

THE STATE OF TEXAS  
COUNTY OF HIDALGO

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RIVER CROSSING TIF -

### 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 is made by and between the **CITY OF DONNA, TEXAS** (hereafter referred to as the "CITY"), a Texas Home Rule Municipality, acting through its City Manager pursuant to Resolution No. 2008-06-05, passed and approved by the City Council on June 19, 2008; **HIDALGO COUNTY**, a political subdivision of the State of Texas, acting through its County Judge pursuant to authority granted by the Hidalgo County Commissioners Court on October 28, 2008 (hereafter referred to as the "COUNTY"); the **TAX INCREMENT REINVESTMENT ZONE NUMBER TWO (2), CITY OF DONNA, TEXAS**, a reinvestment zone created by the CITY pursuant to Chapter 311 of the Texas Tax Code (hereafter referred to as the "ZONE"), 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, as well as to implement and fund the Project ("ZONE BOARD"); and **RHODES ENTERPRISES, INC.**, the developer and petitioner for creation of the ZONE (hereafter referred to as "DEVELOPER").

Collectively, the CITY, COUNTY, ZONE, and DEVELOPER may be referred to as the "Parties." This Agreement is made pursuant to Chapter 311 of the Texas Tax Code for the participation of the CITY and the COUNTY in the Project (as defined below).

2. The initial addresses of the Parties are listed below. Each party may designate a different address by giving the others at least ten (10) days prior written notice.

If to the City, to:

With a copy to:

City of Donna  
307 S. 12<sup>th</sup> St.  
Donna, TX 78537  
Attention:  
City Manager  
Phone: (956) 464-3314  
Fax: (956) 464-9923

City of Donna  
307 S. 12<sup>th</sup> St.  
Donna, TX 78537  
Attention:  
Mayor  
Phone: (956) 464-3314  
Fax: (956) 464-9923



**If to the County, to:**

Hidalgo County  
100 E. Cano, 2<sup>nd</sup> Floor  
Edinburg, TX 78539  
Re: River Crossing TIRZ  
Attention: Honorable J.D.  
Salinas,  
County Judge  
Phone: (956) 318-2600  
Fax: (956) 318-2699

**With a copy to:**

Atlas & Hall, L.L.P.  
818 Pecan Blvd.  
McAllen, TX 78501  
Re: River Crossing TIRZ  
Attention: Stephen L. Crain  
Phone: (956) 628-5501  
Fax: (956) 686-6109

**If to the Zone, to:**

Reinvestment Zone Number Two  
c/o City of Donna  
307 S. 12<sup>th</sup> St.  
Donna, TX 78537  
Attention: Mike Rhodes,  
Presiding Officer  
Phone: (956) 464-3314  
Fax: (956) 464-9923

**With a copy to:**

Earl & Associates, P.C.  
15303 Huebner, Blg. #15  
San Antonio, TX 78248  
Phone: (210)222-1500  
Fax: (210)222-9100

**If to the Developer, to:**

Rhodes Enterprises, Inc.  
14901 N. Ware Rd.  
Edinburg, TX 78541  
Attention: Mr. Ken DeJarnett  
Phone: (956) 287-2800  
Fax: (956) 287-2804

**B. Index**

This Agreement consists of the following sections:

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### C. Parts Incorporated

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

## 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 for all the combined Participating Taxing Entities, which incur Administrative Costs over the life of the ZONE is estimated to be an aggregate two hundred forty thousand dollars (\$240,000.00), representing \$120,000.00 to each of the CITY and the COUNTY.
2. "Agreement" means this Interlocal Agreement.
3. "Agreement Term" has the meaning set forth in Section VII.A. below.
4. "Available Tax Increment" shall mean the "Tax Increment," as defined below, less the Administrative Costs of the COUNTY.
5. "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 2008, the base year of the ZONE.
6. "CITY" has the meaning set forth in Section I.A.1 above, and includes its successors and assigns.
7. "COUNTY" has the meaning set forth in Section I.A.1 above.
8. "DEVELOPER" has the meaning set forth in Section I.A.1 above, and includes its successors and assigns.
9. "Development Agreement" means the agreement among the DEVELOPER, the ZONE and the CITY attached hereto as Exhibit C.
10. "Financing Plan" means the Final Financing Plan for ZONE as adopted by the Board of Directors of ZONE on June 05, 2008, and approved by City Council of CITY on July 22, 2008, and attached hereto as Exhibit "A".
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" means the River Crossing Development Project, as that project is more specifically identified in the Financing and 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. The Project Costs in the aggregate for the life of ZONE are estimated to be fifty four million five hundred forty five thousand dollars (\$54,545,000), plus twenty five million dollars (\$25,000,000) in applicable qualifying project costs as more completely set forth in Exhibit "A".
15. "Project Plan" means the Final Project Plan for the ZONE as adopted by the Board of

Directors of the ZONE on and approved by the CITY Council of the CITY on 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, 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 Two City of Donna, 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. "ZONE" means Tax Increment Reinvestment Zone Number Two, City of Donna, Texas, created by the CITY over the Zone Area on May 29, 2008, by Ordinance No. PL-2008-05-64 a description of which is contained in Exhibit "B", attached hereto.

22. "ZONE BOARD" has the meaning set forth in Section I.A.1 above.

### III. BACKGROUND

A. Resolution of Intent No. 2007-11-02, passed and approved by the City Council of the CITY on November 5, 2007, expressed the CITY's intent to create a tax increment financing reinvestment zone to support revitalization and development activities for the ZONE, commonly known as the River Crossing Development Project, pursuant to Chapter 311, Texas Tax Code. On May 29, 2008, the City Council of the CITY passed and approved Ordinance No. PL-2008-05-64, which created the ZONE and by which the CITY agreed to be bound to this Agreement pursuant to Section 311.013 of the Texas Tax Code. The Project is located in the southernmost sector of the CITY. The Project generally is located along Business Highway 281 between the United States - Mexico border and the City Limit of Donna as it existed prior to its most recent annexation. The Project is more specifically described on Exhibit A. The Project is in the Donna Independent School District and encompasses approximately 927 +/- acres. The ZONE BOARD will provide funding for public improvements and other Project Costs within the area of the Project. The Tax Increment Base for the ZONE is Two Million Two Hundred Forty Nine Thousand Nine Hundred Forty Six Dollars (\$2,249,946.00), and the projected Captured Appraised Value of all the taxable real property in the ZONE at the end of the Agreement Term is Seven Hundred Eighty Five Million Three Hundred Eighty Two Thousand Two Hundred Dollars (\$785,382,200.00). Bonds will be issued pursuant to §311.015 of the Texas Tax Code once the DEVELOPER has initiated construction, and when the City is able to issue bonds based on underwriting requirements. The Bonds will be secured by revenue from the Tax Increment as provided for in Section 311.015 and Section 311.0123 of the Texas Tax Code. The Project includes the construction of public infrastructure that will serve a mixed use development. Construction will be carried out in phases as specified in the Development Agreement and Project Financing Agreement, with the last phase commencing in 2024. The total Project Costs is estimated to be fifty four million five hundred forty five thousand dollars (\$54,545,000), plus twenty five million dollars (\$25,000,000) in applicable qualifying project costs and the city's portion of administrative costs in the amount of one hundred twenty thousand (\$120,000) for a total of seventy nine million six hundred sixty five thousand dollars (\$79,665,000.) The developer is RHODES ENTERPRISES, INC., (the "Developer"), or its successors, assigns or contractors. The ZONE is projected to terminate on May 29, 2038, unless earlier termination occurs under this Agreement (the "term of the ZONE").

B. The ZONE BOARD adopted the Project Plan on June 05, 2008. The CITY approved the Project Plan and Project Financing Plan on July 22, 2008. 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. PL-2008-05-64, 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 a Participating Taxing Entity or the ZONE BOARD to finance any costs or improvements on the Project.

#### 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 50% of the revenue generated from its M&O tax rate as assessed and collected on the tax increment for the respective tax year. For the purpose of this Agreement the M&O tax rate shall be calculated as set forth in section IV(B)(9) of this Agreement. In no event shall the COUNTY contribution to the Tax Increment Fund be greater than \$33,818,213.00, over the life of the ZONE beginning with the 2008 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 it has contributed the maximum total contribution provided for herein of \$33,818,213.00, or 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 2038 (ending on December, 2038), whichever occurs first. The COUNTY's continued contribution to the Tax Increment Fund is conditioned upon the Developer's continuing and full compliance with the Development Agreement and the existence of the ZONE and in the event the Developer is not in compliance with the Development Agreement, the COUNTY may withhold its contributions without incurring penalty or interest.

##### B. Tax Increment Payment

1. 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. COUNTY agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2008 by the later of May 1st, 2009 or 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, 2009, but only for tax year 2008 beginning January 1, 2008. For subsequent payments, the COUNTY agrees to contribute its yearly Tax Increment Payment to the Tax Increment Fund annually not later than the 90<sup>th</sup> 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 31<sup>st</sup> 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. Under no circumstances shall the COUNTY be required to participate in the ZONE with taxes attributable to periods after 2038.

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 and the date for the next annual meeting. 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 90<sup>th</sup> day following the end of the fiscal year of the CITY.

3. Pursuant to Chapter 311 of the Texas Tax Code, 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.

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

"A taxing unit shall make a payment required by the Subsection (b) [Tax Increment Payment], not later than the 90<sup>th</sup> day after the delinquency date for the unit's property taxes. A delinquent payment incurs a penalty of five percent of the amount delinquent and accrues interest at an annual rate of ten 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 report required under section 311.016 of the Texas Tax Code or in any situation in which the CITY is not obligated to pay penalties and interest under the Development Agreement or otherwise.

5. The CITY agrees to comply with the Project Plan and the Development Agreement. 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 or the Development Agreement; 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 and the Development Agreement 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, the DEVELOPER and the ZONE (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) demanding that all breaches must be resolved within ninety (90) days.

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 exceed thirty three million eight hundred eighteen thousand two hundred thirteen dollars (\$33,818,213.00), plus any applicable penalty and/or interest allowed in section 311.013 of the Tax Code.

9. Notwithstanding anything herein to the contrary, the maximum amount of Tax Increment deposited in the Tax Increment Fund by the COUNTY shall not exceed the amount of taxes collected by the COUNTY in any of the years 2008 through 2038 at fifty percent (50%) of its COUNTY Maintenance and Operation (M&O) tax rate equal to \$0.25955 per \$100 valuation on the Captured Appraised Value. In the event that the COUNTY M&O tax rate is less than \$0.5191 per \$100 valuation on the captured appraised value during any of the years 2008 through 2038, then the maximum tax increment paid by the COUNTY into the Tax Increment Fund shall not exceed fifty percent (50%) of the total amount of taxes collected by the COUNTY at the actual M&O tax rate during the year the COUNTY tax rate is less than \$0.5191 per \$100 valuation. In the event that the COUNTY M&O tax rate is greater than \$0.5191 per \$100 valuation on the captured appraised value during any of the years 2008 through 2038, the COUNTY shall retain all taxes collected above the maximum amount of tax increment deposited in the Tax Increment Fund at fifty percent (50%) of the COUNTY'S M&O contribution equal to a tax rate of \$0.25955 per \$100 valuation on the captured appraised value.

#### **C. School District Provisions**

The COUNTY understands that the Project is located in the Donna Independent School District. The City and the Zone represent to the COUNTY that the Donna Independent School District is not participating in the ZONE.

#### **D. 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 nine (9) members, as allowed under Section 311.009(b) of the Texas Tax Code. The COUNTY shall have the right to appoint one member of the ZONE BOARD.

#### **E. 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 Development Agreement, the CITY agrees to participate in the ZONE by contributing to the Tax Increment Fund one hundred percent (100%) of its Tax Increment each year during the term of this Agreement, beginning with the 2008 tax year. The CITY's contributions to the Tax Increment Fund shall end when the CITY has contributed the maximum total contribution provided for herein or when it has contributed all Tax Increments attributable to periods before the ZONE termination date in 2038, whichever occurs first. Notwithstanding anything herein to the contrary, the total CITY Tax Increment Payments over the term of the ZONE shall not exceed fifty four million five hundred forty five thousand dollars (\$54,545,000)(which amount includes the COUNTY's portion of Administrative Cost), plus twenty five million dollars (\$25,000,000) in applicable qualifying Project Costs and the CITY's portion of Administrative Costs (\$120,000) for a total of seventy nine million six hundred sixty five million dollars (\$79,665,000.00)

### 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 2008 by April 30, 2009. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received through January 31, 2009, but only for the tax year 2008 beginning January 1, 2008. 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 Section 311.013(c) 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. PL-2008-05-64 passed and approved by City Council of the CITY on May 29, 2008. 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 Administrative Costs, in the aggregate, exceed the amount set out and described in Section II.1 above. The parties acknowledge and agree that the Project budget sets out the CITY's portion of Administrative Costs as a separate line

item while it includes the COUNTY's portion of Administrative Costs as part of the contingency line item. Notwithstanding the discrepancy in the handling of their Administrative Costs in such budget, the parties acknowledge and agree that they intend that the CITY's and the COUNTY's Administrative Costs be handled in the same way for all purposes under this Agreement.

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; (ii) to reimburse eligible initial startup Administrative Costs incurred by each Participating Taxing Entity, except that if there are insufficient funds for the full reimbursement of Administrative Costs to each Participating Taxing Entity, then the Administrative Costs of each Participating Taxing Entity shall be reimbursed on a pro rata basis based on each taxing entity's total tax increment payment to the ZONE and (iii) to reimburse the DEVELOPER for public improvements, including financing costs, as provided in the Development Agreement and in the Project Plan to the extent that funds are available for this purpose. The Development Agreement is attached hereto as Exhibit "C". The foregoing notwithstanding, no funds will be paid from the Tax Increment Fund to a Participating Taxing Entity for its financial or legal services incurred in any dispute arising under this Agreement with another Participating Taxing Entity or Participating Taxing Entities.

## **VI. RIGHTS AND OBLIGATIONS OF DEVELOPER**

### **A. Agreement by Developer**

In return for the covenants and agreements made by the CITY, the COUNTY, and the ZONE, the DEVELOPER agrees to faithfully perform its obligations under this Agreement and the Development Agreement.

### **B. Rights of Developer**

1. The CITY, the COUNTY, and the ZONE agree and acknowledge that DEVELOPER is making the commitments identified herein in reliance on the commitments made by the CITY and the COUNTY to timely contribute their respective Tax Increments to the Tax Increment Fund as they become due, and on the commitment of the ZONE to properly process payments and reimbursements for proper work completed by the DEVELOPER and/or its assigns, contractors or subcontractors.

2. The DEVELOPER shall have the right to serve as Project Manager for the construction and installation of all public improvements and public infrastructure identified in the Project Plan and Project Financing Agreement.

3. DEVELOPER shall have the right to adjust or prioritize the schedule of construction of improvements within each Phase of the Project, provided that such adjustment or prioritization does not cause a material change in the Project Financing Plan.

4. DEVELOPER shall have the right to use anticipated reimbursements and other rights under this Agreement and the Development Agreement to obtain financing for funding required to construct improvements within the development, including the use of such reimbursements or rights as collateral, or the factoring of such rights and obligations to third parties.

## **VII. 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 May 29, 2038, 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 2008 tax year and ending in accordance with the terms provided herein. Notwithstanding 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 May 29, 2038.

**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 in Section IV.B. above, except the CITY may terminate the ZONE if the DEVELOPER ceases to undertake said improvements as set out in the Development Agreement or the DEVELOPER fails, for three (3) consecutive years or more, to (i) commence as scheduled in the Project Plan construction activities on any remaining improvements in the Project that are specified in the Development Agreement to be a part of the Project; or (ii) timely make any public infrastructure improvements that qualify as Project Costs, as defined in Section 311 of the Texas Tax Code, that are specified in the Development Agreement to be a part of the Project. Termination of the ZONE or participation in the ZONE by a taxing unit shall be subject to Section 311.013 of the Texas Tax Code.

**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.

**VIII. MISCELLANEOUS**

**A. Understanding**

Any and all costs incurred by the DEVELOPER are not, and shall never become, general obligations or debt of any Participating Taxing Entity. With respect to the DEVELOPER's costs, only eligible Project Costs and other allowable expenses under applicable law, if any, incurred by the DEVELOPER 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 No. \_\_\_\_\_ dated June \_\_\_\_\_, 2008. The CITY and the COUNTY are not obligated above and beyond what is actually collected as tax increment funds. There shall also be no recourse against any Participating Taxing Entity, public official, ZONE, or ZONE BOARD if all or part of the DEVELOPER contributions or costs are not reimbursed due to insufficient tax revenue generated by the ZONE.

