

**ORDER RATIFYING  
AMENDED AND RESTATED INTERLOCAL AGREEMENT  
(AS TO MCALLEN TIRZ NUMBER ONE)**

**WHEREAS**, pursuant to Ordinance No. 2014-75 adopted by the City Commission of the CITY OF MCALLEN, TEXAS (the “City”) on December 22, 2014, the City created REINVESTMENT ZONE NUMBER ONE, CITY OF MCALLEN, TEXAS (the “Zone”) in accordance with the provisions of Chapter 311, Texas Tax Code, as amended and

**WHEREAS**, HIDALGO COUNTY, TEXAS (the “County”) agreed to participate in the Zone, based on the benefits and special circumstances for economic development that will be generated through the creation of, and participation by the County in, the project known as the Tres Lago Development Project, as referenced in the Commissioners Court Order of March 17, 2015;

**WHEREAS**, the City, the County, Rhodes Enterprises, Inc. (the “Developer”) and the Zone entered into that certain *Interlocal Agreement*, dated as of March 17, 2015 (the “*Interlocal Agreement*”), which provides, among other things, that the City participate in the Zone at a level of 80% of the City’s M&O tax rate and the County participate in the Zone at a level of 77% of the Applicable M&O Tax Rate and a maximum contribution by the County of \$143,318,484 (the “*Original Cap*”); and

**WHEREAS**, the City and the board of the Zone approved a supplemental plan for the Zone, which includes, in accordance with a Letter of Intent dated and entered into September 15, 2015, among The Texas A&M University System and Texas A&M University (collectively, “Texas A&M”), the City and the County, the development, on approximately 100 acres of land within the original Tres Lagos Development Project, of a new Texas A&M campus (the “*Supplemental Project*”); and

**WHEREAS**, the County previously determined that the Tres Lagos Development Project for the Zone, even without the Supplemental Project, satisfied the requirements of Section VI.3.a.ii of the Amended and Restated Tax Increment Reinvestment Zone Participation Policy for Hidalgo County (as such policy was amended on March 10, 2015, the “*TIRZ Policy*”), which authorizes County participation at an amount not to exceed 100% of the Applicable M&O Tax Rate, as such term is defined in the TIRZ Policy; and

**WHEREAS**, on September 15, 2015, the City Council of the City and the Commissioners Court of the County met together to consider the Supplemental Project, and the benefits of it, including to economic development, at which time the City, the County, the Developer and the Zone deemed it necessary and appropriate to amend the Interlocal Agreement for the purposes of adding the Supplemental Project, and implementing the supplemental plan, including increasing the City’s and the County’s



participation, providing for the related bonds and/or other financing, and adding the **TRES LAGOS PUBLIC IMPROVEMENT DISTRICT** (the "**PID**") as a party, all as set forth in that certain *First Amendment to Interlocal Agreement* (the "*First Amendment*") among such parties dated September 15, 2015; and

**WHEREAS**, pursuant to the Interlocal Agreement as amended by the First Amendment, the County's original pledge of 77% of the tax increment remained subject to the Original Cap and the County's additional pledge for the Supplemental Project was subject to a maximum of \$6.8 million (the "**Additional Pledge Cap**", and together with the Original Cap, the "**Aggregate Cap**"), and;

**WHEREAS**, the City and the board of the Zone subsequently amended the Supplemental Project and Finance Plan, which was approved by the board of the Zone, on November 25, 2015, and the City, on December 14, 2015, approved (as so amended, the "**Supplemental Plan**"); and

**WHEREAS**, in order to implement the Supplemental Plan for the Supplemental Project, the City requested changes to the Interlocal Agreement as amended by the First Amendment, including changing the allocation of the County's tax increment contributions such that during the years 2015 – 2025 up to 33%, instead of 23%, of the County's tax increment will be allocated to the Additional Pledge Cap and during such years 67% of the County's tax increment, instead of 77%, will be allocated to the Original County Cap, while the Aggregate Cap remains unchanged; and

**WHEREAS**, the County found that the Supplemental Project will bring substantial additional benefits to economic development in the County;

**WHEREAS**, the City, the County, the Developer, the PID and the Zone deemed it necessary and appropriate to amend the Interlocal Agreement for the purpose of adding the amended Supplemental Project, and implementing certain changes related to providing for the related bonds and/or other financing, and restating the Interlocal Agreement as amended, all as set forth in that certain *Amended and Restated Interlocal Agreement* (the "**Restated Agreement**") among such parties dated December 15, 2015; and

**WHEREAS**, the Commissioners Court of the County approved a substantially final draft of the Restated Agreement, with such changes thereto as are approved by the County Judge of the County, with advice of the County's attorneys; and

**WHEREAS**, the County Judge with representatives of the other parties finalized the Restated Agreement, and the Restated Agreement was approved by the Commissioners Court of the County on April 5, 2016, but the order (the "**April 2016 Order**") was not signed due a question arising as to which version of the Restated Agreement had been approved;

**WHEREAS**, the Commissioners Court, having previously determined that it is necessary and appropriate to assist with financing the Supplemental Project by entering into the final Restated Agreement to accomplish the purposes set forth therein, wishes to ratify its approval of the Restated Agreement in the form attached hereto as Exhibit I (the "**Final Amended and Restated Interlocal Agreement**"); and

**WHEREAS**, the intent of Commissioners Court in approving the April 2016 Order was to approve the Final Amended and Restated Interlocal Agreement in the form attached hereto as Exhibit I, so in approving this Order negates the need for the April 2016 Order; and

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

**NOW THEREFORE:**

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

**SECTION 1. APPROVAL OF FINAL AMENDED AND RESTATED INTERLOCAL AGREEMENT.** The Final Amended and Restated Interlocal Agreement is hereby approved in the form attached hereto as Exhibit I, and the County Judge is authorized to execute, and the County Clerk is authorized to attest, the Final Amended and Restated Interlocal Agreement on behalf of the County and deliver same, and when executed and delivered, the Final Amended and Restated Interlocal Agreement shall become a valid and binding obligation of the County in accordance with its terms.

**SECTION 2. ENFORCEABILITY OF ORDER.** If any section, paragraph, clause, or provision of this Order shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Order. In case any obligation of the County authorized or established by this Order or the Final Agreement is held to be in violation of law as applied to any person or any circumstance, such obligation shall be deemed to be the obligation of the County to the fullest extent permitted by law. The April 2016 Order will not be signed and is superseded by this Order.

**SECTION 3. INCORPORATION OF RECITALS.** The Commissioners Court hereby finds that the statements set forth in the recitals of this Order are true and correct, and the Commissioners Curt hereby incorporates such recitals as a part of this Order.



**SECTION 4. EFFECTIVE DATE.** This Order shall become effective immediately upon on the passage hereof.

**PASSED, APPROVED and ADOPTED this 7<sup>th</sup> day of April 2016.**

**HIDALGO COUNTY, TEXAS**

By: Ramon Garcia  
Ramon Garcia  
County Judge  
Hidalgo County, Texas

ATTEST:  
Arturo Guajardo, Jr.  
Arturo Guajardo, Jr.  
Hidalgo County Clerk



APPROVED BY  
COMMISSIONERS' COURT  
ON: 4/7/16

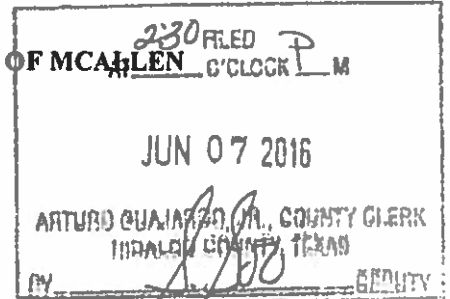
**Exhibit I to County Order**  
**FINAL AMENDED AND RESTATED INTERLOCAL AGREEMENT**



THE STATE OF TEXAS  
COUNTY OF HIDALGO

§  
§  
§

CITY OF MCALLEN



**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 MCALLEN, TEXAS** (hereafter referred to as the "CITY"), a Texas Home Rule Municipality, acting through its City Manager as authorized by the City Commission on December 14, 2015; (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 on December 15, 2015 (hereafter referred to as the "COUNTY"); (iii) the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (1), CITY OF MCALLEN, TEXAS**, a reinvestment zone created by the CITY pursuant to Chapter 311 of the Texas Tax Code (hereafter referred to as the "ZONE"), acting by and through its duly authorized Board of Directors (hereinafter referred to as 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); (iv) **TRES LAGOS PUBLIC IMPROVEMENT DISTRICT, CITY OF McALLEN, TEXAS**, a public improvement district created by the CITY pursuant to Chapter 372, Texas Local Government Code (hereafter referred to as the "PID"); and (v) **RHODES ENTERPRISES, INC.**, the developer, its successors and assigns (hereafter referred to as "DEVELOPER"). Collectively, the CITY, COUNTY, ZONE, PID and DEVELOPER 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 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, Texas 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: Tres Lagos TIRZ  
Attention: Honorable Ramon  
Garcia, County Judge  
Phone: (956) 318-2600

**With a copy to:**

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

**If to the ZONE, to:**

Reinvestment Zone Number One  
c/o City of McAllen  
1300 Houston Avenue.  
McAllen, TX 78501  
Attention: Mike Rhodes,  
Presiding Officer

**With a copy to:**

Reinvestment Zone Number One  
Attention: Board Secretary, Megan  
J. Clay  
601 N W Loop 410, Ste. 390  
San Antonio, Texas 78216

**IF to the PID, to:**

Tres Lagos Public Improvement  
District, City of McAllen,  
Texas  
c/o City of McAllen  
1300 Houston Avenue.  
McAllen, TX 78501  
Attention: Mike Rhodes,  
Presiding Officer

**With a copy to:**

Tres Lagos Public Improvement  
District, City of McAllen,  
Texas  
Attention: Board Secretary, Megan  
J. Clay  
601 N W Loop 410, Ste. 390  
San Antonio, Texas 78216

**If to the Developer, to:**

Rhodes Enterprises, Inc.  
200 S. 10<sup>th</sup> St., Ste. 1400  
McAllen, Texas 78501  
Attention: Mike Rhodes  
Phone: (956) 287-2800

**With a copy to:**

Earl & Associates, P.C.  
601 NW Loop 410, Ste. 390  
San Antonio, Texas 78216  
Phone: (210) 222-1500  
Attn: David L. Earl and Megan J.  
Clay

**B. Index**

This Agreement consists of the following sections:

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<b>Exhibit “A”</b>	Original Project and Finance Plan	27
<b>Exhibit “B”</b>	City of McAllen Ordinance No. 2014-75 passed and approved by the City Commission on December 22, 2014.	28
<b>Exhibit “C”</b>	Development Agreement, as amended	29
<b>Exhibit “D”</b>	Amended and Supplemental Project and Finance Plan approved by the ZONE BOARD on November 18, 2015 and by the Commission of the CITY on December 14, 2015.	30
<b>Exhibit “E”</b>	Map and description of +/- 100 acre tract within the Project which is to be conveyed from DEVELOPER to CITY for the Supplemental Project.	31
<b>Exhibit “F”</b>	Map and description of two tracts located east of the Project which are to be conveyed by CITY to DEVELOPER.	32

**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. “4B CORPORATION” has the meaning set forth in Section V.D.1 below.
2. “4B CORPORATION Payments” has the meaning set forth in Section IV.A.3a below.
3. “Additional Available Tax Increment” shall mean (1) as the CITY, 30% of the CITY’s Aggregate Available Tax Increment for the years 2015 through 2025 and 20% of the CITY’s Aggregate Available Tax Increment for the years 2026 through the remaining Term of the ZONE, and (2) as the COUNTY, 33% of the COUNTY’s Aggregate Available Tax Increment for the years 2015 through 2025 and 23% of the COUNTY’s Aggregate Available Tax Increment for the years 2026 through the remaining Term of the ZONE.
4. “Additional Payments” has the meaning set forth in Section V.F.I. below.
5. “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 Four

Hundred Thousand Dollars (\$400,000), representing Three Hundred Thousand Dollars (\$300,000.00) to the CITY and One Hundred Thousand Dollars (\$100,000.00) to the COUNTY.

6. "Aggregate 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 100% 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 100% of the COUNTY's 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.") To avoid doubt, for both the CITY and the COUNTY, the Available Tax Increment and the Additional Available Tax Increment together amount to the Aggregate Available Tax Increment.

7. "Agreement" means this Amended and Restated Interlocal Agreement.

8. "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 70% for the years 2015 through 2025, and 80% for the years 2026 through the remaining Term of the ZONE, 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 67% for the years 2015 through 2025, and 77% for the years 2026 through the remaining Term of the ZONE, of the COUNTY's 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.")

9. "Base Year" means the year in which a Tax Increment Reinvestment Zone is created by ordinance or order. The Base Year is 2014.

10. "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 2014, the Base Year of the ZONE.

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

12. "CITY's Additional Pledge" has the meaning set forth in Section V.A.2. below.

13. "CITY's Approved Pre-TIRZ Administrative Costs" shall mean the CITY's out-of-pocket Administrative Costs incurred prior to December 22, 2014, in the amount of \$70,000.00.

14. "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 as of December 31, 2014 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.



15. "COUNTY" has the meaning set forth in Section I.A.1 above.
16. "COUNTY's Additional Pledge" has the meaning set forth in Section IV.A.3. below.
17. "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.
18. "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.
19. "DEVELOPER" has the meaning set forth in Section I.A.1 above.
20. "Development Agreement" means the agreement among the DEVELOPER, the ZONE and the CITY attached hereto as Exhibit C.
21. "Educational Facilities Lease" has the meaning set forth in Section V.D.1. below.
22. "Educational Facilities Project Interlocal Funding Agreement" has the meaning set forth in Section V.C.1. below.
23. "First Amendment" means that certain First Amendment to Interlocal Agreement among the Parties executed September 15, 2015, which amended the Original Agreement.
24. "Letter of Intent" means that certain letter of intent between The Texas A&M University System, Texas A&M University, the COUNTY and the CITY dated September 15, 2015, relating to the Texas A&M University campus to be developed as part of the Supplemental Project.
25. "LGC" has the meaning set forth in Section V.D1. below.
26. "LOC" has the meaning set forth in Section VI.A.3.(e). below.
27. "Original Agreement" means that certain Interlocal Agreement executed between the CITY, the COUNTY, the ZONE, and the DEVELOPER, on the 17<sup>th</sup> day of March, 2015,
28. "Original Project and Finance Plan" shall mean the final project and finance plan for the ZONE approved by the Board of Directors of the ZONES and the City Commission of the CITY for the original Project and attached hereto as Exhibit "A".
29. "Participating Taxing Entity" means the CITY and COUNTY.
30. "Parties" has the meaning set forth in Section I.A.1 above.
31. "PID" has the meaning set forth in Section I.A.1. above.
32. "PID Assessment" has the meaning set forth in Section VI.A.3.(a) below.
33. "Pledged PID Revenues" has the meaning set forth in Section VI.A.3.(a) below.
34. "Pre-TIRZ Administrative Costs" shall have the meaning given in the Original Project and Finance Plan.

35. "Project" means the Tres Lagos Development Project, as that project is more specifically identified in the Original Project and Finance Plan.

36. "Project Costs" mean the costs of the Public Infrastructure Improvements, eligible for reimbursement under Chapter 311 of the Texas Tax Code, as described in the Original Project and Finance Plan. The Project Costs in the aggregate for the life of ZONE are estimated to be Two Hundred Thirty-Two Million Three Hundred Ninety-Six Thousand Three Hundred Fifteen and No/100 Dollars (\$232,396,315.00), plus an estimated Twenty Six Million One Hundred Forty-Four Thousand Five Hundred Eighty-Five and No/100 Dollars (\$26,144,585.00) in applicable qualifying interest costs for a total of Two Hundred Fifty-Eight Million Five Hundred Forty Thousand Nine Hundred One and No/100 Dollars (\$258,540,901.00) as more completely set forth in Exhibit "A".

37. "Proposed Supplemental Educational Facilities Project Financing Structure" has the meaning set forth in Section V.D.1. below.

38. "Public Infrastructure Improvements" mean those certain public improvements to be constructed as part of the Project and described in the Original Project and Finance Plan as being public improvements the cost of which will be reimbursed out of either: (i) the Available Tax Increment or (ii) Tax Increment Bonds which will be repaid out of the Available Tax Increment.

39. "Separate Additional Funds" has the meaning set forth in Section V.F.1 below.

40. "Soft Project Costs" mean those costs identified as "Soft Project Costs" in the Original Project and Finance Plan, Exhibit 5, Sources and Uses Table, that are related to the Supplemental Project.

41. "Supplemental Debt Service Shortfall" has the meaning set forth in Section IV.A.3. below.

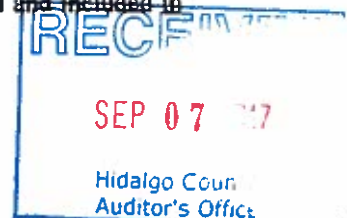
42. "Supplemental Educational Facilities Contract Revenue Bonds" mean the contract revenue bonds, as further described in Section V.D.1. hereof, issued by the CITY or the LGC on behalf of the CITY, in the face amount of +/- \$10,000,000.00 to finance the construction of the Supplemental Educational Facilities Project.

43. "Supplemental Educational Facilities Project" means the construction of a building and related site work to serve as the initial buildings for the new Texas A&M University campus to be located on a +/- 100 acre tract within the Project, with a CITY contribution of approximately \$10,000,000.00, toward the more than approximately \$50,000,000.00 of buildings to be constructed in phase one of the campus.

44. "Supplemental Educational Facilities Project Costs" means the costs of Supplemental Project improvements that are eligible for reimbursement under Chapter 311 of the Texas Tax Code, as described in the Supplemental Project and Finance Plan, and which shall not exceed \$10,000,000.00.

45. "Supplemental Master Infrastructure Taxable Certificates of Obligation" means the certificates of obligation, as further described in Section V.D.2. hereof, issued by the CITY to raise the amount of +/- \$24,500,000.00 to finance the Supplemental Master Infrastructure Project.

46. "Supplemental Master Infrastructure Project" means the construction of the infrastructure for the tract whereupon the Supplemental Educational Facilities Project will be located and included in the Original Project and Finance Plan to be completed in Phase I of the Project.



47. “Supplemental Project” means the Supplemental Educational Facilities Project and the Supplemental Master Infrastructure Project.

48. “Supplemental Project and Finance Plan” means the Supplemental Project and Finance Plan approved by the ZONE BOARD on November 18, 2015, and by the Commission of the CITY on December 14, 2015, a copy of which is attached hereto as Exhibit “D”.

49. “Supplemental Project Obligations” means the Supplemental Educational Facilities Contract Revenue Bonds and the Supplemental Master Infrastructure Taxable Certificates of Obligation.

50. “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.

51. “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, 2014 the year in which the ZONE was designated.

52. “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 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.

53. “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.

54. “Term of the ZONE” has the meaning set forth in Section III. A., below.

55. “Transportation Zone” means Transportation Reinvestment Zone Number Two, Hidalgo County.

56. “ZONE” has the meaning set forth in Section I.A.1. above.

57. “ZONE BOARD” has the meaning set forth in Section I.A.1 above.

### **III. BACKGROUND**

A. A 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 at a level of 80% of the CITY M&O Tax Rate to support revitalization and development activities for the ZONE, commonly known as the Tres Lagos TIRZ, pursuant to Chapter 311, Texas Tax Code. On November 18, 2014, the COUNTY, by resolution, expressed its intent to participate in the ZONE at a level of 77% of the COUNTY M&O Tax Rate. On December 22, 2014, the City Commission of the CITY passed and approved Ordinance No. 2014-75, which created the ZONE over the property contained in the ZONE, a legal description of which is contained in Exhibit “A” to the Development Agreement, and by which the CITY agreed to be bound to an interlocal agreement by and among the CITY, the COUNTY, the ZONE, and the DEVELOPER, pursuant to Section 311.013 of the Texas Tax Code. The ZONE is projected to terminate on December 31, 2044, unless earlier termination occurs under this Agreement (the “Term of the ZONE”).

B. The CITY approved the preliminary project and finance plan on December 22, 2014. 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. 2014-75, attached hereto as Exhibit "B." The COUNTY hereby acknowledges receipt of notice of the initial creation of the ZONE. The CITY represents and warrants that it has found that it has complied with, and has complied with all legal requirements and notice requirements in the creation of the ZONE.

C. On March 17, 2015, the CITY, the COUNTY, the ZONE, and the DEVELOPER approved and executed the Original Agreement, which was amended on September 15, 2015 by the approval and execution by the Parties of the First Amendment. The Parties have agreed to enter into this Agreement, which will further amend, and fully restate, the Original Agreement as previously amended by the First Amendment, in order to implement and fund the Original Project and Finance Plan and the Supplemental Project and Finance Plan for the ZONE. As further described and subject to the terms of this Agreement, the CITY will contribute 70% and the COUNTY will contribute 67% of their respective Aggregate Available Tax Increment during the years 2015 through 2025, and thereafter through the remaining Term of the ZONE the CITY will contribute 80% and the COUNTY will contribute 77% of their respective Aggregate Available Tax Increment.

D. The ZONE BOARD and the CITY have approved the Supplemental Project and Finance Plan to add the Supplemental Project, and fund the construction of the Supplemental Educational Facilities Project, through: (a) the CITY pledging an additional 30% of its Aggregate Available Tax Increment in the years 2015 through 2025 and thereafter through the remaining Term of the ZONE by pledging an additional 20% of its Aggregate Available Tax Increment; and (b) the COUNTY contributing an additional 33% of its Aggregate Available Tax Increment in the years 2015 through 2025 and thereafter through the remaining Term of the ZONE by contributing an additional 23% of its Aggregate Available Tax Increment, all subject to the terms described in Sections IV and V of this Agreement.

