Reinvestment Zone until the expiration of the Reinvestment Zone, and (ii) the County is obligated to contribute and transfer annually to the City, for deposit in the Tax Increment Fund, 88% of the County's Tax Increment generated within the Reinvestment Zone, all of which are based on the Tax Increments generated within the Reinvestment Zone that are received by the City and the County up to January 31<sup>st</sup> following the end of the tax year, but which have not been previously deposited in the Tax Increment Fund, during annual periods preceding each deposit date; and

***WHEREAS***, all capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Interlocal Agreement; and

**WHEREAS**, the obligations of the City and the County to reimburse the developer of the Shoppes Project were set forth in the Development Agreement; and

**WHEREAS**, all public infrastructure improvements related to the Shoppes Project have been completed; and

**WHEREAS**, the parties had previously considered certain amendments to the Interlocal Agreement to correct scrivener's errors and otherwise clarify certain of the Interlocal Agreement so as to avoid confusion in the implementation of the Interlocal Agreement, which the City was unable to agree to due to while certain bonds related to the Shoppes Project were outstanding, which bonds are being paid and redeemed pursuant to the Termination Agreement (as defined below); and

**WHEREAS**, the City Council desires to bring to the City a new first-class, indoor multipurpose event center, to be located on approximately 49.57 acres of land at the corner of Alberta Road and State Highway 281 in the City, which is expected to include approximately 8,500 fixed seats, 10 luxury suites, 1,200 club seats, a restaurant/club area, locker rooms, offices for sports team personnel, offices for facility management, and a marquee, and will be designed to host a variety of entertainment events, including sporting events such as basketball and ice hockey, concerts, family shows and trade shows, which, together with related parking and infrastructure, is herein referred to as the "**Entertainment Center Project**"; and

**WHEREAS**, pursuant to Section 5 of Ordinance No. 07-3211, the termination date of Reinvestment Zone was established as September 6, 2037, unless otherwise terminated earlier as provided therein; however, the City deems it necessary to extend the termination date of the Reinvestment Zone by approximately eight years to December 31, 2045, in order to permit Tax Increment payments generated within the Reinvestment Zone by the City and the County to be available to pay a portion of the debt service on certain "Contract Revenue Bonds" which are in the process of being issued by the *City of Edinburg, Texas Local Government Finance Corporation*, at the request of the City, in connection with providing a portion of the funds to construct and equip the Entertainment Center Project), which Contract Revenue Bonds are expected to have a final maturity date of March 1, 2045; and

**WHEREAS**, the Entertainment Center Project will not be located within the boundaries of the Reinvestment Zone; however, in accordance with Section 311.010(b) of the Act, the Reinvestment Zone is authorized to use tax increment revenues generated within the Reinvestment Zone to pay the costs of providing "areas of public assembly," such as the Entertainment Center Project, in or out of the Reinvestment Zone; and

**WHEREAS**, pursuant to authority granted in Section 311.011(e) of the Act, on January 20, 2015, the City Council of the City (after giving published notice and holding a public hearing in the same manner as required for the original designation of the Reinvestment Zone, which provisions are set forth in Section 311.003(c) of the Act) approved Ordinance No. 2015-\_\_\_\_\_ for the purpose of amending the final project and reinvestment zone financing plan related to the Reinvestment Zone to incorporate being able to use Tax Increment payments generated within the Reinvestment Zone to support the financing related to the Entertainment Center Project (a copy of which Ordinance, including the amended plan, is attached hereto as Exhibit "I"); and

**WHEREAS**, pursuant to authority granted in Section 311.007(c) of the Act, on January 20, 2015, the City Council of the City (after giving published notice and holding a public hearing in the same manner as required for the original designation of the Reinvestment Zone, which provisions are set forth in Section 311.003(c) of the Act) approved Ordinance No. 2015-\_\_\_\_\_ for the purpose of extending the termination date of the Reinvestment Zone from September 6, 2037 to December 31, 2045; and

**WHEREAS**, the extension of the termination date for the Reinvestment Zone will enable Tax Increment payments generated within the Reinvestment Zone to be able to be used to support debt service on the Contract Revenue Bonds issued to finance a portion of the costs to construct and equip the Entertainment Center Project until the final maturity of such Contract Revenue Bonds; however, in accordance with Section 311.007(c) of the Act, the County is not obligated to continue participating in the Reinvestment Zone beyond the original termination date unless it enters into a written agreement to do so; and

**WHEREAS**, the County policy is to participate in a tax increment reinvestment zones for no more than thirty years; and

**WHEREAS**, the City and the County now deem it necessary and appropriate to amend the Interlocal Agreement primarily for the purposes of extending certain of their obligations set forth in the Interlocal Agreement to the new termination date of December 31, 2045, to acknowledge that Tax Increment payments will be used to support the Contract Revenue Bonds being issued to finance a portion of the costs to construct and equip and Entertainment Center Project and to correct and clarify the Interlocal Agreement;

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the County hereby agree as follows:

### **SECTION 1. AMENDMENTS TO SECTION 1 OF INTERLOCAL AGREEMENT RELATING TO DEFINITIONS.**

(a) Amendment of Certain Defined Terms. The following capitalized terms set forth in Section 1 of the Interlocal Agreement are hereby amended to read in their entirety as follows:

**"City's Tax Increment Participation"** shall mean an amount of the City's ad valorem tax levy on the Captured Appraised Value, which the City originally agreed to contribute to the Reinvestment Zone pursuant to Section 4.1 of the Development Agreement and confirms its agreement to continue to make such contribution pursuant to Sections 3 and 4 of this Agreement.

**"County's Tax Increment Participation"** means the amount of the County's ad valorem tax levy on the Captured Appraised Value, which the County originally agreed to contribute to the Reinvestment Zone pursuant to Section 4.1 of the Development Agreement and confirms its agreement to continue to make such contribution pursuant to Sections 3 and 4 of this Agreement.

**"Plan"** means the project plan and reinvestment zone financing plan for the Reinvestment Zone attached hereto as Exhibit "B", which was originally adopted by the board of directors of the Reinvestment Zone and approved by the City Council of the City on August 19, 2008, in connection with the Project, and which was amended by the board of directors of the Reinvestment Zone and approved by the City Council of the City on January 20, 2015, in connection with the Entertainment Center Project.

**"Project"** means the shopping center complex located near the intersection of East Trenton Road and South U.S. Highway 281 in the City known as "*The Shoppes at Rio Grande Valley*," which was the original economic development project for which the Reinvestment Zone was initially created by the City.

**"Tax Increment Base"** means the total appraised value of all real property taxable by the City or the County, as the case may be, and located in the Reinvestment Zone as of January 1, 2007, the year in which the Reinvestment Zone was designated.

**"Tax Increment Participation"** means the amount the City and the County, respectively, have agreed to contribute to the Tax Increment Fund pursuant to Section 3 of this Agreement.

(b) Additional Defined Terms. The following capitalized terms are hereby added to Section 1 of the Interlocal Agreement and shall in their entirety as follows:

**"Contract Revenue Bonds"** means the contract revenue bonds expected to be issued by the City of Edinburg, Texas Local Government Finance Corporation to finance a portion of the costs to construct and equip the Entertainment Center Project, including any refunding bonds issued to refund such contract revenue bonds.

**"County M&O Tax Rate"** means that portion of the ad valorem tax rate used by the County for Maintenance and Operation. The County M&O Tax Rate may change from time to time. The County M&O Tax Rate for 2008 was \$0.5191 per \$100 dollars of valuation on the Captured Appraised Value and may be changed by the County during the term of the Reinvestment Zone.

**"Entertainment Center Project"** means the indoor multipurpose event center, to be located on approximately 49.57 acres of land at the corner of Alberta Road and State Highway 281 in the City, which is expected to include approximately 8,500 fixed seats, 10 luxury suites, 1,200 club seats, a restaurant/club area, locker rooms, offices for sports team personnel, offices for facility management, and a marquee, and will be designed to host a variety of entertainment events, including sporting events such as basketball and ice hockey, concerts, family shows and trade shows, which, together with related parking and infrastructure.

