

THE STATE OF TEXAS
COUNTY OF HIDALGO

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CITY OF PENITAS

**AMENDED AND RESTATED
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 AMENDED AND RESTATED INTERLOCAL AGREEMENT is made by and between (i) the **CITY OF PENITAS, TEXAS** (the “City”), a Texas Home Rule Municipality, acting through its governing body, the City Commission; (ii) **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 (the “County”); and (iii) **REINVESTMENT ZONE NUMBER ONE, CITY OF PENITAS, TEXAS**, a reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code (the “Zone”), acting by and through its duly authorized Board of Directors (the “Zone Board”), 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 and the Supplement Project (as such terms are defined below). Collectively, the City, the County and the Zone may be referred to as the “Parties.” This Agreement is made pursuant to Chapter 791 of the 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 as of the date of this Agreement 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 Penitas
P.O. Box 204
Penitas, Texas 78576
Attention: City Manager
Phone: (956) 331-9649

With a copy to:

City Secretary
City of Penitas
PO Box 204
Penitas, Texas 78575
Phone: (956) 331-9649

If to the County, to:

Hidalgo County
100 E. Cano, Ste. 201
Edinburg, Texas 78539-6243
Re: Penitas TIRZ
Attention: Honorable Ramon Garcia,
County Judge
Phone: (956) 318-2600

With a copy to:

Hidalgo County Auditor
Re: City of Penitas-TIF Zone #1
2808 South Business Hwy 281
Edinburg, Texas 78539
Phone: (956) 318-2511

If to the Zone, to:

Reinvestment Zone Number One, City
of Penitas
% Armin Garza
PO Box 204
Penitas, Texas 78576
Phone: (956) 331-9649

With a copy to:

Bill Calderon
Calderon Economic Development
Strategies, LLC
5523 Spellman Road
Houston, Texas 77096
Phone: (713) 724-4460

B. Index

This Agreement consists of the following sections:

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Exhibit 1 City of Penitas Ordinance No. 2004-05

Exhibit 2 City of Penitas Ordinance No. 2005-01

Exhibit 3 City of Penitas Ordinance No. 2018-04 (without attachment)

Exhibit 4 Second Amended Project Plan and Reinvestment Zone Financing Plan dated May 14, 2018 (Attachment to Ordinance 2018-04)

Exhibit 5 Tax Account List

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. “2009 Agreement” means the Original Agreement as amended by the First Amendment.
2. “2017 Plan” means the First Amended Project Plan and Reinvestment Zone Financing Plan, dated September 28, 2017.
3. “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 Million Two Hundred Thousand Dollars (\$1,200,000), representing One Million One Hundred Fifty-Eight Thousand Dollars (\$1,158,000.00) to the City and Forty-Two Thousand Dollars (\$42,000.00) to the County.
4. “Agreement” means this Amended and Restated Interlocal Agreement.
5. “Amended Plan” means the Second Amended Project Plan and Reinvestment Zone Financing Plan, dated May 14, 2018, a true copy of which is attached hereto as Exhibit 4.
6. “Available Tax Increment” shall mean (i) as to City, an amount calculated as a millage rate per \$100 of Captured Appraised Value of real property in the Zone that equals 100% of the City’s property tax as levied and collected; and (ii) as to County, an amount calculated as a millage rate per \$100 of Captured Appraised Value of real property in the Zone that equals 95% of the County’s Applicable M&O Tax Rate as levied, collected and allocated to the general fund (i.e., excluding only the portion of the County’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.”)
7. “Base Year” means the year in which a Tax Increment Reinvestment Zone is created by ordinance. The Base Year is 2004.
8. “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 2004, the Base Year of the Zone.

9. “City” has the meaning given such term in Section I.A.1 above.

10. “City Tax Rate” means 100% of the ad valorem tax rate adopted by the city council of the City ad valorem tax. The City Tax Rate may change from time to time. The City Tax Rate as of December 31, 2016 is \$0.5060 per \$100 dollars of valuation on the Captured Appraised Value and may be changed by the City during the Term of the Zone.