E. This Agreement is being executed by the Parties to facilitate the funding and construction of the Project pursuant to the Original Project and Finance Plan and the Supplemental Project pursuant to the Supplemental Project and Finance Plan and the expedited construction of the Phase I improvements pursuant to the Original Finance and Project Plan to facilitate the Supplemental Project.

#### IV. RIGHTS AND OBLIGATIONS OF THE COUNTY

##### A. Tax Increment Participation by the COUNTY

1. Subject to the limitations set out in this Agreement, the COUNTY agrees to participate in the ZONE by contributing to the Tax Increment Fund an amount equal to (a) 67% of the revenue generated from the COUNTY M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year in the years 2015 through 2025, and (b) 77% of the revenue generated from the COUNTY M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year beginning in the year 2026 through the remaining 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 of this Agreement. In no event shall the COUNTY contribution to the Tax Increment Fund pursuant to this Section IV.A.1 be greater than One Hundred Forty-Three Million Three Hundred Eighteen Thousand Four Hundred Eighty-Four and No/100 Dollars (\$143,318,484.00) over the life of the ZONE (which for purposes of this provision will be deemed to end no later than December 31, 2044) beginning with the 2015 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 including construction of Public Infrastructure Improvements to support the development and revitalization efforts in the ZONE. The COUNTY's contributions to the Tax Increment Fund pursuant to Section IV.A.1 above shall end when it has contributed the maximum total contribution provided for herein of One Hundred Forty-Three Million Three Hundred Eighteen Thousand Four Hundred Eighty-Four and No/100 Dollars (\$143,318,484.00), 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 2044 (ending on December 31, 2044), whichever occurs first. The COUNTY's continued contribution to the Tax Increment Fund pursuant to Section IV.A.1 above is conditioned upon the DEVELOPER's continuing the Project and being in full compliance with the Development Agreement and on the continued existence of the ZONE. In the event the DEVELOPER has been found to be in Default, as said term is defined in Section 7.1 of the Development Agreement (hereinafter "Default"), the COUNTY may withhold its contributions without incurring penalty or interest until such time as the non-compliance has been remedied.

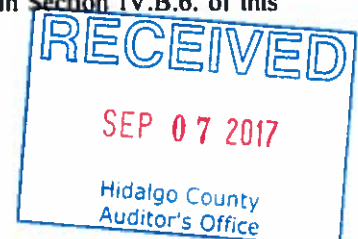
3. In addition to the agreement by the COUNTY pursuant to Section IV.A.1. above to participate in the ZONE at a rate of 67% in the years 2015 through 2025 and 77% in the years 2026 through the remaining Term of the ZONE, the COUNTY agrees to participate in the ZONE by contributing to the Tax Increment Fund an additional amount equal to 33% in the years 2015 through 2025 and 23% in the years 2026 through the remaining Term of the ZONE of the revenue generated from the COUNTY M&O Tax Rate as assessed and collected on the Captured Appraised Value with the ZONE, with said additional contribution being subject to the limitations contained herein (the "COUNTY's Additional Pledge"). The COUNTY's Additional Pledge will only be contributed by the COUNTY to the Tax Increment Fund, subject to Section IVA.4, if for any year the CITY's Additional Pledge for such tax year is not sufficient to pay the debt service on the Supplemental Educational Facilities Contract Revenue Bonds during such year (the "Supplemental Debt Service Shortfall") and/or there are any amounts outstanding necessary for the ZONE to reimburse the 4B CORPORATION for any 4B CORPORATION Payments that have been made by the 4B CORPORATION and not previously reimbursed. In no event shall the COUNTY's Additional Pledge to the Tax Increment Fund and to reimburse the 4B CORPORATION for any 4B CORPORATION Payments exceed an aggregate total of Six Million Eight Hundred Thousand and No/100 Dollars (\$6,800,000.00).

- a. In the event the Supplemental Debt Service Shortfall for any tax year exceeds the amount of the COUNTY's Additional Pledge for such year, the COUNTY shall contribute the full amount of the COUNTY's Additional Pledge for that respective tax year to the Tax Increment Fund and the 4B CORPORATION shall be obligated (as contemplated and described in Section V.D.1. below) to contribute its available sales tax revenues to the Tax Increment Fund in an amount sufficient to cover the remaining Supplemental Debt Service Shortfall for that respective tax year. Funds contributed by the 4B CORPORATION to cover the remaining Supplemental Debt Service Shortfall for any tax year (after accounting for the full amount of the COUNTY's Additional Pledge for such year) as contemplated and described in Section V.D.1. below are herein referred to as the "4B CORPORATION Payments."
- b. In the event the Supplemental Debt Service Shortfall for any tax year is less than the amount of the COUNTY's Additional Pledge for such tax year, the COUNTY shall contribute to the Tax Increment Fund, all or a portion of the COUNTY's Additional Pledge equal to: (i) the Supplemental Debt Service Shortfall for such tax year and/or (ii) an amount necessary for, and which shall be utilized by, the ZONE to reimburse the 4B CORPORATION for any 4B CORPORATION Payments that have been made by the 4B CORPORATION and not previously reimbursed.

- c. To the extent that the COUNTY's Additional Pledge for any tax year is more than (i) any Supplemental Debt Service Shortfall for such tax year, and (ii) any amounts necessary for the ZONE to reimburse the 4B CORPORATION for any 4B CORPORATION Payments that have been made by the 4B CORPORATION and not previously reimbursed, such excess amount shall not be part of the COUNTY's Additional Pledge or contributed to the Tax Increment Fund, and shall instead be retained by the COUNTY and may be used by the COUNTY for any lawful purpose.
- d. The COUNTY's contribution of the COUNTY's Additional Pledge to the Tax Increment Fund is conditioned upon the CITY issuing the Supplemental Educational Facilities Contract Revenue Bonds to fund the Supplemental Project as set forth in the Supplemental Project and Finance Plan attached hereto as Exhibit "D". In the event the CITY does not issue the Supplemental Educational Facilities Contract Revenue Bonds to fund the Supplemental Project as prescribed in the Supplemental Project and Finance Plan, the COUNTY shall have no obligation to contribute the COUNTY's Additional Pledge to the Tax Increment Fund under this Agreement. The Parties hereto agree that all funds contributed by the COUNTY to the Tax Increment Fund pursuant to the COUNTY's Additional Pledge shall only be used to fund debt service payments on the Supplemental Educational Facilities Contract Revenue Bonds to pay the Supplemental Debt Service Shortfall and to pay amounts necessary for the ZONE to reimburse the 4B CORPORATION for any 4B CORPORATION Payments not previously reimbursed. The COUNTY's obligation to contribute the COUNTY's Additional Pledge to the Tax Increment Fund shall end when the aggregate contribution made under the COUNTY's Additional Pledge reaches Six Million Eight Hundred Thousand and No/100 Dollars (\$6,800,000.00).

4. The Administrative Costs that the COUNTY has the right to deduct pursuant to Section IV.B.1 of this Agreement shall be deducted from the Tax Increment Payment due pursuant to Section IV.A.1. above and not from the COUNTY's Additional Pledge. 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 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 aggregate amounts otherwise specified herein, the COUNTY's aggregate contribution to the ZONE with respect to 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.

5. The CITY, the COUNTY, and the ZONE agree and acknowledge that the COUNTY is agreeing to the COUNTY's Additional Pledge in reliance on the commitments made by the CITY, the DEVELOPER and the ZONE BOARD to: (a) in the case of the CITY, (i) timely contribute its Tax Increment Payments to the Tax Increment Fund as they become due in accordance with and subject to the terms of this Agreement and the CITY's Additional Pledge to the Tax Increment Fund as they become due in accordance with and subject to the terms of Section V.A.2. hereof; (ii) issue and pay the Supplemental Project Obligations in accordance with this Agreement, and (iii) fulfill its obligations with respect to this Agreement and the Supplemental Project Obligations; (b) in the case of the DEVELOPER, fulfill its obligations with respect to this Agreement and the Supplemental Project Obligations, and (c) on the commitment of the ZONE to comply with the Original Project and Finance Plan and the Supplemental Project and Finance Plan. Any failure to fulfill such commitments will be considered a breach of this Agreement and such breach shall be subject to the cure provisions contained in Section IV.B.6. of this Agreement.



**B. Tax Increment Payment**

1. 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 Aggregate 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. The Parties agree that COUNTY shall have the right to deduct 1/30 of the COUNTY's pro-rata portion of Administrative Costs per year (1/30 of \$100,000.00, or \$3,333.33 per year) prior to contribution of its Tax Increment Payment described in Section IV.A.1 above into the Tax Increment Fund. The COUNTY agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2015 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, 2016, but only for tax year 2015, 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 90<sup>th</sup> day after the delinquency date for the COUNTY's property taxes (or the first business day thereafter) following the end of each tax year. The amount of each Tax Increment Payment shall be based on the Tax Increments that are received up to January 31<sup>st</sup> following the end of the tax year, but which have not been previously deposited in the Tax Increment Fund, during the annual periods preceding each deposit date. Under no circumstances shall the COUNTY be required to participate in the ZONE with taxes attributable to periods after 2044.

*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 5.0059.*

<b>Tax Increment Reinvestment Zone (TIRZ) Payment Calculation</b>	<b>EXAMPLE</b>
TIRZ Real Property Certified Taxable Value as of January 31 (Provided by Hidalgo County Appraisal District (HCAD))	\$100,000.00
(multiplied by) Hidalgo County Current (GHD) Tax Rate (.59/100)	\$0.0059
GLID 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
(less) Tax Increment Base	\$10,000.00
	\$90,000.00
Captured Appraised Value	\$90,000.00
(multiplied by) 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
(divided) 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
(multiplied by) Percent Collected of Actual Levy	50.85%
Purposed Payment Amount	\$233.40
(less) Administration Costs (as per Agreement)	\$10.00
<b>TAX INCREMENT PAYMENT AMOUNT DUE TO TAX INCREMENT FUND</b>	<b>\$223.40</b>

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 preparing this report, COUNTY acknowledges that CITY will be relying on information provided by the DEVELOPER. In addition to and as part of the CITY's fact sheet, the CITY shall supply the COUNTY with all information as required under Section 311.016 of the Texas Tax Code on or before the 90<sup>th</sup> day following the end of the fiscal year of the CITY. Such reports and documentation also shall include sufficient information on the Supplemental Debt Service Shortfall, the CITY's Additional Pledge, the 4B CORPORATION Payment, and the debt service obligation to allow the COUNTY and the Hidalgo County Auditor to confirm the calculation of the amount due, if any, on the COUNTY's Additional Pledge.

3. Pursuant to Chapter 311 of the Texas Tax Code, in the event there is a conflict between the Parties in regards to the amount of the Tax Increment owed by the COUNTY, the Hidalgo County Auditor will make the final determination as to the amount of any Tax Increment owed by the COUNTY under this Agreement. The annual Captured Appraised Value for the real property contained within the ZONE shall be determined by the Hidalgo County Appraisal District on the assessed appraised values and the Hidalgo County Tax Offices' verification of collections in regards to the real property contained with the ZONE.

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

"A taxing unit shall make a payment required by the Subsection (b) [Tax Increment Payment], not later than the 90<sup>th</sup> day after the delinquency date for the unit's property taxes. A delinquent payment incurs a penalty of five percent of the amount delinquent and accrues interest at an annual rate of ten percent."

The Parties expressly agree that the COUNTY shall not owe any penalty or interest on Tax Increments attributable to taxes that have been levied, but not received by the COUNTY. Further, the COUNTY shall not be liable for the payment of any penalties or interest if the report required 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 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 Original Project and Finance Plan or the Supplemental Project and Finance 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, the DEVELOPER or the Board of Directors for the ZONE materially breaches this Agreement, then the COUNTY may provide written notice to the CITY, the DEVELOPER and the ZONE (with a copy to any other Participating Taxing Entity still contributing Tax Increment Payments) demanding that all breaches must be resolved within ninety (90) days.

7. Except for contributing its respective Tax Increment Payments to the Tax Increment Fund as set out in this Agreement, the COUNTY shall not have any obligation or responsibility for any costs or



expenses associated with the development of the ZONE or the implementation of the Original Project and Finance Plan or the Supplemental Project and Finance 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. This provision shall not affect the obligation of the COUNTY under any separate document or agreement related to the Project or its infrastructure (i.e. agreements relating to design and construction of drainage channels or improvements) to which the COUNTY is a signatory.

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:

- a. One Hundred Forty-Three Million Three Hundred Eighteen Thousand Four Hundred Eighty-Four and No/100 Dollars (\$143,318,484.00), pursuant to Section IV.A.1, and
- b. Six Million Eight Hundred Thousand and No/100 Dollars (\$6,800,000.00). pursuant to the COUNTY's Additional Pledge;

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 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 and to the other provisions of this Agreement, the COUNTY agrees to participate at the applicable percentages of the COUNTY M&O Tax Rate set forth in Section IV.B.1 (67% or 77% depending on the year) and, if applicable, Section IV.B.3 (an additional 33% or 23% depending on the year and the other terms in Section IV.B.3. above, but never exceeding an aggregate of 100% of the COUNTY M&O Tax Rate) for real property within the Zone, without regard to whether the real property is also within the Transportation Zone. (For example, for tax year 2015, sixty-seven percent (67%) equaling \$.355636 per \$100 valuation on the Captured Appraised Value, assuming no additional pledge.)

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 percentages of Applicable M&O Tax Rate specified above, the COUNTY contribution to the ZONE with respect to real property that is within the overlap between the Transportation Zone and the ZONE shall not exceed an aggregate of fifty percent (50%) of the 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 sixty-seven percent (67%) or seventy-seven percent (77%), plus, if applicable, the Additional Pledge of up to thirty-three percent (33%) or twenty-three percent (23%), 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 with respect to such year the COUNTY M&O Tax Rate is less than \$0.5308 per \$100 valuation.

d. *Greater COUNTY M&O Tax Rate.* If the COUNTY M&O Tax Rate is greater than \$0.5308 per \$100 valuation on the Captured Appraised Value during the Term of the ZONE, the COUNTY shall retain all taxes collected in excess of \$0.5308 with respect to any real property within the ZONE per \$100 valuation on the Captured Appraised Value, and to the extent any such excess has been contributed into the Tax Increment Fund, such excess shall be promptly refunded to the COUNTY.

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

11. All rollback taxes received from assessments on real property within the ZONE shall be considered Tax Increment and shall be deposited into the Tax Increment Fund, however any penalties and interest received shall not be considered Tax Increment.

**C. School District Provisions**

The COUNTY understands that the Project is located in the Edinburg Consolidated Independent School District. The City and the Zone represent to the COUNTY that the Edinburg Consolidated Independent School District is not participating in the ZONE by contribution of Tax Increment but may request cooperation in the future with the ZONE BOARD relating to the planning, construction or financing of schools within the ZONE, subject to appropriate approvals.

**D. Management of the ZONE**

1. The ZONE shall in all respects be managed by the ZONE BOARD, including the Director appointed by the CITY. 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 nine (9) 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**

1. Subject to the terms of this Agreement and the Development Agreement, the CITY agrees to participate in the ZONE by contributing to the Tax Increment Fund (i) seventy percent (70%) of the revenue generated from the CITY M&O Tax Rate as levied and collected on the Captured Appraised Value each respective tax year during the years 2015 through 2025, and (ii) eighty percent (80%) of the revenue generated from the CITY M&O Tax Rate as levied and collected on the Captured Appraised Value each respective tax year beginning in 2026 through the remaining Term of the Zone. The CITY agrees to require the DEVELOPER and ZONE to implement the Original Project and Finance Plan. The CITY's contributions to the Tax Increment Fund pursuant to this Section V.A.1 shall end when the CITY has contributed the maximum total contribution provided for herein of One Hundred Twenty Million Nine Hundred Ninety Thousand One Hundred Forty-Nine and No/100 Dollars (\$120,999,149.00), or



when it has contributed all Tax Increments attributable to periods before the ZONE termination date in 2044, whichever occurs first. The CITY's continued contribution to the Tax Increment Fund is conditioned upon the DEVELOPER not being in Default, and on the continued existence of the ZONE. In the event DEVELOPER is found to be in Default under the terms of the Development Agreement, the CITY may withhold its contribution without incurring penalty or interest until such time as the Default has been remedied. As a condition of the COUNTY's participation in this Agreement, the Finance and Project Plan must be followed and implemented pursuant to the Development Agreement.

The CITY and ZONE shall have an obligation to assure that the DEVELOPER follows and implements the Original Project and Finance Plan as provided in the Development Agreement. In the event the CITY and/or ZONE fails to appropriately require the Developer to comply with the Development Agreement or otherwise fails to appropriately implement the Original Project and Finance Plan, such failure will be considered a breach of this Agreement and subject to the cure provisions contained in Section IV.B.6. of this Agreement.

2. In addition to the agreement by CITY pursuant to Section V.A.1. above to participate in the Zone at a rate of 70% in the years 2015 through 2025 and 80% in the years 2026 through the remainder of the Term of the ZONE under the terms of this Agreement and the Development Agreement, the CITY agrees to participate in the Supplemental Project and Finance Plan for the ZONE by contributing to the Tax Increment Fund an additional amount equal to (i) thirty percent (30%) of the revenue generated from the CITY M&O Tax Rate as levied and collected on the Captured Appraised Value each year in the 2015 through 2025 tax years, and (ii) twenty percent (20%) of the revenue generated from the CITY M&O Tax Rate as levied and collected on the Captured Appraised Value each year beginning in 2026 through the remaining Term of the ZONE (the "CITY's Additional Pledge"). The CITY agrees to, and agrees to require the ZONE BOARD to, implement the Supplemental Project and Finance Plan. The CITY's contributions to the Tax Increment Fund of the CITY's Additional Pledge shall end upon the earlier of: (a) the CITY making all required principal and interest payments on the Supplemental Educational Facilities Contract Revenue Bonds using the CITY's Additional Pledge and the COUNTY's Additional Pledge (if required due to a Supplemental Debt Service Shortfall) until such bonds are paid in full; or (b) the ZONE termination date in 2044, whichever occurs first. As a condition of the COUNTY's participation through the COUNTY's Additional Pledge under this Amendment, the Supplemental Finance and Project Plan must be followed and implemented by the City and the ZONE BOARD.

The CITY shall have an obligation to assure that the ZONE BOARD follows and implements the Supplemental Project and Finance Plan. In the event the CITY and/or ZONE fails to appropriately implement the Supplemental Project and Finance Plan, such failure will be considered a breach of this Agreement and such breach shall be subject to the cure provisions contained in Section IV.B.6. of this Agreement.

## **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.1. and V.A.2. of this Agreement shall accrue as the CITY collects its Tax Increment. The CITY agrees to deposit its first Tax Increment Payment to the Tax Increment Fund for tax year 2015 by May 1, 2016. The amount of the first Tax Increment Payment shall be based on the Tax Increments that were received through January 31, 2016, but only for the tax year 2015 beginning January 1, 2015. For subsequent Tax Increment Payments, the CITY agrees to contribute its Tax Increment Payment to the Tax Increment Fund annually on or before May 1, 2016 (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 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. Financing of Supplemental Project**

1. Supplemental Educational Facilities Contract Revenue Bonds. The CITY shall create a "local government corporation" (the "LGC") pursuant to Subchapter D of Chapter 431 of the Transportation Code to issue one or more series of contract revenue bonds, a tax-exempt series and, if necessary, a taxable series (collectively, the "Supplemental Educational Facilities Contract Revenue Bonds") to finance the construction of the Supplemental Educational Facilities Project pursuant to Section 1509.003 of the Texas Government Code, as amended.

Pursuant to this proposed financing structure (the "Proposed Supplemental Educational Facilities Project Financing Structure"), the CITY, the LGC, the ZONE and the Development Corporation of McAllen, Inc. (the "4B CORPORATION"), a nonprofit economic development corporation originally created pursuant Section 4B of Article 5190.6, Texas Revised Civil Statutes (now codified primarily in Chapters 501 and 505 of the Local Government Code and known as the Development Corporation Act), would enter into an inter-local agreement (the "Educational Facilities Project Interlocal Funding Agreement") whereby the 4B CORPORATION and the ZONE, from the respective sources set forth herein, would obligate themselves to pay the LGC an amount sufficient to pay debt service on the Supplemental Educational Facilities Contract Revenue Bonds.

The 4B CORPORATION's payment obligation pursuant to the Educational Facilities Project Interlocal Funding Agreement would be subordinate only to the obligation of the 4B CORPORATION to make debt service payments on its outstanding Sales Tax Revenue Bonds, Series 1998. The ZONE's payment obligation pursuant to the Educational Facilities Project Interlocal Funding Agreement would be limited to the availability of Additional Payments, as defined in Section V.F.1. hereof. Pursuant to the Educational Facilities Project Interlocal Funding Agreement, the 4B CORPORATION's source of pledge (its sales tax) would only be utilized to pay debt service on the Supplemental Educational Facilities Contract Revenue Bonds in the event that the Additional Payments would be insufficient to pay such debt service on the Supplemental Educational Facilities Contract Revenue Bonds. The Parties to this Agreement acknowledge that the 4B CORPORATION's pledge of its sales tax and the LGC's issuance of a series of the Supplemental Educational Facilities Contract Revenue Bonds as tax-exempt bonds shall significantly reduce the interest rate paid on the Supplemental Educational Facilities Contract Revenue Bonds.

Pursuant to the Educational Facilities Project Interlocal Funding Agreement, the CITY and the LGC would be required to construct the Supplemental Educational Facilities Project. The CITY and the LGC would also be required to enter into a lease (the "Educational Facilities Lease") with Texas A&M University for such Supplemental Educational Facilities Project. The Educational Facilities Lease would be for a term lasting as long as the Supplemental Educational Facilities Contract Revenue Bonds are outstanding and the lease would require only a nominal lease payment. At such time as the Supplemental



Educational Facilities Contract Revenue Bonds would be paid in full, the City, pursuant to Section 272.001(j) of the Texas Local Government Code, would donate the Supplemental Educational Facilities Project to Texas A&M University.