**SECTION 2. AMENDMENT TO SECTION 2 OF INTERLOCAL AGREEMENT.**

Section 2 of the Interlocal Agreement is hereby amended in its entirety to read as follows:

**SECTION 2. PURPOSE FOR PARTICIPATING IN THE ZONE.** The City and the County originally agreed to participate in the Reinvestment Zone for the purposes set forth in the Development Agreement, including for development of the Project in the Reinvestment Zone Area in accordance with the Plan, for their mutual benefit and the benefit of their citizens. The City and the County hereby agree to continue to participate in the Reinvestment Zone for the purpose of assisting with providing a portion of the funds necessary to pay debt service related to Contract Revenue Bonds issued to finance the Entertainment Center Project.

**SECTION 3. AMENDMENT TO SECTION 3(a) OF INTERLOCAL AGREEMENT.** For the purpose of clarifying the Interlocal Agreement, Section 3(a) of the Interlocal Agreement is amended by renumbering Section 3(a) as Section 3(a)(i) and by adding the following new Section 3(a)(ii) immediately following Section 3(a)(i):

(ii) Notwithstanding any references to 88% in the Development Agreement or in Section 3(a)(i) above, or any other provisions to the contrary, in order to effectuate the intention of the parties that the County's Tax Increment Participation excludes the amount required for County debt service, the County's Tax Increment Participation shall not exceed 100% of the County M&O Tax Rate as assessed and collected on the tax increment for the respective tax year.

**SECTION 4. AMENDMENT TO SECTION 3(b) OF INTERLOCAL AGREEMENT.** For the purpose of agreeing to the extension of the termination date of the Reinvestment Zone from September 6, 2037 to December 31, 2045, the last sentence of Section 3(b) of the Interlocal Agreement is hereby amended in its entirety to read as follows:

Under no circumstances shall the County be required to participate in the Zone with taxes attributable to periods after September 4, 2037, or, in the event on such date the County's policy allows the County to participate in tax increment reinvestment zones for terms of 37 years or longer, December 31, 2045. Regardless of whether the County's participation extends until December 31, 2045, in no event shall the County contribution to the Tax Increment Fund be greater than \_\_\_\_\_ dollars (\$\_\_\_\_\_), over the life of the Zone.

**SECTION 5. AMENDMENT TO SECTION 3 OF INTERLOCAL AGREEMENT.** For the purpose of clarifying the Interlocal Agreement, Section 3 of the Interlocal Agreement is amended by renumbering the second Section 3(c), which appears on page 5 of the Interlocal Agreement, as Section 3(e), and inserting the following new Section 3(d) immediately following Section 3(c) of the Interlocal Agreement (appearing on page 4 of the Interlocal Agreement):

**(d) County Tax Increment Payment.**

(i) In order to enable to County to make payments hereunder, the City shall request collection reports from the Hidalgo County Tax Assessor Collector and provide a copy of these reports along with a payment request detailing the payment calculation as illustrated in the chart in Section 3(d)(iii) below to the County at least one month prior to a payment required to be made under this Agreement. In addition, at least one month prior to a payment required under Section 3(b) of this Agreement, the City shall provide to the County (A) the annual report required under Tax Code Section 311.016, which shall include: (1) the amount and source of revenue in the Tax Increment Fund established for the Reinvestment Zone; (2) the amount and purpose of expenditures from the Tax Increment Fund; (3) the amount of principal and interest due on outstanding bonded indebtedness; (4) the Tax Increment Base and current Captured Appraised Value retained by the Reinvestment Zone; and (5) the Captured Appraised Value shared by the City and other taxing units, the total amount of tax increments received, and any additional information necessary to demonstrate compliance with the Plan and (B) an updated fact sheet that includes (1) detail as to what portion of the Project has been completed to date, (2) a schedule of what portion of the Project is to be completed in the following year and (3) a current roster of the Reinvestment Zone's board members, including the term of each board member, the entity that appointed the board member, the date for the next annual meeting.

(ii) The parties expressly agree that the County shall not owe any penalty or interest on Tax Increments attributable to taxes that have been levied, but not received by the County. Further, the County shall not be liable for the payment of any penalties or interest if the fact sheet and payment request required under Section 3(d)(i) above and the report required under such Section 3(d)(i) and under Section 311.016 of the Texas Tax Code are not timely submitted to the County or in any situation in which the City is not obligated to pay penalties and interest.

(iii) The chart below is an example of the calculation of the County's Tax Increment Reinvestment Zone payment amount.

<b>Tax Increment Reinvestment Zone (TIRZ) Payment Calculation</b>	<b>EXAMPLE</b>
TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD))	\$ 100,000.00
<i>(Multiplied by)</i> Hidalgo County Current (GHD) Tax Rate (.59/100)	0.0059
GHD Actual Tax Levy for all real property tax accounts located within the TIRZ	<b>\$ 590.00</b>
TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD))	\$ 100,000.00
<i>(Less)</i> Base Year Real Property Certified Appraised Value for Tax Accounts	\$ 10,000.00

located within the TIRZ (Provided by HCAD)	
<b>Captured Appraised Value</b>	<b>\$ 90,000.00</b>
Captured Appraised Value	\$ 90,000.00
<i>(multiplied by)</i> Contribution Rate (The lesser of actual tax year M&O rate or rate specified on agreement) (.51/100)	0.0051
<b>Tax Levy Due to TIRZ</b>	<b>\$ 459.00</b>
TIRZ Collections (for February 1 through January 31) as per Collections Reports provided by Hidalgo County Tax Office	\$ 300.00
<i>(divided)</i> GHD Actual Tax Levy for all Real Property tax accounts located within the TIRZ	\$ 590.00
<b>Percent Collected of Actual Levy</b>	<b>50.85%</b>
Tax Levy Due to TIRZ	\$ 459.00
<i>(Multiplied by)</i> Percent Collected of Actual Levy	50.85%
<b>TIRZ PAYMENT AMOUNT</b>	<b>\$ 233.39</b>

**SECTION 6. AMENDMENT TO NEWLY RENUMBERED SECTION 3(e) OF INTERLOCAL AGREEMENT.** Newly renumbered Section 3(e)(ii) of the Agreement is hereby amended in its entirety to read as follows:

(ii) Except for contributing its respective Tax Increment payments to the Tax Increment Fund as set out herein, the County shall not have any obligation or responsibility for any costs or expenses associated with the development of the Reinvestment Zone or the implementation of the Plan, including without limitation any obligation to pay or repay any bond or other debt issued by the City, the Reinvestment Zone or another entity, or relating to the Reinvestment Zone, the Project or the Entertainment Center Project or any costs associated with the operation of the Reinvestment Zone, the Project, the Entertainment Center Project or any other projects related thereto.

**SECTION 7. AMENDMENT TO SECTION 4 OF INTERLOCAL AGREEMENT.** For the purpose of agreeing to the extension of the termination date of the Reinvestment Zone from September 6, 2037 to December 31, 2045, Section 4 of the Interlocal Agreement is hereby amended in its entirety to read as follows:

**SECTION 4. TERM OF AGREEMENT.** This Agreement shall become effective as of the date of the final signature hereto, and shall remain in effect through the earlier of (i) December 31, 2045, and (ii) the date on which all bonds payable in whole or in part from the City's Tax Increment Participation and the County's Tax Increment Participation collected on the Captured Appraised Value of the real property within the Reinvestment Zone (including but not limited to

any Contract Revenue Bonds issued to finance the Entertainment Center Project) have been paid in full or legally defeased.