**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.

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. 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 Council 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 F 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 COUNTY acknowledges that it was provided with a copy of the initial preliminary finance plan for review and comment before the Project Plan was finalized and approved by the City Council of the CITY. 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.

**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 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. Development Agreement**

The CITY has entered into a written Development Agreement with the DEVELOPER that is binding on the CITY and the ZONE BOARD related to the Project and the development of the ZONE, a copy of which is attached hereto and incorporated herein as Exhibit "C." The CITY hereby represents and warrants that it will enforce and follow the provisions of this Agreement, as required, including, to the extent contained in the Development Agreement, the DEVELOPER's compliance with all applicable building codes and ordinances, as modified or amended and all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, orders and codes, as amended. The CITY and the ZONE agree to provide the COUNTY with a copy of any notice of default that is delivered or sent to any party under the Development Agreement within five (5) business days after receipt of the notice by the CITY or the ZONE.

**M. ZONE Designation**

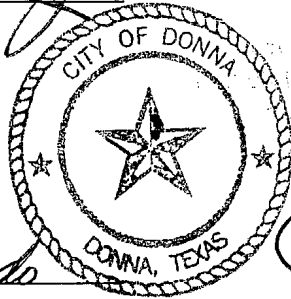
The CITY represents that its designation of the ZONE meets the criteria of Section 311.005(a), Texas Tax Code.

IN WITNESS HEREOF, the CITY OF DONNA; HIDALGO COUNTY; MUNICIPAL DEVELOPMENT ADVISORS; AND TAX INCREMENT REINVESTMENT ZONE NUMBER TWO (1), CITY OF DONNA, TEXAS have made and executed this Agreement in quadruplicate originals on this 12th day of November, 2008.

CITY OF DONNA



City Manager

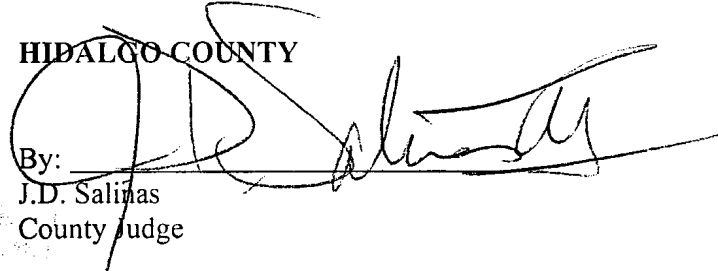


ATTEST/SEAL:



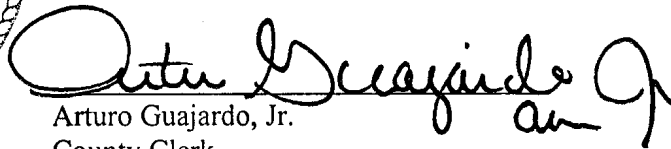
Martha Alvarado  
City Secretary

HIDALGO COUNTY



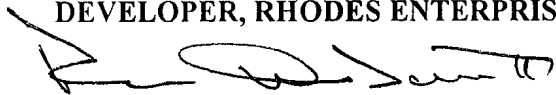
By:  
J.D. Salinas  
County Judge

ATTEST/SEAL:




Arturo Guajardo, Jr.  
County Clerk

DEVELOPER, RHODES ENTERPRISES, INC.



Ken DeJarnett  
Chief Executive Officer

APPROVED AS TO FORM FOR  
HIDALGO COUNTY:

By:   
Stephen L. Crain  
Atlas & Hall, L.L.P

REINVESTMENT ZONE NUMBER TWO,  
CITY OF DONNA, TEXAS  
(River Crossing Development Project)



Mike Rhodes  
Presiding Officer

**Exhibit A**  
**River Crossing Development Project**  
**Project Plan and Financing Plan**

**Exhibit B**  
**River Crossing Development Project**  
**City of Donna Ordinance No. P-2008-05-64**

**Exhibit C**  
**River Crossing Development Project**  
**Development Agreement**

**Tax Increment  
Reinvestment Zone  
#2**

**Project Plan  
and Finance  
Plan**

**City of Donna**

**June, 2008**

*River Crossing*  
DONNA TEXAS



**FINAL**

**Table of Contents**

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## EXECUTIVE SUMMARY

### Overview of Plan

Tax Increment Reinvestment Zone Number Two, City of Donna, the "River Crossing Development", (the Zone) represents an important opportunity for the future of Donna. It will promote and encourage construction of mixed use commercial, light and heavy industrial, office warehouse, retail, distribution, market rate single family housing, affordable and market rate multi-family housing with a combined value of over \$785,000,000. This will be accomplished in an area that has had significant impediments to development due to a lack of infrastructure. A further rationale for creation of this TIRZ is to maximize the positive impact of the new Donna International Bridge to the local economy. The new bridge, which is under construction, will have its U.S. side located to the south of the boundaries of the proposed zone.

The commercial and industrial development within the TIRZ zone built in conjunction with the new bridge will position the City and County as a highly attractive location for employers to locate. Creation of the TIRZ will; 1) Increase the population of the area, 2) Provide for a more efficient use of existing city services and infrastructure, 3) Offer employment opportunities to Donna and Hidalgo County residents and 4) Remove low valued vacant land from the tax rolls and replace it with higher value commercial, industrial and residential developments, 5) A portion of the revenue generated by the TIRZ will be used to fund economic development projects within the zone. This will help to ensure that the zone will become a major economic generator for the City.

The land within the proposed zone was annexed in early 2007. Like a number of other tracts of land in the city it has remained vacant because either; the costs associated with developing the land prohibited the efficient use of the property, or the property was unavailable for development when development should have occurred and current development costs are uneconomical. The area within the Zone includes structures and or tracts that are in blighted condition and that are undeveloped and/or underdeveloped. Creation of the TIRZ will allow for construction of new commercial, industrial, mixed-use, single-family and multi-family subdivisions to market that would otherwise be very difficult, if not impossible due to costs that include off-site utility extensions, on-site and off-site utility plant expansions, potential rail line extensions and rail spur extensions, on-site street and utility extensions, drainage improvements and significant park and recreational installations, as well as on site and offsite highway extensions.

The River Crossing TIRZ is located at U.S. Highway 281 and International Boulevard. Please see Appendix "A" for a location map of the property.

### **Anticipated Benefits of Development**

The projected benefits of the River Crossing development Tax Increment Reinvestment Zone are as follows:

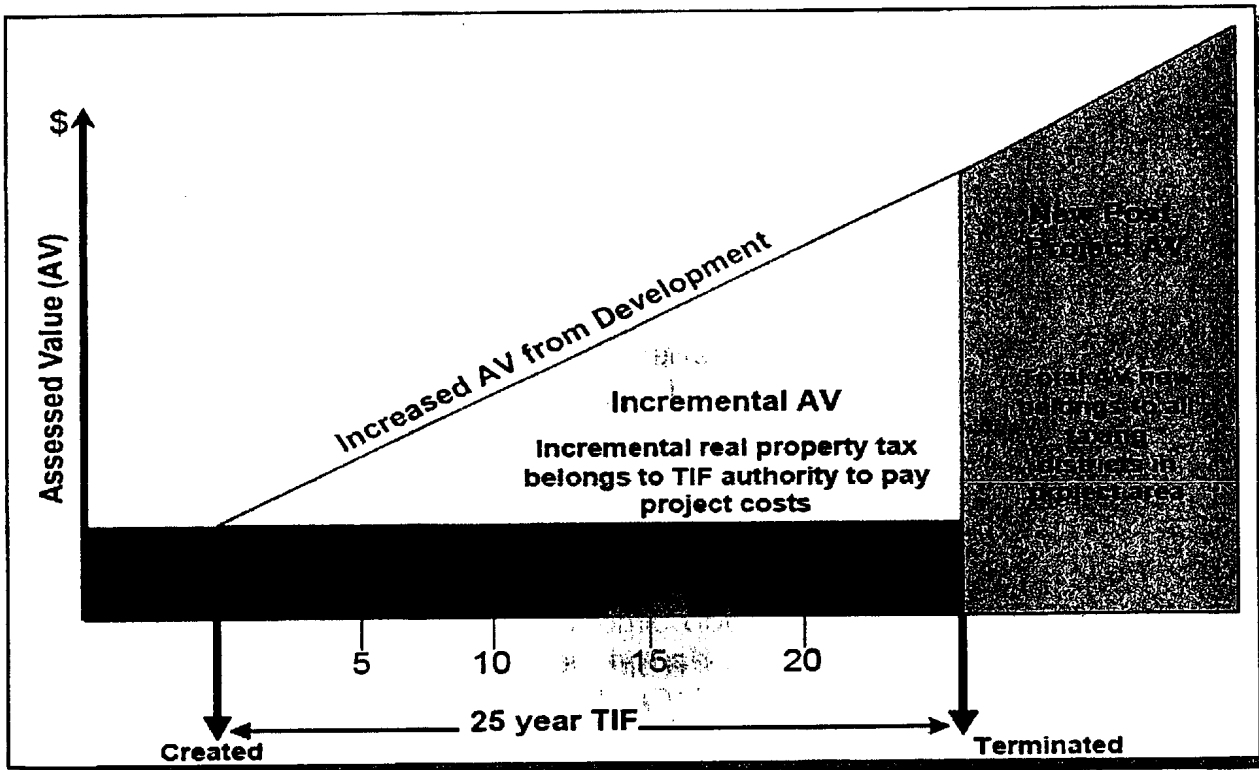
- Donation of land for bridge, road and potential rail related construction.
- New commercial opportunities for area residents and new and relocating companies looking for commercial/industrial building sites.
- Expansion the manufacturing and distribution economic base of the City through new sites for industrial uses.
- Increase employment opportunities for local residents.
- Enhance and increase the population within the area.
- Provide for pedestrian safety and access through sidewalk and street light construction.
- Provide affordable and secure multi-family housing which include handicap adapted units.
- Provide for elementary and middle school sites.
- Enhance the quality of life within the development through landscaping and increased recreational opportunities.
- Create an affordable housing initiative for the benefit of residents inside and outside of the zone.
- Generate significant revenue in the form of sales tax, utility fees, personal property tax, et al.
- Add over +/- \$750,000,000 to the tax base of the City and County.
- Maximize the positive economic impact of the new international bridge. The TIRZ will leverage the economic opportunities the bridge creates for the benefit of the City and County residents.

### The TIRZ Concept

A TIRZ or Tax Increment Reinvestment Zone is a financing tool authorized by the State Legislature in Chapter 311 of the Tax Code. The purpose of the statute is to allow municipalities to provide an incentive to develop areas that lack the infrastructure or have other impairments to desirable growth and development.

When a zone is created, the "base value" of the area is frozen for tax purposes. The existing taxing entities continue to receive tax revenues as before. However the increased ("the increment") tax revenue generated by new development within the zone will be used to reimburse costs related to public improvements within the zone as well as other related allowable expenses. The zone will have a life equal to a predetermined number of years. Upon reaching that date, or all costs having been reimbursed, whichever comes first, the zone will terminate. Upon termination, the increased tax revenue belongs to the respective taxing entities.

### TIF ASSESSED VALUE (AV) OVER PROJECT LIFE



## Project Plan

The River Crossing Tax Increment Reinvestment Zone District Project Plan and Reinvestment Zone Financing Plan provide a long term program to increase business opportunities, economic vitality and population within the District.

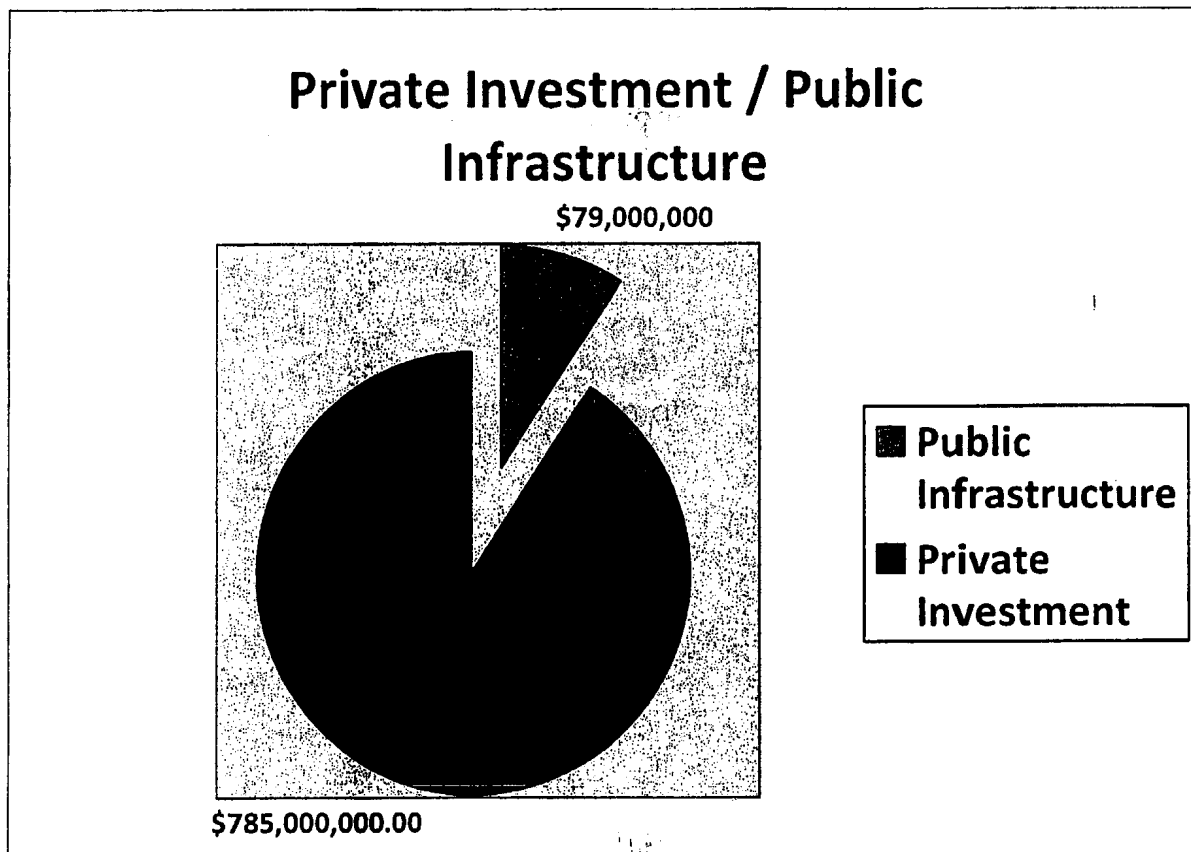
The economics of attracting more commercial and industrial development as well as the development of affordable and market rate housing will be greatly enhanced utilizing TIF to finance public infrastructure improvements and economic development initiatives.

The following specific objectives set the framework for the planned public improvements within the River Crossing Tax Increment Reinvestment Zone District:

- Dedicate or provide land as required in support of the new bridge road extensions which to serve it.
- Complete infrastructure to support +/-343 acres of new industrial development with a value of \$240,000,000.
- Complete infrastructure to support +/-186 acres of new commercial development with a value of \$307,500,000.
- Complete infrastructure to support +/-1,592 new residential dwellings with a value of \$238,000,000.
- Plan the infrastructure for a potential new rail extension in support of industrial commercial building sites.
- Construct primary public streets and utility work to create access for planned developments.
- Work with the Texas Department of Transportation to facilitate road construction within and outside the Zone.
- Execute on an aggressive marketing plan to attract new manufacturing, distribution and other business to the zone. It is proposed that a portion of the revenue generated within the zone be used to provide incentives to attract and promote new business and development.
- Provide attractive, safe pedestrian environments through landscaping, lighting and construction of sidewalks in the multi-family, single-family and commercial areas of the development.