The City and the LGC would enter into the Educational Facilities Lease pursuant to Section 1509.001 of the Texas Government Code, as amended, to develop and diversify the economy of this state and eliminate unemployment or underemployment in this state under the authority granted by Section 52-a, Article III, Texas Constitution. The Educational Facilities Lease would necessarily terminate by its own terms should the Supplemental Educational Facilities Project cease to be operated as an institution of higher education during the time that the Supplemental Educational Facilities Contract Revenue Bonds are outstanding.

**The Proposed Supplemental Educational Facilities Project Financing Structure described above and the issuance of the Supplemental Educational Facilities Contract Revenue Bonds by the LGC are contingent on their approval by the Public Finance Division of the Texas Attorney General.**

2. **Supplemental Master Infrastructure Taxable Certificates of Obligation.** The CITY shall issue Certificates of Obligation (the "Supplemental Master Infrastructure Taxable Certificates of Obligation") pursuant to Subchapter C of Chapter 271, Texas Local Government Code (the Certificate of Obligation Act of 1971) to finance the Supplemental Master Infrastructure Project. The Certificates of Obligation shall be secured by a continuing ad valorem tax levied on all taxable property within the CITY, within the limits prescribed by law, and a pledge of the Pledged PID Revenues, as further defined below in Section VI.A.3.

Notwithstanding the CITY's pledge of city-wide ad valorem taxes to the payment of the Supplemental Master Infrastructure Taxable Certificates of Obligation, city-wide ad valorem taxes shall only be utilized to pay debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation in the event that the Available Tax Increment contributed by the CITY and COUNTY under the Original Project and Finance Plan and this Agreement are insufficient, and then only in the event the Pledged PID Revenues are insufficient to pay the debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation. As further described in Section VI.A.3., the Available Tax Increment contributed by the CITY and COUNTY under the Original Project and Finance Plan and this Agreement are intended as the primary source of payment of the principal and interest on the Supplemental Master Infrastructure Taxable Certificates of Obligation, and the Pledged PID Revenues are intended as the initial source of payment until the said Available Tax Increment is sufficient to pay the debt service. Further, the Pledged PID Revenues are intended as the secondary source of payment to the extent Available Tax Increment is insufficient to pay all of the said debt service on an annual basis.

The Parties to this Amendment acknowledge that the City's pledge of city-wide ad valorem taxes to the payment of the Supplemental Master Infrastructure Taxable Certificates of Obligation shall significantly reduce the interest rate paid on the Supplemental Master Infrastructure Taxable Certificates of Obligation.

3. Each Participating Taxing Entity and Party shall participate in the payment of the Supplemental Educational Facilities Project Costs only to the extent described herein. The CITY, PID, and/or the ZONE shall be entitled to enter into any other agreements for the CITY, the PID or the ZONE to pay the costs of the Supplemental Project and other reasonable 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.

**E. Disbursement of Funds (Other than the Separate Additional 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. 2014-75 passed and approved by City Commission of the CITY on December 22, 2014, 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, 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.

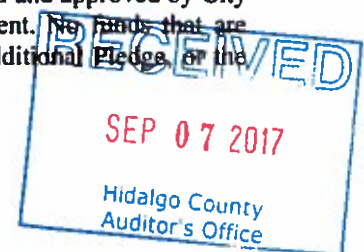
2. The parties agree and understand that under no circumstances shall Administrative Costs, in the aggregate, exceed the amount set out and described in Section II.5 above. Accordingly the agreed allocation of the total amount budgeted for Administrative Costs (\$400,000.00) shall be apportioned in the amount of \$300,000.00 for repayment of the CITY's administrative costs and \$100,000.00 for the repayment of the COUNTY's administrative costs during the Term of the ZONE, with the CITY and the COUNTY each receiving 1/30 of their pro-rata amount per year, as funds are available in the Tax Increment Fund. The CITY shall receive priority reimbursement of the Pre-TIRZ Administration Costs incurred by it. The Parties further agree and understand that the COUNTY and CITY are entitled to deduct their yearly pro-rata portion of Administrative Costs prior to depositing their respective Tax Increment Payment required pursuant to Section IV.A.1. (with respect to the COUNTY) and Section V.A.1 (with respect to the CITY) into the Tax Increment Fund, as long as said deductions are clearly delineated as a deduction from the Tax Increment Payment. If there is not enough Available Tax Increment to pay the COUNTY's and CITY's respective pro-rata yearly Administrative Costs, the COUNTY and CITY are entitled to deduct the pro-rata Administrative Costs which are owing to each entity respectively, prior to depositing the Tax Increment Payment in the Tax Increment Fund during the next year in which sufficient funds exist in the Available Tax Increment to pay said pro-rata Administrative Costs.

3. The CITY and ZONE will use funds in the Tax Increment Fund contributed by the COUNTY and the CITY pursuant to Section IV.A.1. and Section V.A.1, respectively, hereof to reimburse expenditures in the order and priority of payment set forth in the Original Project and Finance Plan and the Development Agreement. 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 a dispute with Developer.

4. In addition, the above notwithstanding, in the event that bonds or tax anticipation notes are issued pursuant to Section 311.015 of the Texas Tax Code, the proceeds shall be used to pay outstanding reimbursements according to the priority of payment, and thereafter the payment of debt service shall be a priority above any other annual obligations, and the amount of the Tax Increment Fund derived from amounts contributed by the COUNTY and the CITY pursuant to Section IV.A.1. and Section V.A.1, respectively, hereof shall not be directed for any other purpose until such bonds or tax anticipation notes or other obligations have been satisfied in full.

**F. Disbursement of Separate Additional Funds in the Tax Increment Fund**

1. Each Participating Taxing Entity agrees the ZONE BOARD shall administer the Tax Increment Fund on behalf of the ZONE, pursuant to Ordinance No. 2014-75 passed and approved by City Commission of the CITY on December 22, 2014 and pursuant to this Agreement. No funds that are deposited in or credited to the Tax Increment Fund as a result of the CITY's Additional Pledge or the



COUNTY's Additional Pledge (except for that portion of the COUNTY's Additional Pledge, if any, which is to be used by the ZONE to pay amounts necessary for the ZONE to reimburse the 4B CORPORATION for any 4B CORPORATION Payments not previously reimbursed, all as further described in Section V.D.1. hereof) (collectively the "Additional Payments") shall be disbursed from the Tax Increment Fund for any purpose other than paying the costs of issuance for and making debt service payments on the Supplemental Educational Facilities Contract Revenue Bonds that shall be issued by the CITY or the LGC on behalf of the CITY. The Additional Payments shall be accounted for separately from other funds held within the Tax Increment Fund (the "Separate Additional Funds"), and no payments may be made from the Separate Additional Funds held within the Tax Increment Fund without the prior written approval of the ZONE BOARD. Notice of the amount of Separate Additional Funds used, disbursed, and remaining in the Tax Increment Fund shall be given at least annually to the COUNTY.

2. In the Educational Facilities Project Interlocal Funding Agreement, the CITY and the ZONE shall limit the use of the Separate Additional Funds in the Tax Increment Fund as set forth in the Supplemental Project and Finance Plan, and only for the cost of issuance and repayment of principal and interest on the Supplemental Educational Facilities Contract Revenue Bonds.

3. The Parties agree and covenant that the Additional Payments shall only be used to fund the costs of issuance of and pay debt service on the Supplemental Educational Facilities Contract Revenue Bonds pursuant to the Supplemental Project and Finance Plan; and, that the Available Tax Increment contributed by the CITY and COUNTY under the Original Project and Finance Plan and this Agreement shall be used as they are received on an annual basis under the following priority: first, to fund the debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation that is due each year that said Supplemental Master Infrastructure Taxable Certificates of Obligation are outstanding; and, second, other uses according to the Priority of Payment set forth in Section 3.7.2 of the Development Agreement. The Parties further agree and covenant that the proceeds from the sale of the Supplemental Educational Facilities Contract Revenue Bonds and Supplemental Master Infrastructure Taxable Certificates of Obligation required to be issued by the CITY, or the LGC, as the case may be, pursuant to this Agreement shall be deposited in the Tax Increment Fund, accounted for separately, and only be used for the respective purposes and under the respective priority of uses as follows:

- a. Proceeds from the Supplemental Educational Facilities Contract Revenue Bonds: All proceeds from the Supplemental Educational Facilities Contract Revenue Bonds shall only be used to fund the following costs and expenses in the following priority: first, payment of the CITY's obligations under the agreement with Texas A&M University, anticipated to be entered into pursuant to the Letter of Intent, related to the funding of buildings and related site work according to the Supplemental Project and Finance Plan to provide an initial Texas A&M University campus within the Project; and, second, other uses according to the Priority of Payment set forth in Section 3.7.2 of the Development Agreement.
- b. Proceeds from the Supplemental Master Infrastructure Taxable Certificates of Obligation: All proceeds from any Supplemental Master Infrastructure Taxable Certificates of Obligation shall only be used to fund the following costs and expenses in the following priority: first, payment or reimbursement for Project Costs and Soft Project Costs for Phase I of the Project and Supplemental Project infrastructure as approved by the ZONE BOARD; second, payment of the CITY's Approved Pre-TIRZ Administrative Costs; third, payment of the CITY and the COUNTY's accrued incremental Administrative Costs; and fourth, other uses according to the priority of payment set forth in Section 3.7.2 of the Development Agreement.

## VI. RIGHTS AND OBLIGATIONS OF DEVELOPER

### A. Agreement by Developer

1. In return for the covenants and agreements made by the CITY, the COUNTY, and the ZONE, the DEVELOPER agrees to faithfully perform its obligations under this Agreement and the Development Agreement, including without limitation the obligation to follow and implement the Original Project and Finance Plan and the Supplemental Project and Finance Plan as those obligations are imposed by the Development Agreement and this Agreement. If the DEVELOPER fails to meet the obligations contained in this Agreement or the Development Agreement, it shall constitute a breach of this Agreement and be subject to the cure provisions contained in Section IV.B.6. of this Agreement.

2. The Parties agree that if the sum of the CITY's Additional Pledge during the years 2015 through 2025 of the ZONE exceeds the amount required to pay debt service on the Supplemental Educational Facilities Contract Revenue Bonds during such years, any such excess shall no longer be considered Separate Additional Funds, and shall be part of the Tax Increment Fund available for disbursement in accordance with Section V.E above.

3. The CITY finds that the Supplemental Project promotes the interests of the CITY, and that the Supplemental Project will confer a special benefit on the part of the CITY located within the PID. The Parties expressly agree to the following in relation to the issuance and payment of the Supplemental Master Infrastructure Taxable Certificates of Obligation by the CITY:

- a. The DEVELOPER hereby agrees and consents to the CITY and PID levying an annual PID assessment pursuant to Texas Local Government Code Section 372.017 (the "PID Assessment") on all property within the PID for the purpose and in the amount necessary to fund the annual debt service payments due on the Supplemental Master Infrastructure Taxable Certificates of Obligation (the "Pledged PID Revenues").
- b. The PID hereby agrees to take all actions as required by law to cause the levy of the PID Assessment by the CITY for the purpose of funding the initial and supplemental debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation by the PID pursuant to this Agreement.
- c. The PID agrees to deposit the Pledged PID Revenues into the PID fund as the PID Assessments are collected. The Parties agree that after the Pledged PID Revenues are deposited in the PID fund they will be accounted for separately and shall only be used to pay the annual debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation to the extent the amount of Available Tax Increment deposited by the CITY and COUNTY into the Tax Increment Fund pursuant to the Original Project and Finance Plan and the Agreement (calculated on the basis of CITY's and the COUNTY's Available Tax Increment being 20% and 23%, respectively, during the years 2015 through 2025 instead of 30% and 33%, respectively, during such time) is insufficient to pay the said debt service for such year. To the extent that the Pledged PID Revenues are required to pay debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation, the PID hereby agrees to take all actions necessary to ensure that the necessary Pledged PID Revenues in the PID Fund to the City's interest



and sinking fund that will be created for the benefit of the Supplemental Master Infrastructure Taxable Certificates of Obligation.

- d. The Parties expressly agree that the PID will only be required to contribute the annual Pledged PID Revenues in the event the amount of Available Tax Increment deposited by the CITY and COUNTY into the Tax Increment Fund pursuant to the Original Project and Finance Plan and the Agreement (calculated on the basis of CITY's and the COUNTY's Available Tax Increment being 20% and 23%, respectively, during the years 2015 through 2025 instead of 30% and 33%, respectively, during such time) is, or is projected to be, insufficient to pay the debt service on the Supplemental Master Infrastructure Taxable Certificates of Obligation for such year.

The Parties agree that the PID Assessment levied to fund the Pledged PID Revenues will no longer be levied or assessed once the combined amount of the Available Tax Increment deposited by the CITY and COUNTY into the Tax Increment Fund each year under the Original Project and Finance Plan and the Agreement (calculated on the basis of CITY's and the COUNTY's Available Tax Increment being 20% and 23%, respectively, during the years 2015 through 2025 instead of 30% and 33%, respectively, during such time) is equal to 120% or more of the debt service required to be paid on the Supplemental Master Infrastructure Taxable Certificates of Obligation annually.

- e. The DEVELOPER agrees to provide the CITY with an irrevocable letter of credit (the "LOC") which will be automatically renewed each year in the amount of the annual debt service payment due to be paid on the Supplemental Master Infrastructure Taxable Certificates of Obligation for the year in which the LOC is provided. The first LOC required must be provided to the CITY no less than 30 days prior to the Supplemental Master Infrastructure Taxable Certificates of Obligation being issued. The LOC for each subsequent year must be provided to the CITY no later than January 15th of the year in which it is required to be provided. The LOC for each year will be released upon the PID making the debt service payment of the Supplemental Master Infrastructure Taxable Certificates of Obligation due in each respective year. The DEVELOPER will no longer be required to provide a LOC to the CITY once the combined amount of the Available Tax Increment deposited by the CITY and COUNTY into the Tax Increment Fund (calculated on the basis of CITY's and the COUNTY's Available Tax Increment being 20% and 23%, respectively, during the years 2015 through 2025 instead of 30% and 33%, respectively, during such time) equals 120% of the annual debt service required to be paid on the Supplemental Master Infrastructure Taxable Certificates of Obligation.

## **B. Rights of Developer**

1. The CITY, the COUNTY, and the ZONE agree and acknowledge that DEVELOPER is making the commitments identified herein in reliance on the commitments made by the CITY and the COUNTY to: (a) timely contribute their respective Tax Increment Payments to the Tax Increment Fund as they become due in accordance with and subject to the terms of this Agreement; (b) timely contribute

their respective Additional Pledge to the Tax Increment Fund as they become due in accordance with and subject to the terms of this Agreement; and (c) on the commitment of the ZONE to comply with the Original Project and Finance Plan and Supplemental Project and Finance Plan and properly and timely (within 30 days of approval if funds are available) process payments and reimbursements for proper work completed by the DEVELOPER and/or its successors, assigns, contractors or subcontractors.

2. The DEVELOPER shall have the right to serve as Project manager for the construction and installation of all public improvements and public infrastructure identified in the Original Project and Finance Plan and the Supplemental Project and Finance Plan, save and except for those obligations to be managed by the CITY or Texas A&M University under the Letter of Intent between said parties.

3. The DEVELOPER shall have the right to adjust or prioritize the schedule of construction of improvements within each Phase of the Project, provided that such adjustment or prioritization does not cause a Material Change in the Original Project and Finance Plan or in the Supplemental Project and Finance Plan.

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

5. The CITY and DEVELOPER agree that the DEVELOPER will convey to the CITY fee simple title to the +/- 100 acre site identified on Exhibit "E" for use as the site for the campus of Texas A&M University; and, in return, the CITY shall convey to the DEVELOPER fee title to the two (2) tracts identified on Exhibit "F". The CITY and DEVELOPER agree that the value of the +/- 100 acre tract to be conveyed by the DEVELOPER to the CITY together with the DEVELOPER's consent to the modification of the Development Agreement and this Agreement to facilitate the financing of the Supplemental Master Infrastructure Taxable Certificates of Obligation exceeds the value of the two (2) tracts which are to be conveyed from the CITY to the DEVELOPER. All conveyances required to be made under this subsection shall be closed within thirty (30) days from the execution of this Agreement with the DEVELOPER and CITY each paying one-half of the closing costs as well as their respective costs of phase I environmental reports.

## VII. 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, 2044, 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, 2045 for the 2044 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, except as set forth in the Development Agreement.



**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, including from the Separate Additional Funds, 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, including any Separate Additional 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.

**VIII. MISCELLANEOUS**

**A. Understanding**

Any and all costs, including with respect to the Supplemental Project Obligations, incurred by the CITY, COUNTY or DEVELOPER are not, and shall never become, general obligations or debt of the COUNTY or any Participating Taxing Entity. With respect to the CITY, COUNTY and DEVELOPER's costs, only eligible Project Costs and other allowable expenses under applicable law, if any, incurred by the CITY, COUNTY or DEVELOPER shall be payable from the Tax Increment Fund in the manner and priority provided in the Original Project and Finance Plan, the Supplemental Project and Finance Plan and the Development Agreement and only to the extent that funds become available in the Tax Increment Fund. The Parties agree and understand that under no circumstance shall the eligible costs exceed the maximum specified in the Original Project and Finance Plan, the Supplemental Project and Finance Plan and the Development Agreement. 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. The Separate Additional Funds in the Tax Increment Fund shall only be used as set forth in the Supplemental Project and Finance Plan and only for the payment of the costs of issuance of and repayment of principal and interest on the Supplemental Educational Facilities Contract Revenue Bonds.

**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, 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.

Upon the occurrence of any event that allows the CITY to terminate hereunder, the COUNTY shall have the right to withhold tax increment payments under this Agreement until such time as such event is cured, and the COUNTY shall not incur any penalties or interest with respect to any such

withheld payments notwithstanding any provision herein to the contrary. With respect to the COUNTY's obligations, to the extent there is any discrepancy between this Agreement and any exhibit hereto, the terms of this Agreement shall control.

**D. Written Amendment**

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

**E. Notices**

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

**F. Non-Waiver**

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

**G. Assignment**

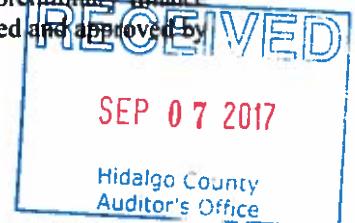
All Parties to this Agreement understand and recognize that only the City Commission of the CITY and only the Commissioners Court of the COUNTY have authority to approve a delegation or assignment of the COUNTY's or the CITY's rights in this Agreement on behalf of the CITY or the COUNTY, respectively. All Parties further agree that the DEVELOPER shall have the right to assign the right to receive reimbursements to a third party for the purpose of obtaining financing, or to a related third party without obtaining consent of any other Party, provided that such reimbursements have been approved by the ZONE BOARD and such assignments are made in compliance with the Development Agreement.

**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. Amendments to Original Project and Finance Plan and Supplemental Project and Finance Plan**

The COUNTY acknowledges that it was provided with a copy of the initial preliminary finance plan for review and comment before the Original Project and Finance Plan was finalized and approved by



the City Commission of the CITY. The COUNTY further acknowledges that it was provided with a copy of the initial preliminary supplemental project and finance plan for review and comment before the Supplemental Project and Finance Plan was finalized and approved by the City Commission of the CITY. The Parties agree that a Material Change to the Original Project and Finance Plan or the Supplemental Project and Finance Plan shall not apply to the COUNTY unless the COUNTY approves the change as provided herein. Further, if such amendment to the Project and Finance Plan (i) has the effect of directly or indirectly increasing the percentage of Tax Increment to be contributed by the COUNTY; or (ii) increases or reduces the geographical area of the ZONE set forth in the Original Project and Finance Plan or the Supplemental Project and Finance Plan, 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, including the Additional Payments, to the Tax Increment Fund, and expenditures from the Tax Increment Fund for Project Costs and Supplemental Educational Facilities Project Costs, including all expenditures from the Separate Additional Funds. 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. Development Agreement**

The CITY, DEVELOPER, and ZONE BOARD have entered into the Development Agreement. The CITY hereby agrees with COUNTY to use reasonable efforts to enforce and follow the provisions of the Development Agreement against DEVELOPER, including, without limitation, the DEVELOPER's compliance with all applicable building codes and ordinances, as modified or amended and all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, orders and codes, as amended, pertained to the construction of the Project. The CITY and the ZONE agree to provide the COUNTY with a copy of any notice of Default that is delivered or sent to any party under the Development Agreement within five (5) business days after receipt of the notice by the CITY or the ZONE. The COUNTY shall have the right to consent to any waivers of Default. The COUNTY shall also have the rights to consent to any changes or modifications in DEVELOPER's or other Parties' obligations prior to such modifications or changes being effective, if modifications or changes constitute a Material Change.

**L. 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; DEVELOPER; TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (1), CITY OF MCALLEN, TEXAS; and TRES LAGOS PUBLIC IMPROVEMENT DISTRICT have made and executed this Agreement in quintuple originals on this 15<sup>th</sup> day of December, 2015.