**SECTION 8. REFERENCES TO DEVELOPMENT AGREEMENT.** The City and the County recognize and acknowledge that certain provisions in the Interlocal Agreement contain references to the Development Agreement related to the Shoppes Project, which was the original "Project" defined in the Interlocal Agreement. Concurrent with the issuance of the Contract Revenue Bonds related to the construction of the Entertainment Center Project, the Development Agreement is expected to be terminated, and neither the City nor the County thereafter shall have any further obligations to the developer named under the Development Agreement, all as further described in that certain *Agreement to Terminate Economic Development Agreement Relating to the Shoppes at Rio Grande Valley*, dated as of March 1, 2015, by and among such developer, the City, the County, the Edinburg Economic Development Corporation, and the City of Edinburg, Texas Local Government Finance Corporation (the "**Termination Agreement**"). All references to the Development Agreement which remain in the Interlocal Agreement have been retained for historical purposes only even though the Development Agreement is expected to be terminated.

**SECTION 9. ADDITIONAL REPRESENTATIONS AND AGREEMENTS OF CITY AND ZONE.** The City and the Zone represent and warrant to the County that the adoption and implementation of the Plan and all revisions thereto, including without limitation the use of the Tax Increment Fund for the payment of the Contract Revenue Bonds related to the construction of the Entertainment Center Project in a proposed new Reinvestment Zone Number Four, City of Edinburg, and all related ordinances and bond issuances, have been, or to the extent such actions are not yet complete, will be done in accordance with all applicable laws. The City and the Zone agree to implement Plan in accordance with the terms thereof.

**SECTION 10. NO OTHER AMENDMENTS INTENDED.** Except as specifically set forth in this First Amendment, the City and the County intend for all other provisions set forth in the Interlocal Agreement shall remain in full force and effect.

*IN WITNESS HEREOF*, the City and the County have made and executed this First Amendment in multiple copies, each of which is an original.

**CITY OF EDINBURG, TEXAS**

By: \_\_\_\_\_  
Richard H. Garcia  
Mayor

Attest:

By: \_\_\_\_\_  
Myra L. Ayala Garza  
City Secretary

APPROVED AS TO FORM:

Palacios, Garza & Thompson P.C.

By: \_\_\_\_\_  
City Attorney

**HIDALGO COUNTY, TEXAS**

By: \_\_\_\_\_  
Ramon Garcia  
County Judge

Attest:

\_\_\_\_\_  
Arturo Guajardo, Jr.  
Hidalgo County Clerk

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, L.L.P.

By: \_\_\_\_\_  
Stephen L. Crain

ACKNOWLEDGED AND AGREED:  
**REINVESTMENT ZONE NUMBER ONE,  
CITY OF EDINBURG, TEXAS**

\_\_\_\_\_  
Presiding Officer

**Exhibit I**  
**to**  
**First Amendment the Interlocal Agreement Between the City of Edinburg, Texas and**  
**Hidalgo County, Texas Relating to Reinvestment Zone Number One, City of Edinburg,**  
**Texas**

Ordinance No. 2015-\_\_\_\_\_ of the City of Edinburg adopted January 20, 2015  
(including the amended final project and reinvestment zone financing plan related to the  
Reinvestment Zone)

ORDER NO. \_\_\_\_\_

STATE OF TEXAS

§

COUNTY OF HIDALGO

§

**ORDER APPROVING AN AGREEMENT TO TERMINATE ECONOMIC DEVELOPMENT AGREEMENT RELATING TO THE SHOPPES AT RIO GRANDE VALLEY**

**WHEREAS**, the CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT FINANCE CORPORATION (the "*Issuer*"), is a nonprofit local government corporation created by the CITY OF EDINBURG, TEXAS (the "*City*") pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended, to aid and act on behalf of the City to assist with financing and constructing economic development projects within the City in order to promote economic development and to stimulate business and commercial activity in the City, all at the request of the City Council of the City (the "*City Council*"); and

**WHEREAS**, the City has informed Hidalgo County, Texas (the "*County*"), that the City Council desires to bring to the City a new first-class, indoor multipurpose event center, to be located on approximately 49.57 acres of land at the corner of Alberta Road and State Highway 281 in the City, which is expected to include approximately 8,500 fixed seats, 10 luxury suites, 1,200 club seats, a restaurant/club area, locker rooms, offices for sports team personnel, offices for facility management, and a marquee, and will be designed to host a variety of entertainment events, including sporting events such as basketball and ice hockey, concerts, family shows and trade shows, which, together with related parking and infrastructure, is herein referred to as the "*Project*"; and

**WHEREAS**, the City has informed the County that the City desires that revenues to support annual debt service payments, for certain "Contract Revenue Bonds" being issued by the Issuer to finance a portion of the costs to construct the Project (the "*Contract Revenue Bonds*"), will come from numerous local sources, all of which are more fully described in that certain *Project Funding Agreement Related to Edinburg Entertainment Center*, dated as of March 1, 2015 (the "*Project Funding Agreement*"), by and among (i) the Issuer, (ii) *Reinvestment Zone Number One, City of Edinburg, Texas*, (iii) *Reinvestment Zone Number Four, City of Edinburg, Texas*, (iv) the City, and (v) the *Edinburg Economic Development Corporation* (the "*EEDC*"); and

**WHEREAS**, the EEDC is a nonstock, nonprofit industrial development corporation created by the City pursuant to the provisions of Section 4A of the Development Corporation Act of 1979, which originally was found at Article 5190.6, Texas Revised Civil Statutes, as amended ("*Article 5190.6*"), to act on behalf of the City to satisfy the public purposes set forth in Section 4A of Article 5190.6 (all of which is now found, as it relates to the EEDC, primarily in Chapters 501, 502 and 504 of the Texas Local Government Code); and

**WHEREAS**, a majority of the citizens of the City voting at an election held on January 20, 1990, authorized the City to levy a sales and use tax on the receipts at retail of taxable items within the City at a rate of one-half of one percent ( $\frac{1}{2}$  of 1%) to be used for improving and promoting industrial and economic development in accordance with Section 4A of Article 5190.6 (the "**EEDC Sales Tax**"); and

**WHEREAS**, in 2007, the City, along with the Issuer, the County, the EEDC , and **FIRST HARTFORD REALTY CORPORATION**, a Delaware corporation (the "**Shoppes Developer**"), entered into an *Economic Development Agreement*, dated as of February 20, 2007, which was subsequently amended with amendments dated and effective as of August 16, 2011, and November 15, 2011 (collectively, the "**Shoppes Development Agreement**"), which, among other things, (i) set forth the respective party's rights and obligations in connection with the development and construction by the Shoppes Developer of a retail shopping center in the City (now generally known as "*The Shoppes at Rio Grande Valley*"), which is further described therein (the "**Shoppes Project**"), and (ii) the potential reimbursements to be provided to the Developer by the City and the EEDC; and

**WHEREAS**, as required by the Shoppes Development Agreement, in 2007 the City created, pursuant to Chapter 311, Texas Tax Code, a tax increment reinvestment zone known as **REINVESTMENT ZONE NUMBER ONE, CITY OF EDINBURG, TEXAS ("TIRZ One")**, and committed to use certain tax increment revenues generated from ad valorem taxes levied by the City and the County within TIRZ One to reimburse the Shoppes Developer for certain expenditures related to the Shoppes Project; and

**WHEREAS**, to further support the Shoppes Project, the City committed, pursuant to the Shoppes Development Agreement, to use 50% of the revenues received by the City from the City's 1% general sales and use tax generated within TIRZ One to reimburse the Shoppes Developer for certain expenditures related to the Shoppes Project; and

**WHEREAS**, similarly, to support the Shoppes Project the EEDC committed, pursuant to the Shoppes Development Agreement, to use all of its revenues generated from the EEDC Sales Tax within TIRZ One to reimburse the Shoppes Developer for certain expenditures related to the Shoppes Project; and

**WHEREAS**, the City and the EEDC each have remaining financial obligations to the Shoppes Developer under the Shoppes Development Agreement that need to be extinguished prior to the issuance of the Contract Revenue Bonds by the Issuer; therefore, it is necessary for the parties to the Shoppes Development Agreement to formally terminate the Shoppes Development Agreement by entering into an **AGREEMENT TO TERMINATE ECONOMIC DEVELOPMENT AGREEMENT RELATING TO THE SHOPPES AT RIO GRANDE VALLEY**, to be dated as of March 1, 2015, by and among the Shoppes Developer, the City, the County, the EEDC and the Issuer (the "**Termination Agreement**"); and

