

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

I. THIS INTERLOCAL AGREEMENT is made by and between the CITY OF MCALLEN, TEXAS (hereafter referred to as the "CITY"), a Texas Home Rule Municipality, acting through its City Manager pursuant to Ordinance No. 2015-109 passed and approved by the City Commission on December 14, 2015; 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 January 5, 2016 (hereafter referred to as the "COUNTY"); the MCALLEN TAX INCREMENT REINVESTMENT ZONE NUMBER TWO (2), 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 Chapter 311, Texas Tax Code, as well as to implement and fund the Project ("ZONE BOARD"). Collectively, the CITY, COUNTY, and ZONE, may be referred to as the "Parties". This Agreement is made pursuant to Chapter 791 Texas Government Code and Chapter 311 of the Texas Tax Code for the participation of 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:

City of McAllen
1300 Houston Avenue
McAllen, Texas 78501
Attention: City Manager
Phone: (956) 681-1000

With a copy to:

City of McAllen
1300 Houston Avenue
McAllen, TX 78501
Attention: City Mayor
Phone: (956) 681-1000

If to the County, to:

Hidalgo County
100 E. Cano, Ste. 201
Edinburg, Texas 78539-6243
Re: McAllen TIRZ #2
Attn: Hon. Ramon Garcia, County Judge
Phone: (956) 318-2600

With a copy to:

Hidalgo County Auditor
Attn: Ray Eufrazio, CPA
Re: McAllen-TIRZ Zone #2
2808 South Business Hwy 281
Edinburg, Texas 78539
Phone: (956) 318-2511

If to the Zone, to:

Reinvestment Zone Number Two
c/o City of McAllen
1300 Houston Avenue
McAllen, Texas 78501

With a copy to:

Reinvestment Zone Number Two
Attn: Board Secretary

Attention: Mayor Jim Darling
Presiding Officer
Phone: (956) 681-1000

B. Index

This Agreement consists of the following sections:

| <u>Section</u> | <u>Description</u> | <u>Page</u> |
|----------------|--|-------------|
| I. | Parties & Index | 1-2 |
| II. | Definitions | 3-5 |
| III | Background | 5 |
| IV. | Rights and Obligations of COUNTY | 5-10 |
| V. | Rights and Obligations of CITY and ZONE BOARD | 10-11 |
| VI | Term and Termination | 11-12 |
| VIII. | Miscellaneous | 12-14 |
| Signature Page | | 14 |
| Exhibit "A" | Project Plan | 15 |
| Exhibit "B" | City of McAllen Ordinance No.2015-109 passed and approved by CITY 12-14-15 | 16 |

C. Parts Incorporated

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

II. DEFINITIONS

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

1. "Administrative Costs" means reasonable costs directly incurred by a Participating Taxing Entity (as hereinafter defined) related to its agreement to participate in the development of the ZONE, as described in this Agreement. These costs include, but are not limited to, costs and expenses for legal review and financial analysis related to the ZONE incurred prior to entering into this Agreement, as well as any such costs and expenses incurred after this Agreement becomes effective. The aggregate reimbursable Administrative Costs for all the combined Participating Taxing Entities, which incur Administrative Costs over the life of the ZONE, shall not exceed an aggregate reimbursement of One Hundred Fifty Thousand Dollars (\$150,000).

2. "Agreement" means this Interlocal Agreement.

3. "Available Tax Increment" shall mean (1) as to CITY, an amount calculated as a millage rate per \$100 of Captured Appraised Value of real property in the Zone that equals 60% of the CITY's M&O Tax Rate as levied, collected, and allocated to the general fund (i.e., excluding only the portion of the CITY's property tax rate that is apportioned for payment of outstanding general obligation bonded indebtedness commonly referred to as the "interest and sinking fund rate"); and (2) as to COUNTY, an amount calculated as a millage rate per \$100 of Captured Appraised Value of real property in the ZONE that equals 50% of the COUNTY's Applicable M&O Tax Rate levied, collected and allocated to the general fund (excluding only that portion of the COUNTY's property tax rate that is apportioned for payment of outstanding general obligation bond indebtedness commonly referred to as the "interest and sinking fund rate").

4. "Base Year" means the year in which a Tax Increment Reinvestment Zone is created by ordinance or order. The Base Year is 2015.

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 2015, the Base Year of the ZONE.

6. "CITY" has the meaning set forth in Section I.A.1 above.

