

FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MCALLEN, TEXAS
AND RHODES ENTERPRISES, INC. AND REINVESTMENT ZONE
NUMBER ONE, CITY OF MCALLEN, TEXAS

This First Amendment ("1st Amendment") is hereby made to that certain Development Agreement ("Agreement"), executed and effective as of March 9th, 2015, by and between the CITY OF MCALLEN, TEXAS (hereinafter called "CITY"); Rhodes Enterprises, Inc., a Texas corporation, or assigns (hereinafter referred to as "DEVELOPER"); and REINVESTMENT ZONE NUMBER ONE, CITY OF MCALLEN, TEXAS, a tax increment reinvestment zone created pursuant to Texas Tax Code Chapter 311 (hereinafter called "ZONE"), by and through its duly authorized Board of Directors ("Board of Directors for the ZONE") (hereinafter collectively the "Parties" or in the singular a "Party") for the purpose of reconfirming the Agreement, and making modifications thereto:

RECITALS

WHEREAS Resolution No. 2014-51 approved by the CITY Commission of CITY on October 27, 2014, expressed the CITY's intent to create a tax increment financing reinvestment zone and to participate in the ZONE, and

WHEREAS on November 18, 2014, the COUNTY OF HIDALGO, by resolution, expressed its intent to participate in the ZONE, and

WHEREAS on December 22, 2014, the City Commission of the CITY passed and approved Ordinance No. 2014-75, which created the ZONE and authorized the Tax Increment Fund; and

WHEREAS the CITY approved the original Project and Finance plan on December 22, 2014; and

WHEREAS on March 17, 2015, the CITY, the COUNTY OF HIDALGO, the ZONE, and the DEVELOPER approved and executed the Original Interlocal Agreement, which was amended on September 15, 2015 by the approval and execution by the Parties and the COUNTY OF HIDALGO of the First Amendment to that Interlocal Agreement; and

WHEREAS on or about December 14, 2015, the Parties and the COUNTY OF HIDALGO agreed to enter into a further amendment, and to fully restate, the Original Interlocal Agreement as previously amended by the First Amendment to that Interlocal Agreement, in order to implement and fund the Original Project and Finance Plan and the Amended Supplemental Project and Finance Plan for the ZONE; and

WHEREAS on December 14, 2015 the City amended the original Project and Finance Plan by approving a ZONE authorized and proposed Amended Supplemental Project and Financing Plan; and

WHEREAS the Parties desire that the Agreement reflect the changes in the projects of the ZONE and financing of such projects and be understood and interpreted to be consistent with the creation documents of the ZONE, the amended and restated Interlocal Agreement, the original Project and Finance Plan and the Amended Supplemental Project and Financing Plan.

THEREFORE the Parties agree as follows:

I. AGREEMENT

1.0 Entire Agreement. This 1st Amendment is made to supplement or modify the Agreement between the Parties, and it is the express intent of the Parties that the Agreement, as amended hereby, shall remain in full force and effect and binding on the Parties without interruption.

1.1 Definitions. All defined terms used in this 1st Amendment that are not otherwise defined in this 1st Amendment shall have the meanings assigned to such terms in the Agreement.

1.2 Purpose and Overview of 1st Amendment. This 1st Amendment calls for a swap of approximately 100 acres of Tres Lagos land for approximately 150 acres of nearby City land. The specifics are shown on the maps included in the Project and Finance Plan. This 1st Amendment allows the 100 acre tract to be used as a site for a future Campus of Texas A & M University. This 1st Amendment contemplates the construction of the public improvements for the Texas A&M Project to include both those outlined in the Original Project and Finance Plan and additional horizontal and vertical improvements to accommodate the needs of the Campus of Texas A & M University. This 1st Amendment further binds the City and Developer to split the costs of the required environmental studies and reviews necessary on both sites and to split the closing costs for the land swap. This 1st Amendment and the Amended Supplemental Project and Finance Plan outline the changes to the project and the changes to the financing of the project. As further described in the Amended Supplemental Project and Finance Plan, the CITY will contribute 70% and the COUNTY will contribute 67% of their respective Available Tax Increment from the year 2015 through 2025, or until the aggregate amount of the 10% reduction has reached \$2,500,000.00, whichever occurs first, and thereafter through the remaining Term of the ZONE the CITY will contribute 80% and the COUNTY will contribute 77% of their respective Available Tax Increment.

II. AMENDMENT

2.0 The Agreement is hereby modified and amended as follows:

Section 1.4 shall read as follows: 1.4 "Available Tax Increment" shall mean (1) as to CITY, an amount calculated as a millage rate per \$100 of Captured Appraisal Value of real property in the Zone that equals 70% 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 appointed 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 (provided by the County pursuant to the amended and restated Interlocal Agreement) calculated as a millage rate per \$100 of Captured Appraised Value of real property in the Zone that equals 67% of the COUNTY’s 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”), together with any rollback taxes collected from within the Zone over the term of the Zone. The term “Available Tax Increment” shall mean 80% of the CITY’s M&O Tax Rate and 77% of the COUNTY’s M&O Tax Rate once the aggregate amount of the 10% reduction has reached \$2,500,000.00 or after December 31, 2025, whichever occurs first.

Section 1.21 shall read as follows: 1.21”Project and Finance Plan” shall mean the final Project Plan and Financing Plan for the ZONE as amended and/or supplemented and approved by the Board of Directors of the ZONE and approved by the City Commission of **CITY**.

Section 1.22 shall read as follows: 1.22 “Project Costs” shall mean the costs of the Public Infrastructure Improvements as described in the Project and Finance Plan.

Section 1.24 shall read as follows: 1.24 “Public Infrastructure Improvements” shall mean those certain public improvements to be constructed as part of the Project and generally described in the Project and Finance Plan.