**CITY OF MCALLEN**

**HIDALGO COUNTY**

\_\_\_\_\_  
Jim Darling  
City Mayor

Ramon Garcia  
Hon. Ramon Garcia  
County Judge

**ATTEST/SEAL:**

**ATTEST/SEAL:**

APPROVED BY  
COMMISSIONERS' COURT  
ON: 6/7/16

\_\_\_\_\_  
Annette Villarreal  
City Secretary

Arturo Guajardo, Jr.  
Arturo Guajardo, Jr.  
County Clerk



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

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

\_\_\_\_\_  
Kevin Pagan, City Attorney

Atlas, Hall, & Rodriguez, LLP

By: Stephen L. Crain  
Stephen L. Crain

**DEVELOPER:  
RHODES ENTERPRISES, INC.**

**TRES LAGOS PUBLIC IMPROVEMENT  
DISTRICT, CITY OF MCALLEN**

\_\_\_\_\_  
Mike Rhodes  
President

\_\_\_\_\_  
Mike Rhodes  
President

**REINVESTMENT ZONE NUMBER ONE,  
CITY OF MCALLEN, TEXAS  
(Tres Lagos Development Project)**

\_\_\_\_\_  
Mike Rhodes  
Presiding Officer



**Exhibit A**  
**Original Project and Finance Plan**

CITY OF MCALLEN, TEXAS



**Tres Lagos  
Tax Increment Reinvestment Zone Number One  
Project and Finance Plan**

Participation Levels:  
City of McAllen (80%) & Hidalgo County (77%)



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## EXECUTIVE SUMMARY

### Overview of Plan

Tax Increment Reinvestment Zone Number One, City of McAllen, Texas, (the “Zone” or the “TIRZ”) represents an important opportunity for the future of the City of McAllen (the “City”). It will promote and encourage construction of approximately 2,571 acres of mixed use development including single-family, multi-family, retail, office and commercial development (the “Project”), and the creation of more than eight thousand new jobs.

Creation of the TIRZ and implementation of the Project will:

- (1) Increase the population and tax base of the area;
- (2) Remove low valued vacant land from the tax rolls and replace it with higher value development;
- (3) Include creation of a public improvement district pursuant to Chapter 372 of the Texas Local Government Code (“PID”) as a mechanism to ensure that the development, rather than the existing City taxpayers, pay for the upkeep and maintenance of some of the public roads and infrastructure in the development; and
- (4) Start a new model for development in the area that is more sensitive to the environment (i.e., recycled water, green spaces, curving design, etc.) and is more sustainable (higher employment base, superior technology, enhanced security, etc.).

This tract of land has remained vacant and undeveloped because either (1) the costs associated with developing the land in the preferred manner prohibited the efficient use of the property, or (2) the property was unavailable for development when development should have occurred and current development costs for the desired development are uneconomical. Creation of the TIRZ will allow for construction of infrastructure and other improvements including single-family subdivisions, multi-family projects, commercial projects, retail developments and thousands of new jobs and related economic development that will cause public benefits that would otherwise be very difficult, if not impossible, to obtain due to costs that include off-site utility extensions, on-site and off-site utility plant expansions, on-site street and utility extensions, drainage improvements, community Wi-Fi, surveillance cameras, Fiber-to-the-Home infrastructure and significant park and recreational installations.

The Zone is located at the southwest corner of Ware Road and Monte Christo Road (the “Property”). Please see Exhibit 1 for a location map of the Property. This Project and Finance Plan will be implemented through the execution of a Development Agreement between the City of McAllen, the Board of Directors of the Zone, and Rhodes Enterprises Inc., its successors and assigns, (acting as the “Developer”), which sets forth the rights and obligations of the parties to assure successful completion of the proposed Project. Unless otherwise defined herein, all defined terms in this Project and Finance Plan shall have the meanings set forth in the Development Agreement.



### **Anticipated Benefits of Development**

The projected benefits of the Zone are as follows:

- The original plan for the Property was to develop a rural subdivision with lots ranging from 1 acre to 10 acres, with the entire development remaining in the County. However, the proposed mixed use development has greater density, supports retail, multifamily, office and institutional uses, creates additional employment and will generate a superior tax base.
- The entire 2,571 acres are currently located in the city limits of the City and within Hidalgo County, Texas. The Property was annexed through a Developer petition conditioned on (1) the City approving participation in the TIRZ in an amount equal to 80% of the revenue generated from the CITY M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE, and the remaining 20% being retained by the City, and (2) Hidalgo County approving participation in the ZONE by contributing to the Tax Increment Fund an amount equal to 77% of the revenue generated from the COUNTY M&O Tax Rate (as defined in the Interlocal Agreement) as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE, and the remaining 23% being retained by the County, during the term of the Zone.
- Over 125 acres of parkland that will be developed and dedicated to the City for public use.
- The Developer will dedicate drainage right-of-way that will improve drainage issues for the community upstream and downstream of the Zone with an estimated value of \$6,000,000.00.
- Recycled water will be used to water the green spaces providing enhanced water conservation.
- The Tres Lagos development will be the first in the region to provide Fiber-to-the-Home (FTTH) for high-speed internet access (up to 1 Gbps).
- Enhance and increase the population within the area, and the economy of the overall general area.
- Provide for pedestrian safety and access through walking trails and street light construction.
- Provide for public use sites and assist in funding emergency access networks.
- Enhance the quality of life within the development and surrounding areas through parks landscaping and increased recreational opportunities.
- Create a sustainable housing initiative for the benefit of landowners inside and outside of the Zone through encouraging green build and ENERGY STAR construction of homes and buildings.

- Generate significant revenue in the form of ad valorem tax, utility fees, property tax, et al, and help extend utility (water, sewer, recycled water, cable, and data) service to adjoining tracts and other areas for future development.
- Add over +/- \$2,600,000,000.00 to the tax base of the City and County over the life of the Zone.\*<sup>1</sup>
- Require only the taxes from within the Zone, and not existing taxpayers in the City or the County, to pay all the costs of the installation of all utilities required for the Project.
- Create a new and replicable standard for better and more sustainable development within the City that encourages new development to pay for itself in a greater amount and does not place the burden unfairly on the City's current budget or on the current and existing taxpayers.

### The TIRZ Concept

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

When a zone is created, the "base value" of the area is frozen for tax purposes. The existing taxing entities continue to receive tax revenues as before. However the increased tax revenue ("the increment") generated by new development within the zone will be used to reimburse costs related to public improvements within the zone as well as other related allowable expenses. The zone will have a life equal to a predetermined number of years. Upon reaching that date, or upon all costs having been reimbursed, whichever comes first, the zone will terminate. Upon termination, the increased tax revenue belongs to the respective taxing entities. The investment in public infrastructure and public amenities will cause the tax revenue received by the City and County to be much greater both during the TIRZ and afterwards than would have been received without the TIRZ. Comparison charts below illustrate the level of tax revenue and public benefit received through the TIRZ Project and Finance Plan compared to ordinary non-TIRZ development.

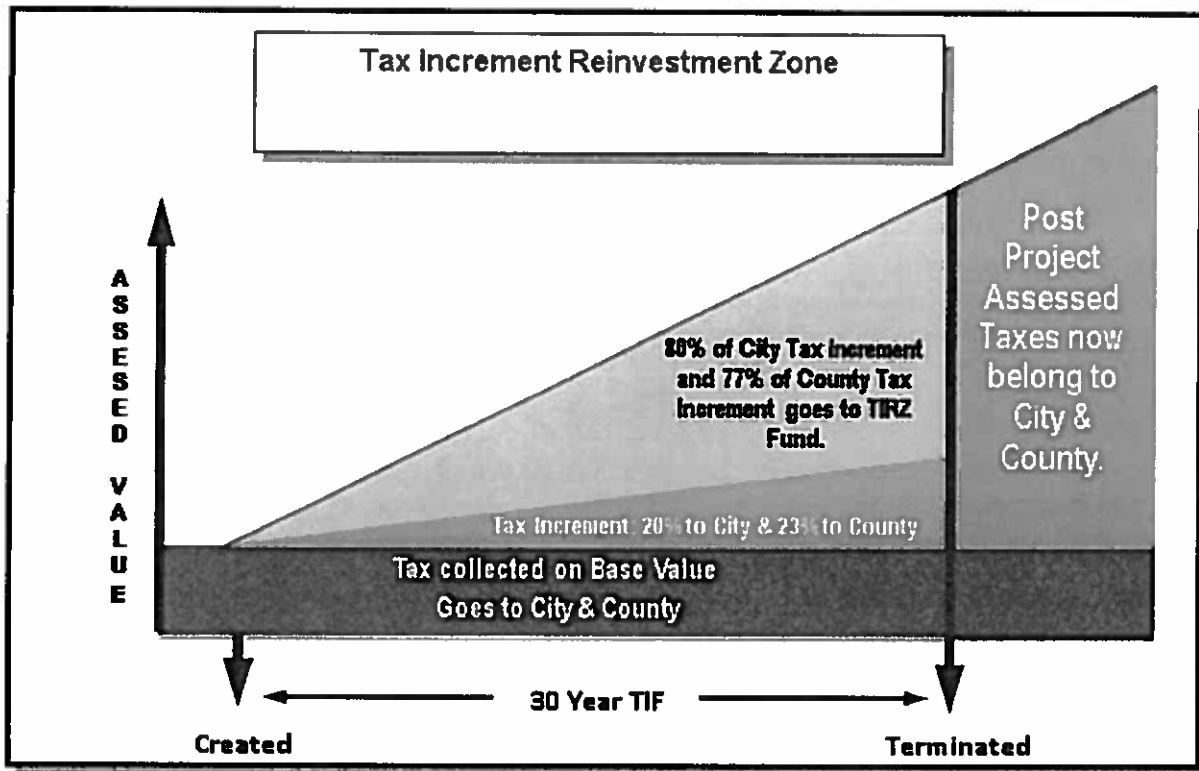
*[Charts on Following Page]*

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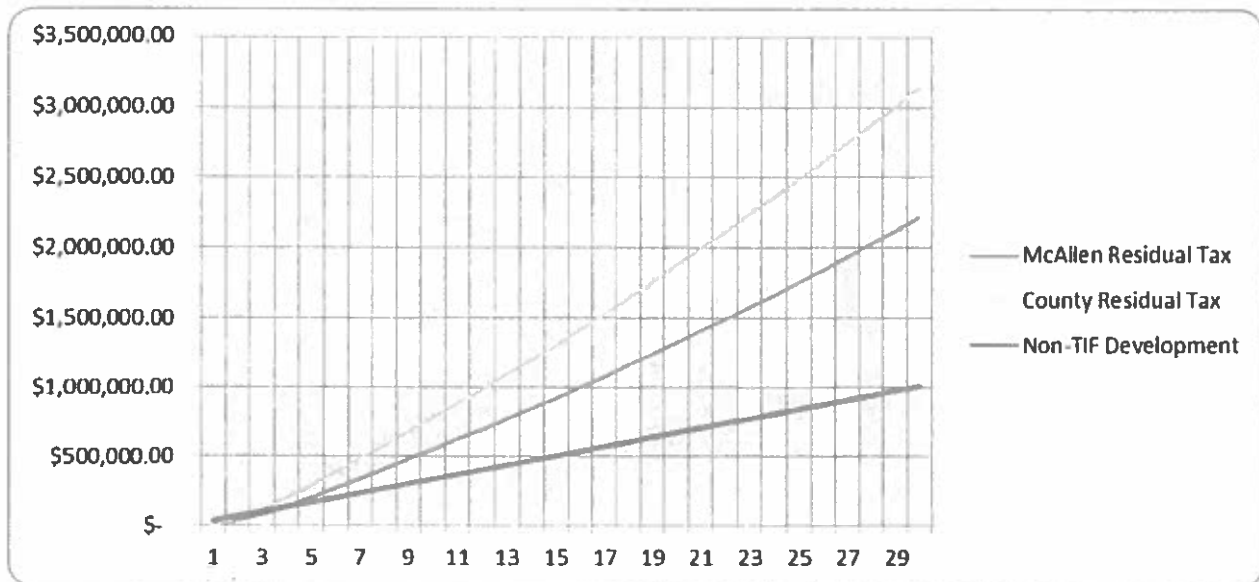
\*<sup>1</sup> \$2,569,780,976 in vertical improvements plus \$232,396,315 in infrastructure over the term of the Project.



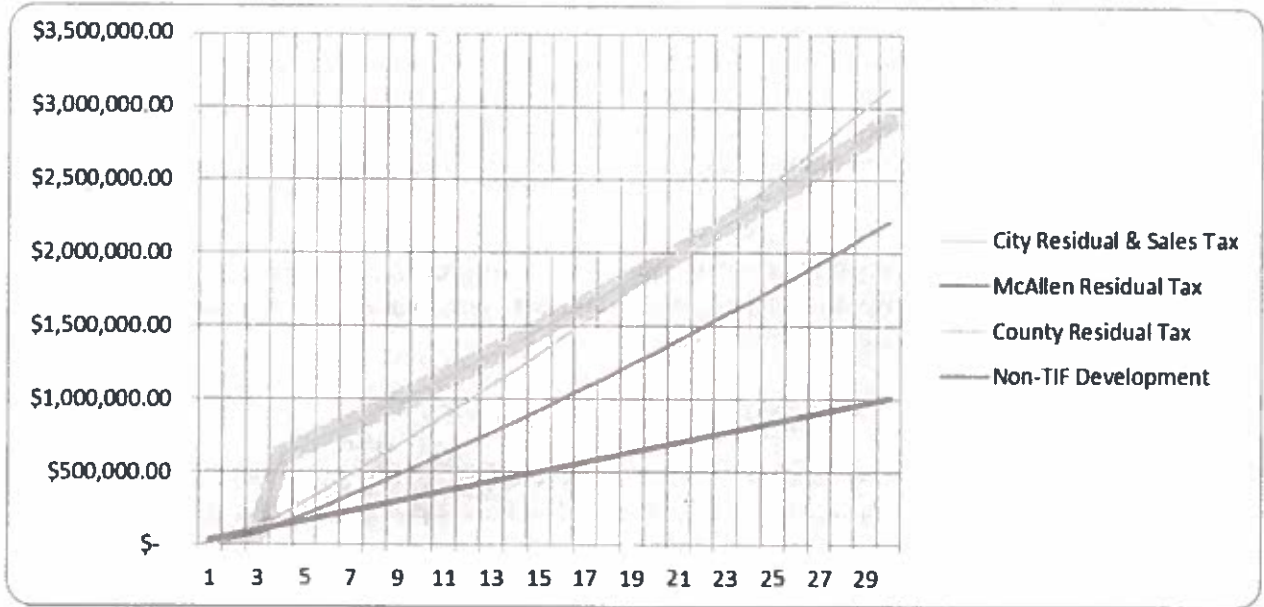
**TIRZ ASSESSED VALUE (AV) OVER PROJECT LIFE**



**INCOME COMPARISON BETWEEN EXISTING DEVELOPMENT METHOD AND "NEW TIRZ METHOD"**



## INCOME COMPARISON BETWEEN EXISTING DEVELOPMENT METHOD AND "NEW TIRZ METHOD" continued



### PROJECT PLAN

The Reinvestment Zone Number One, City of McAllen, Texas Project and Finance Plan provide a long-term method to increase economic vitality, tax base, and population within the Zone.

The economics of attracting market rate housing, new businesses, retail establishments, commercial uses and new employment opportunities will be greatly enhanced utilizing the TIRZ to finance public infrastructure improvements and economic development initiatives.

The following specific objectives set the framework for the planned public improvements within the Zone:

- Complete infrastructure to support +/-2,571 acres of mixed use development with an estimated developed tax base value of over \$2,500,000,000.00.
- Fund reimbursement of construction of primary public streets and public utility work to create access for future planned high technology and secure mixed use developments.
- Provide attractive, safe pedestrian environments through landscaping, lighting and construction of public walkways in the single-family areas and open space areas of the development.
- Construct wastewater collection, recycled water mains and storage and reuse facilities to enhance and encourage environmentally sensitive and water conscious regional development.



- Make utilities (sewer, water, recycled water, cable, and fiber optic) available to adjoining properties in the City and County for future growth.
- Relieve the City and County of some of the maintenance costs of the community by establishing a PID, which will also establish a model community that incorporates availability of gigabit speed internet access to every home and business in the community; community high-speed Wi-Fi access; community security, data, video and surveillance services; interconnected linear hike and bike and park systems, and unique subdivision designs to create a secure and sustainable living and working environment.
- Create, and prove the feasibility of a new model of ‘smart growth’ development for the City and County which is socially and financially sustainable, environmentally sensitive, and which conserves water and has a lower carbon footprint.

### **Planned Private Development and Investment**

The total private development investment stimulated by creation of the Zone is forecasted to be \$2,569,780,976.14 in the form of vertical construction of homes, apartments, office buildings, retail buildings and commercial uses.

### **Public Infrastructure Improvements**

The Public Infrastructure Improvements (hereinafter may be referred to as “Public Improvements”) which will be completed pursuant to the Project and Finance Plan are detailed in Exhibits 4 through 9 of this Project and Finance Plan, and the amount of public investment for reimbursement of the Public Improvements totals \$258,540,901.00. If the interest cap is reached no additional interest payments may be made.

### **Public Infrastructure Improvements and Related Eligible Expenses**

The Public Infrastructure Improvements to be constructed and financed pursuant to the Project and Finance Plan and related capital costs include, but are not limited to, reimbursements associated with the following internal and external project costs for infrastructure to be constructed and dedicated to a Public Entity: Mile 9 Russell Rd. improvements, Shary & Bryan Road improvements, Glasscock/Stewart/Mayberry Road improvements, public parks, together with all site work, internal streets and drainage, onsite and offsite water and sewer and recycled water infrastructure, sidewalks, fiber optic dedicated to the City, PID, or other Public Entity, communication, Wi-Fi and surveillance infrastructure dedicated to the PID, as well as all other related infrastructure, soft project costs, and costs of creation as shown Exhibit 5 and Exhibit 9. The capital cost is estimated to be \$232,396,315.00 of the full eligible build-out amount plus interest on such amount until reimbursed.

*[Remainder of Page Intentionally Left Blank-Project Plan and Finance Plan Continue on Next Page]*

### Existing and Proposed Uses

The existing uses in the area in which the Zone is located consist of open undeveloped or underdeveloped land and farming operations.

The proposed uses in the Zone are those uses set forth in Exhibit 2 which have been master-planned and organized in phases to provide the maximum value enhancement and benefits to the Zone, the City and the surrounding community.

### Description of Zone

The Zone will be located in the northwest sector of the City of McAllen ETJ. The exact location and legal description of the Zone are identified in the survey and field notes attached as Exhibit 1.

### Project Feasibility

The feasibility of the Project has been analyzed by an independent economist and the Developer. The results of this analysis establish that the Project is both economically feasible and is within market absorption capabilities. According to national employment creation statistics by type and square footage of development, it is estimated that the Project could create in excess of 8,000 new jobs, and over \$200,000,000.00 in annual payroll within the McAllen area, which will provide tremendous benefits to the municipality in the form of increased economic stimulus, ad valorem, and sales tax revenues.

Based on the above economic factors, creation of the Zone and approval of the Project and Finance Plan is in the best interest of the City and is in furtherance of its municipal and governmental purposes.

## FINANCE PLAN

### Tax Increment Financing

The Tax Increment Financing Act (Chapter 311 of the Tax Code), provides for counties and cities to create "reinvestment zones" within which various public works and improvements can be undertaken, using tax increment revenues, bonds or notes, to pay for those improvements. The Act also allows the Zone to participate in the funding of improvements outside the Zone if the improvements benefit the Zone. At the time an area is designated a reinvestment zone for tax increment financing, the existing total of appraised value of real property in the zone is identified and designated as the Tax Increment Base. The Zone will not receive any sales tax revenue collected by the City of County.

Public improvements are made in the area to attract private development that would not otherwise occur. As the costs of new development are added to the tax rolls, property values will rise, and there will be an increase in sales tax revenue as well. This rise in new ad valorem value is called the "captured appraised value." The taxes that are collected by the participating taxing jurisdictions on the increment between the frozen value and the new higher value, or the Tax Increment, are then deposited into a TIF Fund, which is used to reimburse or pay for the approved improvements. Once the public improvements are completed and reimbursed, the TIF and Zone are dissolved and any remaining amounts of taxes collected are kept by the taxing jurisdiction. In addition the TIF will be dissolved if the Developer is in Default and does not cure the Default, or if the reimbursements for Public Infrastructure Improvements are paid earlier than



anticipated. In effect, the taxing jurisdictions are “investing” future earnings to receive the benefit of higher tax revenues from new development. Taxing jurisdictions are not restricted from reassessing property value or changing their tax rate as allowed by State law during the life of the Zone.

### **Financing Plan Overview**

The Tax Increment Base is \$1,064,613.00 (hereinafter also referred to “Base Value”). The City has agreed to participate in the ZONE by contributing to the Tax Increment Fund an amount equal to 80% of the revenue generated from the CITY M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE. In no event shall the CITY contribution to the Tax Increment Fund be greater than \$120,990,149.00 over the life of the ZONE beginning with the 2014 tax year. The County has indicated that it will participate in the ZONE by contributing to the Tax Increment Fund an amount equal to 77% of the revenue generated from the COUNTY M&O Tax Rate (as defined in the Interlocal Agreement) as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE. In no event shall the COUNTY contribution to the Tax Increment Fund be greater than \$143,318,484.00 over the life of the ZONE beginning with the 2014 tax year.

The Zone provides funding for approximately +/- \$258,940,901.00 of planned Public Infrastructure Improvements which are eligible for reimbursement, including interest, and Administrative Costs paid to the City and County for administering the Zone. In addition, this Project and Finance Plan authorizes reimbursement of the Pre-TIRZ Administrative Costs to the City in an amount not to exceed \$70,000.00, with said amount to be paid from the contingency or surplus funds as shown on the Sources & Uses Table set forth on Exhibit 5. The Finance Plan indicates that the Zone will yield adequate revenues to provide for incremental financing of the Project as indicated in Exhibits 4 through 9. The total projected revenue of the Zone is \$264,308,634.00.