7. "CITY M&O Tax Rate" means that portion of the ad valorem tax rate used by the CITY for Maintenance and Operation. The CITY M&O Tax Rate may change from time to time. The CITY M&O Tax Rate for the Base Year is \$0.4313 per \$100 dollars of valuation on the Captured Appraised Value and may be changed by the CITY during the Term of the ZONE.

8. "COUNTY" has the meaning set forth in Section I.A.1 above.

9. "COUNTY Applicable M&O Tax Rate" for any given year means the lesser of (i) the Base Year M&O Tax Rate and (ii) the County M&O Tax Rate for the given year. The Base Year M&O Tax Rate was \$0.5308 per \$100 dollars of valuation.

10. "COUNTY M&O Tax Rate" means that portion of the ad valorem tax rate used by the COUNTY for maintenance and operation. The COUNTY M&O Tax Rate is subject to change by the COUNTY in accordance with applicable law.
11. "Material Change" has the meaning given such term in Section IV.B.5 below.
12. "Participating Taxing Entity" means the CITY and COUNTY.
13. "Parties" has the meaning given such term in Section A.I above.
14. "Pre-TIRZ Administrative Costs" shall have the meaning given in the Project and Finance Plan
15. "Project" means the Drainage Projects, as more specifically identified in the Finance and Project Plan.
16. "Project Plan" means the final Project and Finance Plan for the ZONE approved by the Board of Directors of the ZONE and approved by City Commission of CITY and attached hereto as Exhibit "A".
17. "Project Costs" means the costs of the Public Infrastructure Improvements, eligible for reimbursement under Chapter 311 of the Texas Tax Code, as described in the Project Plan. The Project Costs in the aggregate for the Term of ZONE are estimated to be Sixteen Million Two Hundred Twenty Eight Thousand Five Hundred and No/00 Dollars (\$16,228,500.00), as more completely set forth in Exhibit "A".
18. "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.
19. "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, 2015 the year in which the ZONE was designated.
20. "Tax Increment Fund" means the tax increment fund created by the CITY for the deposit of Available Tax Increments for the ZONE, entitled "Reinvestment Zone Number Two City of McAllen, Texas Tax Increment Fund," which fund must be segregated and kept apart from any other funds of the CITY and may only be used to pay for expenses and costs approved by the Board of Directors for the ZONE.
21. "Tax Increment Payment" means the Available 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.
22. The "Term of the ZONE" has the meaning set forth in Section III. A., below.
23. "Transportation Zone" means Transportation Reinvestment Zone Number Two,

Hidalgo County.

24. "ZONE" means McAllen Tax Increment Reinvestment Zone Number Two, created by the CITY over the property contained in the Zone on December 14, 2015, by Ordinance No. 2015-109, a legal description of which is contained in Exhibit "A" to the Project Plan, which is attached hereto as Exhibit "A".

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

III. BACKGROUND

A. Ordinance No. 2015-109 approved by the City Commission of CITY on December 14, 2015 expressed the CITY's intent to create a tax increment financing reinvestment zone and to participate in the ZONE at a level of 60% of the CITY M&O Tax Rate to support revitalization and development activities for the ZONE, commonly known as McAllen TIRZ #2, pursuant to Chapter 311, Texas Tax Code. On January __, 2016, the COUNTY, authorized the execution of this Agreement and expressed its intent to participate in the ZONE at a level of 50% of the COUNTY Applicable M&O Tax Rate. On December 14, 2015, the City Commission of the CITY passed and approved Ordinance No. 2015-109, 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 ZONE is projected to terminate on December 31, 2036, unless earlier termination occurs under this Agreement (the "Term of the ZONE").

B. The CITY approved the preliminary project and finance plan on December 14, 2015. The CITY and the COUNTY agree to participate in the ZONE and to deposit their respective Tax Increment Payments to the Tax Increment Fund, in accordance with the terms, and in consideration for the agreements, set forth herein. The Tax Increment Fund was authorized by Ordinance No. 2015-109, attached hereto as Exhibit "B." The COUNTY hereby acknowledges receipt of notice of the initial creation of the ZONE. The CITY represents that it has complied with all legal requirements and notice requirements in the creation of the ZONE.