**WHEREAS**, a substantially final draft of the Termination Agreement has been presented to and reviewed by the Commissioners Court of the County, and the Commissioners Court of the County has determined that it is necessary and appropriate to assist with financing the Project by approving the draft of the Termination Agreement, with such changes thereto as are approved by the County Judge of the County, with advice of the County's attorneys, which thereafter will permit a portion of the revenues generated from the City's 1% general sales collected within TIRZ One, and all of the revenues generated from the EEDC Sales Tax collected within TIRZ One, to be committed and used, along with certain other revenues of the City, the EEDC and other entities, to support payment of the Contract Revenue Bonds under the terms provided in the Project Funding Agreement; and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Order was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; **NOW THEREFORE**:

**BE IT ORDERED BY THE COMMISSIONERS COURT OF THE HIDALGO COUNTY, TEXAS:**

**SECTION 1. APPROVAL OF TERMINATION AGREEMENT.** The draft of the Termination Agreement is hereby approved in substantially the form attached hereto as Exhibit A, with such changes thereto, including indemnification provisions, as are approved by the County Judge of the County, with advice of the County's attorneys, and the County Judge is authorized to execute, and the County Clerk is authorized to attest, the final Termination Agreement on behalf of the County and deliver same, and when executed and delivered, the Termination Agreement shall become a valid and binding obligation of the County in accordance with its terms.

**SECTION 2. ENFORCEABILITY OF ORDER.** If any section, paragraph, clause, or provision of this Order shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Order. In case any obligation of the County authorized or established by this Order or the Termination Agreement is held to be in violation of law as applied to any person or any circumstance, such obligation shall be deemed to be the obligation of the County to the fullest extent permitted by law.

**SECTION 4. INCORPORATION OF RECITALS.** The Commissioners Court hereby finds that the statements set forth in the recitals of this Order are true and correct, and the Commissioners Curt hereby incorporates such recitals as a part of this Order.

[The remainder of this page intentionally left blank]

**PASSED, APPROVED and ADOPTED this 27<sup>th</sup> day of January, 2015.**

**HIDALGO COUNTY, TEXAS**

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

Ramon Garcia  
County Judge  
Hidalgo County, Texas

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr.  
Hidalgo County Clerk

Signature Page to the Order Approving an  
Agreement to Terminate Economic Development Agreement Relating to The Shoppes at Rio Grande Valley

**Exhibit A**  
to the Order Approving an  
Agreement to Terminate Economic Development Agreement Relating to The Shoppes at Rio  
Grande Valley

**Draft of**  
**Agreement to Terminate Economic Development Agreement Relating to The Shoppes at**  
**Rio Grande Valley**

**AGREEMENT TO TERMINATE ECONOMIC DEVELOPMENT AGREEMENT  
RELATING TO THE SHOPPES AT RIO GRANDE VALLEY**

This **AGREEMENT TO TERMINATE ECONOMIC DEVELOPMENT AGREEMENT RELATING TO THE SHOPPES AT RIO GRANDE VALLEY** (this "**Agreement**"), dated as of March 1, 2015, is entered into by and among the **CITY OF EDINBURG, TEXAS** (the "**City**"), a home-rule municipality organized under the laws of the State of Texas, **HIDALGO COUNTY, TEXAS** (the "**County**"), the **EDINBURG ECONOMIC DEVELOPMENT CORPORATION**, a non-profit corporation created by the City and organized pursuant to Section 4A of the Development Corporation Act of 1979, - Article 5190.6, V.A.T.C.S. (the "**EEDC**"), the **CITY OF EDINBURG, TEXAS LOCAL GOVERNMENT FINANCE CORPORATION**, a non-profit corporation organized under Subchapter D of Chapter 431 of the Texas Transportation Code (the "**LGC**") and **FIRST HARTFORD REALTY CORPORATION**, a Delaware corporation (the "**Developer**").

**RECITALS**

**WHEREAS**, the City, the County, the EEDC, the LGC and the Developer entered into that certain *Economic Development Agreement*, dated and effective as of February 20, 2007, which was subsequently amended by the *First Amendment to Economic Development Agreement with First Hartford Realty Corporation Regarding City of Edinburg, Texas Reinvestment Zone Number One and the Development Known Generally as "The Shoppes at Rio Grande Valley,"* dated and effective as of August 16, 2011, and further subsequently amended by the *Second Amendment to Economic Development Agreement with First Hartford Realty Corporation Regarding City of Edinburg, Texas Reinvestment Zone Number One and the Development Known Generally as "The Shoppes at Rio Grande Valley,"* dated and effective as of November 15, 2011 (collectively, the "**Development Agreement**"); and

**WHEREAS**, all capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Development Agreement; and

**WHEREAS**, the Development Agreement was entered into by the parties in connection with a proposal by the Developer to construct and develop a new retail shopping center (further described and defined in the Development Agreement as the "Facility") located generally near the intersection of East Trenton Road and South U.S. Highway 281 in the City, which is now known as "*The Shoppes at Rio Grande Valley*"; and

**WHEREAS**, the Development Agreement contains numerous obligations on the part of the Developer to construct and develop the Facility and entitles the Developer to receive a Maximum Reimbursement of up to \$17,250,000,<sup>1</sup> upon satisfaction of certain conditions, from specifically designated funds of the City and the EEDC and from Tax Increment payments made by the City and the County generated within the reinvestment zone created by the City as required by the Development Agreement (now known as *Reinvestment Zone Number One, City of Edinburg, Texas - "TIRZ One"*), for costs related to construct Public Infrastructure related to the Facility and assist the Developer with other certain other costs related to the Facility; and

**WHEREAS**, as more specifically set forth in Article V of the Development Agreement, the Developer is eligible, upon satisfaction of certain conditions, to receive up to an aggregate of \$12,000,000 as **Initial Local Reimbursements** which are described as follows:

- (i) the **Public Infrastructure Reimbursement**, equal to the lesser of (1) **\$8,000,000**, and (2) the actual amount of Public Infrastructure Costs expended by the Developer, subject to submission of certain evidence required by the Development Agreement, to be paid solely with proceeds of Public Infrastructure Bonds as described in Section 5.3 of the Development Agreement;
- (ii) the **City's Chapter 380 Grant Reimbursement** equal to the difference between **\$8,000,000** and the Public Infrastructure Reimbursement, to be paid by the City solely with the City's Dedicated 1% Sales Tax Revenues in accordance with the terms set forth in Section 5.4 of the Development Agreement; and
- (iii) **\$4,000,000** of costs for site improvements to be paid by the EEDC solely with proceeds from EEDC Grants as described in Section 5.5.2 of the Development Agreement; and

**WHEREAS**, the Developer also is eligible, upon satisfaction of certain conditions, to receive the **EEDC Incentive Reimbursement** equal to an amount not to exceed **\$4,000,000** (subject to adjustment as provided in Section 6.2 of the Development Agreement), to be paid solely from EEDC Grants and only upon satisfaction of the conditions described in Section 5.5.3 of the Development Agreement; and

**WHEREAS**, on January 3, 2012, the LGC issued and delivered \$4,275,000 in principal amount of its *Tax Increment Contract Revenue Bonds, Series 2011* (the "**Series 2011 Bonds**") for the purpose of providing a portion of the funds required to pay the Developer for the Public Infrastructure Reimbursement; and

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<sup>1</sup>Up to \$1,250,000 of such potential reimbursement would have been obtained from the State of Texas if the Developer qualified to receive State Economic Development Assistance through the Texas Enterprise Zone Program Facility. No local entities were obligated to provide such reimbursement.