Financing Method: Initial financing is being accomplished through equity invested by the Developer through private investments and conventional land development bank loans, the issuance of Tax Increment Bonds (hereinafter also referred to as “Bonds”) when available, as well as other funding sources. No taxing jurisdiction is guaranteeing the repayment of these loans; they remain the obligation of the Developer. In the event Bonds are issued they will not become obligations of the City or County. When Bonds are issued by the City, only the pledged Available Tax Increment can be looked to for repayment of those obligations. Other Public Infrastructure Improvements included in the Project and Finance Plan will be funded through similar financing sources and reimbursed to the Developer, as Available Tax Increment is available. Bonds are projected to be issued for the Project with the assistance of the City upon the completion of 900 homes which are built and assessed in the Project. If Bonds are issued, the Available Tax Increment from the Zone will serve as the only repayment source for the Bonds.

Priority of Payment: The City and the Board shall disburse funds from the Tax Increment Fund (or Bond revenues) to pay expenditures in the following order or priority of payment:

1. FIRST, to reimburse the City for reasonable Pre-TIRZ Administrative Costs approved by the Zone;
2. SECOND, payment of Administrative Costs to the City and County pursuant to the Interlocal Agreement;

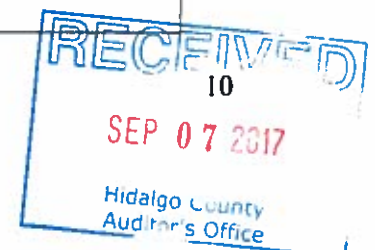
3. **THIRD**, to reimburse the City for the City Project Costs, plus interest, as provided in the Project and Finance Plan, for the City Public Improvements;
4. **FOURTH**, to pay the debt service on any Tax Increment Bonds issued by the Zone/City which are due and payable in whole or in part from the Available Tax Increment provided they are used to pay costs as set forth in the Project and Finance Plan;
5. **FIFTH**, to reimburse Developer or City for Project Costs, plus Interest, as provided for in the Project and Finance Plan incurred by the City or Developer, for Public Infrastructure Improvements constructed by either on a first in, first out basis; and
6. **SIXTH**, to reimburse or pay the cost of any project or improvement that was not included in the original Project and Finance Plan, but was later added as a subsequent project with approval of the ZONE and the CITY.

The foregoing, notwithstanding, no funds will be paid from the Tax Increment Fund to the City or County for its financial and legal services in any dispute arising under the Development Agreement with another participating taxing entity.

**Capital Costs:** The total capital costs to be incurred for Public Infrastructure Improvements total \$232,396,315.00. The Developer’s portion of this amount is estimated to be \$230,696,315.00, the City’s portion of this amount, the City Public Improvements, to be incurred for off-site improvements (extension of fiber optic strands and conduits to the Zone, extension of sewer mains to the Zone, the extension of recycled water trunk mains to the Zone, and the construction of a new fire station to serve the Zone and other areas) are estimated to be \$4,050,000.00. The City and County have negotiated a maximum reimbursement to the Developer. It is projected that neither the City nor the Developer will receive any payments until fiscal year 2016. The earliest projected payoff of the capital cost would occur in fiscal year 2044 and includes an estimated reimbursement of the Developer contribution of \$230,696,315.00 out of the Project Costs totaling \$258,540,901.00.

**TIRZ Collections:** The TIRZ collections for this project shall not extend beyond December 31, 2045 and may be terminated earlier once each taxing entity has deposited its respective maximum dollar contribution amount described in the table below. Some taxing entities may reach their maximum dollar contribution prior to others and/or prior to the end of the TIRZ; the term of the TIRZ will continue through December 31, 2045 or will terminate once all taxing entities have deposited their maximum dollar contribution, and all obligations of the Zone have been satisfied pursuant to Section 311.017 of the Texas Tax Code.

<b>Participating Taxing Entities</b>	<b>Maximum Dollar Contribution</b>	<b>Maximum Length of Contribution</b>
City of McAllen, Texas	\$120,990,149.00	December 31, 2045
Hidalgo County	\$143,318,484.00	December 31, 2045
<b>Maximum Contribution Amount</b>	<b>\$264,308,634.00</b>	



**Developer's Risk:** All financing, development costs, construction costs, improvements, damages, or other costs incurred by the Developer with respect to this project are at the sole risk of the Developer. Neither the City nor County shall incur any risk of loss whatsoever associated with the development, construction, completion, or failure of the Project, if such loss is due to Developer. In the event that the Project fails, is abandoned by the Developer, or for any reason is not completed, the City shall have the right to terminate the TIRZ and any funds remaining in the TIRZ account after payment of approved reimbursements shall be distributed to the City and County on a pro-rata basis in accordance with each entity's participation level.

**Limited Obligation of the City and County:** Except for the financial obligation of the City to construct the City Public Improvements the City and County obligations shall be limited to the City imposing and collecting taxes and the County imposing taxes, and both the City and the County depositing such tax receipts into the Tax Increment Fund during the term of the TIRZ for so long as the Project is viable, the Developer is not in Default, and eligible project costs and capital costs (and interest thereon) incurred by the Developer have not been fully paid. The TIRZ collections for this Project shall not extend beyond 30 years or past the collection of taxes assessed for the year 2044 (and collected in 2045), and may be terminated prior to December 31, 2044 upon payment of the total amount of reimbursement for Project Costs to the Developer as provided in the Development Agreement, or for Default by the Developer as set forth in the Development Agreement, or as allowed by Section 311.017 of the Texas Tax Code.

Any costs incurred by the Developer are not, and shall not in any event become, general obligations or debt of the City or County. The Project Costs incurred by the Developer shall be paid solely by the TIRZ revenues contributed to the Zone and shall never constitute a debt, indebtedness, or a pledge of the faith and credit or taxing power of the State, the City, County, or any political corporation, subdivision, or agency of the State of Texas, other than the TIRZ, which is funded solely by the pledged Tax Increment of the City and County.

**Financing Policy:** This Project and Finance Plan limits the amount of City and County Available Tax Increment (80% of the CITY M&O Tax Rate and 77% of the County M&O Tax Rate) paid to finance repayment of the City and Developer expenditures for reimbursable public improvements.

**Short Term Financing:** The short term financing for the Project will be paid through initial capital investment and conventional development loans provided by the Developer for Public Infrastructure Improvements installed by the Developer. The City will fund the initial cost of the City Public Improvements (\$4,050,000.00) through advancing City budgeted funds. The Project costs advanced by the Developer and City for construction of their respective public improvements will be reimbursed according to the approved priority of payment as TIF Funds become available in the balance of the Tax Increment Fund.

**Long Term Financing/Bonds:** To minimize the cost of interest incurred by the Project, the Zone will recommend the issuance of, and the City will issue (contingent upon City Commission approval), Tax Increment Bonds when 900 homes have been completed within the Zone and are being assessed ad valorem taxes. It is projected that the Tax Increment Bonds will be issued in the fourth year of the Project and Finance Plan (2018). The amount of the issuance will be the maximum amount as is reasonably and prudently determined by the City and its financial advisers that can be debt-serviced and underwritten at reasonably acceptable interest rates at the time of issuance based upon the amount of the pledged tax

increment that is being generated within the Zone according to the City's debt issuance policies and State of Texas public finance requirements.

### **Financial Assumptions**

The Finance Plan is based upon conservative assumptions. Accordingly, the Finance Plan assumes that there will be no tax rate changes during the project term, and assumes an increase in assessed values of existing tax base of only 1.015% per year rather than the actual average appreciation rate which is historically in excess of 3% per year.

The Finance Plan also assumes that the taxing entities will continue to collect tax revenues at the same rate and that homestead and other exemption rates will remain unchanged. Build-out rates of tax base within the Finance Plan are based on conservative rates of absorption established from historical market data collected from the Rio Grande Valley demographics.

### **Financial Feasibility**

Based on the private development plans, public improvement program, budgets and general financing strategy, financial assumptions, and the feasibility study prepared by H.E. Skip Preble, MAI, CCIM, of Boerne, Texas, and as required by Section 311.011(c)(3) of the Texas Tax Code, the City of McAllen City Commission finds that the Finance and Project Plan is economically feasible.

### **Financial and Governance Policies**

Pursuant to Chapter 311 of the Texas Tax Code, the Zone will be governed by a nine-member Board of Directors appointed by the City Commission, the Board of Directors of the ZONE (hereinafter also referred to as the "TIRZ Board"). The TIRZ Board members shall include: a City designee, a County designee, and five other initial members all of whom must be the owners of real property within the Zone, or an agent or employee of an owner of real property in the Zone; the other two board members shall be the State Senator and State Representative representing the districts in which the Zone is located. The chairperson of the TIRZ Board will be designated by the City Commission.

The TIRZ Board will operate pursuant to Robert's Rules of Order and will adopt rules governing the management of the TIRZ. These rules are designed to ensure conformity with all Texas Tax Code rules and regulations, including but not limited to the requirement that all Public Infrastructure Improvements are publically bid and that all meetings are held in compliance with the Texas Open Meetings Act. The TIRZ Board may make non-Material Changes within the Project and Finance Plan, provided that said changes do not violate the competitive bidding requirements for public infrastructure improvements as required by Texas law. Additional guidelines and requirements for carrying out the Project and additional rights and obligations of the City, County, and Developer are contained in the City ordinances creating the Zone, approving the Finance Plan and Project Plan, as well as in the Development Agreement and the Interlocal Agreement related to the Project.

**Compliance:** The Developer shall comply with all applicable federal, state and local laws, rules and regulations, including all those relating to the construction of public improvements.



**Reporting:** The Developer shall submit a project status report and financial report on a semi-annual basis to the City.

**Inspection:** The Developer shall allow the City, County and/or the Board of Directors for the ZONE reasonable access to the Project site or sites for inspections during and upon completion of construction upon reasonable notice.

The TIRZ Board may from time-to-time recommend amendments to these financial policies to the City which, if adopted by the City, may affect the operation of the Zone.

### **Conclusions**

Based upon a set of conservative assumptions and an analysis of the Zone Project and Finance Plan, the TIRZ Board and the Commission of the City of McAllen has concluded that the TIRZ Project and Finance Plan is economically feasible in compliance with Chapter 311 of the Texas Tax Code.

The success of the Project within the Zone will encourage other large planned mixed-use developments with higher values. The new residential population base: will support an expanding retail base, will supplement the existing job market by adding over 8,000 new jobs, and will attract additional private development into the Zone and surrounding area. In addition, the Zone will serve to stabilize and enhance future property values in the City of McAllen and Hidalgo County, and will serve the municipal and governmental purpose of protecting the public safety and welfare.

*[Remainder of Page Intentionally Left Blank-Project Plan and Finance Plan Continue on Next Page]*

**APPENDIX & EXHIBITS**  
**TIRZ REQUIREMENTS**

Section 311 of the Texas Tax Code (Tax Increment Financing Act) specifies that TIRZ Project and Finance Plans meet certain requirements. These requirements are listed below, along with a reference indicating where these elements can be located in the Project and Finance Plan. All of the exhibits identified below in this Appendix are incorporated into the Project and Finance Plan of the Zone as if fully set forth herein, and are made a part hereof for all purposes:

**Project Plan**

- |  |                                       |
|--|---------------------------------------|
| 1. Survey and Field Notes of Property  | Exhibit 1                             |
| 2. Map of proposed improvements and uses-<br>Tres Lagos Master Plan                                      | Exhibit 2A                            |
| Map of existing uses and conditions  | Exhibit 2B                            |
| 3. Proposed changes of zoning ordinances, waivers and<br>exceptions to subdivision rules and regulations | Exhibit 3                             |
| 4. Estimated non-project costs   | None claimed                          |
| 5. Relocation plan for current residents   | Not Applicable (no current residents) |

**Finance Plan**

- |   |                              |
|---|------------------------------|
| 1. Summary  | Exhibit 4                    |
| 2. Detailed estimate of Project Costs including<br>Administrative Costs     | Exhibit 5 & Exhibit 7        |
| 3. Proposed Public Improvements (location, kind, number)                    | Exhibit 5 & Exhibit 9        |
| 4. Finding that Plan is economically feasible/economic<br>feasibility study | Pages 8 & 12                 |
| 4. Project timeline   | Exhibit 4 & Exhibit 8        |
| 5. Estimated amount of bonded indebtedness                                  | Exhibit 6 & Page 12          |
| 6. Time when costs/obligations will be incurred                             | Exhibit 5 & Pages 11 & 12    |
| 7. Methods of financing, sources of revenue                                 | Exhibit 6 & Pages 9, 11 & 12 |
| 8. Current total appraised value  | Exhibit 4                    |
| 9. Estimated captured appraised value                                       | Exhibit 6 & Exhibit 7        |
| 10. Duration of Zone  | Exhibit 4                    |



Exhibit I  
Field Notes of Property & Survey

**Tract 1:** A tract of land containing 2561.402 acres situated in the County of Hidalgo, Texas, being 2571.402 acres comprised of 1.) 18.865 acres being a part or portion of LOT 54-7, OUT OF THE AMENDED MAP OF LOTS 53-6, 54-6, 55-6, 56-6, 57-6, 58-6, 59-6, 53-7, 54-7, 55-7, 56-7, 57-7, 58-7, 59-7, 53-8 & 53-9, WEST ADDITION TO SHARYLAND SUBDIVISION, according to the plat thereof recorded in Volume 6, Page 42, Hidalgo County Map Records, 2.) ALL OF SECTION 223, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 8, Page 54, Hidalgo County Map Records; 3.) ALL OF SECTION 224, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 411, Page 149-150, Hidalgo County Deed Records; 4.) a part or portion of SECTION 227, TEXAS-MEXICAN RAILWAY CO. SURVEY; 5.) a part or portion of SECTION 230, TEXAS-MEXICAN RAILWAY CO. SURVEY; 6.) a part or portion of SECTION 232, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the patent issued by the State of Texas, to W. S. Daugherty recorded in Volume 4, Page 142-143, Hidalgo County Deed Records, SAVE AND EXCEPT 10.00 acres conveyed to Hidalgo County Irrigation District No. 7 by virtue of a Warranty Deed recorded in Volume 622, Page 638, Hidalgo County Deed Records, said 2571.402 acres also being more particularly described as follows:

BEGINNING at the Northeast corner of Section 232 Texas –Mexican Railway Co. Survey located on the city limits of the City of McAllen for the Northeast corner of this tract;

1. THENCE, in a Southwesterly direction along the East Lot line of Lot 232 and the city limits of the City of McAllen to the Southeast corner of said lot for the Northernmost Southeast corner of this tract;

2. THENCE, N 80° 23' 30" W along the South line of said Section 232, the North line of Lots 35-68, Section 229, Tex-Mex as per plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, and within Mile 9 Road right-of-way, a distance of 5175.14 feet to an iron pipe found for the Southwest corner of said Section 232, and the Northeast corner of Section 230 for an inside corner of this tract;

3. THENCE, S 09° 05' 05" W along the East line of said Section 230, and the West line of Section 229, as per said plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, at a distance of 2519.05 feet pass an iron pipe found in line, and now continuing along the West line of Section 229, Tex-Mex, as per plat thereof recorded in Volume 12, Page 22, Hidalgo County Map Records, and continuing a total distance of 3295.30 to an outside corner of this tract;

4. THENCE, N 80° 48' 32" W a distance of 251.52 feet (250.00 feet) to an iron rod set for an inside corner of this tract;

5. THENCE, S 08° 44' 55" W, at a distance of 20.00 pass an iron pipe found in line, and continuing a total distance of 250.00 feet to an iron pipe found for an outside corner of this tract;
6. THENCE, N 80° 55' 38" W a distance of 2503.36 feet (2503.2 feet) to an iron pipe found for an inside corner of this tract;
7. THENCE, S 09° 02' 13" W at a distance of 1611.44 feet pass the North right-of-way line of Mile 8 Road, and continuing a total distance of 1631.44 feet to the Southernmost Southeast corner of this tract;
8. THENCE, N 80° 48' 07" W along the South line of said Section 230, and within said Mile 8 Road right-of-way, a distance of 627.20 feet to an iron rod found for the centerline of Glasscock Road, and for an angle point of this tract;
9. THENCE, N 80° 47' 57" W along the South line of said Section 230, said Section 223, and within said Mile 8 Road right-of-way, a distance of 2644.96 feet to a concrete monument found for the centerline of Stewart Road, and for an angle point of this tract;
10. THENCE, N 81° 10' 51" W along the South line of said Section 223, and within said Mile 8 Road right-of-way, at a distance of 2658.21 feet pass an iron rod found in line and for the center line of Bryan Road, and continuing a total distance of 4164.66 feet to the Southwest corner of said Section 223, and for the Southernmost Southwest corner of this tract;
11. THENCE, N 08° 59' 01" E along the West line of said Section 223, a distance of 1554.21 feet to an iron rod set for an inside corner of this tract;
12. THENCE, N 81° 02' 31" W along the South line of said Section 223, and said Section 224, at a distance of 1161.82 feet pass an iron rod found in line, at a distance of 2462.04 feet pass an iron rod found in line, and continuing a total distance of 2915.12 feet to an iron pipe found for the Southwest corner of said Section 224 and to a point on the East line of said Lot 54-7, for an inside corner of this tract;
13. THENCE, S 08° 59' 01" W along the East line of said Lot 54-7, a distance of 110.00 feet to the Southeast corner of said Lot 54-7, for an outside corner of this tract;
14. THENCE, N 81° 17' 16" W along the South line of said Lot 54-7, at a distance of 761.50 feet pass a No. 4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 791.50 feet to the Southwest corner of said Lot 54-7, for the Northernmost Southwest corner of this tract;



15. THENCE, N 08° 42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 280.00 feet to an outside corner of this tract;

16. THENCE, S 81° 17' 16" E at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing along the South line of The Frass Subdivision (Vol.25, Pg.134-A H.C.M.R.), for a total distance of 205.00 feet to a No.4 rebar set at the Southeast corner of said The Frass Subdivision, for an inside corner of this tract;

17. THENCE, N 08° 42' 46" E along the East line of said The Frass Subdivision, a distance of 125.00 feet to a No.4 rebar set at the Northeast corner of said The Frass Subdivision, for an inside corner of this tract;

18. THENCE, N 81° 17'16" W along the North line of said The Frass Subdivision, at a distance of 175.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 205.00 feet to an outside corner of this tract;

19. THENCE, N 08° 42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 692.13 feet to the Southernmost Northwest corner of this tract;

20. THENCE, S 81° 17' 16" E along the South line of a certain 3.82-acre tract, at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 746.69 feet to a No.4 rebar set for an outside corner of this tract;

21. THENCE, S 08° 59' 01" W along the West line of a tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No.7 (now United Irrigation District) by virtue of a Deed recorded in Vol.519, Pg.65, Hidalgo County Deed Records, a distance of 477.14 feet to a No.4 rebar set for an inside corner of this tract;

22. THENCE, S 81° 17' 16" E along the South line of said tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No.7, a distance of 50.00 feet to a No.4 rebar set for an inside corner of this tract;

23. THENCE, N 08° 59' 01" E along the West line of said Section 224, a distance of 2284.35 feet to an iron pipe found for the Northwest corner of said Section 224, and for an outside corner of this tract;

24. THENCE, S 81° 02' 31" E along the North line of said Section 224, a distance of 2554.12 feet to an iron rod set for the Northeast corner of said Section 224, and for an inside corner of this tract;
25. THENCE, N 08° 59' 01" E along the West line of said Section 223, a distance of 854.95 feet to an iron pipe found for the Northwest corner of said Section 223, and for an outside corner of this tract;
26. THENCE, S 80° 46' 58" E along the North line of said Section 223, a distance of 3177.65 feet to an iron pipe found for an angle point of this tract;
27. THENCE, S 80° 45' 29" E along the North line of said Section 223, a distance of 2102.46 feet to an iron pipe found for the Northeast corner of said Section 223, and for an inside corner of this tract;
28. THENCE, N 09° 03' 26" E along the West line of said Section 227, at a distance of 3795.04 feet pass an iron pipe found in line, and continuing a distance of 5216.19 feet to an iron pipe found for the South right-of-way line of Monte Cristo Road (F.M. 1925) and a distance of 5,256.19 feet to the Northwest corner of Section 227 and the Northernmost Northwest corner of this tract;
29. THENCE, in a Southeasterly direction along the North lot line of Section 227 and 232 to the Northeast corner of Section 232 to the POINT OF BEGINNING, and containing 2571.402 acres, SAVE AND EXCEPT the above mentioned 10.00 acres conveyed to Hidalgo County Irrigation District No. 7, leaving 2,561.402 acres of land, more or less, as shown in Exhibit A.