IV. RIGHTS AND OBLIGATIONS OF THE COUNTY

A. Tax Increment Participation by the COUNTY

1. Subject to the limitations set out in this Agreement, the COUNTY agrees to participate in the ZONE by contributing to the Tax Increment Fund an amount equal to 50% of the revenue generated from the COUNTY Applicable M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year during the Term of the ZONE. For the purpose of this Agreement the COUNTY M&O Tax Rate shall be calculated as set forth in section IV(B)(2) of this Agreement. In no event shall the COUNTY contribution to the Tax Increment Fund be greater than Eight million two hundred twenty nine thousand, three hundred seventy five and No/100th Dollars (\$8,229,375.00) over the life of the ZONE (which for purposes of this

provision will be deemed to end no later than December 31, 2036) beginning with the 2015 tax year.

2. The Parties hereto agree that the COUNTY's contribution to the Tax Increment Fund shall be used to fund Project Costs. The COUNTY's contributions to the Tax Increment Fund shall end when it has contributed the maximum total contribution provided for herein of Eight Million Two Hundred Twenty Nine Thousand, Three Hundred Seventy Five and NO/100 Dollars (\$8,229,375.00), 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 2036 (ending on December 31, 2036), whichever occurs first.

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 Available 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 value of the Tax Increment Base have been collected, then the remaining ad valorem taxes collected shall constitute the taxes collected on the value of the Tax Increment. COUNTY agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2016 by the later of: (i) collection reports having been provided to the Hidalgo County Auditor's Office; (ii) May 1, 2016; or (iii) 30 days after the full execution and delivery of this Agreement by all Parties. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received up to January 31, 201, but only for tax year 20155, beginning January 1, 2015. For subsequent payments, the COUNTY agrees to contribute its yearly Tax Increment Payment to the Tax Increment Fund annually not later than the 90th day after the delinquency date for the COUNTY's property taxes (or the first business day thereafter) following the end of each tax year. The amount of each Tax Increment Payment shall be based on the Tax Increments that are received up to January 31st following the end of the tax year, but which have not been previously deposited in the Tax Increment Fund, during the annual periods preceding each deposit date. Under no circumstances shall the COUNTY be required to participate in the ZONE with taxes attributable to periods after 2036.

The chart below is for illustrative purposes only and is an example of how the payment calculation is calculated by the COUNTY. Assuming for the purpose of this example, the tax value of the zone is \$100,000.00, the base value is \$10,000.00, the Administrative Costs are \$10.00 per year and the overall COUNTY tax rate is \$.0059.

| Tax Increment Reinvestment Zone (TIRZ Payment Calculation) | EXAMPLE |
|--|--------------------|
| TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD)) | \$100,000.00 |
| <i>(multiplied by)</i> Hidalgo County Current (GHD) Tax Rate (.59/100) | \$0.0059 |
| GHD Actual Tax Level for all real property tax accounts located within the TIRZ | \$590.00 |
| TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD)) | \$100,000.00 |
| <i>(less)</i> Tax Increment Base | \$10,000.00 |
| | \$90,000.00 |
| Captured Appraised Value | \$90,000.00 |
| <i>(multiplied by)</i> Contribution Rate (County Applicable M&O Tax Rate) (.51/100) | 0.0051 |
| Tax Levy Due to TIRZ | \$459.00 |
| Tax Increment (for February 1 through January 31) as per Collections Reports provided by Hidalgo County Tax Office | \$300.00 |
| <i>(divided)</i> GHD Actual Tax Levy for all Real Property tax accounts located within the TIRZ | \$590.00 |
| Percent Collected of Actual Levy | 50.85% |
| Tax Levy Due to TIRZ | \$459.00 |
| <i>(multiplied by)</i> Percent Collected of Actual Levy | 50.85% |
| Purposed Payment Amount | \$233.40 |
| <i>(less)</i> Administration Costs (as per Agreement) | \$10.00 |
| TAX INCREMENT PAYMENT AMOUNT DUE TO TAX INCREMENT FUND | \$223.40 |

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

3. 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 311.0 13 (c) and (c-1) of the Texas Tax Code, which state as follows:

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

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

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

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

The Parties expressly agree that the COUNTY shall not owe any penalty or interest on Tax Increments attributable to taxes that have been levied, but not received by the COUNTY. Further, the COUNTY shall not be liable for the payment of any penalties or interest if the report required to be filed by the CITY under section 311.016 of the Texas Tax Code is not filed timely; or if the fact sheet, the TIRZ's annual audit report, and/or payment request are not provided to the County timely, or under any other situation in which the CITY does not pay interest or penalties.