11. “County” has the meaning given such term in Section I.A.1 above.

12. “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 \$0.5095 per \$100 dollars of valuation.

13. “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.

14. “County’s Effective Termination Date” has the meaning given such term in Section V.F below.

15. “County’s Maximum Contribution” is the lesser of (i) Fifteen Million Dollars (\$15,000,000.00) or (ii) the City’s aggregate contribution to the Tax Increment Fund over the Term of the Zone. Amounts deducted by the County from a Tax Increment Payment for the County’s Administrative Costs in accordance with Section IV below count toward the County’s Maximum Contribution as if those amounts had been contributed by the County into the Tax Increment Fund as part of such Tax Increment Payment.

16. “Creation Ordinance” has the meaning given such term in Section III.A below.

17. “First Amendment” means that certain Amendment to Interlocal Agreement among the Parties effective March 3, 2009, which amended the Original Agreement.

18. “Material Change” has the meaning given such term in Section V.F below.

19. “Original Agreement” means that certain Interlocal Agreement executed between the City, the County, and the Zone, entered into by the County on March 3, 2009.

20. “Original Plan” means the project and finance plan for the Zone, which was attached as Exhibit 2 to the Original Agreement.

21. “Participating Taxing Entity” means the City and County.

22. “Parties” has the meaning given such term in Section I.A.1 above.

23. "Project" means the improvements for water, waste water, drainage, sidewalks, streets, lights and bridges identified in the Amended Plan.
24. "Project Costs" mean the items set forth in Section 211.002(1) of the Texas Tax Code that are included in the Amended Plan for the Project. The Project Costs in the aggregate for the life of Zone are estimated to be Thirty Million Two Hundred Three Thousand Eight Hundred Five Dollars (\$30,203,805.00), as more completely set forth in Exhibit 4.
25. "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.
26. "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, 2004 the year in which the Zone was designated.
27. "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 One City of Penitas, 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 Zone Board for the Zone.
28. "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.
29. "Term of the Zone" has the meaning given such term in Section III. I., below.
30. "Transportation Zone" means Transportation Reinvestment Zone Number Two, Hidalgo County.
31. "Zone" has the meaning given such term in Section I.A.1. above.
32. "Zone Board" has the meaning given such term in Section I.A.1 above.

III. BACKGROUND

- A. On November 3, 2004, the City created the Zone over the property contained in the Zone by adoption of City Ordinance No. 2004-05 (as amended, the "Creation Ordinance"), a true and correct copy of which is attached hereto as **Exhibit 1**, for the purposes of development and redevelopment of the property within the Zone (a legal description of which is contained in Exhibit 1). The City amended the creation ordinance on February 11, 2005, by Ordinance No. 2005-01, a true and correct copy of which is attached to this Agreement as **Exhibit 2**. The termination of the Zone was to

occur on December 31, 2034, or as otherwise provided in the ordinance. The Zone and the City adopted the Original Plan for the Zone in 2005. The City agreed to participate in the Zone by contributing tax increments produced in the Zone to the Tax Increment Fund. The County also agreed to participate in the Zone, beginning with the 2005 tax year, and the City, the County and the Zone entered into the 2009 Agreement setting forth the terms and conditions for its participation in the Zone.