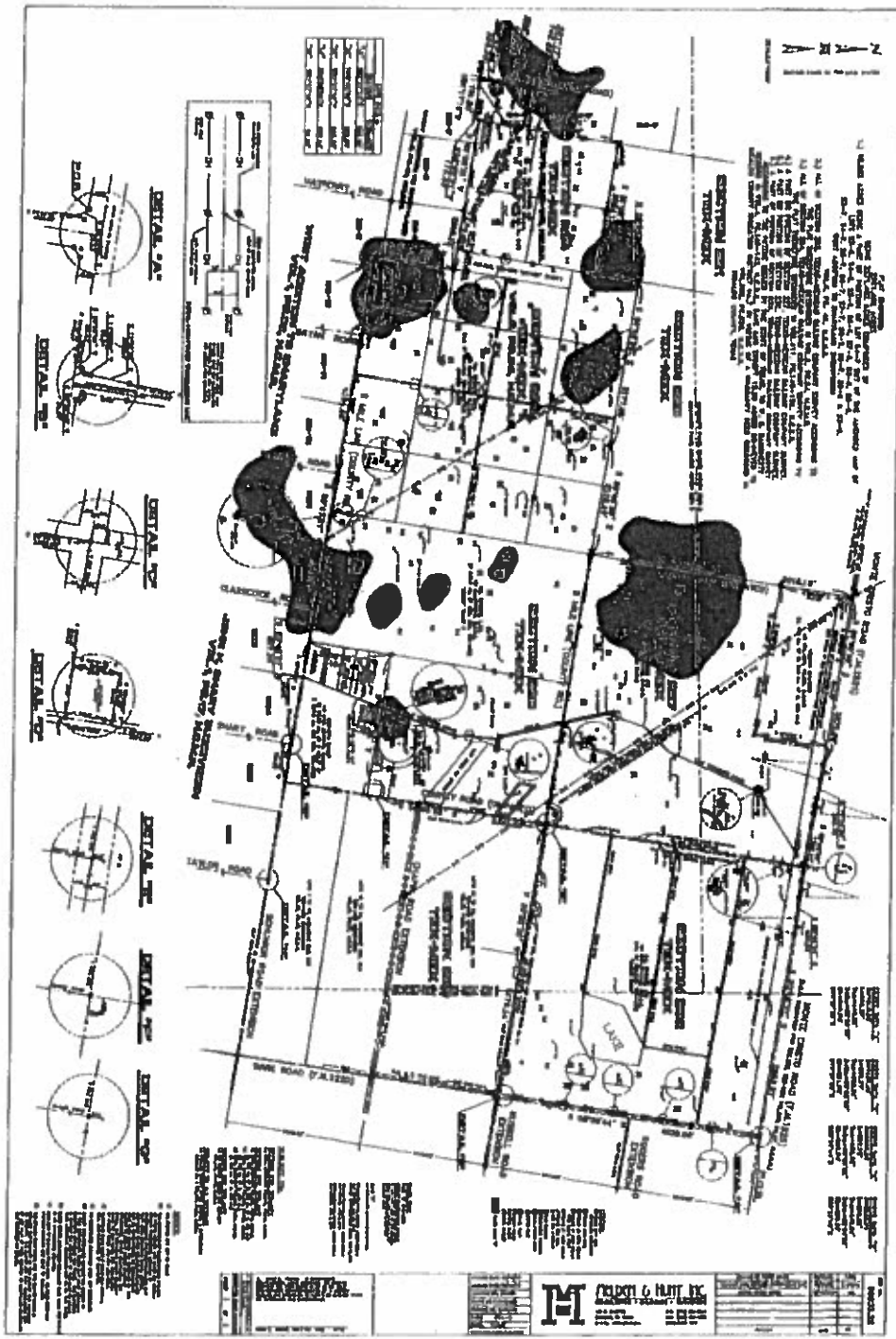


Exhibit A

Exhibit 2  
A. Map of Proposed Improvements and Uses



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B. Map of Existing Uses and Conditions



Exhibit 3

A. Waivers and Exceptions to the City of McAllen Platting Regulations

The following specific waivers and exceptions will be required for the Project.

1. The requirement that two access points must be provided into any subdivision with over 20 lots shall not apply to this Project. Emergency access walks/drives shall be recognized as secondary access points for emergency service vehicles.
2. The requirement that the maximum street length ending in a cul-de-sac shall be 600 feet will not apply to this Project provided the unit of development enjoying the variance is designed and platted using the 'coving method' and there are emergency access walks/drives serving the unit of development.
3. The requirements pertaining to sidewalks contained in the City's Development Code will not apply to this Project provided a sidewalk having a width of at least adequate for pedestrian and bike traffic is provided in a plan that is sealed by the registered engineer designing the unit of development.
4. The requirements pertaining to side yard set-backs from property line will be five (5) feet rather than six (6) feet as required by the City Development Code.
5. The requirements pertaining to front yard set-backs for R-1 zoning will be 20 feet rather than the 25 feet as required by the City Development Code.
6. There will be no park fee collected because the parkland dedication will exceed the CITY's requirements as of 10/30/2014.

B. Current and Future Land Use/Zoning

<u>Tract</u>	<u>Acreege</u>	<u>Current Land Use</u>	<u>Zoning District</u>
1	28.7499 acres	Open Space-Agricultural	C-4- Commercial Industrial
2	15.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
3	11.5000 acres	Open Space-Agricultural	C-4- Commercial Industrial
4	55.000 acres	Open Space-Agricultural	R-1- Single Family Residential
5	81.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
6	2.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
7	12.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
8	15.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
9	100.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
10	4.4665 acres	Open Space-Agricultural	R-1- Single Family Residential
11	20.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
12	5.4285 acres	Open Space-Agricultural	R-1- Single Family Residential
13	79.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
14	19.6183 acres	Open Space-Agricultural	C-4- Commercial Industrial
15	15.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
16	8.1425 acres	Open Space-Agricultural	C-4- Commercial Industrial
17	52.0000 acres	Open Space-Agricultural	R-1- Single Family Residential



18	20.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
19	7.4507 acres	Open Space-Agricultural	C-4- Commercial Industrial
20	18.3713 acres	Open Space-Agricultural	C-4- Commercial Industrial
21	35.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
22	25.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
23	30.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
24	56.9548 acres	Open Space-Agricultural	C-4- Commercial Industrial
25	39.7438 acres	Open Space-Agricultural	C-4- Commercial Industrial
26	40.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
27	5.6970 acres	Open Space-Agricultural	R-1- Single Family Residential
28	99.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
29	21.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
30	29.1412 acres	Open Space-Agricultural	R-3A- Apartment Residential
31	43.7021 acres	Open Space-Agricultural	R-3A- Apartment Residential
32	18.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
33	60.5814 acres	Open Space-Agricultural	R-1- Single Family Residential
34	42.4782 acres	Open Space-Agricultural	C-4- Commercial Industrial
35	1.6301 acres	Open Space-Agricultural	C-4- Commercial Industrial
36	33.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
37	41.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
38	6.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
39	49.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
40	67.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
41	40.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
42	12.2107 acres	Open Space-Agricultural	R-1- Single Family Residential
43	68.6857 acres	Open Space-Agricultural	R-1- Single Family Residential
44	23.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
45	41.7396 acres	Open Space-Agricultural	C-4- Commercial Industrial
46	20.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
47	67.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
48	23.9745 acres	Open Space-Agricultural	R-3A- Apartment Residential
49	62.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
50	6.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
51	92.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
52	10.3235 acres	Open Space-Agricultural	R-1- Single Family Residential
53	57.3405 acres	Open Space-Agricultural	R-1- Single Family Residential
54	6.3298 acres	Open Space-Agricultural	C-4- Commercial Industrial
55	79.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
56	8.0321 acres	Open Space-Agricultural	R-1- Single Family Residential
57	57.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
58	6.2000 acres	Open Space-Agricultural	R-1- Single Family Residential
59	57.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
60	46.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
61	3.1158 acres	Open Space-Agricultural	R-1- Single Family Residential
62	1.5466 acres	Open Space-Agricultural	R-1- Single Family Residential
63	59.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
64	3.9616 acres	Open Space-Agricultural	C-4- Commercial Industrial
65	0.7792 acres	Open Space-Agricultural	C-4- Commercial Industrial
66	29.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
67	42.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
68	16.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
69	6.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
70	12.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
71	0.6336 acres	Open Space-Agricultural	C-4- Commercial Industrial

72	6.9196 acres	Open Space-Agricultural	C-4- Commercial Industrial
73	5.9685 acres	Open Space-Agricultural	C-4- Commercial Industrial
74	72.2971 acres	Open Space-Agricultural	C-4- Commercial Industrial

*[Remainder of Page Intentionally Left Blank-Project Plan and Finance Plan Continue on Next Page]*



## Exhibit 4

## A. Summary Fact Sheet

<b>Proposed Tres Lagos Tax Increment Finance Zone</b>			
<b>Estimated 30 Year Build out of Residential, Multi-Family, &amp; Commercial</b>			
<b>Summary Fact Sheet</b>			
<b>February 20, 2015</b>			
<b>Site Area</b>		<b>2,571 +/- Acres</b>	
<b>2014 Base Value</b>		<b>\$1,064,613.00</b>	
			<b>Taxable Value</b>
Residential Units (SF/MF) 2.5 du/acre	239 Acres		\$ 289,261,974.70
3.5 du/acre	513 Acres		\$ 646,356,673.82
4.5 du/acre	697 Acres		\$ 575,364,753.07
Multifamily 10 du/acre	48 Acres		\$ 58,642,983.99
Multifamily 15 du/acre	70 Acres		\$ 90,841,924.27
Townhomes 8 du/acre	75 Acres		\$ 110,833,324.31
Sales Center	4 Acres		\$ 1,000,000.00
Commercial / Retail	192 Acres		\$ 319,976,279.19
Commercial / Office	97 Acres		\$ 267,955,187.64
University Campus/Flex	105 Acres		\$ 209,547,875.14
School Site	80 Acres		\$ -
Church, Mosque, Synagogue	90 Acres		\$ -
Roadway	135 Acres		\$ -
Drainage	76 Acres		\$ -
Parks	121 Acres		\$ -
<b>Totals</b>	<b>2,542 Acres</b>		<b>\$ 2,569,780,976.14</b>
<b>Estimated Taxable Value Created</b>	<b>\$ 2,569,780,976</b>		
<b>McAllen TIF Assessed Rate</b>	<b>\$ 0.4313</b>		
<b>County TIF Assessed Rate</b>	<b>\$ 0.5308</b>		
<b>Tax Collection Rate</b>	<b>100.00%</b>		
<b>Est. Infrastructure Costs</b>	<b>\$ 258,940,901</b>		
<b>Est. Total Net TIF Revenues</b>	<b>\$ 264,308,634</b>		
<b>Excess (Shortage) TIF Revenues</b>	<b>\$ 5,367,733</b>		
<b>Est. TIF Life</b>	<b>30 Years</b>		
<p>The projections and estimates contained in this Finance and Project Plan are subject to and may be impacted by market &amp; economic conditions both domestic &amp; international. Actual completion &amp; construction of the Project may take more or less time than described herein. However it is understood that the Developer will use its best efforts to complete the project as quickly as economically feasible. A growth rate of 1.015% per year has been used to establish value of future tax basis.</p>			

B. Overall Summary with Escalators Table

**Proposed Tres Lagos Tax Increment Finance Zone**  
**Finance Plan - Overall Summary with Escalators (30 year)**  
**Tax Value added by year with escalator**

Development Type/ by acre	Development Year	2015	2016	2017	2018	2019	2020
	<b>Total Current Value</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
Single Family 2.5 du/acre	233,025,000	-	8,035,345	8,155,875	8,278,213	8,402,386	8,528,422
Single Family 3.5 du/acre	520,695,000	-	17,955,000	18,224,325	18,497,690	18,775,155	19,056,783
Single Family 11.5 du/acre	463,505,000	-	15,932,931	16,222,675	16,466,015	16,713,005	16,963,700
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	171,517,500	-	-	-	6,352,500	6,447,788	6,544,504
Multifamily 30 du/acre	48,000,000	-	-	-	1,777,778	1,804,444	1,831,511
Multifamily 25 du/acre	82,950,000	-	-	-	-	6,380,769	-
Townhomes 8 du/acre	90,000,000	-	-	3,214,286	3,262,500	3,311,438	3,361,109
Retail & Commercial	261,904,500	-	-	-	9,700,167	9,845,669	9,993,354
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	1,000,000	250,000	-	-	-	-	250,000
Office Use	219,324,600	-	-	-	8,123,133	8,244,980	8,368,655
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>2,091,921,600</b>	<b>250,000</b>	<b>41,973,276</b>	<b>45,817,161</b>	<b>72,457,996</b>	<b>79,925,645</b>	<b>74,898,099</b>
<b>Projected Construction Costs</b>	<b>282,396,315</b>	<b>22,600</b>	<b>3,795,823</b>	<b>4,143,442</b>	<b>6,552,682</b>	<b>7,228,018</b>	<b>6,773,351</b>
<b>Proposed Tax Revenue - City of McAllen</b>		<b>863</b>	<b>145,687</b>	<b>303,125</b>	<b>563,284</b>	<b>629,568</b>	<b>1,047,937</b>
<b>Proposed Tax Revenue - Hidalgo County</b>		<b>1,022</b>	<b>172,573</b>	<b>359,835</b>	<b>655,963</b>	<b>737,652</b>	<b>1,268,772</b>

Development Type/ by acre	2021	2022	2023	2024	2025	2026	2027
	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>
Single Family 2.5 du/acre	8,656,348	8,786,194	8,917,987	9,051,756	9,187,533	9,325,346	9,465,226
Single Family 3.5 du/acre	19,942,694	19,632,774	19,927,265	20,226,174	20,529,567	20,837,511	21,150,073
Single Family 11.5 du/acre	17,218,156	17,476,428	17,738,575	18,004,653	18,274,723	18,548,844	18,827,077
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	6,642,672	6,742,312	6,843,447	6,946,098	7,050,290	7,156,044	7,263,385
Multifamily 30 du/acre	1,858,984	1,886,869	1,915,172	1,943,699	1,973,058	2,002,653	2,032,693
Multifamily 25 du/acre	6,476,481	-	6,573,628	-	6,672,232	-	6,772,316
Townhomes 8 du/acre	3,411,526	3,462,699	3,514,639	3,567,359	3,620,869	3,675,182	3,730,310
Retail & Commercial	10,143,255	10,295,403	10,449,834	10,606,582	10,765,681	10,927,156	11,091,073
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	-	-	-	-	250,000	-	-
Office Use	8,494,185	8,621,593	8,750,922	8,882,185	9,015,418	9,150,649	9,287,909
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>82,244,240</b>	<b>76,904,276</b>	<b>84,631,468</b>	<b>79,228,708</b>	<b>87,339,371</b>	<b>81,623,395</b>	<b>89,620,062</b>
<b>Projected Construction Costs</b>	<b>7,437,689</b>	<b>6,954,784</b>	<b>7,653,587</b>	<b>7,164,992</b>	<b>7,898,474</b>	<b>7,381,554</b>	<b>8,104,227</b>
<b>Proposed Tax Revenue - City of McAllen</b>	<b>1,371,763</b>	<b>1,637,312</b>	<b>1,929,126</b>	<b>2,202,497</b>	<b>2,505,652</b>	<b>2,785,486</b>	<b>3,094,711</b>
<b>Proposed Tax Revenue - Hidalgo County</b>	<b>1,674,917</b>	<b>1,949,257</b>	<b>2,285,340</b>	<b>2,608,960</b>	<b>2,965,940</b>	<b>3,199,533</b>	<b>3,665,828</b>



Overall Summary with Escalators Table (Continued)

Development Type/ by acre	2028	2029	2030	2031	2032	2033	2034
	14	15	16	17	18	19	20
Single Family 2.5 du/acre	9,607,204	9,751,312	9,897,582	10,046,046	10,196,736	10,349,688	10,504,933
Single Family 3.5 du/acre	21,467,324	21,709,334	22,116,174	22,447,917	22,784,636	23,126,405	23,473,301
Single Family 4.5 du/acre	19,109,483	19,396,125	19,687,067	19,982,373	20,282,108	20,586,340	20,895,135
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	7,372,336	7,482,921	7,595,164	7,709,092	7,824,728	7,942,099	8,061,231
Multifamily 30 du/acre	2,063,184	2,094,131	2,125,543	2,157,427	2,189,788	2,222,635	2,255,974
Multifamily 35 du/acre	-	6,873,901	-	6,977,009	-	7,081,664	-
Townhomes 8 du/acre	3,786,264	3,843,058	3,900,704	3,959,215	4,018,603	4,078,882	4,140,065
Retail & Commercial	11,257,439	11,426,301	11,597,696	11,771,661	11,948,736	12,127,459	12,309,371
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	-	-	250,000	-	-	-	-
Office Use	9,427,228	9,568,636	9,712,166	9,857,848	10,005,716	10,155,802	10,308,139
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>84,090,462</b>	<b>82,225,720</b>	<b>85,852,097</b>	<b>84,908,587</b>	<b>89,250,552</b>	<b>87,670,974</b>	<b>91,948,150</b>
<b>Projected Construction Costs</b>	<b>7,604,661</b>	<b>8,340,367</b>	<b>7,857,121</b>	<b>8,587,991</b>	<b>8,071,310</b>	<b>8,832,805</b>	<b>8,315,266</b>
<b>Proposed Tax Revenue - City of McAllen</b>	<b>3,384,857</b>	<b>3,203,072</b>	<b>4,002,850</b>	<b>4,330,323</b>	<b>4,638,273</b>	<b>4,875,277</b>	<b>5,282,535</b>
<b>Proposed Tax Revenue - Hidalgo County</b>	<b>4,009,521</b>	<b>4,386,462</b>	<b>4,741,563</b>	<b>5,129,470</b>	<b>5,494,251</b>	<b>5,893,448</b>	<b>6,269,255</b>

Development Type/ by acre	2035	2036	2037	2038	2039	2040	2041
	21	22	23	24	25	26	27
Single Family 2.5 du/acre	10,662,507	10,822,444	10,984,781	11,149,553	11,316,796	11,486,548	11,658,846
Single Family 3.5 du/acre	23,825,401	24,182,782	24,545,523	24,913,706	25,287,412	25,666,723	26,051,724
Single Family 4.5 du/acre	21,208,562	21,526,691	21,849,591	22,177,335	22,509,995	22,847,645	23,190,360
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	8,182,149	8,304,882	8,429,455	8,555,896	8,684,235	8,814,498	8,946,716
Multifamily 30 du/acre	2,289,814	2,324,161	2,359,024	2,394,409	2,430,325	2,466,780	2,503,782
Multifamily 35 du/acre	7,187,889	-	7,295,708	-	7,405,143	-	7,516,220
Townhomes 8 du/acre	4,202,166	4,265,199	4,329,177	4,394,114	4,460,026	4,526,927	4,594,830
Retail & Commercial	12,494,012	12,681,422	12,871,643	13,064,718	13,260,689	13,459,599	13,661,493
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	-	-	-	-	-	-	-
Office Use	10,462,761	10,619,702	10,778,998	10,940,683	11,104,793	11,271,365	11,440,435
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>100,515,261</b>	<b>94,727,282</b>	<b>103,443,899</b>	<b>97,590,415</b>	<b>106,458,414</b>	<b>100,540,085</b>	<b>109,564,406</b>
<b>Projected Construction Costs</b>	<b>9,090,026</b>	<b>8,566,594</b>	<b>9,354,875</b>	<b>8,825,520</b>	<b>9,627,581</b>	<b>9,082,271</b>	<b>9,908,579</b>
<b>Proposed Tax Revenue - City of McAllen</b>	<b>5,639,352</b>	<b>5,966,200</b>	<b>6,323,122</b>	<b>6,659,848</b>	<b>7,027,126</b>	<b>7,374,079</b>	<b>7,752,120</b>
<b>Proposed Tax Revenue - Hidalgo County</b>	<b>6,680,076</b>	<b>7,067,242</b>	<b>7,450,034</b>	<b>7,838,901</b>	<b>8,324,018</b>	<b>8,734,942</b>	<b>9,182,749</b>

Overall Summary with Escalators Table (Continued)

Development Type/ by acre	2042	2043	2044	TOTALS	
	28	29	30		
Single Family 2.5 du/acre	11,833,729	12,011,335	12,191,403	289,261,975	289,261,975
Single Family 3.5 du/acre	26,442,500	26,839,137	27,141,724	646,356,674	646,356,674
Single Family 4.5 du/acre	23,538,215	23,891,288	24,249,657	575,364,753	575,364,753
School Site	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-
Technology Park/Campus	9,080,917	9,217,130	9,355,387	209,547,875	209,547,875
Multifamily 10 du/acre	2,541,338	2,579,458	2,618,150	58,642,984	58,642,984
Multifamily 15 du/acre	-	7,628,964	-	90,841,924	90,841,924
Townhomes 8 du/acre	4,663,753	4,733,709	4,804,715	110,833,324	110,833,324
Retail & Commercial	13,866,415	14,074,412	14,285,528	319,976,279	319,976,279
Perimeter ROW	-	-	-	-	-
Interior ROW	-	-	-	-	-
Drainage way & Park	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-
Park with Main Trail	-	-	-	-	-
Sales Center	-	-	-	1,000,000	1,000,000
Office Use	11,612,042	11,786,223	11,963,016	267,955,188	267,955,188
Major Drainage way	-	-	-	-	-
<b>Added Value</b>	<b>103,578,909</b>	<b>112,761,556</b>	<b>106,709,581</b>	<b>2,569,780,976</b>	<b>2,569,780,976</b>
<b>Projected Construction Costs</b>	<b>9,367,085</b>	<b>10,197,511</b>	<b>9,680,205</b>		<b>232,906,315</b>
<b>Proposed Tax Revenue - City of McAllen</b>	<b>8,109,509</b>	<b>8,498,582</b>	<b>8,866,772</b>		<b>120,990,149</b>
<b>Proposed Tax Revenue - Hidalgo County</b>	<b>9,606,092</b>	<b>10,066,967</b>	<b>10,503,106</b>		<b>148,318,484</b>



Exhibit 5  
Sources & Uses Table

Proposed Tres Lagos Tax Increment Finance Zone  
Sources & Uses

Sources of Funds

Net TIF Revenues City of McAllen	\$	120,990,149
Net TIF Revenues Hidalgo County	\$	143,318,484