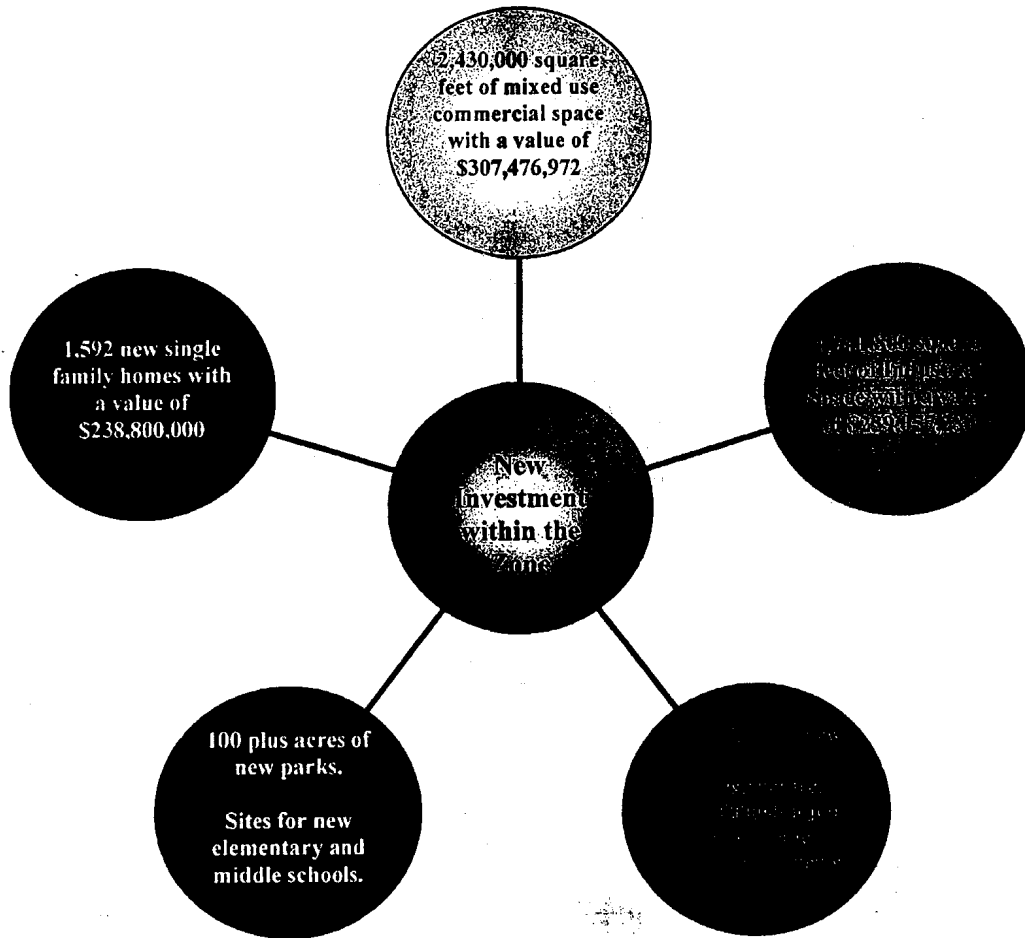
- Construct sewage treatment and water storage facilities to enhance regional development.
- Coordinate an effort to establish an affordable housing initiative, offering up to \$5,000,000 in housing assistance loans and grants to benefit local residents.

**Planned Private Development vs. Public Infrastructure Investments**



**Planned Private Development**

The River Crossing Tax Increment Reinvestment Zone District development program includes;



- 4,741,800 Square Feet of Industrial Development
- 2,430,000 Square Feet of Mixed Use commercial, office and retail
- 300 Multi-family Homes
- 1,592 Single Family Homes
- 100 plus acres of regional, neighborhood and pocket parks

The total private investment is forecasted to be in excess of \$ 758,334,000

### **Public Improvements**

The public improvements enumerated in the Project Plan provide for approximately \$55,000,000 of on-site streets, drainage, sewer, water and parks and off-site sewer treatment and water storage improvements and other project costs. Included in the scope of the plan are over 2000 feet of potential rail line improvements. The improvements planned for the River Crossing TIRZ District are designed to fully meet the short and long-term needs necessary to ensure growth and investment in the area.

In addition, the TIRZ will fund an aggressive program to attract new business and employers within the zone. The TIRZ will also fund an affordable housing initiative. These funds will be used both inside and outside of the zone to benefit low income families in the City and County.

### **Existing Uses**

The area in which the zone is to be located is primarily composed of vacant farm and ranch land.

### **TIRZ Zoning**

The Zone property is currently zoned Agriculture-Open District. The Developer has pre-annexation land use rights to develop the project according to the approved land plan. It is anticipated that prior to construction of any unit in the TIRZ the TIRZ Board will rezone the property according to the land use plan for the project, these zoning changes will include industrial, C-1, C-1A, C-2A, C-2L and both single-family and multi-family as depicted on the preliminary Master Plan. The areas and respective uses depicted on the said Exhibit will be, generally the zoning changes required to implement the project.

**Description of Zone**

The River Crossing TIRZ will be located in the southern sector of Donna. The property is predominantly vacant and is located in an area that has not seen new commercial, single-family or multi-family housing. The property is approximately 930 acres in size.

**A survey with field notes that show the above property is attached in the exhibits.**

## Project Feasibility

The feasibility of any development has two aspects that must be looked at, financial feasibility and market feasibility. Is the project financially feasible, can it be developed and brought to market at a price that allows for market rate product to be built. The second aspect is market feasibility, are there consumers for the product to be built.

The purpose of the Tax Increment Reinvestment Zone (TIRZ) is to address the financial aspect of the development. The TIRZ incremental funds provide for the difference between the costs of development and what the market will allow, thereby insuring the financial feasibility of the project.

Market feasibility addresses issues relating to product absorption, type of product and demand. The 2000 census revealed that 29% or 1,188 of the housing units in Donna were renter occupied compared with 36% for the Texas as a whole. While it looks like the numbers are comparable generally in smaller cities the number of rental housing units is usually less than 20% while in larger cities the number is generally in the 40% range in larger cities within South Texas (i.e. San Antonio) in 2000, 46.01% of the housing units were renter occupied. This large pool of renters provides a ready market for homes in the price ranges that address Donna median or average family incomes. In 2000 the median family income in Donna was \$22,500 by 2005 it is estimated that the median family income was \$24,863. Median income is that number at which half of all family incomes fall below and half of family incomes are above. Builders tend to use average family income as a benchmark as this indicates to them the potential for buyers that qualify for home ownership. An additional component of the demand for housing is the increase or decrease in population projected within a market. The population of Donna increased by 3,102 between 1990 and 2000 census from 12,751 to 15,853, a 24% increase. The estimated population for 2005 is 16,449, an increase of 29%. This population increase is reflected in the rate of family formation, which is a key number for builders of single-family homes. It is estimated that the City of Donna will grow by 131% by the year 2020 to 29,535. We feel that the development project outlined here can have a significant positive impact on the growth in Donna based on job creation and the higher than average quality of residential development that will attract buyers currently living outside of the city.

The National Association of Homebuilders reports that the construction of a typical single-family home generates 1 job for 1 year, 1/2 of that job is on-site and the other 1/2 is in the manufacture and distribution of the materials going into the home. Using these statistics development within the zone should generate 80 construction jobs per year over the ten years of home construction

and an additional 80 jobs per year in the local manufacturing and distribution sectors of the economy related to the residential construction. With regard to the industrial and commercial development it is anticipated that a total of 240+ jobs per year over a fifteen year period will be generated. Using generally accepted industry standards there will be 1 job created in the Zone for every 2,000 square feet of industrial space, 1 job for every 200 square feet of office space, 1 job per 500 square feet of retail space and 1 job for every 375 feet of restaurant/food service space. Additional employment will occur through the construction of other public improvements but there is not a meaningful way of measuring these job gains.

Data obtained from the Texas Education Commission for the Donna ISD for the 2004-2005 school year indicates that the district has a student teacher ratio of 1 teacher for every 15 students and a staff student ratio of 1 staff to 8.9 students. New home construction in the price ranges projected for the TIRZ are generally appealing to families with children, subtracting the destination retirement housing of 10% from the total single-family homes planned for the development leaves approximately 1,433 homes available for families with children. For planning purposes most school districts use a figure of 1.9 students per household for new home construction. This means on average that the River Crossing development will generate approximately 272 new students per year over the 10 years of new home construction. This increase in students will result in the hiring of 18 new teachers per year and 30 school support staff per year for a total of 480 new school hires over the 10 year period.

Based upon the income levels in Donna and projected increases in population from expanding employment opportunities there is adequate demand for the types of housing being produced in the price ranges planned for the development within the time frame projected for completion.

## FINANCING PLAN

### Tax Increment Financing

The Tax Increment Financing Act (Chapter 311 of the Tax Code), provides for municipalities to create "reinvestment zones" within which various public works and improvements can be undertaken, using tax increment revenues, bonds or notes, to pay for those improvements. The Act also allows the Zone to participate in the funding of improvements outside the Zone if the improvements benefit the Zone. At the time an area is designated a reinvestment zone for tax increment financing, the existing total of appraised value of real property in the zone is identified and designated as the "tax increment base." The base can also include sales tax revenue collected from within the Zone in the prior year. Taxing units levying taxes in the zone during its life are usually limited to revenues from this base.

Public improvements are made in the area to attract private development that would not otherwise occur. As the costs of new development are added to the tax rolls, property values will rise and there will be an increase in sales tax revenue as well. This rise in new ad valorem value is called the "captured appraised value." Then the taxes that are collected by the participating taxing jurisdictions on the increment between the frozen value and the new higher value, as well, as the increase in sales tax (if allowed), the tax increment, are deposited into a TIF Trust Fund, which is used to pay for the public improvements. Once the public improvements are completed and paid for, the TIF is dissolved and any remaining amounts of taxes collected are kept by the taxing jurisdiction. In effect, the taxing jurisdictions are "investing" future earnings to receive the benefit of higher tax revenues from new development. Taxing jurisdictions are not restricted from raising their tax rate during the life of the zone.

### Financing Plan

The Reinvestment Zone Financing Plan provides approximately +/- \$79,500,000 of planned public improvements and tax increment allowable expenses to be paid for with TIRZ increment funds including interest. The Reinvestment Zone Financing Plan provides for incremental financing and predicts revenues for the River Crossing TIRZ District.

Financing Method: Initial financing is being accomplished through equity invested by the developer through conventional land development bank loans, the issuance of Bonds when available, as well as other funding services. No taxing jurisdiction is guaranteeing the repayment of these loans; they remain the obligation of the developer unless Bonds are issued. Other public improvements included in the Project Plan will be funded through similar financing sources and reimbursed to the developer, as incremental TIRZ revenue is available. Tax Increment Revenue Bonds are projected to be issued for the project by the City of Donna. If bonds are issued, tax increment (including sales tax) from the Zone will serve as repayment source for the bonds.

Financing Policy: The goal of the River Crossing TIRZ District is to borrow only those funds needed to finance the critical improvements as described in the Development Agreement in order to reduce interest expense.

Long Term Financing: The developers of the industrial and commercial sites, the multi-family units and the single family homes will arrange for long term financing for their individual projects.

Timing of Debt: The bonds required for critical improvements will be issued in the first twelve (12) months after approval of the Plan. The local participation (City/County) will be included in the amount of issuance but will not include the amount of contingency identified in the Financing Plan. Every effort will be made to keep the local participation as low as possible to reduce interest cost. The taxing entities will have no liability for the bonds issued for the critical improvements.

### **Financial Assumptions**

No tax rate changes or inflation has been factored into the financial pro forma's for the District. All projections assume that taxable appraised value and tax rates will remain unchanged over the entire 30 year life of the District. It has also been assumed that the taxing entities will continue to collect tax revenues at the same rate and that homestead and other exemption rates will remain unchanged.

### **Financial Feasibility**

The private development plans and, public improvement program, budgets and general financing strategy and financial assumptions are addressed in the Finance Plan. Based upon a set of conservative assumptions and analysis of the project-financing plan, the River Crossing TIRZ consultants have concluded that the plan is feasible.

### Financial Policies

The River Crossing Board of Directors will adopt rules governing the management of the TIRZ. These rules are designed to insure conformity with all Tax Code rules and regulations regarding bidding of public works projects. Additional guidelines and requirements are contained in the participation agreements between Hidalgo County, the City of Donna and the River Crossing TIRZ District.

The River Crossing TIRZ Board of Directors may from time-to-time recommend amendments to these financial policies, which will affect the operation of the TIRZ District.

### Conclusions

Based upon a set of conservative assumptions and analysis of the River Crossing Tax Increment Reinvestment Zone District Project Plan and Reinvestment Zone Financing Plan, The TIRZ District Board of Directors has concluded that the TIRZ District Project Plan and Reinvestment Zone Financing Plan is feasible.

The success of the TIRZ District project plan will encourage other large planned mixed-use developments. The new residential population base; will support an expanding retail base, will supplement the existing job market and will attract additional private development into the TIRZ area and serve to stabilize and enhance future property values. The project will also enhance and maximize the economic job growth potential of the new international bridge by building the infrastructure to support significant industrial and commercial growth within the zone.

## Donna Tax Increment Finance Zone #2

Est. Build Out - 15yrs Residential / 20 Years Commercial & Industrial

### Summary Fact Sheet

11/5/2008 (Includes County Edits)

**FINAL**

Site Area 927 +/- Acres  
 Base Value (2008) \$2,249,946.00

Project:	Residential	Commercial	Industrial
<b>Total</b>	<b>1,592 Units</b>	2,673,712 ft. <b>186 Acres</b>	5,976,432 ft. <b>343 Acres</b>

			Taxable Value
Years 1-15	Residential Units	1,592	\$238,800,000
Years 1-20	Commercial	186 Acres	\$307,476,972.00
Years 1-20	Industrial	343 Acres	\$239,057,280.00
<b>Totals</b>			<b>\$758,334,252.00</b>

Captured Value	\$ 785,382,200
Growth Factor	0.00%
Collection Rate	97.50%
Est. Infrastructure Costs	\$54,545,000
Est. Total TIF Revenues*	\$162,810,691
Est. TIF Life	30 Years

The projections and estimates contained in this finance plan are subject to and may be impacted by market & economic conditions both domestic & international. Actual completion & construction of the project may take more or less time than described herein. However it is understood that the Developer will use its best efforts to complete the project as quickly as economically feasible.

\*This Finance Plan shows a significant surplus. Per the Interlocal and Development the total reimbursable expenses to the TIRZ shall be limited to \$79,665,000.00. The maximum contribution by Hidalgo County shall be \$33,818,213.00





**Donna - Tax Increment Finance Zone #2**  
**Revenue Available For Reimbursement of Public Improvements**

Fiscal Year Ending	TIF Revenue	Cumulative TIF Revenues	Debt Service Pub. Imp. Infrastructure	TIF Admin. Exp.
	1-Sep-11	\$ 526,847.44	\$ 526,847.44	TBD*
1-Sep-12	\$ 1,053,694.87	\$ 1,580,542.31		\$ 10,000.00
1-Sep-13	\$ 1,580,542.31	\$ 3,161,084.61		\$ 10,000.00
1-Sep-14	\$ 2,107,389.74	\$ 5,268,474.35		\$ 10,000.00
1-Sep-15	\$ 2,634,237.18	\$ 7,902,711.53		\$ 10,000.00
1-Sep-16	\$ 3,161,084.61	\$ 11,063,796.14		\$ 10,000.00
1-Sep-17	\$ 3,687,932.05	\$ 14,751,728.19		\$ 10,000.00
1-Sep-18	\$ 4,214,779.48	\$ 18,966,507.68		\$ 10,000.00
1-Sep-19	\$ 4,741,626.92	\$ 23,708,134.60		\$ 10,000.00
1-Sep-20	\$ 5,268,474.35	\$ 28,976,608.95		\$ 10,000.00
1-Sep-21	\$ 5,795,321.79	\$ 34,771,930.74		\$ 10,000.00
1-Sep-22	\$ 6,322,169.23	\$ 41,094,099.97		\$ 10,000.00
1-Sep-23	\$ 6,849,016.66	\$ 47,943,116.63		\$ 10,000.00
1-Sep-24	\$ 7,375,864.10	\$ 55,318,980.72		\$ 10,000.00
1-Sep-25	\$ 7,902,711.53	\$ 63,221,692.26		\$ 10,000.00
1-Sep-26	\$ 8,235,847.63	\$ 71,457,539.89		\$ 10,000.00
1-Sep-27	\$ 8,568,983.74	\$ 80,026,523.62		\$ 10,000.00
1-Sep-28	\$ 8,902,119.84	\$ 88,928,643.46		\$ 10,000.00
1-Sep-29	\$ 9,235,255.94	\$ 98,163,899.40		\$ 10,000.00
1-Sep-30	\$ 9,235,255.94	\$ 107,399,155.34		\$ 10,000.00
1-Sep-31	\$ 9,235,255.94	\$ 116,634,411.28		\$ 10,000.00
1-Sep-32	\$ 9,235,255.94	\$ 125,869,667.22		\$ 10,000.00
1-Sep-33	\$ 9,235,255.94	\$ 135,104,923.16		\$ 10,000.00
1-Sep-34	\$ 9,235,255.94	\$ 144,340,179.10		\$ 10,000.00
1-Sep-35	\$ 9,235,255.94	\$ 153,575,435.03		\$ 10,000.00
1-Sep-36	\$ 9,235,255.94	\$ 162,810,690.97		\$ 10,000.00
<b>Totals</b>		<b>\$ 162,810,691</b>	<b>\$ -</b>	<b>\$ 240,000</b>

\*Debt issuance is anticipated at a future date. At such time this plan shall be updated to reflect bonded or other indebtedness.