5. The CITY and the ZONE agree to comply with the Project Plan and to provide prior written notice to the COUNTY of a proposed change that would constitute at least a twenty-five percent (25%) increase or decrease in either the Project Costs or the scope and scale of the Project (hereinafter a "Material Change"); provided that any Material Change that is not approved by the COUNTY shall not change the amount of Tax Increment Payments due from the COUNTY. The ZONE BOARD shall have the right to amend and modify the Project Plan without providing prior written notice to the COUNTY so long as such amendment or modification does not constitute a Material Change.

6. If the CITY or the Board of Directors for the ZONE materially breaches this Agreement, then the COUNTY may provide written notice to the CITY 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.). If the objections and/or concerns, as set out in the notice, are not resolved within 90 business days from the date of such notice, then the COUNTY may discontinue its Tax Increment Payments and terminate its participation in the Zone.

7. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the COUNTY shall not have any obligation or responsibility for any costs or expenses associated with the 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 Eight Million Two Hundred Twenty Nine Thousand, Three Hundred Seventy Five and No/100th Dollars (\$8,229,375.00), plus any applicable penalty and/or interest allowed in section 311.013 of the Tax Code, subject to the limitations in Section IV.B.4.

9. a. *General Provisions.* Subject to changes in the COUNTY M&O Tax Rate that will be addressed as set forth in Section IV.B.9.b. and IV.B.9.c. below, the COUNTY agrees to participate at fifty percent (50%) of the COUNTY Applicable M&O Tax Rate (for tax year 2015, 50% equaling \$0.5308 per \$100 valuation on the Captured Appraised Value) for real property within the Zone, without regard to whether the real property is also within the Transportation Zone.

b. *Transportation Zone Overlap:* This provision intentionally deleted because the maximum contribution of the COUNTY hereunder is 50% of the COUNTY Applicable M&O Tax Rate.

c. *Lower COUNTY M&O Tax Rate.* If the COUNTY M&O Tax Rate is less than \$0.5308 per \$100 valuation on the Captured Appraised Value during a year in the Term of the ZONE, then the maximum tax increment paid by the COUNTY into the Tax Increment Fund for such year shall not exceed 50 percent (50%), or, with respect to property within an overlap with the Transportation Zone, fifty percent (50%) of the total amount of taxes collected by the COUNTY at the actual COUNTY M&O Tax Rate with respect to such year the COUNTY M&O Tax Rate is less than \$0.5308 per \$100 valuation.

10. COUNTY taxes that are delinquent for more than five years will be considered uncollectible and shall not be included in the Tax Increment Payment.

C. School District Provisions

The COUNTY understands that the Project is located in the McAllen Independent School District. The City and the Zone represent to the COUNTY that the McAllen Independent School District is not participating in the ZONE by contribution of Tax Increment.

D. Management of the ZONE

1. The ZONE shall in all respects be managed by the ZONE BOARD. 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 Financing Plan as limited by the CITY's ordinance creating the ZONE. 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 in a manner that will not interfere with ongoing operations.

2. The ZONE BOARD shall be composed of five (5) members, as allowed under Section 311.009(b) of the Texas Tax Code. The COUNTY shall have the right to designate one member of the ZONE BOARD as its designee. If it is necessary for the CITY to make or confirm the appointment, the CITY shall appoint or confirm the COUNTY's designee.

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 legal description of the ZONE contained 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, the CITY agrees to participate in the ZONE by contributing to the Tax Increment Fund sixty percent (60%) of the revenue generated from the CITY M&O Tax Rate as levied and collected on the Captured Appraised Value each year during the term of this Agreement, beginning with the 2015 tax year. The CITY agrees to require the ZONE to implement the Project Plan. The CITY's contributions to the Tax Increment Fund shall end when the CITY has contributed the maximum total contribution provided for herein of Eight Million One Hundred Fifty One Thousand, Five Hundred Seventy and No/100 Dollars (\$8,151,570.00), or when it has contributed all Tax Increments attributable to periods before the ZONE termination date in 2036, whichever occurs first. The CITY's continued contribution to the Tax Increment Fund is conditioned upon.

B. Tax Increment Payment

1. The CITY's obligation to contribute its Tax Increment Payment to the Tax Increment Fund as provided above in Section V of this Agreement shall accrue as the CITY collects its Tax Increment. The CITY agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2015 by [REDACTED]. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received through January 31, 2016, but only for the tax year 201 [REDACTED] beginning January 1, 201 [REDACTED]. For subsequent Tax Increment Payments, the CITY agrees to contribute its Tax Increment Payment to the Tax Increment Fund annually on or before [REDACTED] (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 CITY shall administer the Tax Increment Fund on behalf of the ZONE, pursuant to Ordinance No.2015-109 passed and approved by City Commission of the CITY on December 14, 2015. Except for amounts to be paid to the CITY and COUNTY for Administrative Costs, no funds shall be disbursed from the Tax Increment Fund without the prior written approval of the ZONE BOARD, and notice of the amount of funds used and disbursement of funds by the ZONE shall be given at least annually to the COUNTY. The Parties agree that the CITY shall be responsible for the annual administration of the ZONE.