Total Sources of Funds

\$ 264,308,634

Uses Of Funds

	Units	Amount	Cost Per Unit	Location	Total Infrastructure Improvements
<b>Public Improvements</b>					
<b>Internal Hard Project Costs</b>					
Site Work	Acres	1550	\$ 2,500.00	Project Site	\$ 3,875,000
Mile 9 Russell Rd Pav/Drain/light	L.F.	27560	\$ 513.00	Site	\$ 14,138,280
Shary & Bryan Pav/Drain/light	L.F.	11900	\$ 479.50	Site	\$ 5,708,050
Glasscock/Stewart/Mayberry	L.F.	10400	\$ 354.50	Site	\$ 3,686,800
Int. Streets & Drainage	L.F.	154560	\$ 214.50	Project Site	\$ 53,596,698
Water Reuse System, and Lakes	L.F.	154,480	\$ 39.00	Project Site	\$ 14,969,651
Water	L.F.	154,560	\$ 50.00	Project Site	\$ 26,196,890
Spine Water Main	34,100 LF of 20 in. & 16 in	LS	na	Offsite and Onsite	\$ 3,400,000
Spine Sanitary Sewer Main	15 to 21 inch SS	LS	na	Onsite	\$ 2,200,000
Drain Ditch Xings	10' x 10' Box Culvert Xing	5	\$ 150,000.00	Ditch Xing with Roads	\$ 750,000
Spine Water Reuse	Lake Lining/pumps/tanks	LS	na	50 ac of lake reservoir	\$ 3,000,000
Sewer	L.F.	154,560	\$ 52.00	Project Site	\$ 25,682,259
Parks w/amenities & Landscaping	Acres	121	\$ 100,000.00	Project Site	\$ 12,100,000
Main Entrances	Each	3	\$ 350,000.00	Project Site	\$ 1,050,000
Minor Entrances	Each	21	\$ 75,000.00	Project Site	\$ 1,575,000
Roundabouts	Each	3	\$ 85,000.00		\$ 255,000
Bus Stops	Each	5	\$ 35,000.00	Project Site	\$ 175,000
Mail Box Clusters	Each	8500	\$ 100.00	Project Site	\$ 850,000
Water Impact Fees	AcFt	3125	\$ 2,500.00	Project Site	\$ 7,812,500
Sewer Impact Fees				Project Site	\$ -
Sidewalks	S.F.	755,117	\$ 4.00	Project Site	\$ 3,020,468
Purchase of Real Property	Acres	40	\$ 15,000.00	South Area	\$ 600,000
Masonry Walls	LF	52800	\$ 80.00		\$ 4,224,000
<b>Common Hard Costs</b>					
FTTH, Comm. W/FI, Surveillance		varies	varies	Project Site	\$ 13,779,000
				Sub Total:	\$ 202,622,598
<b>Soft Project Costs</b>					
Engineering/Surveying/Consulting					\$ 16,209,808
Construction Management					\$ 2,532,782
Formation Costs & Consulting					\$ 900,000
Contingency & City Public Improvements (approx. \$4,050,000.00) plus Pre-TIRZ Administrative Costs (up to \$70,000)					\$ 10,131,130
<b>Subtotals</b>					<b>\$ 232,396,316</b>

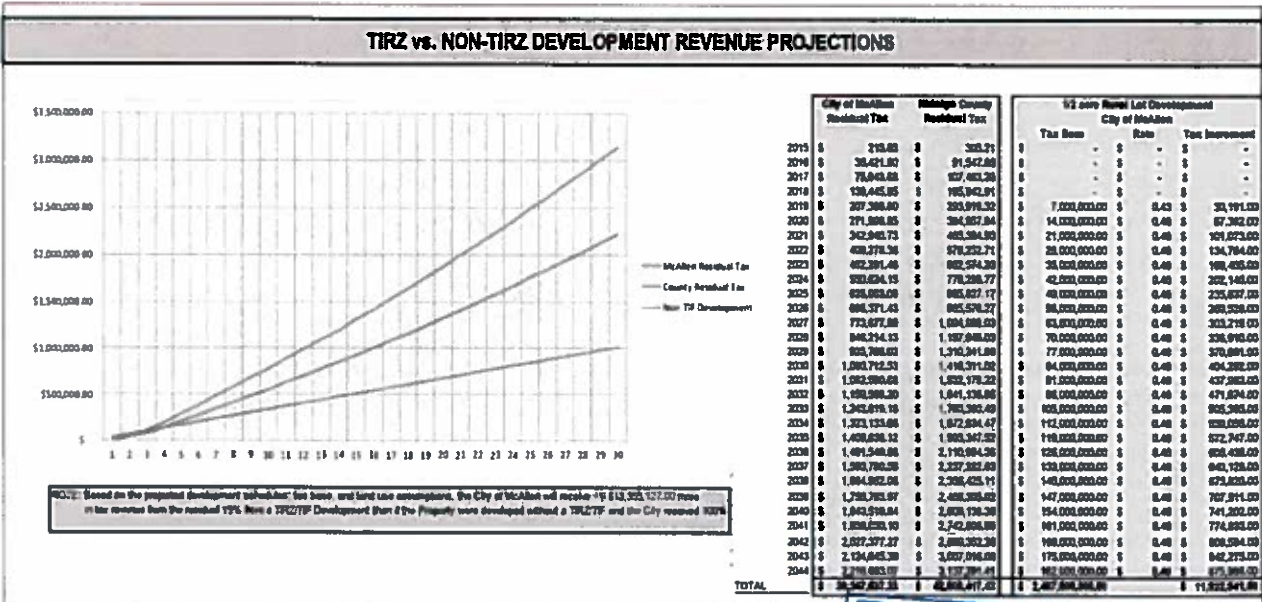
<b>EXPENSE:</b>	
Total Infrastructure	\$ 232,396,316
Interest Expense / Finance Costs (estimated) @ 4.5%	\$ 26,144,685
<b>Total</b>	<b>\$ 268,540,901</b>
Admin. Expenses (City & County)	\$ 400,000
<b>Grand Total</b>	<b>\$ 268,940,901</b>
<b>REVENUE:</b>	
Total TIF Revenue	\$ 264,308,634
Project Financing Surplus (Shortage)	\$ 6,367,733

The above allocation of costs are estimated and may be changed or adjusted by action of the Board of the TIRZ to meet project requirements pursuant to Section 13.3 of the Development Agreement, however the total maximum contributions of the participating taxing entities and term of the Zone may not be increased without approval by the City Commission and County Commissioners Court.

Exhibit 6
A. TIF Revenue Build Out Assumptions

Proposed Tres Lagos Tax Increment Finance Zone TIF Revenue Build Out Assumptions. Table with columns for Tax Year, TIF Assessed Values, City of McAllen Tax, Hidalgo County, and Edinburg ISD. Includes a revenue total summary at the bottom.

B. TIRZ v. Non-TIRZ Revenue Projections



C. TIRZ v. Non-TIRZ Revenue Projections (w/Sales Tax)

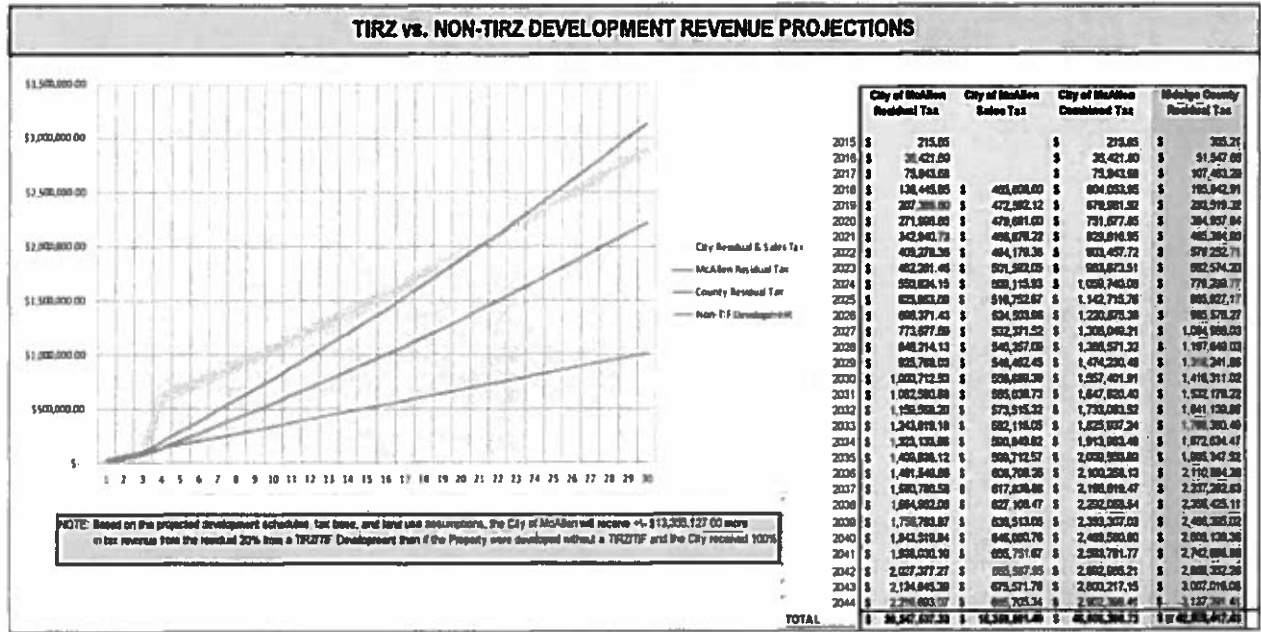


Exhibit 7  
Projected Value of Taxable New Improvements

McAllen - Tax Increment Finance Zone #1										
Projected Value of Taxable New Improvements										
Construction Costs of Public Improvements (figures do not include interest, formation or other allowable project costs)										
Year										Total
2016	\$280,000									\$ 280,000
2016		\$ 41,973,276								\$ 41,973,276
2017			\$ 46,817,161							\$ 46,817,161
2018				\$ 72,467,996						\$ 72,467,996
2019					\$ 79,925,638					\$ 79,925,638
2020						\$ 74,898,030				\$ 74,898,030
2021							\$ 82,344,340			\$ 82,344,340
2022								\$ 76,904,276		\$ 76,904,276
2023									\$ 84,631,468	\$ 84,631,468
2024									\$ 79,228,708	\$ 79,228,708
2025									\$ 87,338,571	\$ 87,338,571
2026									\$ 81,623,596	\$ 81,623,596
2027									\$ 83,620,662	\$ 83,620,662
2028									\$ 84,898,462	\$ 84,898,462
2029									\$ 82,228,720	\$ 82,228,720
2030									\$ 86,882,087	\$ 86,882,087
2031									\$ 84,908,687	\$ 84,908,687
2032									\$ 89,388,662	\$ 89,388,662
2033									\$ 97,678,974	\$ 97,678,974
2034									\$ 91,948,180	\$ 91,948,180
2035									\$ 100,816,381	\$ 100,816,381
2036									\$ 94,727,282	\$ 94,727,282
2037									\$ 103,443,898	\$ 103,443,898
2038									\$ 87,580,415	\$ 87,580,415
2039									\$ 108,458,414	\$ 108,458,414
2040									\$ 100,540,085	\$ 100,540,085
2041									\$ 109,584,400	\$ 109,584,400
2042									\$ 103,578,908	\$ 103,578,908
2043									\$ 112,781,550	\$ 112,781,550
2044									\$ 108,709,581	\$ 108,709,581
	\$ 280,000	\$ 41,973,276	\$ 46,817,161	\$ 72,467,996	\$ 79,925,638	\$ 74,898,030	\$ 82,344,340	\$ 76,904,276	\$ 84,631,468	\$ 2,010,678,808
										\$ 2,888,708,576



Exhibit 8  
Estimated Construction Schedule

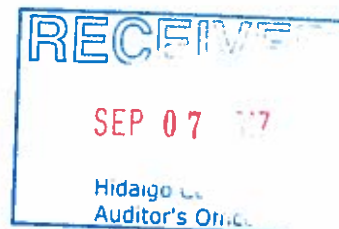
**McAllen - Tax Increment Finance Zone #1**  
**Projected Uses of Tax Increment**  
 Estimated Construction Schedule of Public Improvements (figures do not include interest, formation or other allowable project costs)

Year												Total
2016	22,668,67											\$ 22,669
2016		\$ 3,795,823										\$ 3,795,823
2017			\$ 4,143,442									\$ 4,143,442
2018				\$ 6,662,687								\$ 6,662,687
2019					\$ 7,228,918							\$ 7,228,918
2020						\$ 6,773,361						\$ 6,773,361
2021							\$ 7,437,699					\$ 7,437,699
2022								\$ 6,964,784				\$ 6,964,784
2023									\$ 7,663,687			\$ 7,663,687
2024										\$ 7,164,992		\$ 7,164,992
2025											\$ 7,398,474	\$ 7,398,474
2026											\$ 6,371,189	\$ 7,381,664
2027											\$ 7,062,639	\$ 8,104,727
2028											\$ 6,699,280	\$ 7,604,661
2029											\$ 7,188,067	\$ 8,340,367
2030											\$ 8,663,140	\$ 7,867,121
2031											\$ 7,328,236	\$ 8,682,991
2032											\$ 6,783,146	\$ 8,071,310
2033											\$ 7,467,130	\$ 8,832,806
2034											\$ 6,899,886	\$ 8,316,266
2035											\$ 7,619,782	\$ 9,090,826
2036											\$ 7,037,768	\$ 8,586,694
2037											\$ 7,767,278	\$ 9,364,676
2038											\$ 7,179,216	\$ 8,826,620
2039											\$ 7,906,643	\$ 9,627,681
2040											\$ 7,323,617	\$ 9,092,271
2041											\$ 8,068,944	\$ 9,906,379
2042											\$ 7,470,720	\$ 9,367,886
2043											\$ 8,214,241	\$ 10,197,611
2044											\$ 7,620,882	\$ 9,660,266
		\$ 3,795,823	\$ 4,143,442	\$ 6,662,687	\$ 7,228,918	\$ 6,773,361	\$ 7,437,699	\$ 6,964,784	\$ 7,663,687	\$ 7,164,992	\$ 146,298,236	\$ 232,398,316

The projections and estimates contained in this Schedule are subject to and may be impacted by market & economic conditions both domestic & international. Actual completion & construction of the project may take more or less time than described herein. However it is understood that the Developer will use its best efforts to complete the project as quickly as economically feasible. In the event the Developer spends more for infrastructure in a year than required, the amount spent in excess of the required amount shall be credited forward to the next year and applied as if the funds were spent in that year for the purpose of determining

Exhibit 9  
Allocated Land Uses and Values Table

Tres Lagos Allocated Land Uses and Values			ALL TAXABLE VALUES ONLY						
Designation	Description	Category	Square Feet	Acreage	AC by Cat.	Avg Unit Value	Type Unit	Value Per Acre	Total Value
SFBA	Single Family 2.5 du/acre	Single Family		239		\$390,000.00	House	\$975,000.00	\$233,025,000.00
SF-B	Single Family 3.5 du/acre	Single Family		513		\$290,000.00	House	\$1,015,000.00	\$520,695,000.00
SFBC	Single Family 4.5 du/acre	Single Family		687	1344	\$190,000.00	House	\$665,000.00	\$463,505,000.00
NRE	School Site	Commercial/Other	3,475,137	80		\$0.00	Acre	\$0.00	\$0.00
NREG	Church, Mosque, Synagogue	Commercial/Other	3,920,400	90		\$0.00	Acre	\$0.00	\$0.00
NRED	Technology Park/Campus	Commercial/Other	4,573,800	105	379.8	\$150.00	Usable S.F.	\$1,633,500.00	\$171,517,500.00
MFB	Multifamily 80 du/acre	Multifamily	2,090,880	48		\$100,000.00	Unit	\$1,000,000.00	\$48,000,000.00
MFC	Multifamily 85 du/acre	Multifamily	3,049,200	70		\$79,000.00	Unit	\$1,185,000.00	\$82,950,000.00
MFA	Townhomes 8 du/acre	Multifamily	3,267,000	75	193	\$150,000.00	Unit	\$1,200,000.00	\$90,000,000.00
NRA	Retail & Commercial	Retail	8,381,885	192	192.4	\$125.00	Usable S.F.	\$1,361,250.00	\$261,904,500.00
Roadway	Perimeter ROW	Public Use/ROW	1,206,538	28			Acre	\$0.00	\$0.00
Roadway	Interior ROW	Public Use/ROW	5,424,061	125	152.2		Acre	\$0.00	\$0.00
OSZC	Drainage way & Park	Public Use/Amenities	246,660	6			Acre	\$0.00	\$0.00
OSZD	Parks in Street Islands	Public Use/Amenities	479,889	11			Acre	\$0.00	\$0.00
OSZE	Park with Main Trail	Public Use/Amenities	4,770,220	110	126.2		Acre	\$0.00	\$0.00
Sales Center	Sales Center	Office	174,240	4		\$250,000.00	Acre	\$250,000.00	\$1,000,000.00
NREB	Office Use	Office	4,212,252	57	100.7	\$200.00	Usable S.F.	\$2,178,000.00	\$219,324,600.00
OSZA	Major Drainage way	Public Use/Flood Plain	3,073,394	71	70.6	\$0.00	Acre	\$0.00	\$0.00
<b>Totals</b>			<b>111,463,996</b>	<b>2,559</b>	<b>2558.9</b>				<b>\$2,091,921,600.00</b>



**Exhibit B**

**City of McAllen Ordinance No. 2014-75 passed and approved  
by the City Commission on December 22, 2014**

**ORDINANCE NO. 2014-75**

**DESIGNATING THE TRES LAGOS DEVELOPMENT PROJECT BEING A +/- 2571 ACRE AREA LOCATED IN THE NORTHERN MOST AREA OF THE CITY AS A TAX INCREMENT REINVESTMENT ZONE; DESCRIBING THE BOUNDARIES OF THE ZONE; CREATING A BOARD OF DIRECTORS FOR THE ZONE; PROVIDING FOR AN EFFECTIVE DATE AND A TERMINATION DATE FOR THE ZONE; NAMING THE ZONE "REINVESTMENT ZONE NUMBER ONE, CITY OF MCALLEN, TEXAS"; ESTABLISHING A TAX INCREMENT FUND; AND CONTAINING OTHER PROVISIONS RELATED THERETO.**

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

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

WHEREAS, the proposed public improvements for the Zone are those set forth in the preliminary project plan for the Zone; and

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

WHEREAS, on October 27, 2014, the Commission adopted Resolution No. 2014-51, expressing its intent to create the proposed Zone in order to encourage the growth and development of new housing opportunities within the City limits; and

WHEREAS, on November 18, 2014, the Commissioners Court of Hidalgo County (the "County") passed and approved a Resolution of Intent to Participate to Participate in Proposed Reinvestment Zone Number One, City of McAllen, Texas, by pledging 77% of its maintenance and operation portion of the County's assessed and collected taxes during the term of the Zone; and

WHEREAS, pursuant to §311.003(b) of the Act, the City has distributed a copy of the preliminary finance plan for the Zone to the governing body of each taxing unit that levies taxes on real property in the proposed Zone; and



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

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MCALLEN:**

**SECTION 1. FINDINGS.** The City hereby finds and declares that: (a) improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City; and (b) the Zone area meets the requirements of Section 311.005(a)(4) of the Act, being that the Zone area:

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

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

(1) the proposed Zone is a contiguous geographical area located wholly within the jurisdictional limits of the City of McAllen;

(2) the total appraised value of the taxable real property in the proposed Zone or in existing reinvestment zones, if any, does not exceed fifteen (15%) of the total appraised value of taxable real property in the City;

(3) the proposed Zone does not contain more than fifteen (15%) of the appraised value of real property taxable by Hidalgo County; and

(4) development or redevelopment within the boundaries of the proposed Zone will not occur solely through private investment in the reasonably foreseeable future without creation of the Zone.

**SECTION 2. DESIGNATING THE AREA AS A REINVESTMENT ZONE.** The area located in the northwestern most part of the City's jurisdictional limits and being commonly referred to as the "Tres Lagos Development Project", with the boundaries as more specifically described in Exhibits A and B attached hereto, and officially assigned the name as designated in Section 6 below (which reinvestment Zone so described, named and designated is hereinafter referred to as the "Zone"), is hereby designated as a Tax Increment Reinvestment Zone pursuant to the Act, specifically Chapter 311.005(a)(4) thereof.

**SECTION 3. DESCRIPTION OF THE BOUNDARIES OF THE REINVESTMENT ZONE.** Attached hereto as Exhibits "A" & "B" which are incorporated herein as if a part hereof, is a field notes description and a map depicting the

boundaries of the Zone, which consists of approximately 2571+/- acres of real property within the jurisdictional limits of the City.

**SECTION 4. CREATION AND COMPOSITION OF A BOARD OF DIRECTORS FOR THE ZONE AND AUTHORITY OF BOARD.** There is hereby created a Board of Directors (the "Board") for the Zone, with all the rights, powers and duties as provided by the Act. Pursuant to §311.009(b) and §311.009(e)(2) the Board shall consist of nine (9) members and have the following composition:

- a) Six (6) members appointed by the City of McAllen, Texas by Ordinance of the City Commission and meeting the requirements of §311.009(e)(2) of the Texas Tax Code, which said members for the purpose of establishing the initial Board shall be:
  1. Mike Rhodes (hereby designated as Presiding Officer)
  2. Megan Clay
  3. Jaime Gonzalez
  4. Lori Rhodes
  5. Nick Rhodes
  6. James Darling; and
- b) One member appointed by Hidalgo County, Texas provided if the County waives the appointment of a board member the position shall be filled by an appointment made by the Commission; and
- c) The member of the State Senate, or their designee, pursuant to §311.009(b); and
- d) The member of the State House of Representatives, or their designee, pursuant to §311.009(b).

The term of each initial director shall be determined by lot and then recorded in the minutes of the organizational meeting of the Board. Four (4) of the initial directors shall serve an initial term of three (3) years, and three (3) shall serve an initial term of two (2) years. The term of each subsequent director shall be two (2) years. Vacancies shall be filled for the remainder of the unexpired term, by appointment made by the governing body that appointed the director who served in the vacated position.

The Commission shall annually appoint a member of the Board to serve as chairman of the Board for a one year term beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>. The Board may elect a vice-chairman to serve in the absence of the chairman, and other officers as it deems appropriate.