**APPENDIX**

**TIRZ REQUIREMENTS**

Section 311 of the State Tax Code (Tax Increment Financing Act) specifies that TIRZ (TIF) project and financing plans meet certain requirements. These requirements are listed below, along with a reference indicating where these elements can be located in the plan.

**Project Plan**

- |   |                |
|---|----------------|
| 1. Map of existing uses and conditions              | Exhibit 1      |
| 2. Map of proposed improvements and uses            | Exhibit 2      |
| 3. Survey and Field Notes of Property and Financial | Exhibit 3      |
| 4. Project Feasibility                              | Page 9, and 10 |
| 5. Proposed zoning changes                          | Page 7         |
| 6. Estimated non-project costs                      | None claimed   |
| 7. Relocation plan for current residents            | Not Applicable |

**Financing Plan**

- |   |                             |
|---|-----------------------------|
| 1. Detailed estimate of project costs.<br>Finance Plan          | Sources and Uses Page       |
| 2. Proposed public improvements<br>Plan                         | Sources & Uses Page Finance |
| 3. Project Timeline   | Summary Page Finance Plan   |
| 4. Estimated amount of bonded indebtedness                      | Revenue Page Finance Plan   |
| 5. Time when costs/obligations will be incurred<br>Finance Plan | Sources and Uses Page       |

6. Methods of financing, sources of Revenue	Revenue Page Finance Plan
7. Current total appraised value.	Summary Page Finance Plan
8. Estimated captured appraised value	Revenue Page Finance Plan
9. Duration of Zone	Summary Page Finance Plan



Exhibit 1

Map of Existing Uses and Conditions



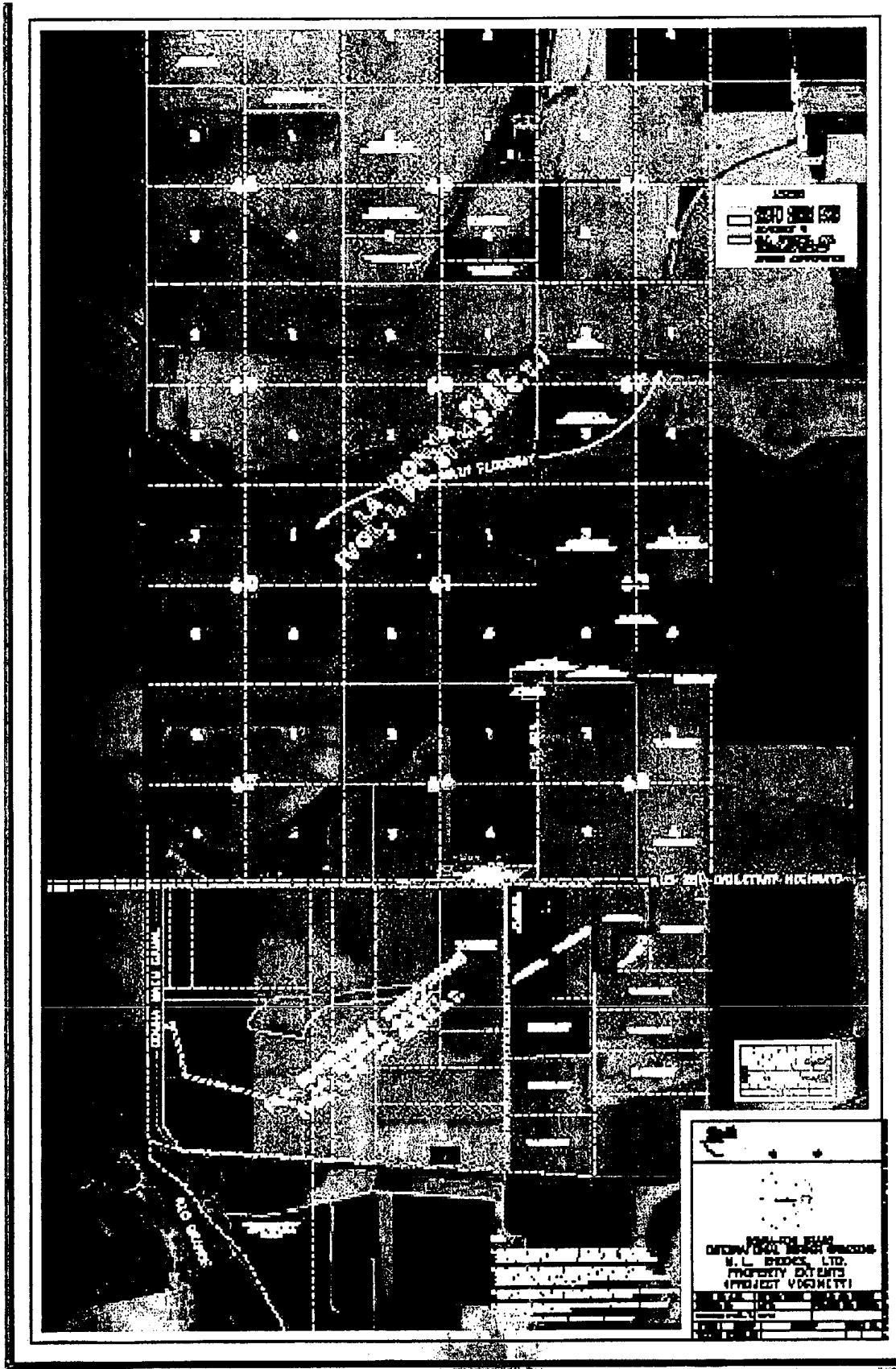
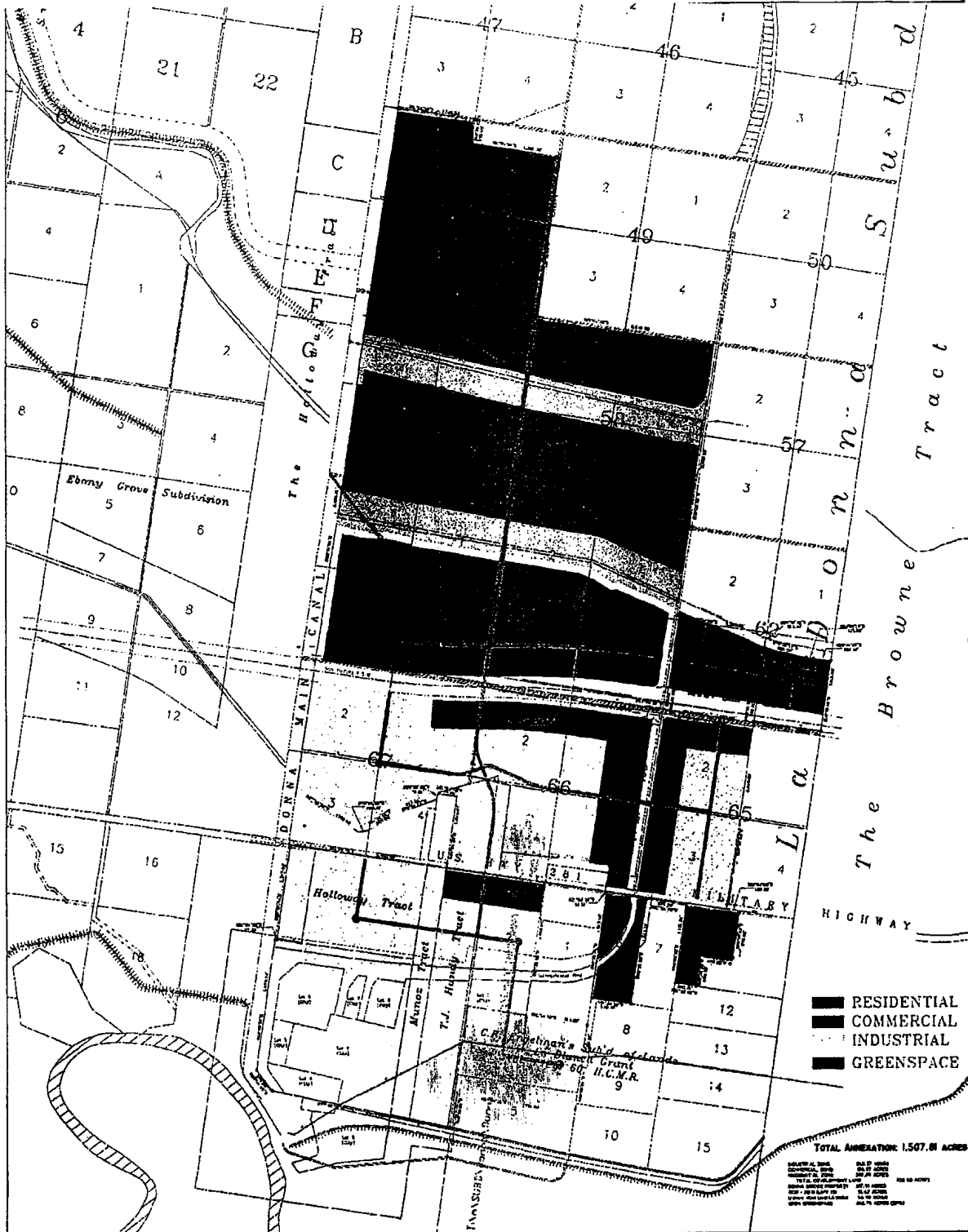




Exhibit 2

Map of Proposed Improvements and Uses



# RIVER CROSSING - DONNA

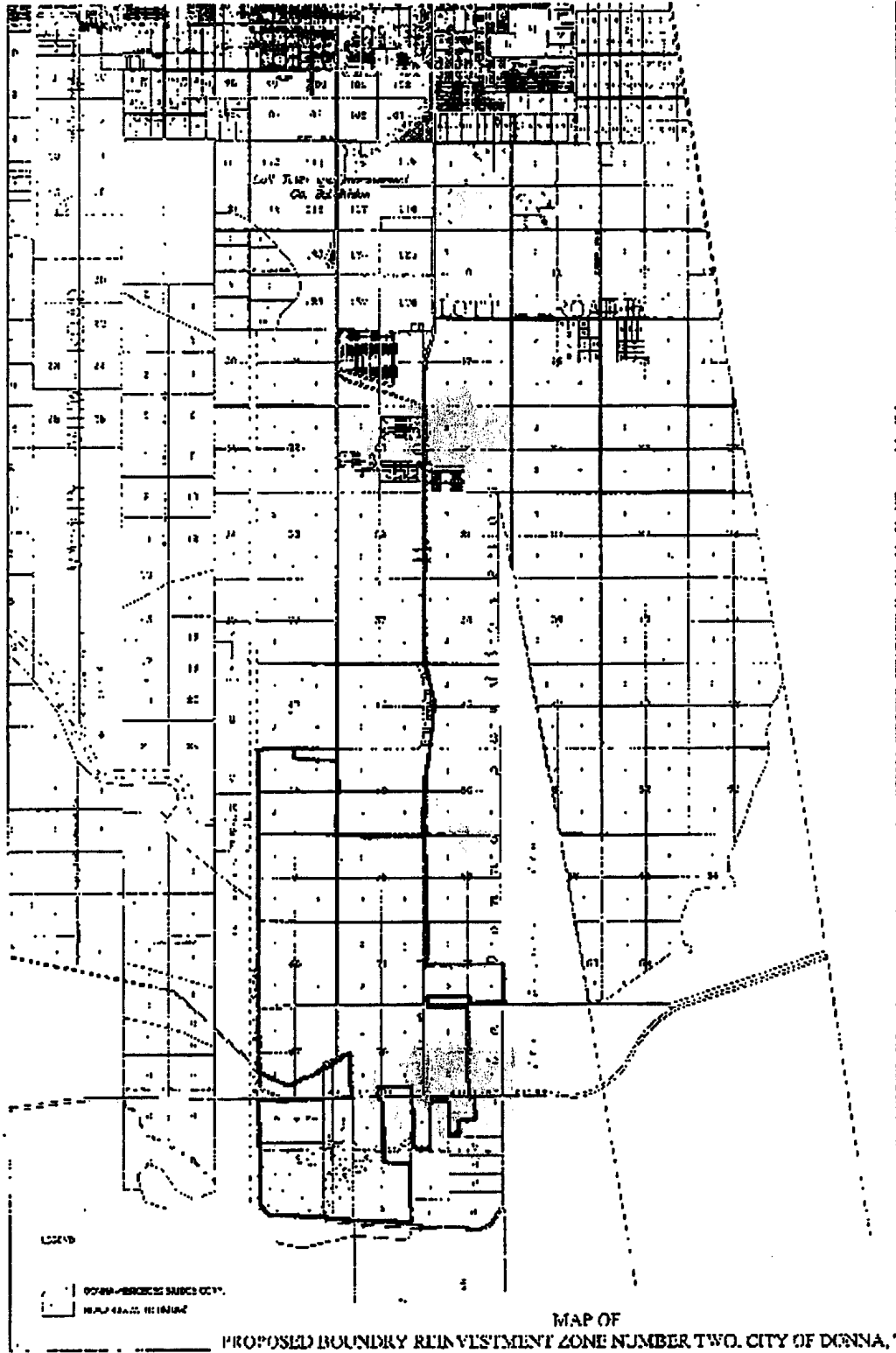
PREPARED BY: **PERIOD CONSULTING, INC.**  
 1000 W. 10th Street, Suite 100  
 Fort Worth, Texas 76102  
 TEL: 817-339-1111  
 FAX: 817-339-1112  
 WWW: www.periodconsulting.com