- B. Due to a myriad of issues, including an unanticipated downturn in the economy that negatively impacted development in Texas, and significantly delayed development in the Zone, including the anticipated increase in taxable values in the Zone, which also directly and negatively impacted the generation of tax incremental revenues, on October 24th, 2017, (i) the Zone Board adopted the 2017 Plan, to extend the term of the Zone in order to allow the Zone to fully fund the list of projects originally anticipated in the Original Plan at the time of its adoption; (ii) the City adopted Ordinance 2017-10 to approve the 2017 Plan and extend the term of the Zone.
- C. Also in 2017, (i) the Zone Board by motion, adopted an amendment the 2009 Agreement, which would extend County participation to be co-terminus with that of the City, and reduce the participation tax rate from \$0.509 to \$0.48 and (ii) the same day, the City adopted Ordinance No. 2017-11, approving the amendment to the 2009 Agreement. This amendment was not executed by the County.
- D. Due to a request from the Zone Bond Counsel, a minor clarification to language in the 2017 Plan relating to the amount of bonded indebtedness, and sources of revenue available to defense debt was approved by the Zone Board on May 14th, 2018. On the same day, after the required public hearing, City Council adopted Ordinance No. 2018-04, a true and correct copy of which (excluding the copy of the Amended Plan) is attached hereto as **Exhibit 3**, approving the Amended Plan, and extending the term of the zone. As explained in the Amended Plan, exact locations of infrastructure improvements will be determined by the City and the Zone Board, which are expected overtime based on factors such as the location and progress of private development within the Zone.
- E. Subsequent to the approval of Ordinance No. 2018-04, City Council approved Ordinance No. 2018- 05, to replace the 2017 Plan previously attached to the version of the Interlocal agreement previously approved by the City Council with the Amended Plan.
- F. A true and correct copy of the Amended Plan is attached hereto as **Exhibit 4**.
- G. The City and the Zone represent and warrant that (i) each has found that the City and the Zone have complied with all legal requirements, including notice requirements, in the creation of the Zone, the adoption and amendment of the Creation Ordinance, and the adoption of each of the Original Plan, the 2017 Plan and the Amended Plan; (ii) the Amended Plan is feasible; and (iii) construction pursuant to the Original Plan commenced within three (3) years of creation of the Zone.
- H. The Parties agree that the changes to the Original Plan adopted by the Amended Plan constituted a Material Change to the Original Plan, that notice was given to the County

in accordance with the 2009 Agreement, and that the Parties worked together to address the County's comments and objections prior to the adoption of the Amended Plan.

- I. The Zone is now projected to terminate on December 31, 2047, unless earlier termination occurs under this Agreement (the "Term of the Zone").
- J. The Parties now desire to enter into this Agreement, which amends and restates the 2009 Agreement, pursuant to Section 31 1.013(f) of the Texas Tax Code.

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 95% 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 Applicable M&O Tax Rate shall be calculated as set forth in Section IV.B of this Agreement. In no event shall the County contribution to the Tax Increment Fund (including amounts allocated to the County's Administrative Costs in accordance with Subsection IV.B.1.e. below) be greater than the County Maximum Contribution over the Term of the Zone (which for purposes of this provision will be deemed to end no later than December 31, 2047) beginning with the 2005 tax year.

2. The Parties hereto agree that the County's contribution to the Tax Increment Fund pursuant to Section IV.A.1 above shall be used to fund Project Costs. The County's contributions to the Tax Increment Fund shall end when the County has contributed the County Maximum Contribution, 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 2047 (ending on December 31, 2047), whichever occurs first.

3. In accordance with Section IV.B.9.b. hereof, the Parties agree that, notwithstanding anything to the contrary contained herein, in the event any of the property within the Zone is also within the Transportation Zone, during any period commencing on or after January 1, 2035, with respect to which the County is obligated to pay part of the tax increment on such real property in the Zone to the Transportation Zone, the County's Available Tax Increment with respect to property that is within the overlap between the Transportation Zone and the Zone shall be fifty percent (50%), and not ninety-five percent (95%) of the County Applicable M&O Tax Rate.

B. Tax Increment Payment

1. a. The 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.

b. The Parties acknowledge that, prior to the execution of this Agreement, the County made all payments due on or before the date hereof pursuant to the 2009 Agreement.

c. The County agrees to deposit its next Tax Increment Payment to the Tax Increment Fund, which will be for tax year 2017, by the later of:

- (i) thirty (30) days after collection reports and any other documentation required under this Agreement have been provided to the Hidalgo County Auditor's Office and/or the County;
- (ii) the information required under Section 311.016 of the Tax Code having been provided to the County;
- (iii) May 1, 2018; or
- (iv) thirty (30) days after the full execution and delivery of this Agreement by all Parties.