**WHEREAS**, upon delivery of the Series 2011 Bonds, the LGC transferred proceeds of the Series 2011 Bonds and other available funds in the amount of \$4,403,382.00, which amount was equal to, and fully satisfied, the Public Infrastructure Reimbursement due and owing to the Developer; and

**WHEREAS**, with the payment of the Public Infrastructure Reimbursement on January 3, 2012, the total amount due to the Developer as the City's Chapter 380 Grant Reimbursement was reduced to \$3,596,618.00, of which the City has paid the Developer with a total of \$2,024,352.00 from the City's Dedicated 1% Sales Tax Revenues (as of September 30, 2014)<sup>2</sup>, which leaves a balance to be paid for the City's Chapter 380 Grant Reimbursement equal to \$1,572,266.00 (the "**Remaining City's Dedicated 1% Sales Tax Reimbursement**"); and

**WHEREAS**, with respect to the commitment of the EEDC to provide EEDC Grants to reimburse the Developer for \$4,000,000.00 of costs for site improvements, the EEDC has provided the Developer with a total of \$2,024,352.00 of EEDC Grants (as of September 30, 2014), which leaves a balance to be paid in the amount of \$1,975,684.00 (the "**Remaining EEDC Grant Reimbursement**"); and

**WHEREAS**, the City, the EEDC and the LGC are working with a private entity to develop and construct a new multipurpose arena and entertainment center which will be owned by the LGC and leased to and operated by third party (the "**Entertainment Center**"); and

**WHEREAS**, the City and the EEDC desire to pledge certain of their respective revenues to secure "Contract Revenue Bonds" that are expected to be issued by the LGC to provide a portion of the funds to construct and equip the Entertainment Center and accomplish other related purposes, and in order to do so the City and the EEDC need to be able to satisfy, and be released from, its obligations to make future reimbursement payments to the Developer under the Development Agreement; and

**WHEREAS**, in lieu of the City and the EEDC continuing to make periodic payments to the Developer to satisfy the City's Chapter 380 Grant Reimbursement and the EEDC Grants over a period of years, the City and the EEDC have proposed paying to the Developer on or before March 11, 2015, a lump sum payment in the amount of \$3,547,950.00 (the "**Final Reimbursement Amount**," which amount is equal the Remaining City's Dedicated 1% Sales Tax Reimbursement and the Remaining EEDC Grant Reimbursement) in consideration for the Developer agreeing to terminate the Development Agreement pursuant to Article VIII of the Development Agreement and release the County, the City and the EEDC from all future obligations thereunder, including but not limited to the EEDC Incentive Reimbursement, which termination and release shall become effective immediately upon such payment; and

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<sup>2</sup>Note: All figures and dates in this draft which are highlighted in yellow will be updated to reflect any additional payments made to First Hartford prior to March 11, 2015. Currently it is expected that one additional payment will be made between February 13, 2015 - February 20, 2015 for approximately \$400,000. Such additional payment will have the effect of reducing the Final Reimbursement Amount by the amount of such additional payment.

**WHEREAS**, in order to assure the City and the EEDC that the Developer will fully and completely terminate the Development Agreement and release the City and the EEDC from all future payments required thereunder, it is necessary for the parties hereto to execute this Termination Agreement; and

**WHEREAS**, the City and the EEDC also have represented to the Developer that funds will be provided on or about March 11, 2015 to pay and redeem all outstanding Series 2011 Bonds at the redemption price of par plus accrued interest; and

**WHEREAS**, this Agreement will become irrevocable to each party upon its execution thereof, and the termination of and release of all further obligations under the Development Agreement being provided by this Agreement, as further described in Section 1 below, shall become effective only upon the later of (i) the delivery to the Developer of the funds described in Section 1 of this Agreement, and (ii) receipt by the Developer of written evidence that the Series 2011 Bonds have been paid or defeased and are no longer outstanding;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. PAYMENT OF FINAL REIMBURSEMENT AMOUNT; TERMINATION OF DEVELOPMENT AGREEMENT.** In consideration of the mutual promises and agreements contained in this Agreement, including the recitals set forth above, the parties hereby agree that on or before March 11, 2015, the City and the EEDC will cause to be wire transferred to the Developer, in immediately available funds, an amount equal to the Final Reimbursement Amount for the purposes described in the recitals of this Agreement. Immediately upon receipt by the Developer of such Final Reimbursement Amount and written evidence that the Series 2011 Bonds have been paid and redeemed and are no longer outstanding, the Development Agreement shall automatically terminate and neither the City, the County, the EEDC, the LGC, nor the Developer shall have any further obligations thereunder except with respect to the Developer for the limited purpose set forth in Section 2 hereof. For purposes of clarity, all parties acknowledge and agree that the termination of the Development Agreement in accordance with the terms of this Agreement shall constitute a full, complete and final release as to all obligations of (i) the City, the County, the EEDC, and the LGC to the Developer under the Development Agreement (including but not limited to the payment by the EEDC to the Developer of the EEDC Incentive Reimbursement), and (ii) the Developer to the City, the County, the EEDC, and the LGC except for the limited purpose set forth in Section 2 hereof.

## **SECTION 2. DEVELOPER'S CONTINUING OBLIGATIONS.**

(A) **DEVELOPER TO CONTINUE TO COOPERATE WITH CITY AND EEDC TO PROVIDE SALES TAX INFORMATION WITHIN TIRZ ONE.** In Section 5.7 of the Development Agreement, the City, the EEDC and the Developer agreed to cooperate with each other, and to work with the Comptroller of Public Accounts of the State of Texas, to develop a reporting method which would enable the City, the EEDC and the Developer to determine the amount of the City's 1% Sales Tax Revenues and the EEDC's Sales Tax Revenues which are actually collected solely within TIRZ One. Such cooperation has been very helpful to all parties in order to provide accurate sales tax collection information, which has been used as the basis of certain reimbursements provided to the Developer in accordance with the Development Agreement. The Developer recognizes and acknowledges that, in connection with providing certain financial support for the construction of a new multi-purpose entertainment center in the City, the City has entered into a new contractual commitment to provide fifty percent (50%) of the sales tax revenues generated from the City's general 1% sales tax collected within TIRZ One; therefore, the City will have a continuing need to accurately determine the amount of the City's 1% Sales Tax Revenues which are actually collected within TIRZ One. Accordingly, the Developer agrees to continue cooperating with the City and the EEDC, and to continue working with the Comptroller of Public Accounts of the State of Texas, to develop, or modify as necessary, a reporting method which would enable the City, the EEDC and the Developer to continue determining the amount of the City's 1% Sales Tax Revenues which are actually collected solely within TIRZ One. In the event the City, the EEDC and the Developer are unable to develop with the Comptroller a sales tax reporting method mutually satisfactory to such parties to accomplish the intent of this Section, the Developer shall make a good faith effort to provide the City and the EEDC, not less frequently than quarterly, evidence reasonably satisfactory to the City and the EEDC of the sales tax collections actually paid to the Comptroller from tenants within the Facility.

(B) **INDEMNIFICATION AND HOLD HARMLESS AGREEMENTS.** In Section 8.6 of the Development Agreement, the parties agreed that the termination of the Development Agreement by mutual consent of the parties pursuant to Section 8.1 of the Development Agreement does not terminate certain obligations of the Developer. Accordingly, the parties acknowledge and agree, notwithstanding the termination of the Development Agreement by mutual consent pursuant to Section 8.1 of the Development Agreement provided for hereunder, that the indemnification and hold harmless agreements of the Developer pursuant to Article XI of the Development Agreement, which are incorporated herein by reference, continue in full force and effect.

**SECTION 3. IRREVOCABLE AGREEMENT.** All parties to this Agreement acknowledge and agree that this Agreement shall become binding on each respective party immediately upon execution thereof by such party and that this Agreement shall be and remain irrevocable by any party from and after the effective date of this Agreement.

**SECTION 4. GOVERNING LAW.** This Agreement is made according to the laws of the State of Texas. The parties expressly agree that this Agreement is governed by, and will be construed and enforced in accordance with, Texas law.

**SECTION 5. BINDING EFFECT.** This Agreement is binding on and inures to the benefit of the parties and their respective heirs, representatives, successors, and assigns.