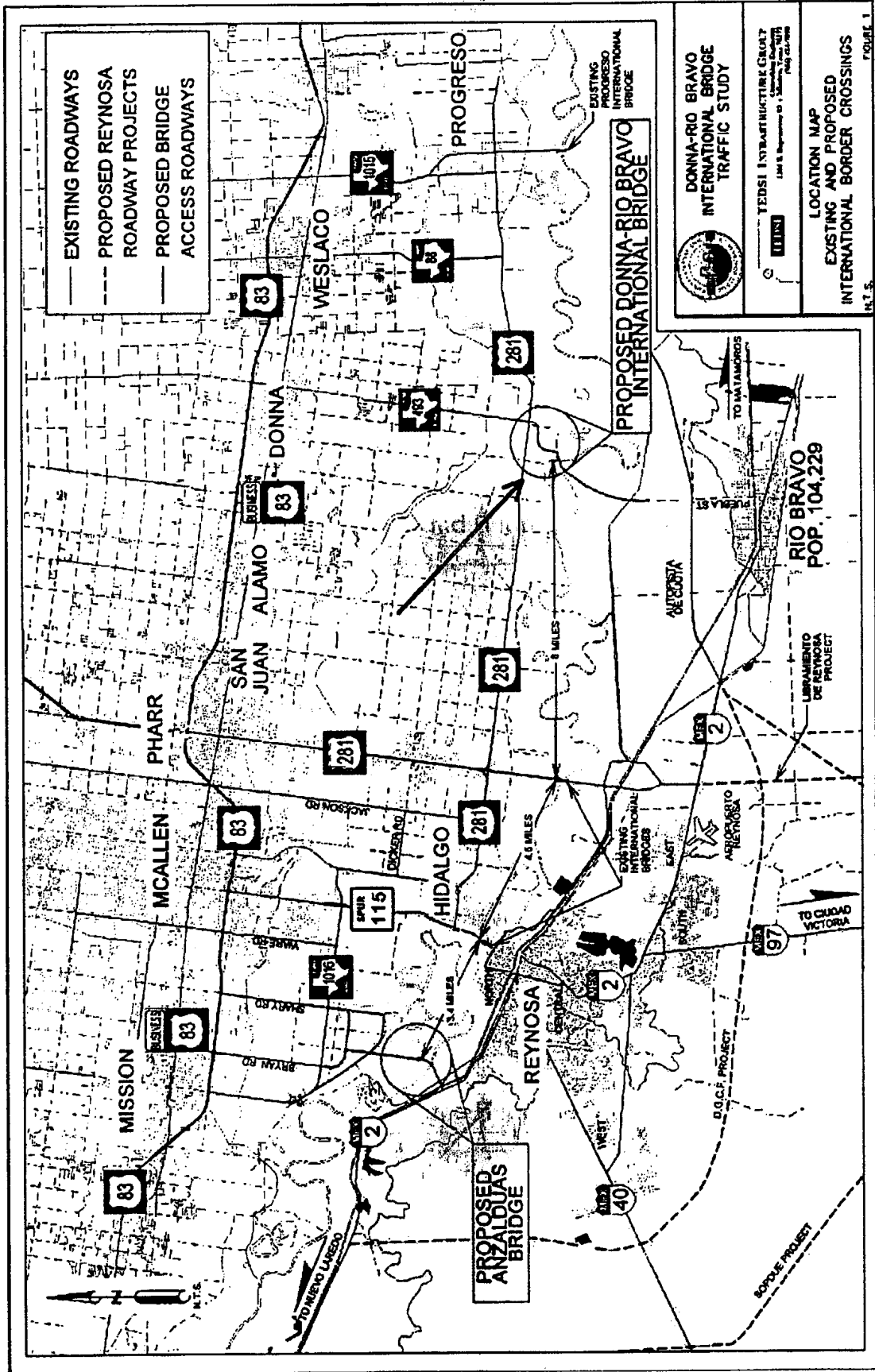


Exhibit 3

Survey and Field Notes of Property









Miscellaneous Exhibits

9000 11

## ORDINANCE NO. P-2008-05-64

**DESIGNATING THE RIVER CROSSING DEVELOPMENT PROJECT BEING A +/- 1528 ACRE AREA LOCATED IN THE SOUTHERN MOST AREA OF THE CITY AS A TAX INCREMENT REINVESTMENT ZONE; DESCRIBING THE BOUNDARIES OF THE ZONE; CREATING A BOARD OF DIRECTORS FOR THE ZONE; PROVIDING FOR AN EFFECTIVE DATE AND A TERMINATION DATE FOR THE ZONE; NAMING THE ZONE "REINVESTMENT ZONE NUMBER TWO, CITY OF DONNA, TEXAS"; ESTABLISHING A TAX INCREMENT FUND; AND CONTAINING OTHER PROVISIONS RELATED THERETO.**

**WHEREAS**, the City Council (the "Council") of the City of Donna, Texas (the "City") desires to support revitalization, economic development and job creation activities for the community through the construction of the RIVER CROSSING Development Project (the "Project"), to be funded in whole or in part through the creation of a Tax Increment Reinvestment Zone (the "Zone"), as hereinafter more specifically defined and named, and with boundaries as hereinafter provided, pursuant to the provisions of the Tax Increment Financing Act (the "Act"), Texas Tax Code, Chapter 311; and

**WHEREAS**, the City received a petition for Zone designation by owners representing over 50% of the appraised value of the land in the proposed Zone; and the City agrees to create the Zone as petitioned; and

**WHEREAS**, the proposed public improvements for the area may include the design and construction of streets with curbs, sidewalks, drainage, sewer, water, utilities, street lights and other public improvements which may be provided for in a Development Agreement to be considered by Council at a later date; and

**WHEREAS**, pursuant to the Act, the City may designate a contiguous geographic area within the jurisdiction of the City to be a Zone if the area satisfies certain sections of the Act; and

**WHEREAS**, §311.0031 of the Act states that an area designated as an enterprise zone under Chapter 2303 of the Government Code constitutes designation of the area as a reinvestment zone without further hearing or other procedural requirements; and

**WHEREAS**, on November 5, 2007, the Council adopted Resolution No. 2007-11-02, expressing its intent to create the proposed Zone in order to encourage the growth and development of new housing opportunities within the City limits; and

**WHEREAS**, pursuant to §311.003(e) of the Act, the City sent written notice to the governing body of each taxing unit that levies real property taxes in the proposed Zone of the City's intent to create a Tax Increment Reinvestment Zone within the corporate limits of the City to reimburse those certain costs associated with the Project, providing 60-days notice or requesting waiver of the notice requirement prior to the public hearing, as required by the Act; and

**WHEREAS**, both the governing bodies of the County of Hidalgo and the Donna Independent School District have taken action waiving such notice in furtherance of creation of the Zone, and

**WHEREAS**, pursuant to §311.003(b) of the Act, the City has distributed a copy of the Preliminary Finance Plan to the governing body of each taxing unit that levies taxes on real property in the proposed Zone, and

**WHEREAS**, pursuant to §311.0031 of the Act a public hearing is not required because the City of Donna is an enterprise zone under Chapter 2303 of the Government Code; but the City shall conduct a public hearing for the benefit of its residents and to foster open government.

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Ordinance 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 ORDAINED BY THE CITY COUNCIL OF THE CITY OF DONNA:**

**SECTION 1. FINDINGS.** The City hereby finds and declares that: (a) improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City; and (b) the Zone area meets the requirements of Section 311.005(a)(5) of the Act, being that the Zone area:

(1) is an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The City, pursuant to the Act, further finds and declares that:

- (1) the proposed Zone is a contiguous geographical area located wholly within the corporate limits of the City of Donna;
- (2) the total appraised value of the taxable real property in the proposed Zone or in existing reinvestment zones, if any, does not exceed fifteen (15%) of the total appraised value of taxable real property in the City and in industrial districts created by the City;
- (3) the proposed Zone does not contain more than fifteen (15%) of the appraised value of real property taxable by Hidalgo County or by the Donna Independent School District; and
- (4) development or redevelopment within the boundaries of the proposed Zone will not occur solely through private investment in the reasonably foreseeable future.

**SECTION 2. DESIGNATING THE AREA AS A REINVESTMENT ZONE.** The area located in the most recently annexed, southern most part of the City and being commonly referred to as the "River Crossing Development Project", with the boundaries as more specifically described in exhibits A and B attached hereto, and officially assigned the name as

designated in Section 5 below (which reinvestment Zone so described, named and designated is hereinafter referred to as the "Zone"), is hereby designated as a Tax Increment Reinvestment Zone pursuant to Chapter 311, Texas Tax Code.

**SECTION 3. DESCRIPTION OF THE BOUNDARIES OF THE REINVESTMENT ZONE.** Attached hereto as Exhibits "A" & "B" which are incorporated herein as if a part hereof, is a field note description and a map depicting the boundaries of the Zone, which consists of approximately 2000+/- acres of real property within the corporate limits of the City;

**SECTION 4. CREATION AND COMPOSITION OF A BOARD OF DIRECTORS FOR THE ZONE.** There is hereby created a Board of Directors (the "Board") for the Zone, with all the rights, powers and duties as provided by the Act, including but not limited to §311.010, to include the powers provided under Chapter 211 of the Texas Local Government Code pursuant to §311.010(c) the Board shall consist of nine (9) members and have the following composition:

- a) Six (6) members appointed by the City of Donna, Texas by resolution of the City Council and meeting the requirements of §311.009(e) (2) of the Texas Tax Code; and
- b) One member appointed by Hidalgo County, Texas; and
- c) The member of the State Senate of District \_\_\_\_\_, or their designee; and
- d) The member of the State House of Representatives of District \_\_\_\_\_, or their designee.

**SECTION 5. EFFECTIVE DATE AND TERMINATION DATE OF THE ZONE.** The Zone shall take effect immediately upon passage of the ordinance (the "Effective Date"), and continue until its termination date of May 29, 2038 (the "Termination Date"), unless otherwise terminated earlier as a result of payment in full of all project costs, tax increment bonds, if any, including interest on said bonds, or as authorized or permitted by law, or extended as may be allowed by law.

**SECTION 6. ASSIGNING A NAME TO THE ZONE.** The Zone created hereby is assigned the name of "REINVESTMENT ZONE NUMBER TWO, CITY OF DONNA, TEXAS."

**SECTION 7. TAX INCREMENT BASE.** The Tax Increment Base for the Zone is the total appraised value of all real property within the zone and taxable by the City and located in Zone, determined as of January 1, 2008, the year in which the Zone was designated as a Tax Increment Reinvestment Zone (the "Tax Increment Base").

**SECTION 8. ESTABLISHMENT OF A TAX INCREMENT FUND.** There is hereby created and established in the depository bank of the City, a fund to be called the "REINVESTMENT ZONE NUMBER TWO, CITY OF DONNA, TEXAS TAX INCREMENT FUND" (herein call the "Tax Increment Fund"). Money in the Tax Increment Fund, from whatever source, may be disbursed from the Tax Increment Fund, invested, and paid as permitted by the Act or by any agreements entered into pursuant to the Act, or as otherwise authorized by law.

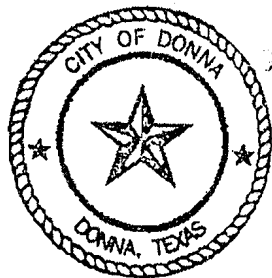
**SECTION 9. INCORPORATION OF RECITALS.** The Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Council hereby incorporates such recitals as a part of this Ordinance.

**SECTION 10. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any circumstances shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, as if such invalid provision had never appeared herein, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 11. EFFECTIVE DATE.** The Zone shall take effect immediately upon passage of this ordinance, pursuant to §311.004(a)(3) of the Act.

**PASSED AND APPROVED UPON FIRST READING ON THIS 14<sup>TH</sup> DAY OF MAY, 2008.**

**PASSED, APPROVED AND ADOPTED UPON SECOND AND FINAL READING ON THIS 29<sup>TH</sup> DAY OF MAY, 2008.**



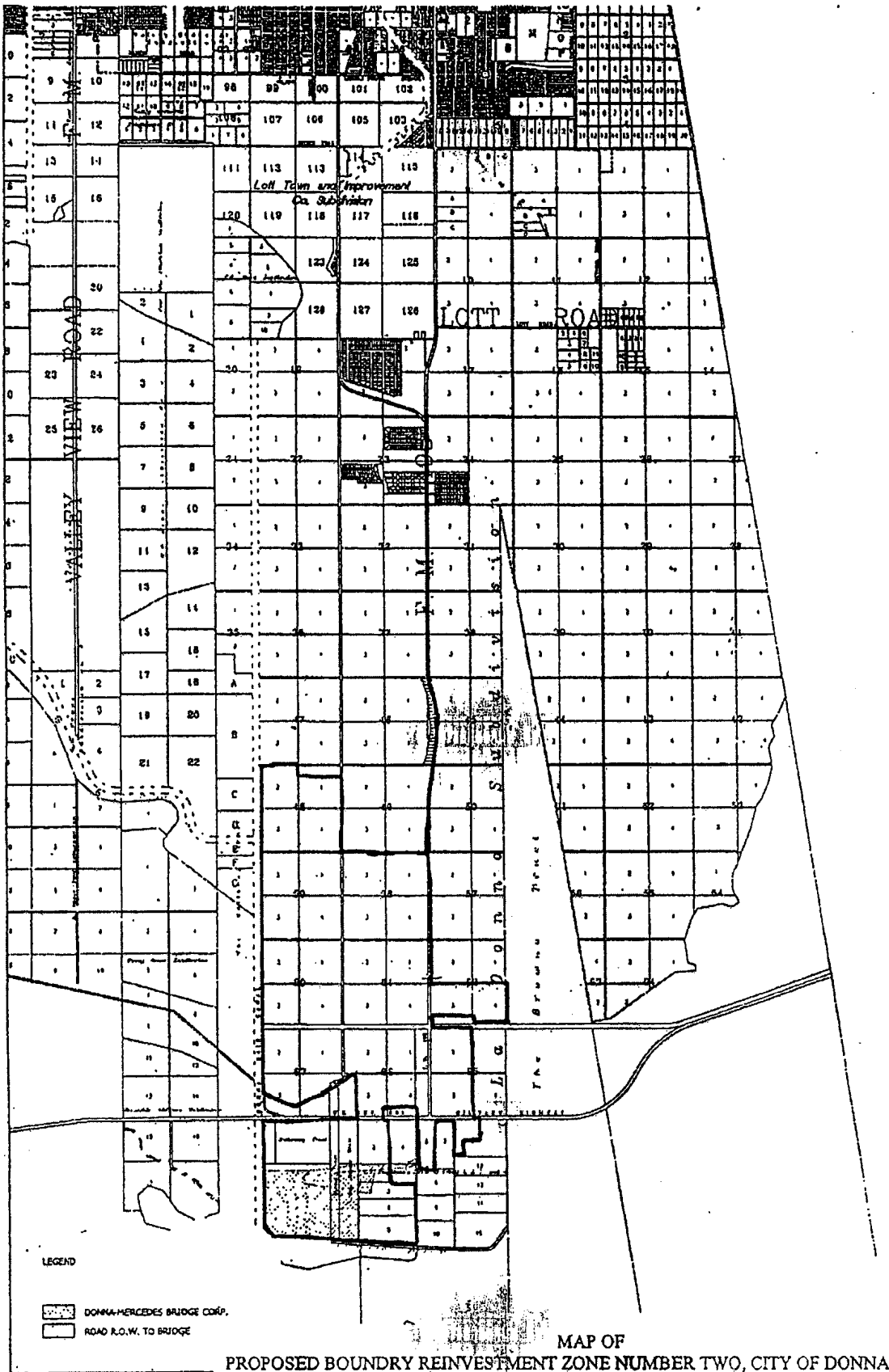
*Ricardo Morales*  
\_\_\_\_\_  
Ricardo Morales  
Mayor

Attest:

*Martha Alvarado*  
\_\_\_\_\_  
Martha Alvarado  
City Secretary

Approved as to form and substance:

*Javier Villalobos*  
\_\_\_\_\_  
Javier Villalobos  
City Attorney



MAP OF  
 PROPOSED BOUNDRY REINVESTMENT ZONE NUMBER TWO, CITY OF DONNA, TEXAS  
 EXHIBIT A

March 7, 2007

**METES AND BOUNDS  
ANNEXATION TO THE CITY OF DONNA  
HIDALGO COUNTY, TEXAS**

A tract of land containing 1,528.16 acres situated in the County of Hidalgo, Texas, described as follows:

BEGINNING at the Northeast corner of Lot 1, Block 58, LA DONNA PLAT SUBDIVISION, according to the map thereof recorded in Volume 1, Page 51, Hidalgo County Map Records;

THENCE, S 08° 35' 22" W along the East lines of Blocks 58 and 61, La Donna Plat Subdivision and within the right-of-way of FM Road 493, a distance of 3,980.00 feet to the Southeast corner of Lot 1, Block 61;

THENCE, S 81° 24' 38" E along the North line of Lot 3, Block 62, La Donna Plat Subdivision, a distance of 1,320.00 feet to the Northeast corner of said Lot 3;

THENCE, S 08° 35' 22" W along the East line of Lot 3, Block 62, La Donna Plat Subdivision, a distance of 214.40 feet;

THENCE, along the South boundary of the Levee Easement to Hidalgo County Drainage District No. 1 (Vol.330 Pg.497 H.C.D.R.), to Hidalgo County (Vol.455 Pg.441 H.C.D.R.) and to the United States of America (Vol.457 Pg.461 H.C.D.R.), as follows: S 76° 33' 37" E a distance of 825.00 feet, S 83° 25' 19" E a distance of 105.39 feet and S 82° 45' 43" E a distance of 258.40 feet;

THENCE, S 08° 33' 16" W along the East line of Lot 4, Block 62, La Donna Plat Subdivision, a distance of 982.50 feet;

THENCE, N 81° 24' 38" W along the North line of a tract described in a Deed to San Benito Rio Grande Valley Railroad Company (Vol.184 Pg.311 H.C.D.R.), a distance of 985.00 feet;

THENCE, S 08° 35' 22" W along the East lines of Lot 3, Block 62 and Lots 2 and 3, Block 65, La Donna Plat Subdivision, a distance of 2,740.00 feet to the Southeast corner of said Lot 3, Block 65;

THENCE, S 81° 24' 38" E along the South line of Lot 4, Block 65, La Donna Plat Subdivision and within the right-of-way of U.S. 281-Military Highway, a distance of 189.98 feet;

THENCE, S 08° 35' 22" W within Lot 11, out of the C. R. Engelman Subdivision of Lands in the La Blanca Grant according to the plat thereof recorded in Volume 1, Page 60, Hidalgo County Map Records, a distance of 878.85 feet;