For the avoidance of doubt, the amount of the next Tax Increment Payment due pursuant to this Agreement after the date hereof shall be based on the Tax Increments that were received on or before January 31, 2018, but which have not been previously deposited into the Tax Increment Fund or otherwise part of a calculation of a previously made Tax Increment Payment, meaning they were received by the County on or after January 31, 2017.

d. For subsequent payments, the County agrees to contribute its yearly Tax Increment Payment to the Tax Increment Fund annually not later than the later of:

- (i) thirty (30) days after collection reports and any other information required under this Agreement have been provided to the Hidalgo County Auditor's Office and/or the County;
- (ii) the information required under Section 311.016 of the Tax Code having been provided to the County; and
- (iii) 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 or otherwise part of a calculation of a previously made Tax Increment Payment, during the annual periods preceding each deposit date.

e. Under no circumstances shall the County be required to participate in the Zone with taxes attributable to periods after 2047, or to make any Tax Increment Payment from any source other than the County's Available Tax Increment.

f. The County shall have the right to deduct the County's Administrative Costs prior to contribution of its Tax Increment Payment into the Tax Increment Fund. For the avoidance of doubt, if the County deducts Administrative Costs prior to making the payment into

the Tax Increment Fund, the amount of the deducted Administrative Costs shall be counted as having been made by the County to the Tax Increment Fund for purposes of determining whether the County has reached the County Maximum Contribution. The County will not deduct more than \$1400 in any calendar year for Administrative Costs.

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

h. The chart below is for illustrative purposes only and is an example of the calculation of the County's Tax Increment Payment.

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*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, the overall County tax rate is \$.0059 and there is no overlap with the Transportation Zone.**

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 Levy 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> Base Year Real Property Certified Appraised Value for Tax Accounts located within the TIRZ (Provided by HCAD)	\$10,000.00
Captured Appraised Value	\$90,000.00
Captured Appraised Value	\$90,000.00
<i>(multiplied by)</i> 95% of M&O Rate (The lesser of actual tax year M&O rate or rate specified on agreement) (.005095* .95)	0.004840
Tax Levy Due to TIRZ	\$435.62
TIRZ Collections (for February 1 through January 31) as per Collections Reports provided by Hidalgo County Tax Office	\$300.00
<i>(divided)</i> GHD Actual Tax Levy for all Real Property tax accounts located within the TIRZ	\$590.00
Percent Collected of Actual Levy	50.85%
Tax Levy Due to TIRZ	\$435.62
<i>(Multiplied by)</i> Percent Collected of Actual Levy	50.85%
Proposed Payment Amount	\$221.50
<i>(LESS)</i> Administrative Cost (as per Agreement)	\$10.00
TAX INCREMENT PAYMENT AMOUNT DUE TO TAX INCREMENT FUND	\$211.50

**The calculation is performed separately for each tax year, so for any payment including taxes with respect to more than one tax year, there will be a separate calculation chart for each such tax year.*

2. At least thirty (30) days prior to the expected date of a payment required under Section IV.B. of this Agreement, the City shall provide to the County:

- (i) the Zone annual audit report;
- (ii) an updated fact sheet that includes detail as to what portion of the Project has been completed to date;
- (iii) a schedule of what portion of the Project is expected to be completed in the following year;
- (iv) a current roster of the Zone's board members, including the term of each board member, the entity that appointed the board member;
- (v) the date for the next annual meeting of the Zone Board, or the next expected meeting if not already scheduled; and
- (vi) a formal request for payment, including the calculation in the form of the chart set forth in Section IV.B.1.h above.

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. Such reports and documentation also shall include sufficient information on to allow the County and the Hidalgo County Auditor to confirm the expenditures from the Tax Increment Fund were for Project Costs.

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. Upon written request from another Party, the County will provide the Parties information showing the difference in the County's calculation of such amount owed. 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) 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, or with respect to any payment made prior to the date hereof. 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 Zone's annual audit report, payment request or other documentation required by this Agreement are not provided to the County timely, or under any other situation in which the City does not pay interest or penalties.