**SECTION 6. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties. It supersedes any and all prior agreements, arrangements, or understandings between the parties on all subjects in any way related to the transaction or occurrence described in this Agreement. No oral understandings, statements, promises, or inducements contrary to or consistent with the terms of this Agreement exist. This Agreement is not subject to any modification, waiver, or addition that is made orally. This Agreement is subject to modification, waiver, or addition only by means of a writing signed by all parties.

**SECTION 7. COUNTERPARTS.** This Agreement may be executed in any number of identical counterparts, each of which will be deemed an original for all purposes.

[The remainder of this page intentionally left blank]

*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

**FIRST HARTFORD REALTY CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF EDINBURG, TEXAS**

ATTEST:

By: \_\_\_\_\_  
Richard H. Garcia, Mayor

By: \_\_\_\_\_  
Myra L. Ayala Garza, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Palacios & Associates, P.C.

By: \_\_\_\_\_  
City Attorney

**EDINBURG ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Richard H. Garcia  
President, Board of Directors

**CITY OF EDINBURG, TEXAS  
LOCAL GOVERNMENT FINANCE  
CORPORATION**

By: \_\_\_\_\_  
Elias Longoria, Jr.  
President, Board of Directors

**HIDALGO COUNTY, TEXAS**

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

By: \_\_\_\_\_  
Ramon Garcia, County Judge

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, L.L.P.

By: \_\_\_\_\_  
Stephen L. Crain

AI-48234

County Judge's Office 2. D.

**CC REGULAR**

**Meeting Date:** 01/27/2015

**Submitted By:** Monica Badillo,  
EXECUTIVE OFFICE

**Department:** EXECUTIVE OFFICE

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**Information**

**CAPTION**

Discussion and possible action on Order approving Amendment to Interlocal Agreement with the City of Mission relating to Tax Increment Reinvestment Zone Number One, City of Mission

**BACKGROUND**

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**Fiscal Impact**

**Attachments**

amend

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**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Purchasing Department	Monica Badillo	01/23/2015 04:24 PM
Form Started By: Monica Badillo		Started On: 01/23/2015 02:05 PM
Final Approval Date: 01/23/2015		

THE STATE OF TEXAS   §  
  §  
COUNTY OF HIDALGO   §

SECOND AMENDMENT TO AGREEMENT

This SECOND AMENDMENT TO AGREEMENT (this “Amendment”), dated as of January 27, 2015, is made by and between the CITY OF MISSION, TEXAS (the “City”), a municipal corporation and home-rule city principally situated in the County of Hidalgo, acting by and through its governing body, the City Council; COUNTY OF HIDALGO, TEXAS (the “County”); and the REINVESTMENT ZONE NO. ONE, CITY OF MISSION, TEXAS (the “Reinvestment Zone”), a reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code, acting by and through its Board of Directors.

RECITALS

The City, the County and the Reinvestment Zone entered into that certain Agreement, the latest signature on which is dated April 9, 2002 (the “Agreement”), providing for the participation in the Reinvestment Zone financing as more particularly described therein.

The terms of the Agreement provide that the County’s participation shall be limited to the area described in City of Mission, Texas, Resolution No. 1333 (the “2013 Resolution”, a copy of which is attached hereto as Exhibit “A”), and that it shall not extend to any additional areas unless the County approves the participation. In the first Amendment to Agreement between the parties hereto, approved by Commissioners Court September 6, 2005, the County approved a subsequent expansion of the Reinvestment Zone boundaries.

Pursuant to the 2013 Resolution, the City expanded the Reinvestment Zone to accommodate additional transportation improvements that will benefit the City, the County and the Reinvestment Zone. In January 2013, the City also adopted a corresponding amendment to the Project Plan and Reinvestment Zone Financing Plane (as amended, the “Reinvestment Zone Project Plan”).

The City informed the County that the expansion of the Reinvestment Zone pursuant to the 2013 Resolution would have no financial impact on the County’s participation in the Reinvestment Zone because the additional property added to the Zone is all within right of way.

The parties desire to provide for the participation of the County in the Reinvestment Zone, as expanded.

Now, therefore, the parties agree as follows:

1. Definitions. Capitalized terms used herein shall have the meanings provided in the Agreement, unless otherwise defined or the context clearly requires otherwise.

2. Expansion of the Reinvestment Zone.

a. The County hereby approves its participation in the Reinvestment Zone as enlarged by the City to include the land described in the 2013 Resolution. The terms of the Agreement are hereby amended to apply as of the date hereof to the Reinvestment Zone as enlarged.

b. The City and the Zone represent and warrant that (i) the land added to the Zone by the 2013 Resolution is all within the Right-of-Way of the proposed route for the Hidalgo County Loop project being developed by the Hidalgo County Regional Mobility Authority, and is not land that is likely to be developed or improved in such a way as to cause the Tax Increment to increase from what it would have been absent the expansion to the Reinvestment Zone by the 2013 Resolution; and (ii) because of (i) above, the expansion of the Reinvestment Zone by the 2013 Resolution will have no fiscal impact on the County.

3. Calculation and Payment of Tax Increment; Reports and Audits.

a. The parties acknowledge that because of the TRZ, the County's contribution with respect to any property added to the Reinvestment Zone that is also within the TRZ will be limited. The Agreement is amended by adding the following language at the end of the second paragraph of Section IV.A of the Agreement:

The City and the Reinvestment Zone acknowledge and agree that in the event there is real property added to the Reinvestment Zone after September 6, 2005 (including without limitation the property added to this Agreement pursuant to that certain Second Amendment to Agreement as of dated January 27, 2015), that is also within the boundaries of Transportation Reinvestment Zone Number Two, Hidalgo County (the "TRZ") as of January 27, 2015, that during any period with respect to which the County is obligated to pay part of the tax increment on such real property in the Zone to the TRZ, the County contribution to the Zone with respect to real property that is within the overlap between the TRZ

and the Reinvestment Zone shall not exceed fifty percent (50%) of the County M&O Tax Rate (as defined below). "County M&O Tax Rate" means that portion of the ad valorem tax rate used by the County for Maintenance and Operation. The County M&O Tax Rate may change from time to time, including during the Agreement Term.

b. The parties have agreed to clarify and change the timing provision for making payments. The Agreement is amended by deleting "and payment shall be due on the last day of each calendar quarter" from the last sentence of the third paragraph of Section IV.A of the Agreement and adding the following at the end of such paragraph:

In accordance with section 311.013(c) of the Texas Tax Code, the County agrees to contribute its yearly Tax Increment Participation payment to the Tax Increment Fund annually not later than May 1 of each tax year (or the first business day thereafter). The amount of each Tax Increment Participation payment shall be based on the Tax Increments that are received up to the preceding January 31<sup>st</sup>, but which have not been previously deposited in the Tax Increment Fund, during the annual periods preceding each deposit date.

c. The following new paragraphs are added at the end of Section IV.A. of the Agreement:

One month prior to a payment required from the County under this Agreement, the City shall provide to the County (i) a copy of the collection reports it has requested and received from the Hidalgo County Tax Assessor Collector, (ii) a payment request detailing the payment calculation in County's standard form or such other form as may be agreed to by the parties and (iii) a fact sheet that includes detail as to what portion of the Project has been completed to date and a current roster of the Reinvestment Zone's board members, including the term of each board member, the entity that appointed the board member, the date for the next annual meeting and a formal request for payment. In addition to and as part of the City's fact sheet, the City shall supply the County with all information as required under Section 311.016 of the Texas Tax Code on or before the 90th day following the end of the fiscal year of the City.

In the event there is a conflict between the Parties in regards to the amount of the Tax Increment owed by the County, the

Hidalgo County Auditor will make the final determination as to the amount of any Tax Increment owed by the County under this Agreement based on the information submitted by the parties. The annual Captured Appraised Value for the real property contained within the Reinvestment Zone shall be determined by the Hidalgo County Appraisal District on the assessed appraised values and the Hidalgo County Tax Offices' verification of collections in regards to the real property contained with the Reinvestment Zone.