THENCE, N 81° 24' 38" W within Lot 11 in said C. R. Engelman Subdivision and along the North line of a 5.0-acre tract described in Document #898108, Hidalgo County Official Records, a distance of 466.69 feet;

THENCE, S 08° 35' 22" W within Lot 11 in said C. R. Engelman Subdivision and along the West line of said 5.0-acre tract described in Document #898108, Hidalgo County Official Records, a distance of 466.69 feet;

THENCE, N 81° 24' 38" W along the South line of said Lot 11, C. R. Engelman Subdivision, a distance of 300.21 feet to the Southwest corner of said Lot 11;

EXHIBIT

B

THENCE, N 08° 35' 22" E along the East line of said Lot 11, C. R. Engelman Subdivision, a distance of 1131.91 feet to the Northwest corner of said Lot 11;

THENCE, N 81° 24' 38" W along the North of Lot 7 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant and within the right-of-way of U.S. 281-Military Highway, a distance of 575.80 feet to the Northeast corner of Lot 6 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant;

THENCE, S 08° 35' 22" W along the East line of said Lot 6, C. R. Engelman Subdivision, a distance of 1513.10 feet to the Southeast corner of said Lot 6;

THENCE, N 81° 24' 38" W along the South line of said Lot 6, C. R. Engelman Subdivision, a distance of 575.80 feet to the Southwest corner of said Lot 6;

THENCE, N 08° 35' 22" E along the West line of said Lot 6, C. R. Engelman Subdivision, a distance of 1,530.10 feet to the Northwest corner of said Lot 6;

THENCE, N 81° 24' 38" W along the North of Lot 1 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant and within the right-of-way of U.S. 281-Military Highway, a distance of 20.31 feet;

THENCE, N 08° 27' 23" E at a distance of 79.96 feet pass the North right-of-way line of U.S. 281-Military Highway, continuing now along the East line of a 7.0-acre tract described in Volume 892 page 237, Hidalgo County Deed Records, for a total distance of 379.96 feet;

THENCE, N 81° 32' 37" W along the North line of said 7.0-acre tract described in Volume 892 page 237, Hidalgo County Deed Records, a distance of 1016.40 feet;

THENCE, S 08° 27' 23" W along the West line of said 7.0-acre tract described in Volume 892 page 237, Hidalgo County Deed Records, at a distance of 300.00 feet pass the North right-of-way line of U.S. 281-Military Highway, continuing for a total distance of 377.60 feet;

THENCE, S 81° 24' 38" E along the North of Lot 2 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant and within the right-of-way of U.S. 281-Military Highway, a distance of 122.51 feet;

THENCE, S 08° 35' 22" W along the East line of said Lot 2, C. R. Engelman Subdivision, a distance of 1,905.80 feet to the Southeast corner of said Lot 2;

THENCE, S 81° 24' 38" E along the North of Lot 3 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant, a distance of 914.20 feet to the Northeast corner of said Lot 3;

THENCE, S 08° 35' 22" W along the East lines of said Lots 3, 4 and 5, C. R. Engelman Subdivision of Lands in the La Blanca Grant, a distance of 1,208.80 feet;

THENCE, N 81° 24' 38" W within Lot 5 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant, a distance of 1,791.80 feet;

THENCE, S 08° 35' 22" W along the East line of the Handy Tract as shown in the plat of C. R. Engelman Subdivision of Lands in the La Blanca Grant (Vol.1 Pg.60 H.C.M.R.), a distance of 524.50 feet;

THENCE, N 77° 48' 59" W along the South line of the Handy and the Muñoz Tracts, and its extension as shown in the plat of C. R. Engelman Subdivision of Lands in the La Blanca Grant (Vol.1 Pg.60 H.C.M.R.), a distance of 2,615.17 feet;

THENCE, N 38° 04' 45" W along the East line of the 200-foot Donna Irrigation District No.1 Main Canal right-of-way, a distance of 370.90 feet;

THENCE, N 08° 35' 22" E along the East line of the 200-foot Donna Irrigation District No.1 Main Canal right-of-way, a distance of 1,873.74 feet;

THENCE, S 81° 24' 38" E a distance of 27.35 feet;

THENCE, N 08° 35' 22" E along the West line of a certain 11.42-acre tract designated as Tract 8-C in Document #741019 Hidalgo County official Records, a distance of 1,347.00 feet;

THENCE, S 81° 24' 38" E along the North line of said 11.42-acre tract, the North line of the above mentioned Muñoz Tract and within the right-of-way of U.S. 281-Military Highway, a distance of 2,284.20 feet;

THENCE, N 08° 35' 22" E along the extended East line of said Muñoz Tract also being the East line of a certain 8.394-acre tract described in Document #696213, Hidalgo County Deed Records, a distance of 1024.27 feet;

THENCE, N 81° 24' 38" W along a Northern boundary of said 8.394-acre tract described in Document #696213, Hidalgo County Deed Records, a distance of 277.80 feet;

THENCE, S 08° 35' 22" W along a Western boundary of said 8.394-acre tract described in Document #696213, Hidalgo County Deed Records, a distance of 76.81 feet;

THENCE, along the "centerline of the Ruthven Resaca" as follows: S 68° 54' 22" W a distance of 617.32 feet, S 61° 41' 22" W a distance of 450.00 feet, S 79° 55' 22" W a distance of 150.00 feet and N 57° 38' 38" W a distance of 1065.00 feet;

THENCE, N 08° 35' 22" E along the East line of the 200-foot Donna Irrigation District No.1 Main Canal right-of-way and within Blocks 67, 60, 59 and 48 out of La Donna Plat Subdivision (Vol.1, Pg. 51, H.C.M.R.), a distance of 9,822.30 feet;

THENCE, S 81° 24' 38" E along the North line of Lot 2, Block 48, La Donna Plat Subdivision, a distance of 1,120.00 feet;

THENCE, S 08° 35' 22" W along the East line of said Lot 2, Block 48, La Donna Plat Subdivision, a distance of 330.00 feet;

THENCE, S 81° 24' 38" E a distance of 1,320.00 feet;

THENCE, S 08° 35' 22" W along the East lines of Lots 1 and 4, Block 48, La Donna Plat Subdivision, a distance of 2,310.00 feet;

THENCE, S 81° 24' 38" E along the North lines of Lots 2 and 1, Block 58, La Donna Plat Subdivision, a distance of 2,640.00 feet to the POINT OF BEGINNING and containing 1,519.32 acres of land, more or less.

SAVE AND EXCEPT a 200'x200' tract containing 0.918 of one acre, being the North 200 feet of the East 200 feet of Lot 1, Block 66, La Donna Plat Subdivision (Reference Deeds: Vol.352 Pg.151 and Vol.477 Pg.379 Hidalgo County Deed Records).

Prepared by:  
MELDEN & HUNT, INC.  
Consultants, Engineers, Surveyors  
115 West McIntyre  
Edinburg, Texas 78541  
(956) 381-0881

**DEVELOPMENT AGREEMENT WITH THE CITY OF DONNA, TEXAS AND  
RHODES ENTERPRISES, INC. AND REINVESTMENT ZONE NUMBER TWO,  
CITY OF DONNA, TEXAS**

This Development Agreement ("Agreement"), pursuant to Ordinance Number P-2008-05-64, effective as of May 29, 2008, is entered into by and between the **CITY OF DONNA**, Hidalgo County, Texas (hereinafter called "**CITY**"); **RHODES ENTERPRISES, INC.**, an entity created in the State of Texas (hereinafter referred to as "**DEVELOPER**"); and **REINVESTMENT ZONE NUMBER TWO, CITY OF DONNA, TEXAS**, a tax increment financing zone created pursuant to Texas Tax Code Chapter 311 (hereinafter called "**ZONE**"), by and through its duly authorized Board of Directors;

**WITNESSETH:**

**WHEREAS**, **CITY** recognizes the importance of its continued role in economic development; and

**WHEREAS**, By Ordinance Number Ordinance PL – 2008-05-64, dated May 29, 2008, and Resolution 2007-11-02, dated November 5, 2007 pursuant to Chapter 311 of the Texas Tax Code (as amended), **CITY** created the **ZONE** and established a Board of Directors for the **ZONE**.

**WHEREAS**, the **ZONE** was created to promote development and redevelopment in the **ZONE** through the use of tax increment financing, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

**WHEREAS**, Chapter 311 authorizes the expenditure of funds derived from a Tax Increment Reinvestment Zone, the payment of expenditures made or estimated to be made, and the payment of monetary obligations incurred or estimated to be incurred, by a municipality in establishing a Tax Increment Reinvestment Zone, the payment of costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the tax increment reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in the Act ("Project Costs"); and

**WHEREAS**, on June \_\_, 2008, by a Board Resolution, the Board of Directors for the **ZONE** adopted and approved a Project Plan and a Reinvestment Zone Financing Plan ("Project and Financing Plan") providing for development of the Zone Property as shown

on Exhibit A and recommending to City Council that they give approval by Ordinance of a Project Plan and a Reinvestment Zone Financing Plan; and

**WHEREAS, CITY** approved the Project and Financing Plan for the **ZONE** by Ordinance Number \_\_\_\_\_, on June \_\_\_\_\_, 2008; and

**WHEREAS,** Pursuant to the Texas Tax Code, Chapter 311 (as amended), the Board of Directors for the **ZONE** has authority to enter into agreements that it considers necessary or convenient to implement the Project and Financing Plan and to achieve the purposes of developing the Zone Property; and

**WHEREAS,** pursuant to said authority above, the Board of Directors for **ZONE** desires to enter into a binding agreement with **CITY** and **DEVELOPER** for **DEVELOPER** to develop the Zone Property as specified in the Project and Financing Plan and as specified in this Agreement; and

**NOW, THEREFORE,** in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, **CITY**, the Board of Directors for **ZONE**, and **DEVELOPER** hereby agree as follows:

## I. DEFINITIONS

1.1 "Act" shall mean the Tax Increment Financing Act, Chapter 311, Texas Tax Code, Vernon's Texas Codes, as amended.

1.2 "Agreement" shall mean this document by and between **CITY**, **ZONE** and **DEVELOPER**, which agreement may be amended from time to time, pursuant to the provisions contained herein.

1.3 "Available Tax Increment" shall mean the "Tax Increment" as defined in Section 311.012 (a) of the Act, less the administrative costs of the participating taxing entities for organizing and/or managing the **ZONE**;

1.4 "Certificate of Completion" shall mean a written acknowledgement by **DEVELOPER** that public improvements were constructed as specified in the Project and Financing Plan and in this Agreement and that said improvements comply with all **CITY** codes and published standards for the particular type of improvement in question.

1.5 "CITY", "Board of Directors for ZONE", and "DEVELOPER" shall have the meanings specified above.

1.6 "Completion" shall mean construction of a public improvement in the Zone Property substantially in accordance with the Project and Financing Plan and with this Agreement so that the particular improvement can be used and maintained for its intended purpose.

1.7 "Construction Schedule" shall mean the timetable for constructing the improvements specified in the Project Plan, Financing Plan and this Agreement as may be amended due to economic conditions, weather, or other factors, more particularly set forth in Exhibit B.

1.8 "Contract Progress Payment Request" shall mean a request for payment due to DEVELOPER for successfully completed work on a specific improvement in the Zone Property, accompanied by documentation satisfactory to CITY and ZONE including the name and address of the entity that performed the work, a description of the contract pursuant to which the payment is made, the amount of such payment, the original contract amount, total payments made to date on such contract, adequate proof of payment (i.e. cancelled checks and invoices for said payments, if available), an estimate of remaining work to be completed on the specific improvement, the cost of such remaining work, and any customary lien and/or subcontractor releases.

1.9 "Development Agreement" shall mean this document among CITY, ZONE, and DEVELOPER, as it may be amended.

1.10 "Financing Plan" shall mean the final financing plan as defined in the Act, as approved and as may be amended from time to time by Board of Directors for ZONE and CITY.

1.11 "Participating Taxing Entity" shall mean any governmental entity recognized as such by Texas law that is participating in this Project.

1.12 "Phase" shall mean a portion of the Project that is being constructed by Developer normally being a set number of units and/or acres out of the Zone Property being constructed together during a specific timeline.

1.13 "Project" shall mean the design, construction, assembly, installation and implementation of the improvements and/or activities as more specifically detailed in the

Project and Financing Plan and in this Agreement as (either or both) may be amended from time to time.

1.14 "Project and Financing Plan" shall mean the Project and Financing Plan for ZONE, as approved by the Board of Directors for ZONE and by CITY, as may be amended from time to time by the Board of Directors for ZONE and CITY.

1.15 "Project Costs" shall mean the items set forth and described in Section 311.002(1), Texas Tax Code (as said Code may be amended from time to time), that are included in the Project Plan for the Project. The Project Costs include public infrastructure improvements and related capital costs, including streets, streetlights, drainage, utilities, sidewalks, landscaping and rights-of-way, and other costs including, but not limited to, engineering, architectural, and legal and other professional services incidental to those expenditures and obligations. The Project Costs for public improvements are estimated at Fifty Four Million Five Hundred Forty Five Thousand Dollars (\$54,545,000.) in the aggregate for the life of ZONE, plus Twenty Five Million Dollars (\$25,120,000.) in applicable qualifying project costs and administrative costs for a total of Seventy Nine Million Six Hundred Sixty Five Thousand (\$79,665,000.).

1.16 "Public Infrastructure Improvements" shall have the meaning specified in Paragraph 3.2 of this Agreement, and as more specifically detailed in Exhibit C, the Project Plan and Financing Plan as (either or both) may be amended from time to time.

1.17 "TIF" shall mean tax increment financing pursuant to the Act.

1.18 "Tax Increment Fund" means the tax increment fund created by CITY for the deposit of Available Tax Increments for ZONE entitled "Reinvestment Zone Number Two (2), City of Donna, Texas Tax Increment Fund."

1.19 "Zone Property" shall mean the real property subject to the Project Plan and Financing Plan.

1.20 Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

## II. REPRESENTATIONS

2.1 CITY, the Board of Directors for ZONE, and DEVELOPER represent each to

the others that CITY and the Board of Directors for ZONE shall use only Available Tax Increment funds to pay DEVELOPER up to a maximum total payment of Seventy Nine Million Five Hundred Forty Five Thousand Dollars (\$79,545,000.) as full compensation for designing and constructing the public infrastructure improvements designated under the Project and Financing Plan and this Agreement, pursuant to Article VI, Compensation to Developer.

2.3 DEVELOPER represents that it understands that any contributions made by DEVELOPER in anticipation of reimbursement from tax increments shall not be, nor construed to be, financial obligations of CITY, other taxing entities, or ZONE. DEVELOPER shall bear all risks associated with reimbursement from incorrect estimates of tax increment, changes in tax rates or tax collections, changes in market or economic conditions impacting the project, changes in interest rates or capital markets, changes in development code requirements for which the Project does not enjoy statutory or constitutional vested rights, unanticipated effects covered under legal doctrine of *force majeure*, and/or other unanticipated factors.

### III. THE PROJECT

3.1 **The Project.** The Project shall constitute and include the design, construction, assembly, installation and implementation of a mixed use development built pursuant to City of Donna development standards prescribed by City of Donna Code of Ordinances. The TIF funds will pay for Public Infrastructure Improvements, Project Costs and related costs only (the "Costs"). The TIF funds are the taxes on that amount of value assessed to the property within the Zone that is in excess of its value on January 1, 2008, the year the Zone was created or the base year. Taxes on the assessed value as of the base year will still go to the participating taxing entities; it is only the taxes on the increased value that funds the Project. The taxes on that additional increment of value are collected only until the earlier of payment of the agreed-upon amount of Project Costs or the termination of the ZONE pursuant to the City's Ordinance Number PL - 2008-05-64, dated May 29, 2008.

3.2 **The Public Infrastructure Improvements.** The public infrastructure improvements to be reimbursed with Available Tax Increment funds shall consist of the following items: street excavation and installation, curbing, sidewalks, drainage, lighting, traffic control, highway improvements, signage and fencing, off-site sewer, utilities, landscaping and other public improvements allowed under Chapter 311 of the Texas Tax Code, as more fully described in Section 1.15 and on Exhibit C.

3.3 **Construction of Public Improvements.** Project Costs eligible for reimbursement through TIF proceeds shall be publicly bid in general compliance with the requirements of the Texas Local Government Code.