5. As a condition of the County's participation in this Agreement, the Amended Plan must be followed and implemented by the Zone. The City and the Zone agree to provide prior written notice to the County of a proposed change to the Amended Plan at least thirty (30) days prior to the submission of the proposed change to the city Commission for approval. The County, and any member of the County Commissioners Court, may comment upon any proposed amendment to the Amended Plan prior to its approval by the City Commission.

6. If the City or the Zone Board 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 ninety (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 development of the Zone or the implementation of the Amended 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, including any amounts paid prior to execution of this Agreement and amounts allocated to Administrative Costs, shall not exceed the County's Maximum Contribution, plus any applicable penalty and/or interest allowed in Section 311.013 of the Tax Code, subject to the limitations on Section IV.B.4. hereof.

9. a. *General Provisions.* Subject to the provisions of this Agreement, the County agrees to participate at ninety-five percent (95%) of the County Applicable M&O Tax Rate per \$100 valuation on the Captured Appraised Value) of real property in the Zone. The City represents and warrants that none of the real property in the Zone is in the Transportation Zone.

b. *Transportation Zone Overlap.* Notwithstanding anything to the contrary contained herein, in the event any of the property within the Zone is also within the Transportation Zone, during any period with respect to which the County is obligated to pay part of the tax increment on such real property in the Zone to the Transportation Zone, in lieu of the 95% of County Applicable M&O Tax Rate specified above, the County contribution to the Zone with respect to real property that is within the overlap between the Transportation Zone and the Zone shall not exceed fifty percent (50%) of the Applicable M&O Tax Rate.

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

10. Any portion of the taxes included in the calculation of a County Tax Increment Payment that are refunded by the County pursuant to applicable law after such calculation, shall be offset against the County's future Tax Increment Payment.

11. 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 La Joya Independent School District. The City and the Zone represent to the County that the La Joya Independent School District is not participating in the Zone by contribution of any Tax Increment.

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 Amended 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 seven (7) directors (or such larger number not to exceed fifteen (15) as required by Section 3 of the Creation Ordinance.

3. Notwithstanding anything to the contrary in the Creation Ordinance, pursuant to the provisions of Section 311.009(a) of the Texas Tax Code, the County shall have the unequivocal right to appoint and thereafter at all times to maintain one (1) director on the Zone Board. Failure of the County to appoint a person to the Zone board shall not be deemed a waiver of the County's right to make an appointment at a later date. If it is necessary for the City to make or confirm the appointment, the City shall appoint or confirm the County's designee. The County may also appoint and maintain as many non-voting ex-officio members to the Zone Board as the County desires.

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 2 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 a written amendment to this Agreement.

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 one hundred percent (100%) of the revenue generated from the City Tax Rate as levied and collected on the Captured Appraised Value each respective tax year during the term of the Zone, beginning with the 2005 tax year. The City agrees to require the Zone to implement the Amended Plan. The City's contributions to the Tax Increment Fund pursuant to this Section V.A.1 shall end when the City has contributed all Tax Increments attributable to periods before the Zone termination date.

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.A. of this Agreement shall accrue as the City collects its Tax Increment. The City agrees to deposit its Tax Increment Payments to the Tax Increment Fund annually on or before May 1, (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 City shall not owe any interest on Tax Increments that have been levied, but not received by 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 related expenses from the Available 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 the Creation Ordinance, and pursuant to this Agreement. 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 (except for amounts to be deducted by the County for Administrative Costs), 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 Zone Board shall be responsible for the annual administration of the Zone.

2. The parties agree and understand that under no circumstances shall the amount reimbursable as Administrative Costs, in the aggregate, exceed the amount set out and described in Section II.2 above

3. The City and Zone will use funds in the Tax Increment Fund to reimburse expenditures set forth in the Amended Plan in the order incurred. The foregoing notwithstanding, no such 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 or the Zone Board.