Section 3.7.2.1 through 3.7.2.5 shall read as follows:

3.7.2.1 **FIRST**, to pay debt service on the “City of McAllen Combination Tax and Assessment Revenue Certificates of Obligations Taxable Series 2016” (hereafter the “C of Os”) issued by the **CITY**;

3.7.2.2 **SECOND**, to reimburse the **CITY** for Pre-TIRZ Administrative Costs approved by the **ZONE**, unless the same has been previously paid from the proceeds of the C of Os;

3.7.2.3 **THIRD**, to pay Administrative Costs to the **CITY** and County pursuant to the Interlocal Agreement to reimburse the **CITY** for the **CITY** Project Costs, plus interest, as provided in the Project and Finance Plan, for the **CITY** Public Improvements;

3.7.2.4 **FOURTH**, to reimburse **CITY, DEVELOPER** or **PUB** for Project Costs, plus Interest, as provided for in the Project and Finance Plan incurred by the **CITY, DEVELOPER** or **PUB**, for allowed and approved Public Infrastructure Improvements constructed by either on a first in, first out basis; and

3.7.2.5 FIFTH, to reimburse or pay the cost of any project or improvement that was not included in the Project and Finance Plan, but was later added as a subsequent project with approval of the ZONE and the CITY.

Section 5.1 shall read as follows: 5.1 **CITY** and **Zone** shall only use Available Tax Increment funds to pay for annual debt service on the C of Os as it is incurred, for Public Improvements and related costs required under the Project and Finance Plan and this Agreement. **CITY** shall deposit its Available Tax Increment into the Tax Increment Fund established pursuant to the Interlocal Agreement with the County at the time required therein. After the annual debt service on the C of Os has been paid, the **CITY** pre-TIRZ Administrative Costs have been paid, the **CITY** and County Administrative Costs as incurred have been paid (maximum of \$400,000.00), and the **CITY** has been reimbursed for the **CITY** Public Improvements incurred and approved to date, the remainder of the Available Tax Increment shall be used to reimburse the Developer for Project Costs incurred by Developer and reimburse the PUB up to a maximum of \$3,000,000.00 for upgrades to its recycled water plant.

Section 5.2 shall read as follows: 5.2 **Contract Revenue Bonds and C of Os. CITY** and **ZONE** acknowledge that for a successful Project the **CITY** and **ZONE** shall cause Contract Revenue Bonds and C of Os to be issued. The Contract Revenue Bonds shall be for vertical infrastructure of approximately \$12,800,000.00 and the C of Os shall be for horizontal infrastructure and related expenses of approximately \$24,500,000.

Section 5.3 shall read as follows: 5.3 If the Additional Available Tax Increment (as defined in the Second Amendment to the Interlocal Agreement) are not sufficient to pay the debt service on the Contract Revenue Bonds when due County agrees to backstop the payment of said debt service with its 23% Additional Available Tax Increment not to exceed \$6,800,000 for payment of the said debt service on the Contract Revenue Bonds. If the Available Tax Increment is not sufficient to pay the debt service on the C of Os as said debt service is due, the PID Debt Service Assessments shall be used to backstop the shortfall. Additionally a DEVELOPER'S renewable irrevocable letter of credit will serve as a final source of payment of debt service shortfalls on the C of Os.

Section 20.3 is added and shall read as follows:

"20.3 Redirected Increment. The Parties hereby agree that during years 2015 through 2025 of the Project ten percent (10%) of the amount of the original available tax increment contributed by the CITY and the COUNTY (80% and 77% respectively) to the Tax Increment Fund under the Original Project and Finance Plan, the Interlocal Agreement, and the Agreement shall be redirected and applied by the CITY and ZONE to the payment of debt service on the Contract Revenue Bonds (as that term is defined in the Amended Supplemental Project and Finance Plan and Interlocal Agreement) (the "Diverted Increment"). The Parties expressly agree

that the Diverted Increment will only be diverted towards the payment of debt service if the sum of CITY's Additional Pledge during years 2015 through 2025 of the Zone is not sufficient to pay the debt service on the Contract Revenue Bonds during such years. The Parties further agree that the maximum amount of Diverted Increment shall be \$2,500,000.00, and upon the earlier of December 31, 2025 or the amount of Diverted Increment reaching \$2,500,000.00, the amount of contribution by the City and the County shall return to 80% and 77% respectively.

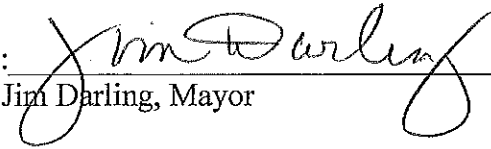
III. RATIFICATION

3.0 As amended and supplemented hereby, the Agreement is ratified and shall remain in full force and effect. In the event of a conflict between this 1st Amendment and the Development Agreement, this 1st Amendment shall control. The parties agree that a facsimile copy or electronic copy (including PDF copy) of the signature of the person executing this 1st Amendment on any party's behalf shall be effective as an original signature and shall cause the facsimile copy or electronic copy (including PDF copy) of this 1st Amendment to be legally binding and effective as an execution counterpart hereof.


THIS 1st AMENDMENT IS EXECUTED AND EFFECTIVE ON THIS 11th DAY OF JANUARY, 2016.

{Signatures on next page}


CITY OF MCALLEN

By: 
Jim Darling, Mayor

RHODES ENTERPRISES, INC.

By: 
Michael Rhodes, President

**TAX REINVESTMENT ZONE NUMBER ONE,
CITY OF MCALLEN, TEXAS**

By: 
Michael Rhodes, Chairman