3.4 **Financing.** The cost of the Public Infrastructure Improvements and all other Qualifying Costs associated with the Project shall be paid for through one of more of the following:

a. **DEVELOPER'S** funds obtained by **DEVELOPER** from:

- i. **DEVELOPER'S CAPITAL INVESTMENT;**
- ii. Loans or Lines of Credit secured by **DEVELOPER;**
- iii. Venture Capital raised by or on behalf of **DEVELOPER;**
- iv. The offering or sell of Partnership Shares;
- v. The sale by **DEVELOPER** of property owned by **DEVELOPER** within the **ZONE;** or
- vi. Other funds lawfully obtained by or on behalf of **DEVELOPER** or the General or Limited Partners of **DEVELOPER;**
- vii. Revenue from bonds issued by the City pursuant to this Agreement.

To the extent costs are paid for from sources (i) through (vii) above, **CITY** and Board of Directors of **ZONE** pledge to use Available Tax Increment funds, up to the maximum amount provided herein, to reimburse **DEVELOPER** for Project Costs. In order to obtain such reimbursement, **DEVELOPER** must complete the improvements in compliance with this Agreement and promptly submit a Certificate of Completion and Payment Request to the **ZONE**. Upon verification of completion, the **ZONE** shall promptly reimburse the **DEVELOPER** from the Tax Increment Fund using collected tax increment, bond funds, or other available funds; or

b. Other sources obtained at the discretion of **ZONE, DEVELOPER, or CITY.**

3.5 **DEVELOPER** may use any or part of the Zone Property owned by **DEVELOPER** as collateral for construction loan(s), loans, or other sources of financing as required for the financing of the Project. **DEVELOPER** may also use its rights to reimbursements under this Agreement for such purposes provided they are solely related to providing

funds for construction of improvements or professional services related to establishing or constructing improvements within the ZONE.

#### IV. DUTIES AND OBLIGATIONS OF DEVELOPER

4.1 Subject to the consideration from CITY and ZONE, DEVELOPER agrees to complete, or cause to be completed, the improvements described in the Project and Financing Plan and in this Agreement which includes, but is not limited to, street excavation and installation, curbing, sidewalks, drainage, lighting, traffic control, highway improvements, signage and fencing, off-site sewer, utilities, landscaping. DEVELOPER agrees to provide, or cause to be provided, all materials, labor and services for completing the Project. DEVELOPER also agrees, when required in connection with improving the Project, to obtain or cause to be obtained, all necessary permits and approvals from CITY and/or all other governmental agencies having jurisdiction over the construction of improvements in ZONE. All improvements will be completed in accordance with the Project and Financing Plans and this Agreement. Developer shall complete the above improvements during the term of the Project.

4.2 DEVELOPER shall be responsible for paying, or causing to be paid, to CITY and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project, and such payment shall be subject to reimbursement.

4.3 DEVELOPER agrees to use its best efforts to start and complete the Project in accordance with the Construction Schedule set forth in this Agreement in Exhibit B.

4.4 DEVELOPER shall submit to CITY and to the Board of Directors for ZONE written annual reports, starting twelve months from the commencement of construction and annually thereafter through the duration of the Project, on its construction progress and expenses.

4.5 DEVELOPER shall diligently work to successfully complete, or have completed, any and all required improvements that are not completed before the ZONE terminates in accordance with the terms of the Ordinance that created it. Such completion shall be at no additional cost to ZONE, CITY or any other taxing entity participating in the ZONE. DEVELOPER is only required to construct such improvements to the extent the Tax Increment Fund is reasonably anticipated to be sufficient to reimburse the cost of such improvements pursuant to Chapter 311 of the Texas Tax Code.

4.6 **DEVELOPER** shall prepare, or cause to be prepared, plans and specifications for each Phase of Public Infrastructure Improvements prior to starting any construction in said Phase. Furthermore, **DEVELOPER** shall not commence any construction on the Project until the plans and specifications for a Phase have been approved in writing by the appropriate department of **CITY**.

4.7 **DEVELOPER** agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with the Project Plan, Financing Plan and the plans and specifications approved by the appropriate department of **CITY**. **DEVELOPER** also agrees to provide periodic reports of such construction to **CITY** upon reasonable request.

4.8 If substantial completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond **DEVELOPER**'s control, then following written request of **DEVELOPER**, the deadlines set forth in the Construction Schedule shall be extended by the period of each such delay.

4.9 The Goods and Services to be provided by the **DEVELOPER** shall be in compliance with State Law and subject to Chapter 271, Subchapter I of the Texas Local Government Code.

#### V. DUTIES AND OBLIGATIONS OF CITY AND ZONE.

5.1 **CITY** and **ZONE** shall use only Available Tax Increment funds to pay **DEVELOPER** up to a maximum total payment of Seventy Nine Million Five Hundred Forty Five Dollars (\$79,545,000.) as full reimbursement for designing and constructing the improvements required under the Project and Financing Plan and this Agreement. This payment includes infrastructure improvements and other qualifying project costs. **CITY** shall deposit its Available Tax Increment into the Tax Increment Fund established pursuant to the Interlocal Agreements with the other Participating Taxing Entities at the same time those other Participating Taxing Entities are required to make their deposits of Available Tax Increment.

5.2 **Issuance of Bonds.** **CITY** and **ZONE** acknowledge that reimbursing developer for public improvements necessary and essential to the successful completion of the

Project, and to generation of Tax Increment benefits the CITY's goal of continued economic development. As such, CITY and ZONE agree to cause Bonds to be issued as soon as possible based on underwriting considerations under the authority granted by Chapter 311 of the Texas Tax Code to accelerate the reimbursement of the public improvements, and to take all other reasonable and necessary steps to cooperate with DEVELOPER to successfully complete the project.

It is further agreed by ZONE and CITY that the CITY shall, subject to legislative and underwriting limitations, and approval of the City Council, issue ZONE bonds for use in accelerating reimbursements to the DEVELOPER in an amount equal to at least 10% of the project costs. CITY, ZONE, and DEVELOPER shall fully cooperate to assure that all public improvements meet the criteria of the CITY, ZONE and Chapter 311 of the Texas Local Government Code.

5.3 If Available Tax Increment funds do not exist in an amount sufficient to make such payments in full when the payments are due to DEVELOPER under this Agreement, CITY shall make partial payments to DEVELOPER and pay the remainder as Available Tax Increment funds become available. No fees, costs, expenses, or penalties shall be paid to DEVELOPER on any late payment. The CITY is not obligated above and beyond what is actually collected as tax increment funds. There shall also be no recourse against any Participating Taxing Entity, public official, ZONE, or ZONE BOARD if all or part of the DEVELOPER contributions or costs are not reimbursed due to insufficient tax revenue generated by the Zone.

5.4 CITY agrees to recognize this agreement as a permit, pursuant to Texas Local Government Code Chapter 245.

5.5 City agrees that the City shall provide utility service to the Zone.

5.6 City shall provide and acknowledge the waivers and variances to the City of Donna Development Requirements and Building Codes as identified in Exhibit D to facilitate the development and construction of the Project.

## VI. INSURANCE

6.1 DEVELOPER's financial integrity is of interest to CITY; therefore, subject to DEVELOPER's right to maintain reasonable deductibles in such amounts as are

approved by CITY, DEVELOPER shall obtain and maintain in full force during all public infrastructure construction required by the Project Plan, and any extension hereof, at DEVELOPER's sole and reimbursable expense, insurance coverage written on an occurrence basis, except for professional liability coverage, by companies authorized and admitted to do business in the State of Texas and rated A - or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>Type</u>	<u>Amount</u>
(1) Worker's Compensation & Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
(2) Commercial General Liability (Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations)	Combined limits of \$500,000 per occurrence and \$750,000 in the aggregate or its equivalent in umbrella or excess liability coverage
(3) Business Automobile Liability (any auto, including employer's non-owned and hired auto coverage)	\$250,000 combined single limit per occurrence

6.2 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may make a reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, DEVELOPER shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

6.3 With the exception of the workers' compensation and professional liability policies, DEVELOPER agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance shall include CITY as an additional insured with respect to operations and activities of, or on behalf of, the named insured that are performed under agreement with CITY.

6.4 If DEVELOPER fails to maintain the aforementioned insurance or fails to secure

and maintain the aforementioned endorsements, CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of DEVELOPER to maintain said insurance or to secure such endorsement. In addition to any other remedies CITY may have upon DEVELOPER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order DEVELOPER to stop work hereunder and/or to withhold any payment(s) that become due to DEVELOPER hereunder until DEVELOPER demonstrates compliance with the requirements hereof.

6.5 Nothing herein contained shall be construed as limiting in any way the extent to which DEVELOPER may be held responsible for payments of damages to persons or property resulting from DEVELOPER's or its subcontractors' performance of the work covered under this Agreement.

6.6 DEVELOPER SHALL ALSO INDEMNIFY CITY, ZONE, THE BOARD OF DIRECTORS FOR ZONE, AND ALL OTHER TAXING ENTITIES PARTICIPATING IN ZONE AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES RAISED BY THIRD PARTIES ARISING OUT OF DEVELOPER'S AND DEVELOPER'S SUBCONTRACTORS' ACTIONS RELATED TO THE PERFORMANCE OF THIS AGREEMENT AND THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS.

6.7 DEVELOPER shall also require each of its subcontractors working on this Project to indemnify the Board of Directors for ZONE, CITY and all other taxing entities participating in ZONE and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety.

## VII. DEFAULT

7.1 In the event that DEVELOPER fails to commence construction of the Project, fails to complete construction of the Project, or fails to perform any other obligation pursuant to the terms of this Agreement, CITY and the Board of Directors for ZONE

may terminate this Agreement if DEVELOPER does not take adequate steps to cure its failure within one hundred twenty (120) calendar days after receiving written notice from CITY and/or the ZONE requesting the failure be cured. In the event the DEVELOPER fails to cure a default within one hundred twenty (120) calendar days after receiving notice, this Agreement may be terminated by CITY. If this Agreement or the ZONE is terminated and the DEVELOPER has incurred expenditures for public infrastructure that were specifically approved by the Board of Directors of the ZONE and such infrastructure has been completed, then DEVELOPER shall be reimbursed for such expenditures out of the Tax Increment Fund, despite termination of this Agreement or ZONE.

## VII. INDEMNIFICATION

**8.2 DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY, ZONE, THE BOARD OF DIRECTORS FOR ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN ZONE FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY A THIRD PARTY, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, ZONE, THE BOARD OF DIRECTORS FOR ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN ZONE DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF DEVELOPER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS DEVELOPER AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ZONE, THE BOARD OF DIRECTORS FOR ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN ZONE. IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT,**

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HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, ZONE, THE BOARD OF DIRECTORS FOR ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN ZONE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AS TO SAID CLAIMANTS. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR DEVELOPER KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES UNDER THIS AGREEMENT.

#### IX. SITE INSPECTION

9.1 DEVELOPER shall allow CITY and/or the Board of Directors for ZONE reasonable access to the Project site for inspections during and upon completion of construction of the Project, and to documents and records necessary for CITY and/or the Board of Directors for ZONE to assess DEVELOPER'S compliance with this Agreement.

9.2 All personnel supplied or used by DEVELOPER in the performance of this Agreement shall be deemed employees, contractors or subcontractors of DEVELOPER and shall not be considered employees, agents or subcontractors of CITY, ZONE, the Board of Directors for ZONE, or of any other taxing Entities participating in ZONE for any purpose whatsoever. DEVELOPER shall be solely responsible for the compensation of all such personnel.

9.3 The directors, officers, elected or appointed officials, employees and agents of CITY, ZONE, the Board of Directors for ZONE, and any other taxing entities participating in ZONE shall be protected from personal responsibility for any liability arising under or growing out of the Agreement.

#### X. EXAMINATION OF RECORDS

10.1 CITY reserves the right to conduct examinations, during regular business hours and following notice to the Board of Directors for ZONE and DEVELOPER, of the

books and records related to the Agreement (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of the Board of Directors for ZONE and/or DEVELOPER's services hereunder) no matter where books and records are located. CITY also reserves the right to perform any and all additional audit tests relating to the Board of Directors for ZONE and/or DEVELOPER's services, provided that such audit tests are related to those services performed by the Board of Directors for ZONE and/or DEVELOPER for CITY. These examinations shall be conducted at the offices maintained by the Board of Directors for ZONE and/or DEVELOPER, during normal business hours.

#### **XI. NON-WAIVER**

11.1 Any provision of this Agreement may be amended or waived if done in writing and is signed by CITY, through an ordinance passed and approved by its City Council, the Board of Directors for ZONE, and DEVELOPER.

#### **XII. ENTIRE AGREEMENT**

12.1 This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

12.2 The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

#### **XIII. CHANGES AND AMENDMENTS**

13.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by CITY, ZONE and DEVELOPER and evidenced by passage of a subsequent CITY ordinance, as to CITY's approval.

13.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to the ZONE and DEVELOPER's services

hereunder may occur during the term of this Agreement and the parties agree to amend this Agreement to reflect such changes in rules, regulations or laws.

#### **XIV. SEVERABILITY**

14.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to City Code or ordinances of the CITY, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of the Agreement a clause or provision as similar as may be possible to such invalid, illegal or unenforceable clause or provision that is legal, valid and enforceable.

#### **XV. VENUE AND GOVERNING LAW**

15.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

15.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract shall be heard and determined in Hidalgo County, Texas. CITY acknowledges that any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Contract results in CITY's waiver of liability and suit under the terms of this Contract and under Texas law. The parties agree that any dispute that may arise under this Agreement shall first be submitted to mediation, or to alternative dispute resolution proceedings, before litigation is filed. This Agreement is subject to Section 212.172 of the Texas Local Government Code, and is considered a "permit" for the purposes of Chapter 245, Texas Local Government Code, and shall be enforced under Chapter 271, Subchapter I; Section 271.151 - 271.160, of the Texas Local Government Code.

#### **XVI. TAXES**

16.1 DEVELOPER shall pay, on or before their respective due dates to the appropriate collecting authority, all Federal, State, and local taxes and fees that are now

or may hereafter be levied upon its property.

## XVII. NOTICE & ESCROW

17.1 Any notice sent under this Agreement (except as otherwise expressly required) must be written and mailed with sufficient postage, sent by certified mail, return receipt requested, or delivered personally to an officer of the receiving party at the following addresses:

### CITY:

City of Donna  
307 S. 12<sup>th</sup> Street  
Donna, Texas 78537  
Phone: (956) 464-3314  
Fax: (956) 464-9923  
(with copies being sent to both the  
Mayor and the City Manager)

### DEVELOPER:

Rhodes Enterprises, Inc.  
c/o Mr. Ken DeJarnett, CEO  
14901 N. Ware Rd.  
Edinburg, TX 78541  
Phone: (956) 287-2800  
Fax: (956) 287-2804

### ZONE:

Mike Rhodes  
Presiding Officer  
Reinvestment Zone Number Two  
c/o City of Donna  
307 S. 12<sup>th</sup> Street  
Donna, Texas 78537  
Phone: (956) 464-3314  
Fax: (956) 464-9923

17.2 Each party may change its address by written notice in accordance with this Article. Any communication delivered by facsimile transmission shall be deemed delivered when such transmission is made if during normal business hours or at the beginning of the next business day if the transmission is made after normal business hours. Any communication delivered in person shall be deemed received when receipted for by or actually received by an officer of the party to whom the communication is properly addressed.