The Reinvestment Zone agrees to conduct or to cause to be conducted, at a minimum, an annual financial review, a copy of which will be provided to the County. Furthermore, each party to the Agreement shall have reasonable access to financial information and audit reports regarding the operation of the Reinvestment Zone, contribution of Tax Increment Participation payments to the Tax Increment Fund, and expenditures from the Tax Increment Fund. In addition, the City agrees, during the term of this Agreement, to prepare and deliver an annual report to the County in accordance with Section 311.016 and, if applicable, 311.0101(c), Texas Tax Code. The County shall have the right to withhold or delay payments to the Tax Increment Fund until such time as it has received the financial or other report from the City for the applicable tax year or the City or the Reinvestment Zone are otherwise in material breach of their obligations under this Agreement, and shall not incur any penalties or interest with respect to any such withheld or delayed payments notwithstanding any provision herein to the contrary.

4. Amended Project Plan. The County has received a copy of the Reinvestment Zone Project Plan relating to the expansion of the Reinvestment Zone as described herein in compliance with Article V of the Agreement. A complete copy of the Reinvestment Zone Project Plan, which has been amended to expand the Reinvestment Zone in accordance with Exhibit A of this Amendment, is attached hereto as Exhibit "B".

5. Addresses. The addresses of the parties, which one party may change by giving written notice of its changed address to the other parties, for purposes of the Agreement, as amended hereby, are as follows:

City	County	Reinvestment Zone
City Manager or Designee City of Mission, Texas 1201 E. 8th St. Mission, Texas 78752	Hidalgo County Attention: County Judge 302 W. University Drive Edinburg, Texas 78539	Reinvestment Zone No. One, City of Mission, Texas Attention: Executive Director 901 Business Park Drive, Suite 200 Mission, Texas 78572

6. Agreement remains in effect; effective date. Except as specifically amended hereby, the terms of the Agreement shall remain in full force and effect as of the date thereof. The effective date of this Amendment shall be the date first written above.

[Signature pages follow.]

IN WITNESS WHEREOF, the City, the County and the Reinvestment Zone have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF MISSION, TEXAS,  
a home rule municipality

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(SEAL)

COUNTERSIGNED:

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

HIDALGO COUNTY

By: \_\_\_\_\_  
Ramon Garcia  
County Judge

ATTEST/SEAL:

\_\_\_\_\_  
Arturo Guajardo, Jr.  
County Clerk

APPROVED AS TO FORM FOR  
HIDALGO COUNTY:

ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

REINVESTMENT ZONE NUMBER ONE,  
CITY OF MISSION, TEXAS

By: \_\_\_\_\_  
Chairman, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

Exhibit A  
Annexed Land

Exhibit B

Revised Reinvestment Zone Project Plan

AI-48243

Budget and Management 3. A.

**CC REGULAR**

**Meeting Date:** 01/27/2015

**Submitted For:** Dina Trevino, BUDGET & MANAGEMENT

**Submitted By:** Merlen P. Munoz, BUDGET & MANAGEMENT

**Department:** BUDGET & MANAGEMENT

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**Information**

**CAPTION**

Discussion, consideration, and approval to pay the UT System 2014 Support Payment, in the amount of \$1,000,000.00 pursuant to the Chapter 381 Economic Development Agreement between the University of Texas System and Hidalgo County, with authority for County Treasurer to issue payment/check after review, audit, and processing procedures are completed by County Auditor.

**BACKGROUND**

Chapter 381 Economic Development Agreement approved on 12/16/2014 (AI-47804)

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**Fiscal Impact**

**FISCAL YEAR:** 2014

**ACCT. #:** 4-1100-415-00-115-002-0-843

**FUNDS AVAILABLE Y/N?:** Y

**MATCHING FUNDS Y/N?:** N

**BUDGETARY IMPACT:**

Funds available as of 1/23/15.

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**Attachments**

Agreement

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**Form Review**

**Inbox**

Purchasing Department

Form Started By: Merlen P. Munoz

Final Approval Date: 01/23/2015

**Reviewed By**

Monica Badillo

**Date**

01/23/2015 04:24 PM

Started On: 01/23/2015 03:43 PM

**CHAPTER 381  
ECONOMIC DEVELOPMENT AGREEMENT**

**By and Between**

**HIDALGO COUNTY, TEXAS,**

**and**

**THE UNIVERSITY OF TEXAS SYSTEM.**

**Effective as of December 16, 2014**

## CHAPTER 381

### ECONOMIC DEVELOPMENT AGREEMENT

This CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is entered into to be effective as of the 16<sup>th</sup> day of December, 2014 (the "Effective Date"), by and between HIDALGO COUNTY, TEXAS (the "County") and The University of Texas System ("UT").

#### RECITALS

**WHEREAS**, on August 26, 2014, the County, UT, and the Cities of Edinburg, McAllen, Mission, and Pharr (the cities hereinafter referred to as the "City Parties") signed a Memorandum of Understanding ("MOU") concerning commitments related to establishment of The University of Texas Rio Grande Valley Medical School ("Medical School") in order to advance the health, education and economy of the region; and

**WHEREAS**, UT committed to creating and operating in the lower Rio Grande Valley, the new Medical School, with the expectation that the Medical School will increase opportunities for economic development, including new and expanded research funding and technology transfer and commercialization; and

**WHEREAS**, operation of the Medical School will create new jobs and tax value, and will promote local economic development and stimulate business and commercial activity in the County; and

**WHEREAS**, under Chapter 381 of the Texas Local Government Code, the County has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the County; and

**WHEREAS**, to ensure the success of the Medical School, the County committed to fund certain amounts in recognition of the increase in opportunities for economic development, pursuant to an economic development agreement; and

**WHEREAS**, MOU contemplates the County and UT entering into an agreement with respect to the provision of the funds committed by the County in the MOU and the parties have opted to proceed under option (ii) of the "The County of Hidalgo" heading of Section 4 of the MOU by executing this Agreement; and

**WHEREAS**, County and UT desire to set forth in this Agreement the terms and conditions of the payment to UT of County economic development funds; and

**WHEREAS**, the parties recognize that all agreements of the parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE I**

#### **PURPOSE AND INTERPRETATION**

UT is taking steps to establish the Medical School in accordance with Senate Bill 24, Regular Session, 83<sup>rd</sup> Texas Legislature, as codified in Chapter 79 of the Texas Education Code. Subject to the terms and conditions of this Agreement, the County will grant funds to UT each year from 2014 to 2023, in recognition of the increased opportunities for economic development in the County.

### **ARTICLE II**

#### **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set out below:

2.1 “*Agreement*” has the meaning given such term in the introductory paragraph above.

2.2 “*City Parties*” has the meaning given such term in the recitals above.

2.3 “*County*” has the meaning given such term in the introductory paragraph above.

2.4 “*Effective Date*” has the meaning given such term in the introductory paragraph above.

2.5 “*Medical School*” has the meaning given such term in the recitals above.

2.6 “*MOU*” has the meaning given such term in the recitals above.

2.7 “*Support Payments*” means the County’s payments pursuant to this Agreement.

2.8 The “*Term*” of this Agreement (hereinafter so called) shall include, and extend until the earlier of, (a) the end of the payout periods of the Support Payments as set forth in this Agreement, or (b) the creation of a County or multi-county taxing district and either (i) the provision of that district of either an equivalent amount of support as that committed by the County and City Parties under the MOU or (ii) the acceptance and continuation by that district of the commitments made by the County and City Parties under the MOU.

2.9 “*UT*” has the meaning given such term in the introductory paragraph above.

### ARTICLE III

#### UT’S OBLIGATION

**SECTION 3.1. OBLIGATIONS UNDER MOU.** UT remains obligated to the commitments set forth in section 3 of the MOU.

**SECTION 3.2. SOLE OBLIGATION.** The payment of all indebtedness and obligations incurred by UT in connection with the development, construction, and operation of the Medical School shall be solely the obligations of UT. The County shall not be obligated to pay any indebtedness or obligations of UT and shall only be obligated to reimburse UT for the Support Payments in accordance with the terms and conditions of this Agreement.