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 11.1 above.

3. The CITY and ZONE will use funds in the Tax Increment Fund to reimburse expenditures in the order and priority of payment set forth in the Project Plan. No change in such priority shall be made without the COUNTY's consent. 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. TERM AND TERMINATION

A. Term of the ZONE and Termination

This Agreement shall become effective as of the last date of execution by the Parties hereto, and shall remain in effect until December 31, 2036 unless earlier terminated as provided herein. Subject to the terms of this Agreement, the COUNTY agrees to participate under this Agreement, beginning with the 2015 tax year and ending in accordance with the terms provided herein. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree and understand that the CITY's and COUNTY's Tax Increment Payments will not be made after December 31, 2036 for the 2035 tax year.

B. Early Termination

Neither the CITY, the COUNTY, nor the ZONE BOARD shall take any action to terminate the ZONE earlier than the Term of the ZONE as specified in Section III.A. above.

C. Disposition of Tax Increments

Upon expiration or termination of the ZONE and after all bonds and/or notes 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 provision 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 City Manager of the CITY.

VII. MISCELLANEOUS

A. Understanding

Any and all costs incurred by the CITY or COUNTY are not, and shall never become, general obligations or debt of the COUNTY or any Participating Taxing Entity. With respect to the CITY and COUNTY costs, only eligible Project Costs and other allowable expenses under applicable law, if any, incurred by the CITY or COUNTY shall be payable from the Tax Increment Fund in the manner and priority provided the Project Plan 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 Project Plan passed and approved in accordance with Ordinance No. 2015-109 dated December 14, 2015. The CITY and the COUNTY are not obligated above and beyond what is actually collected as its Available Tax Increment during the Term of the ZONE, which shall be deposited into the Tax Increment Fund.

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.

D. Written Amendment

This Agreement may be changed or amended only by a written instrument duly executed

on behalf of each Party hereto. All Parties to this Agreement understand and recognize that only the City Commission of CITY and only the Commissioners Court of the COUNTY have authority to approve a change or amendment to this Agreement on behalf of the CITY or the COUNTY, respectively.

E. Notices

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

F. Non-Waiver

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

G. Assignment

No assignment of this Agreement by either party is permitted.

H. Successors

This Agreement shall bind and benefit the Parties and their legal successors. 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. Amendments to 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 Commission of the CITY. The Parties agree that a Material Change to the Project Plan shall not apply to the COUNTY unless the COUNTY approves the change as provided herein. Further, 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; or (ii) increases or reduces the geographical area of the ZONE set forth in the Project Plan or (iii) otherwise materially changes the Project, the COUNTY must approve said amendment in order for the amendment to

be binding on the COUNTY.

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 or other 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 (and other documentation and information pursuant to Section IV.B.2. above) from the CITY for the applicable tax year, and shall not incur any penalties or interest with respect to any such withheld or delayed payments notwithstanding any provision herein to the contrary.

K. ZONE Designation

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

IN WITNESS HEREOF, the CITY OF MCALLEN; HIDALGO COUNTY; AND TAX INCREMENT REINVESTMENT ZONE NUMBER TWO (2), CITY OF MCALLEN, TEXAS have made and executed this Agreement in triplicate originals on this __day of January, 2016.

CITY OF MCALLEN

HIDALGO COUNTY

James E. Darling, City Mayor

Honorable Ramon Garcia,
County Judge

ATTEST/SEAL:

ATTEST/SEAL:

Perla Lara, Interim City Secretary

Arturo Guajardo, Jr., County Clerk

**APPROVED AS TO FORM FOR
CITY OF MCALLEN:**

**APPROVED AS TO FORM FOR
HIDALGO COUNTY:**

Kevin Pagan, City Attorney

Atlas, Hall, & Rodriguez, LLP

By: _____
Stephen L. Crain

DRAFT

**Exhibit “A”
Project Plan**

DRAFT

Exhibit “B”

**City of McAllen Ordinance No. 2015-109 75 passed and approved
by the City Commission on December 14, 2014**

DRAFT