F. Project Plan.

1. The City and the Zone Board agree to comply with and implement the Amended Plan.

2. The City agrees to provide prior written notice to the County of any proposed amendments to the Amended Plan. The County shall have a period of thirty (30) business days from receipt of such notice of a proposed change to provide comments and objections to the proposed change. If the County timely provides written notice to the City that it objects to the proposed change, and (i) the change, on its own or taken together with any prior changes, constitutes a Material Change to the Amended Plan; (ii) the objection, as set out in the notice, is not resolved within forty-five (45) business days from the date of the City's receipt of the County's notice; and (iii) the City approves such change notwithstanding the County's objection, then the County may thereafter discontinue its Tax Increment Payments and terminate its participation in the Zone; *provided that* the County's discontinuation shall not become effective until such time as (x) all Project Costs incurred in accordance with the Amended Plan prior to the adoption of the proposed change and which the Zone is obligated to reimburse are paid in full or (y) the County has made aggregate Tax Increment Payments equal to half of such Project Costs (the "County's Termination Effective Date"). Prior to the County's Termination Effective Date, the County shall remain a participant in this Agreement and shall be bound by its terms.

3. A change to the Amended Plan is a Material Change if (i) it provides for improvements or costs unrelated to the projects and costs in the Amended Plan as of the date of this Agreement; (ii) it would constitute at least a twenty percent (20%) increase or decrease (taken in the aggregate with all prior amendments to the Amended Plan) in either the Project Costs or the scope and scale of the Project; (iii) has the effect of directly or indirectly increasing the percentage of Tax Increment to be contributed by the County; or (iv) increases or reduces the geographical area of the Zone.

4. If the County does not provide notice of its objections within 45 days as provided above, the changes to the Amended Plan are deemed approved.

5. Notwithstanding any other provision hereof, no change, regardless of whether it is a Material Change, without a corresponding specific written amendment to this Agreement will change the amount of Tax Increment Payments due from the County or increase the County Maximum Contribution.

G. Tax Accounts; Plats and Subdivisions

The Parties agree to cooperate so that the City and the County can properly account for all tax accounts within the Zone. The Zone agrees to use its best efforts to (i) provide such information as the County and the Hidalgo County Appraisal District may reasonably need to properly allocate tax accounts to the Zone, and (ii) provide copies of all plats approved within the Zone to the County, the County Auditor, and the Hidalgo County Appraisal District. The tax accounts identified as of the date of this Agreement are listed on **Exhibit 5** attached hereto.

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. As this Agreement is a restatement and amendment of the Original Agreement, the term of the Agreement commenced with the tax year beginning on January 1, 2005. This Agreement terminates on the earlier of (i) December 31, 2047; (ii) the termination of the Zone as provided in Section 311.017 of the Texas Tax Code; or (iii) termination by the Parties hereto consistent with all applicable laws. Upon termination of this Agreement, the obligation of the County to contribute to the Tax Increment Fund for the Zone shall end; however, any refund obligations of the City, the Zone or any related redevelopment authority shall survive such termination.

B. Early Termination

The Zone may terminate early pursuant to the provisions of Section 311.017 of the Texas Tax Code.

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. Such payment shall be made to the County not later than sixty (60) days after such termination. 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 Zone or the City are not, and shall never become, general obligations or debt of the County. 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 in Amended Plan, and only to the extent that funds become available in the Tax Increment Fund. The Parties agree and understand that eligible costs exceeding the maximum specified in the Amended Plan, shall not increase the amount due from the County 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, subject to the County Maximum Contribution and the other provisions of this Agreement.

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.

In the event any term, covenant or condition shall be held invalid and affects in any manner the limitations on the County's, or any other Party's, contributions or participation, then neither the County, nor any other Party, shall have any liability for any incremental or other payments as may otherwise be provided for in this Agreement.

C. Entire Agreement

1. This Agreement merges the prior negotiations and understandings of the Parties hereto, including the Original Agreement and the First Amendment, which are further amended and restated hereby, 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.