### ARTICLE IV

#### PAYMENT OF SUPPORT PAYMENTS

**SECTION 4.1. COUNTY’S OBLIGATION.** The duty of the County to make Support Payments to UT for any purpose under this Agreement is limited in its entirety by the provisions of this Agreement, including without limitation Sections 7.3 and 7.4 below.

**SECTION 4.2. TIME FOR MAKING PAYMENTS.** During the Term, the County shall pay, each year from 2014 to 2023, a Support Payment of One Million Dollars (\$1,000,000) per year to UT. The Support Payment for 2014 will be made as soon as

reasonably possible after the Effective Date of this Agreement. The Support Payments for 2015 through 2023 will be made on or around October 15<sup>th</sup> of each year.

## **ARTICLE V**

### **COVENANTS**

**SECTION 5.1. COVENANTS OF UT.** UT shall comply with the following covenants.

**SECTION 5.1.1. ORGANIZATION.** UT shall not change, or permit to be changed, its organizational documents in any manner that would materially adversely affect UT's obligations under this Agreement.

**SECTION 5.1.2. BUSINESS OF UT.** During the Term of this Agreement, UT shall work to establish the Medical School as required by Chapter 79 of the Texas Education Code and consistent with the terms of the MOU.

**SECTION 5.2. COVENANTS OF THE COUNTY.** The County shall comply with the following covenants.

**SECTION 5.2.1. ORGANIZATION.** The County shall not change, or permit to be changed, its organizational documents in any manner that would materially adversely affect UT or the County's obligations under this Agreement.

**SECTION 5.3 FURTHER ACTIONS.** The County and UT will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES**

**SECTION 6.1. REPRESENTATIONS AND WARRANTIES OF UT.** UT represents and warrants to the County, as of the Effective Date, as follows:

**SECTION 6.1.1. AUTHORITY.** The execution, delivery and performance by UT of this Agreement is within its respective powers and have been duly authorized by all necessary action.

**SECTION 6.1.2. NO CONFLICTS.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of UT or any judgment, decree, license, order or permit

applicable to UT, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of UT pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which UT is a party or, to the knowledge of UT, by which UT is bound, or to which UT is subject.

**SECTION 6.1.3. NO PENDING LITIGATION.** There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of UT, threatened against or affecting UT or any subsidiaries of UT, questioning the validity or any action taken or to be taken by UT in connection with the execution, delivery and performance by UT of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by UT hereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of UT to perform, its obligations under this Agreement or (ii) would have an adverse effect on the consolidated financial condition or results of operations of UT or on the ability of UT to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Medical School).

**SECTION 6.1.4. NO DEFAULTS.** UT is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which UT is a party or by which UT or any of its property is bound that would have any material adverse effect on UT's ability to perform under this Agreement.

**SECTION 6.2. REPRESENTATION AND WARRANTIES OF THE COUNTY.** The County represents and warrants to UT, as of the Effective Date, as follows:

**SECTION 6.2.1. AUTHORITY.** The execution, delivery and performance by the County of this Agreement is within its respective powers and have been duly authorized by all necessary action.

**SECTION 6.2.2. NO CONFLICTS.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the governing documents of the County or any judgment, decree, license, order or permit applicable to the County, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the County pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the County is a party or by which the County is bound, or to which the County is subject.

**SECTION 6.2.3. NO PENDING LITIGATION.** There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the County, threatened against or affecting the County, questioning the validity of any proceedings taken or to be taken by the County in connection with the execution, delivery and performance by the County of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the County hereof, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of, or the authority or ability of the County to perform its obligations under this Agreement.

**SECTION 6.2.4. NO DEFAULTS.** The County is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the County is a party or by which the County is bound that would have any material adverse effect on the County's ability to perform under this Agreement.

## **ARTICLE VII PERSONAL LIABILITY OF PUBLIC OFFICIALS; FUNDING AUTHORITY**

**SECTION 7.1. COUNTY OFFICIALS.** To the extent permitted by State law, no employee of the County, nor any commissioner, official or agent of the County, shall be personally responsible for any liability arising under or growing out of this Agreement.

**SECTION 7.2. UT OFFICIALS** To the extent permitted by State law, no employee of UT, nor any regent or agent of UT, shall be personally responsible for any liability arising under or growing out of this Agreement.

**SECTION 7.3. COMMITMENT OF CURRENT REVENUES ONLY.** The Support Payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the County. Under no circumstances shall the County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the County shall have no obligation or liability to pay any Support Payments unless the County appropriates funds to make such payment during the year in which such Support Payment(s) is payable.

**SECTION 7.4. AUTHORITY.** If the final judgment of a court of competent jurisdiction determines that any party to this Agreement lacked the necessary authority to make a commitment expressed in the Agreement, the party is released from the commitment, and that party is entitled to and shall receive a refund of any money paid, transferred, or provided under this Agreement.

## **ARTICLE VIII INFORMATION**

UT shall, at such times and in such form as County may reasonably require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by the County.

## **ARTICLE IX MISCELLANEOUS**

**SECTION 9.1. ENTIRE AGREEMENT.** This Agreement, including exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

**SECTION 9.2. AMENDMENT.** This Agreement may only be amended, altered, or revoked by written instrument signed by all parties.

**SECTION 9.3. SUCCESSORS AND ASSIGNS.** In this Agreement, unless a clear contrary intention appears, reference to any party includes such party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. This Agreement is not assignable without the prior written permission of the other party thereto.

**SECTION 9.4. WAIVER.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

**SECTION 9.5. REMEDIES.** Upon breach of this Agreement, including any of the covenants contained in Article V or the representations and warranties contained in Article VI, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages.

**SECTION 9.6. NOTICES.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

**UT:**

Scott C. Kelley  
Executive Vice Chancellor for Business Affairs  
201 West 7th Street  
Austin, TX 78701-2982  
(512) 400-4560  
(512) 499-2982 (fax)

**COUNTY:**

Hidalgo County  
302 West University Drive  
Edinburg, Texas 78539  
Attn: County Judge  
Telephone: (956) 318-2600  
Facsimile: (956) 318-2699

With a copy to:

Hidalgo County Attorney  
Attn: Stephen L. Crain, Attorney  
Atlas, Hall & Rodriguez, LLP  
818 Pecan Blvd.  
McAllen, TX 78501  
Telephone: (956) 632-8221  
Facsimile: (956) 686-6109

**SECTION 9.7. APPLICABLE LAW.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Hidalgo County, Texas.

**SECTION 9.8. SEVERABILITY.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**SECTION 9.9. NO THIRD-PARTY BENEFICIARIES.** The County and UT intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the County and UT or permitted assignees of the County and UT.

**SECTION 9.10. NO JOINT VENTURE.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

**SECTION 9.11. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

**SECTION 9.12. FORCE MAJEURE.** Means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

EXECUTED to be effective as of the Effective Date.

COUNTY OF HIDALGO, TEXAS

By: Ramon Garcia  
Name: Ramon Garcia  
Title: County Judge

ATTEST:

[Signature]  
County Clerk

APPROVED BY  
COMMISSIONERS' COURT  
ON: 12/16/14

UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_  
Name: Scott C. Kelley  
Title: Executive Vice Chancellor for Business Affairs

**SECTION 9.11. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

**SECTION 9.12. FORCE MAJEURE.** Means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

EXECUTED to be effective as of the Effective Date.

COUNTY OF HIDALGO, TEXAS

ATTEST:

By: \_\_\_\_\_  
Name: Ramon Garcia  
Title: County Judge

\_\_\_\_\_  
County Clerk

UNIVERSITY OF TEXAS SYSTEM

By: Scott C. Kelley  
Name: Scott C. Kelley  
Title: Executive Vice Chancellor for Business Affairs