## XVIII. CAPTIONS

18.1 All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

**XIX. EFFECTIVE DATE**

19.1 This Agreement shall become effective from the date of execution. This Agreement shall terminate on the earlier of: (i) the date DEVELOPER receives the final payment for completing the Project; (ii) the date of a termination by default (provided that all existing warranties on the Project shall survive termination of this Agreement); or (iii) expiration of the ZONE tax increment finance district pursuant to the ordinance of the City creating the Zone.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**CITY OF DONNA**

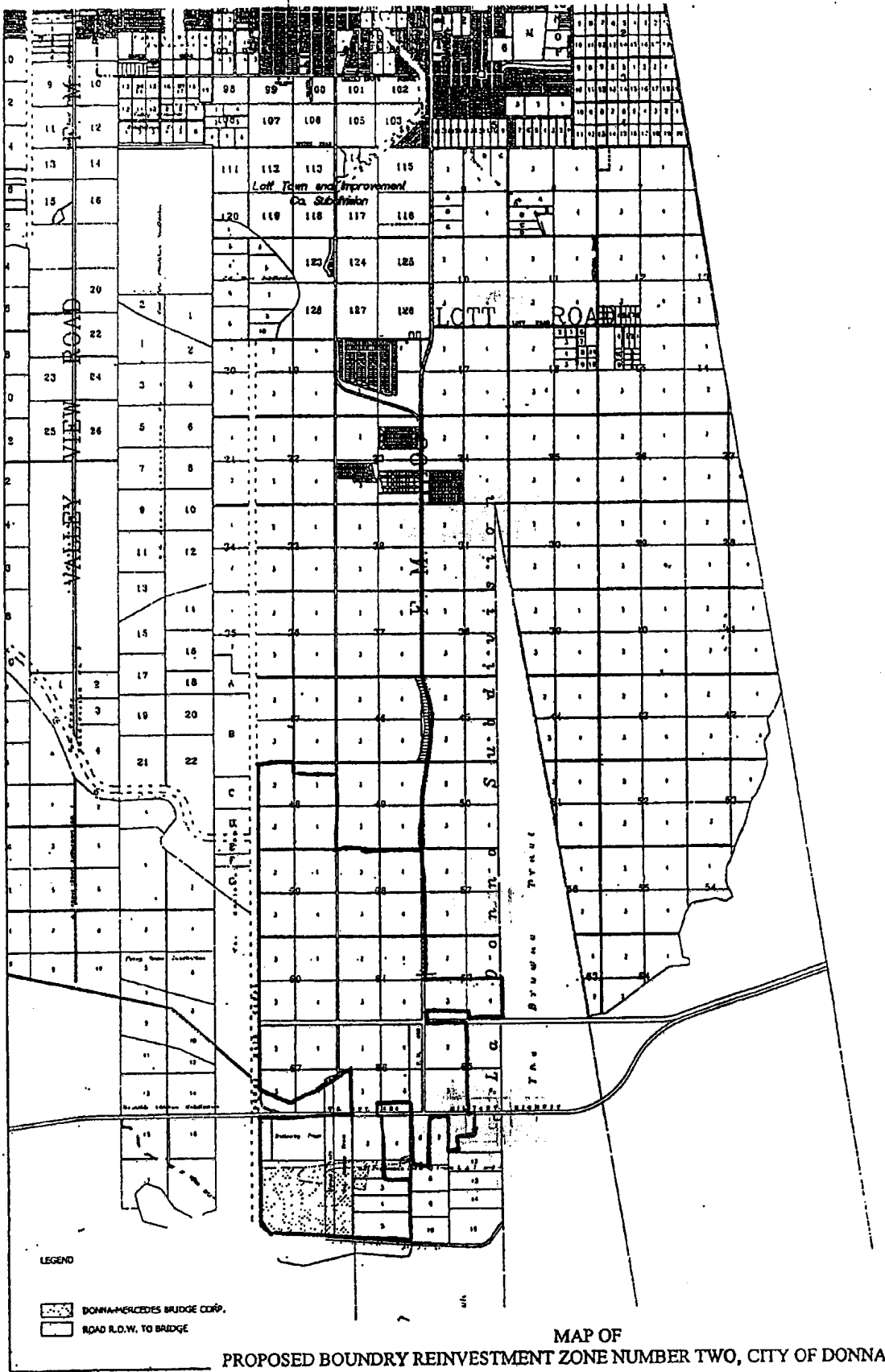
By: \_\_\_\_\_  
P. R. Avila II, City Manager

**RHODES ENTERPRISES, INC.**

By: \_\_\_\_\_  
Ken DeJarnett, Chief Executive Officer

**REINVESTMENT ZONE NUMBER TWO,  
CITY OF DONNA, TEXAS**

By: \_\_\_\_\_  
Mike Rhodes, Presiding Officer



MAP OF  
 PROPOSED BOUNDARY REINVESTMENT ZONE NUMBER TWO, CITY OF DONNA, TEXAS

EXHIBIT

A

March 7, 2007

**METES AND BOUNDS  
ANNEXATION TO THE CITY OF DONNA  
HIDALGO COUNTY, TEXAS**

A tract of land containing 1,528.16 acres situated in the County of Hidalgo, Texas, described as follows:

BEGINNING at the Northeast corner of Lot 1, Block 58, LA DONNA PLAT SUBDIVISION, according to the map thereof recorded in Volume 1, Page 51, Hidalgo County Map Records;

THENCE, S 08° 35' 22" W along the East lines of Blocks 58 and 61, La Donna Plat Subdivision and within the right-of-way of FM Road 493, a distance of 3,960.00 feet to the Southeast corner of Lot 1, Block 61;

THENCE, S 81° 24' 38" E along the North line of Lot 3, Block 62, La Donna Plat Subdivision, a distance of 1,320.00 feet to the Northeast corner of said Lot 3;

THENCE, S 08° 35' 22" W along the East line of Lot 3, Block 62, La Donna Plat Subdivision, a distance of 214.40 feet;

THENCE, along the South boundary of the Levee Easement to Hidalgo County Drainage District No. 1 (Vol.330 Pg.497 H.C.D.R.), to Hidalgo County (Vol.455 Pg.441 H.C.D.R.) and to the United States of America (Vol.457 Pg.461 H.C.D.R.), as follows: S 76° 33' 37" E a distance of 625.00 feet, S 83° 25' 19" E a distance of 105.39 feet and S 82° 45' 43" E a distance of 256.40 feet;

THENCE, S 08° 33' 16" W along the East line of Lot 4, Block 62, La Donna Plat Subdivision, a distance of 962.50 feet;

THENCE, N 81° 24' 38" W along the North line of a tract described in a Deed to San Benito Rio Grande Valley Railroad Company (Vol.184 Pg.311 H.C.D.R.), a distance of 985.00 feet;

THENCE, S 08° 35' 22" W along the East lines of Lot 3, Block 62 and Lots 2 and 3, Block 65, La Donna Plat Subdivision, a distance of 2,740.00 feet to the Southeast corner of said Lot 3, Block 65;

THENCE, S 81° 24' 38" E along the South line of Lot 4, Block 65, La Donna Plat Subdivision and within the right-of-way of U.S. 281-Military Highway, a distance of 189.96 feet;

THENCE, S 08° 35' 22" W within Lot 11, out of the C. R. Engelman Subdivision of Lands in the La Blanca Grant according to the plat thereof recorded in Volume 1, Page 60, Hidalgo County Map Records, a distance of 678.85 feet;

THENCE, N 81° 24' 38" W within Lot 11 in said C. R. Engelman Subdivision and along the North line of a 5.0-acre tract described in Document #898108, Hidalgo County Official Records, a distance of 466.69 feet;

THENCE, S 08° 35' 22" W within Lot 11 in said C. R. Engelman Subdivision and along the West line of said 5.0-acre tract described in Document #898108, Hidalgo County Official Records, a distance of 466.69 feet;

THENCE, N 81° 24' 38" W along the South line of said Lot 11, C. R. Engelman Subdivision, a distance of 300.21 feet to the Southwest corner of said Lot 11;

THENCE, N 08° 35' 22" E along the East line of said Lot 11, C. R. Engelman Subdivision, a distance of 1131.91 feet to the Northwest corner of said Lot 11;

THENCE, N 81° 24' 38" W along the North of Lot 7 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant and within the right-of-way of U.S. 281-Military Highway, a distance of 575.80 feet to the Northeast corner of Lot 6 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant;

THENCE, S 08° 35' 22" W along the East line of said Lot 6, C. R. Engelman Subdivision, a distance of 1513.10 feet to the Southeast corner of said Lot 6;

THENCE, N 81° 24' 38" W along the South line of said Lot 6, C. R. Engelman Subdivision, a distance of 575.80 feet to the Southwest corner of said Lot 6;

THENCE, N 08° 35' 22" E along the West line of said Lot 6, C. R. Engelman Subdivision, a distance of 1,530.10 feet to the Northwest corner of said Lot 6;

THENCE, N 81° 24' 38" W along the North of Lot 1 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant and within the right-of-way of U.S. 281-Military Highway, a distance of 20.31 feet;

THENCE, N 08° 27' 23" E at a distance of 79.96 feet pass the North right-of-way line of U.S. 281-Military Highway, continuing now along the East line of a 7.0-acre tract described in Volume 892 page 237, Hidalgo County Deed Records, for a total distance of 379.96 feet;

THENCE, N 81° 32' 37" W along the North line of said 7.0-acre tract described in Volume 892 page 237, Hidalgo County Deed Records, a distance of 1018.40 feet;

THENCE, S 08° 27' 23" W along the West line of said 7.0-acre tract described in Volume 892 page 237, Hidalgo County Deed Records, at a distance of 300.00 feet pass the North right-of-way line of U.S. 281-Military Highway, continuing for a total distance of 377.60 feet;

THENCE, S 81° 24' 38" E along the North of Lot 2 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant and within the right-of-way of U.S. 281-Military Highway, a distance of 122.51 feet;

THENCE, S 08° 35' 22" W along the East line of said Lot 2, C. R. Engelman Subdivision, a distance of 1,905.90 feet to the Southeast corner of said Lot 2;

THENCE, S 81° 24' 38" E along the North of Lot 3 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant, a distance of 914.20 feet to the Northeast corner of said Lot 3;

THENCE, S 08° 35' 22" W along the East lines of said Lots 3, 4 and 5, C. R. Engelman Subdivision of Lands in the La Blanca Grant, a distance of 1,208.80 feet;

THENCE, N 81° 24' 38" W within Lot 5 in said C. R. Engelman Subdivision of Lands in the La Blanca Grant, a distance of 1,791.80 feet;

THENCE, S 08° 35' 22" W along the East line of the Handy Tract as shown in the plat of C. R. Engelman Subdivision of Lands in the La Blanca Grant (Vol.1 Pg.80 H.C.M.R.), a distance of 524.50 feet;

THENCE, N 77° 48' 59" W along the South line of the Handy and the Muñoz Tracts, and its extension as shown in the plat of C. R. Engelman Subdivision of Lands in the La Blanca Grant (Vol.1 Pg.60 H.C.M.R.), a distance of 2,615.17 feet;

THENCE, N 38° 04' 45" W along the East line of the 200-foot Donna Irrigation District No.1 Main Canal right-of-way, a distance of 370.90 feet;

THENCE, N 08° 35' 22" E along the East line of the 200-foot Donna Irrigation District No.1 Main Canal right-of-way, a distance of 1,873.74 feet;

THENCE, S 81° 24' 38" E a distance of 27.35 feet;

THENCE, N 08° 35' 22" E along the West line of a certain 11.42-acre tract designated as Tract 8-C in Document #741019 Hidalgo County official Records, a distance of 1,347.00 feet;

THENCE, S 81° 24' 38" E along the North line of said 11.42-acre tract, the North line of the above mentioned Muñoz Tract and within the right-of-way of U.S. 281-Military Highway, a distance of 2,264.20 feet;

THENCE, N 08° 35' 22" E along the extended East line of said Muñoz Tract also being the East line of a certain 8.394-acre tract described in Document #696213, Hidalgo County Deed Records, a distance of 1024.27 feet;

THENCE, N 81° 24' 38" W along a Northern boundary of said 8.394-acre tract described in Document #696213, Hidalgo County Deed Records, a distance of 277.80 feet;

THENCE, S 08° 35' 22" W along a Western boundary of said 8.394-acre tract described in Document #696213, Hidalgo County Deed Records, a distance of 76.81 feet;

THENCE, along the "centerline of the Ruthven Resaca" as follows: S 68° 54' 22" W a distance of 617.32 feet, S 81° 41' 22" W a distance of 450.00 feet, S 79° 55' 22" W a distance of 150.00 feet and N 57° 38' 38" W a distance of 1065.00 feet;

THENCE, N 08° 35' 22" E along the East line of the 200-foot Dorina Irrigation District No.1 Main Canal right-of-way and within Blocks 67, 60, 59 and 48 out of La Donna Plat Subdivision (Vol.1, Pg. 51, H.C.M.R.), a distance of 9,822.30 feet;

THENCE, S 81° 24' 38" E along the North line of Lot 2, Block 48, La Donna Plat Subdivision, a distance of 1,120.00 feet;

THENCE, S 08° 35' 22" W along the East line of said Lot 2, Block 48, La Donna Plat Subdivision, a distance of 330.00 feet;

THENCE, S 81° 24' 38" E a distance of 1,320.00 feet;

THENCE, S 08° 35' 22" W along the East lines of Lots 1 and 4, Block 48, La Donna Plat Subdivision, a distance of 2,310.00 feet;

THENCE, S 81° 24' 38" E along the North lines of Lots 2 and 1, Block 58, La Donna Plat Subdivision, a distance of 2,640.00 feet to the POINT OF BEGINNING and containing 1,519.32 acres of land, more or less.

SAVE AND EXCEPT a 200'x200' tract containing 0.918 of one acre, being the North 200 feet of the East 200 feet of Lot 1, Block 66, La Donna Plat Subdivision (Reference Deeds: Vol.352 Pg.151 and Vol.477 Pg.379 Hidalgo County Deed Records).

Prepared by:  
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**Donna Tax Increment Finance Zone #2**  
**Est. Build Out - 15yrs Residential / 20 Years Commercial & Industrial**  
**Summary Fact Sheet**  
 June 1, 2008

**FINAL**

Site Area 927 +/- Acres  
 Base Value (2008) \$2,249,946.00

Project:	Residential	Commercial	Industrial
<b>Total</b>	<b>1,592 Units</b>	<b>2,673,712 ft. 186 Acres</b>	<b>5,976,432 ft. 343 Acres</b>

			Taxable Value
Years 1-15	Residential Units	1,592	\$238,800,000
Years 1-20	Commercial	186 Acres	\$307,476,972.00
Years 1-20	Industrial	343 Acres	\$239,057,280.00
<b>Totals</b>			<b>\$758,334,252.00</b>

<b>Captured Value</b>	<b>\$ 785,382,200</b>
<b>Growth Factor</b>	<b>0.00%</b>
<b>Collection Rate</b>	<b>97.50%</b>
<b>Est. Infrastructure Costs</b>	<b>\$54,545,000</b>
<b>Est. Total TIF Revenues</b>	<b>\$114,321,727</b>
<b>Est. TIF Life</b>	<b>30 Years</b>

The projections and estimates contained in this finance plan are subject to and may be impacted by market & economic conditions both domestic & international. Actual completion & construction of the project may take more or less time than described herein. However it is understood that the Developer will use its best efforts to complete the project as quickly as economically feasible.

**Donna Tax Increment Finance Zone #2**  
**Sources & Uses**

Sources of Funds

TIF Revenues \$ 114,321,727

Total Sources of Funds

\$ 114,321,727

**Uses Of Funds**

						Total Infrastructure Improvements
Public Improvements						
<b>Hard Project Costs</b>						
Site Work						\$ 1,850,000.00
Streets & Approaches						\$ 18,585,000.00
Drainage						\$ 2,727,250.00
Water						\$ 5,950,000.00
Sewer						\$ 6,200,000.00
Landscaping						\$ 760,000.00
Monument, Signage & Fencing						\$ 340,000.00
Street Lights / Signs						\$ 1,322,000.00
Plating Fees						\$ 372,300.00
Electric & Conduit						\$ 652,000.00
Water Impact Fees						\$ 242,000.00
Sewer Impact Fees						\$ 1,464,000.00
Sidewalks						\$ 1,380,000.00
Purchase of Real Property						\$ 600,000.00
<b>Soft Project Costs</b>						
Engineering/Surveying/Consulting						\$ 4,363,600.00
Construction Management						\$ 4,363,600.00
Formation Costs - Consulting						\$ 300,000.00
Contingency						\$ 4,073,250.00
<b>Subtotals</b>						<b>\$ 56,545,000</b>

**Total Infrastructure** \$ 54,545,000

**Interest Expense (estimated)** \$ 25,000,000

**Total** \$ 79,545,000

**Total City Admin. Expenses** \$ 120,000

**Grand Total** \$ 79,665,000

**Project Financing Surplus (Shortage)** \$ 34,656,727

The above allocation of costs are estimated and may be changed or adjusted by action of the Board of the TIRZ to meet project requirements, however the total maximum contributions of the participating taxing entities and term of the Zone may not be increased without approval by the City Council and County Commissioners Court.

**EXHIBIT**

**C**

## **EXHIBIT D**

### **Waivers and Variances to the City of Donna Development Requirements and Building Codes**

A to the extent waivers and variances to the development requirements and building codes are reasonably required to complete the project, such waivers shall be deemed granted by the City provided they are approved by a majority vote of the Zone Board. The City shall reserve the right to rescind any such waiver provided such action is taken by the city within 10 days after the waiver is granted.