2. With respect to the County's obligations, to the extent there is any irreconcilable conflict between the terms contained in the body of this Agreement and any exhibit hereto, the terms contained in the body of this Agreement shall control over those contained in such exhibit.

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 Party shall assign this Agreement at law or otherwise without the prior written consent of the other Parties. No Party shall delegate any portion of its performance under this Agreement without the written consent of the other Parties.

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. Access to Financial Information

1. 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 thirty (30) such time as it has received the financial report (and other documentation and information pursuant to Section IV.B. 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.

2. The County Auditor shall be authorized to audit Zone records at the County's expense upon reasonable notice to the Zone and the City. The Zone and the City shall cooperate with the County Auditor with respect to such audit.

3. In the event the City recreates a redevelopment authority in connection with the Zone, the City shall provide to the County, with a copy to the County Auditor, a copy of each of the audits required by the agreement between the City, the Zone and any such redevelopment authority within thirty (30) days of receipt of each audit.

J. Zone Designation

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

K. No Waiver of Immunity

No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its elected officials, trustees, officers, employees, directors and agents as a result of its execution of this Agreement and performance of the covenants contained herein.

L. Force Majeure

The Parties agree that in the event a Party's performance of any obligation under this Agreement is delayed due to the act or failure or delay in acting of another Party or another government entity (so long as such failure is not caused by an act or omission of the delaying Party), then such Party's time to perform shall be extended by the length of the delay; provided that the Party whose performance has been delayed gives prompt notice thereof to the other Parties hereto. The Parties further agree that in the event any payment hereunder is miscalculated due to errors in the information provided to the Party making the calculation or making the payment based on such calculation, that such payment shall be promptly adjusted upon the Parties becoming aware of the miscalculation and agreeing to the proper calculation (e.g., in the event the Hidalgo County Appraisal District omits a tax account that should be in the Zone from calculations of the tax increment attributable to the Zone). It is the Parties intention that all of the Parties work together in good faith to correct any such delays or miscalculations and that no interest or penalty shall be due with respect to any such delays or miscalculations.

[Signature page follows]

IN WITNESS HEREOF, the City, the County and the Zone have made and executed this Agreement in triplicate originals effective on this 18th day of December, 2018.

CITY OF PENITAS

HIDALGO COUNTY

Rodrigo Lopez
City Mayor

Hon. Ramon Garcia
County Judge

ATTEST/SEAL:

ATTEST/SEAL:

Ana Valdez
City Secretary

Arturo Guajardo, Jr.
County Clerk

**APPROVED AS TO FORM FOR
THE CITY OF PENITAS:**

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

Oscar Longoria, City Attorney

Atlas, Hall, & Rodriguez, LLP

By: _____
Stephen L. Crain

**REINVESTMENT ZONE NUMBER ONE,
CITY OF PENITAS, TEXAS**

Rodrigo Lopez
Chair, Board of Directors

Exhibit 1

City of Penitas Ordinance No. 2004-05
(Creation of Zone)

[See attached 12 pages]

Exhibit 2

City of Penitas Ordinance No. 2005-01
(first amendment to creation ordinance)

[See attached 12 pages]

Exhibit 3

**City of Penitas Ordinance No. 2018-04
Approval of Amended Plan**

[See attached 2 pages]

[The Amended Plan is intentionally omitted from the attached copy of the Ordinance, and is instead included separately as Exhibit 4 hereto]

Exhibit 4

Amended Plan:

Second Amended Project Plan and Reinvestment Zone Financing Plan dated May 14, 2018
(Attachment to Ordinance 2018-04)

[See attached 25 pages]

Exhibit 5

Tax Account List*

*This is a list of the tax accounts within the Zone. The Parties acknowledge that it is subject to correction based on any errors discovered by the Hidalgo County Appraisal District or the Hidalgo County Auditor's Office. Any errors uncovered after a payment is made will be accounted for in the next payment after discovery of the error.

[See attached 3 pages]