The Board may hold its meetings at any place within the City as the Board may from time to time determine; provided that, in the absence of any such determination by the Board, the meetings shall be held at the City Commission Chambers of the City. The Board shall conduct its meetings in accordance with the requirements of the Act and the Texas Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*, as amended. Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by resolution of the Board. Notice of regular meetings need not be given to each of the Directors but public notice of each meeting shall be given in the manner prescribed by law. Special meetings of the Board shall be held whenever called by the chairman, the



vice-chairman in the absence of the chairman, or upon advice of or request by the Mayor. A majority of the directors fixed by this Ordinance shall constitute a quorum for Board meetings. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law.

The Board shall make recommendations to the Commission concerning the administration of the Zone. The Board shall prepare and adopt a project plan and financing plan for the Zone and must submit such plans to the Commission for its final approval. The Board shall possess all powers necessary to prepare, monitor, and administer such project plan and financing plan for the Zone as set forth in the project plan, financing plan and Development Agreement (as defined below) (hereafter collectively the "Governing Documents"). The Board shall have the power to enter into agreements for the acquisition of professional services relating to accounting and auditing functions required for administration the Zone. The Board shall have the power to review reimbursement requests submitted by the Developer and the City and shall approve payment of said reimbursements provided all of the prerequisites for approving the reimbursement as set forth in the Governing Documents have been complied with. All actions of the Board in administering the Zone must be carried out pursuant to the policies and procedures established by the Board, and must be in compliance with the Governing Documents and the Act. The Board shall submit an annual report on the status of the Zone to the Commission no later than 30 days prior to the end of the City's fiscal year. The Board may not undertake any of the projects set forth in the project plan or financing plan for the Zone in place of the Developer or the City without subsequent written authorization of the Commission to do so. Any powers not herein specifically delegated to the Board are specifically reserved to the Commission and the Board shall not have any rights of the City with respect to the Zone unless specifically delegated herein or by the Commission pursuant to a subsequent ordinance. Without limiting the foregoing, the Board shall NOT have any of the City's powers under *Chapter 211 of the Texas Local Government Code* nor shall the Board have any other powers which City is entitled to delegate to the Board under Sections 311.010 (b) (provided the Board may enter into the Development Agreement and contracts for professional accounting and auditing services), (c), (d), (f), or (h) of the Act.

**SECTION 5. EFFECTIVE DATE AND TERMINATION DATE OF THE ZONE.**

The Zone shall take effect immediately upon passage of this ordinance (the "Effective Date"). The term of the Zone shall be for a period of 30 years, beginning on the later of the Effective Date or the date of approval of the Development Agreement (so called herein) between the City, the Zone and Rhodes Enterprises, Inc. ("Developer") (the "Term"), unless otherwise terminated earlier as a result of (i) payment in full of all project costs, tax increment bonds or notes, if any, including interest on said bonds or notes, (ii) the Zone being deannexed from the City pursuant to the terms of the Ordinance annexing the property within the Zone or the terms of the Chapter 212 Agreement entered into between the City, M.L. Rhodes Ltd., and Rhodes Enterprises, Inc., it being acknowledged that the Zone shall automatically terminate upon the property within the Zone being deannexed from the City, (iii) any termination of the Development

Agreement as a result of the default of the Developer thereunder according to the terms of the Development Agreement, it being acknowledged that any such termination of the Development Agreement will result in the termination of the Zone, or (iv) as otherwise permitted by law.

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

**SECTION 7. TAX INCREMENT BASE.** The Tax Increment Base for the Zone is the total appraised value of all real property within the zone and taxable by the City and located in Zone, determined as of January 1, 2014, the year in which the Zone was designated as a Tax Increment Reinvestment Zone (the "Tax Increment Base").

**SECTION 8. LIMITATION OF TAX INCREMENT AND ESTABLISHMENT OF A TAX INCREMENT FUND.** There is hereby created and established in the depository bank of the City, a fund to be called the "REINVESTMENT ZONE NUMBER ONE, CITY OF MCALLEN, TEXAS TAX INCREMENT FUND" (herein called the "Tax Increment Fund").

The Tax Increment Fund may be divided into additional accounts and sub-accounts authorized by resolution or Ordinance of the Commission.

The Tax Increment Fund shall consist of, and there shall be deposited therein, (i) the percentage of the tax increment, as defined by Section 311.012(a) of the *Texas Tax Code*, that each taxing unit which levies real property taxes in the Zone, other than the City, has elected to dedicate to the Tax Increment Fund under an agreement with the City authorized by Section 311.013(f) of the Act, plus (ii) an amount calculated as a millage rate per hundred dollars of Captured Appraised Value (as defined below) of real property in the Zone that equals eighty percent (80%) of the "City's M&O Tax Rate" as same is actually levied, collected and allocated to the City's general fund. As used herein, "City's M&O Tax Rate" means that portion of the City's ad valorem tax rate used by the City for maintenance, support, current expenses and operations, and general municipal purposes and excluding the portion of the City's property tax rate that is collected and apportioned for payment of outstanding general obligation bonded indebtedness commonly referred to as the "interest and sinking fund rate". As used above, the phrase "Captured Appraised Value" means the captured appraised value of the property in the Zone as defined by Section 311.012(b), Texas Tax Code (i.e., the total appraised value of all real property taxable by the City and located in the Zone in any given year less the total appraised value of that property in 2014, the base year of the Zone. The amount of the tax increment to be contributed by the City to the Zone shall be deemed limited as set forth above for purposes of Section 311.013(l) of the Act.

Any interest received on monies held within the Tax Increment Fund as a result of depository interest or investment of said funds shall be added to the balance of the Tax



Increment Fund and such interest shall be credited towards the maximum amount to be contributed by the City and the County to the Tax Increment Fund.

The Tax Increment Fund shall be maintained in an account at a depository bank of the City and shall be secured in the manner prescribed by law for Texas cities. In addition, all revenues from (i) the sale of any obligations hereafter issued by the City and secured in whole or in part from the tax increments; (ii) revenues from the sale of any property acquired as part of a tax increment financing plan adopted by the Board; and (iii) other revenues dedicated to and used in the Zone shall be deposited into the Tax Increment Fund. Prior to the termination of the Zone, money shall be disbursed from the Tax Increment Fund only to pay project costs, as defined by the Texas Tax Code and pursuant to the terms of the Development Agreement, for the Zone, or to satisfy the claims of holders of tax increments bonds or notes issued for the Zone.

Any expenditure to be made from the Tax Increment Fund or any contract related thereto, must be approved by the Commission prior to such expenditure being made or contract being executed. Approval of the project plan and financing plan shall constitute approval by the Commission for the payments for the various Zone projects identified therein in accordance with such plans, provided such payment is approved by the Board according to the policies and procedures set forth in the project plan, financing plan and Development Agreement.

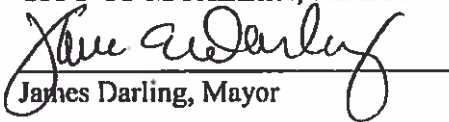
**SECTION 9. INCORPORATION OF RECITALS.** The Commission hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Commission hereby incorporates such recitals as a part of this Ordinance.

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

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

**PASSED AND APPROVED AT MCALLEN, TEXAS, THIS 22<sup>nd</sup> DAY OF DECEMBER 2014.**

CITY OF MCALLEN, TEXAS

  
James Darling, Mayor

ATTEST:

*Annette Villarreal*

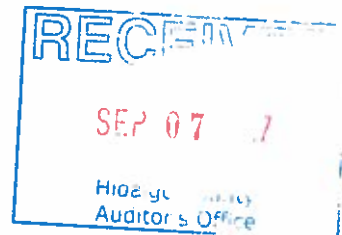
Annette Villarreal, TRMC/CMC, CPM  
City Secretary



APPROVED AS TO FORM:

*Kevin D. Pagan*

Kevin D. Pagan City Attorney





**Exhibit B: Metes and Bounds Description**

**Tract 1:** A tract of land containing 2561.402 acres situated in the County of Hidalgo, Texas, being 2571.402 acres comprised of 1.) 18.865 acres being a part or portion of LOT 54-7, OUT OF THE AMENDED MAP OF LOTS 53-6, 54-6, 55-6, 56-6, 57-6, 58-6, 59-6, 53-7, 54-7, 55-7, 56-7, 57-7, 58-7, 59-7, 53-8 & 53-9, WEST ADDITION TO SHARYLAND SUBDIVISION, according to the plat thereof recorded in Volume 6, Page 42, Hidalgo County Map Records, 2.) ALL OF SECTION 223, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 8, Page 54, Hidalgo County Map Records; 3.) ALL OF SECTION 224, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 411, Page 149-150, Hidalgo County Deed Records; 4.) a part or portion of SECTION 227, TEXAS-MEXICAN RAILWAY CO. SURVEY; 5.) a part or portion of SECTION 230, TEXAS-MEXICAN RAILWAY CO. SURVEY; 6.) a part or portion of SECTION 232, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the patent issued by the State of Texas, to W. S. Daugherty recorded in Volume 4, Page 142-143, Hidalgo County Deed Records, SAVE AND EXCEPT 10.00 acres conveyed to Hidalgo County Irrigation District No. 7 by virtue of a Warranty Deed recorded in Volume 622, Page 638, Hidalgo County Deed Records, said 2571.402 acres also being more particularly described as follows:

BEGINNING at the Northeast corner of Section 232 Texas –Mexican Railway Co. Survey located on the city limits of the City of McAllen for the Northeast corner of this tract;

1. THENCE, in a Southwesterly direction along the East Lot line of Lot 232 and the city limits of the City of McAllen to the Southeast corner of said lot for the Northernmost Southeast corner of this tract;
  
2. THENCE, N 80° 23' 30" W along the South line of said Section 232, the North line of Lots 35-68, Section 229, Tex-Mex as per plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, and within Mile 9 Road right-of-way, a distance of 5175.14 feet to an iron pipe found for the Southwest corner of said Section 232, and the Northeast corner of Section 230 for an inside corner of this tract;
  
3. THENCE, S 09° 05' 05" W along the East line of said Section 230, and the West line of Section 229, as per said plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, at a distance of 2519.05 feet pass an iron pipe found in line, and now continuing along the West line of Section 229, Tex-Mex, as per plat thereof recorded in Volume 12, Page 22, Hidalgo County Map Records, and continuing a total distance of 3295.30 to an outside corner of this tract;
  
4. THENCE, N 80° 48' 32" W a distance of 251.52 feet (250.00 feet) to an iron rod set for an inside corner of this tract;



5. THENCE, S 08° 44' 55" W, at a distance of 20.00 pass an iron pipe found in line, and continuing a total distance of 250.00 feet to an iron pipe found for an outside corner of this tract;
6. THENCE, N 80° 55' 38" W a distance of 2503.36 feet (2503.2 feet) to an iron pipe found for an inside corner of this tract;
7. THENCE, S 09° 02' 13" W at a distance of 1611.44 feet pass the North right-of-way line of Mile 8 Road, and continuing a total distance of 1631.44 feet to the Southernmost Southeast corner of this tract;
8. THENCE, N 80° 48' 07" W along the South line of said Section 230, and within said Mile 8 Road right-of-way, a distance of 627.20 feet to an iron rod found for the centerline of Glasscock Road, and for an angle point of this tract;
9. THENCE, N 80° 47' 57" W along the South line of said Section 230, said Section 223, and within said Mile 8 Road right-of-way, a distance of 2644.96 feet to a concrete monument found for the centerline of Stewart Road, and for an angle point of this tract;
10. THENCE, N 81° 10' 51" W along the South line of said Section 223, and within said Mile 8 Road right-of-way, at a distance of 2658.21 feet pass an iron rod found in line and for the center line of Bryan Road, and continuing a total distance of 4164.66 feet to the Southwest corner of said Section 223, and for the Southernmost Southwest corner of this tract;
11. THENCE, N 08° 59' 01" E along the West line of said Section 223, a distance of 1554.21 feet to an iron rod set for an inside corner of this tract;
12. THENCE, N 81° 02' 31" W along the South line of said Section 223, and said Section 224, at a distance of 1161.82 feet pass an iron rod found in line, at a distance of 2462.04 feet pass an iron rod found in line, and continuing a total distance of 2915.12 feet to an iron pipe found for the Southwest corner of said Section 224 and to a point on the East line of said Lot 54-7, for an inside corner of this tract;
13. THENCE, S 08° 59' 01" W along the East line of said Lot 54-7, a distance of 110.00 feet to the Southeast corner of said Lot 54-7, for an outside corner of this tract;
14. THENCE, N 81° 17' 16" W along the South line of said Lot 54-7, at a distance of 761.50 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 791.50 feet to the Southwest corner of said Lot 54-7, for the Northernmost Southwest corner of this tract;

15. THENCE, N 08° 42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 280.00 feet to an outside corner of this tract;

16. THENCE, S 81° 17' 16" E at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing along the South line of The Frass Subdivision (Vol.25, Pg.134-A H.C.M.R.), for a total distance of 205.00 feet to a No.4 rebar set at the Southeast corner of said The Frass Subdivision, for an inside corner of this tract;

17. THENCE, N 08° 42' 46" E along the East line of said The Frass Subdivision, a distance of 125.00 feet to a No.4 rebar set at the Northeast corner of said The Frass Subdivision, for an inside corner of this tract;

18. THENCE, N 81° 17'16" W along the North line of said The Frass Subdivision, at a distance of 175.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 205.00 feet to an outside corner of this tract;

19. THENCE, N 08° 42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 692.13 feet to the Southernmost Northwest corner of this tract;

20. THENCE, S 81° 17' 16" E along the South line of a certain 3.82-acre tract, at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 746.69 feet to a No.4 rebar set for an outside corner of this tract;

21. THENCE, S 08° 59' 01" W along the West line of a tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No.7 (now United Irrigation District) by virtue of a Deed recorded in Vol.519, Pg.65, Hidalgo County Deed Records, a distance of 477.14 feet to a No.4 rebar set for an inside corner of this tract;

22. THENCE, S 81° 17' 16" E along the South line of said tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No.7, a distance of 50.00 feet to a No.4 rebar set for an inside corner of this tract;

23. THENCE, N 08° 59' 01" E along the West line of said Section 224, a distance of 2284.35 feet to an iron pipe found for the Northwest corner of said Section 224, and for an outside corner of this tract;



24. THENCE, S 81° 02' 31" E along the North line of said Section 224, a distance of 2554.12 feet to an iron rod set for the Northeast corner of said Section 224, and for an inside corner of this tract;

25. THENCE, N 08° 59' 01" E along the West line of said Section 223, a distance of 854.95 feet to an iron pipe found for the Northwest corner of said Section 223, and for an outside corner of this tract;

26. THENCE, S 80° 46' 58" E along the North line of said Section 223, a distance of 3177.65 feet to an iron pipe found for an angle point of this tract;

27. THENCE, S 80° 45' 29" E along the North line of said Section 223, a distance of 2102.46 feet to an iron pipe found for the Northeast corner of said Section 223, and for an inside corner of this tract;

28. THENCE, N 09° 03' 26" E along the West line of said Section 227, at a distance of 3795.04 feet pass an iron pipe found in line, and continuing a distance of 5216.19 feet to an iron pipe found for the South right-of-way line of Monte Cristo Road (F.M. 1925) and a distance of 5,256.19 feet to the Northwest corner of Section 227 and the Northernmost Northwest corner of this tract;

29. THENCE, in a Southeasterly direction along the North lot line of Section 227 and 232 to the Northeast corner of Section 232 to the POINT OF BEGINNING, and containing 2571.402 acres, SAVE AND EXCEPT the above mentioned 10.00 acres conveyed to Hidalgo County Irrigation District No. 7, leaving 2,561.402 acres of land, more or less, as shown in Exhibit A.

**Exhibit C**

**Development Agreement, as amended**



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

This Development Agreement ("Agreement"), pursuant to City Commission authorization, effective as of March 9<sup>th</sup>, 2015, is entered into 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");

**WITNESSETH:**

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

**WHEREAS, M.L. RHODES, LTD.**, a Texas limited partnership ("Owner") is the owner of certain real property consisting of approximately 2,571 acres, more or less, in Hidalgo County, Texas (the "County"), as more particularly described on Exhibit A (the "Property"). The Property is currently located within the CITY's extraterritorial jurisdiction, but will be annexed into the corporate limits (which annexation shall not affect the rights and obligations of the Parties under this Agreement);

**WHEREAS, By Ordinance Number 2014-75, dated December 22, 2014** pursuant to Chapter 311 of the Texas Tax Code (as amended), CITY created the ZONE and established a Board of Directors for the ZONE.

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

**WHEREAS, the boundaries of the Zone** are coterminous with the boundaries of the Property;

**WHEREAS, pursuant to the Act, the CITY and the County** entered into that certain *Interlocal Agreement*, a copy of which is attached as Exhibit "C" (the "Interlocal Agreement"), which, among other things, obligates the County to pay to the CITY a portion of the County's tax increment for the Property and obligates the CITY to deposit such portion of the County's tax increment in the Tax Increment Fund;

**WHEREAS, Chapter 311** authorizes the expenditure of funds derived from a Tax Increment Reinvestment Zone for the payment of expenditures made or estimated to be made, and the payment of monetary obligations incurred or estimated to be incurred, by a City in establishing a Tax Increment Reinvestment Zone, the payment of costs of public works or public improvements in the zone, plus other costs incidental to those expenditures and obligations, consistent with the

project plan and finance plan of the tax increment reinvestment zone, and the pledging and use of the Tax Increment Funds for uses that benefit the Zone under Section 311.010 of the Texas Tax Code, which expenditures, pledges, and monetary obligations constitute project costs, as defined in the Act; and

WHEREAS, on March 3<sup>rd</sup>, 2015 by a Board Resolution, the Board of Directors for the ZONE adopted and approved a Project Plan and a Reinvestment Zone Finance Plan pursuant to the Act ("Project and Finance Plan") providing for development of the Property and recommending to the CITY that they give approval by Ordinance of the Project and Finance Plan; and

WHEREAS, CITY approved the Project and Finance Plan for the ZONE a copy of which is attached as Exhibit "B" and this Agreement by action of the City Commission on March 9, 2015; and

WHEREAS, Pursuant to the Texas Tax Code, Chapter 311 (as amended) including but not limited to Section 311.010, et. sec., the Board of Directors for the ZONE has authority to enter into agreements that it considers necessary or convenient to implement the Project and Finance Plan and to achieve the purposes of developing the Zone Property and to dedicate, pledge, or otherwise provide for the use of the revenue from the TIRZ to pay project costs that benefit the Zone; and

WHEREAS, pursuant to said authority above, the Board of Directors for ZONE desires to enter into a binding agreement with CITY and DEVELOPER for DEVELOPER to develop the Zone Property as specified in the Project and Finance Plan and to pledge certain revenues of the Zone for reimbursement to the Developer of such costs to facilitate the funding of such improvements and as specified in this Agreement; and

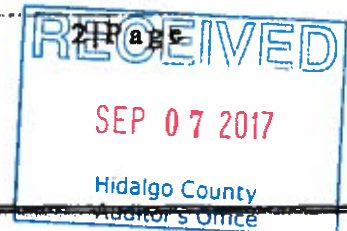
WHEREAS, the Parties intend for the rights, duties, and obligations of the Parties under the Zone Ordinance, Interlocal Agreement, and the Project and Finance Plan to be incorporated as part of this Agreement;

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

## I. DEFINITIONS

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

1.2 "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 Four Hundred thousand dollars (\$400,000), representing \$300,000.00 to the CITY and \$100,000.00 to the COUNTY.

1.3 "Agreement" shall mean this document by and between CITY, ZONE and DEVELOPER, which agreement may be amended from time to time by written agreement signed by all Parties, pursuant to the provisions contained herein.

1.4 "Available Tax Increment" shall mean 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 80% 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) an amount (provided by the County pursuant to the Interlocal Agreement) calculated as a millage rate per \$100 of Captured Appraised Value of real property in the Zone that equals 77% 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.

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

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

1.7 "CITY M&O Tax Rate" shall mean 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 as of December 31, 2014 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.

1.8 "City Project Costs" shall mean the Project Costs for the City Public Improvements.

1.9 "City Public Improvements" shall mean the offsite sewer, recycled water, fiber optic infrastructure and fire station and apparatus to be built by CITY to bring such services to the Property as further defined in the Project and Finance Plan.

1.10 "Completion" or "completed" as to any Public Improvements shall mean completion of construction of same and the acceptance thereof by CITY as evidenced by the CITY issuing a Letter of Acceptance for same.

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

1.12 "County" shall mean Hidalgo County, a political subdivision in the State of Texas.

1.13 "Fiscal Year of Zone" shall be congruent with the fiscal year of the CITY, with the exception of the initial year and the ending year which shall be partial Fiscal Years.

1.14 "Goods and Services" shall mean the services and goods (infrastructure, etc.) that are performed and/or installed by the Developer pursuant to this Agreement. The Goods and Services provided hereunder are "goods and services" described in the meaning prescribed in Section of 271.151 of the Texas Local Government Code, and this Agreement shall be subject to Chapter 271 of said Code for the purpose of interpretation and enforcement between the Parties.

1.15 "Participating Taxing Entity" or "Participating Taxing Entities" means, singularly, a taxing unit participating in the ZONE, and collectively, two or more taxing units participating in the ZONE, and may include CITY and County.

1.16 "Parties" shall mean collectively, the DEVELOPER, Board of Directors for ZONE and CITY.

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

1.18 "PID" shall mean the Public Improvement District for the Project created by the CITY on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 establishing the "Tres Lagos Public Improvement District" acting by and through its Board of Directors created pursuant to the Texas Local Government Code Chapter 372, Subchapter A.

1.19 "Pre-TIRZ Administrative Costs" shall have the meaning given in the Project and Finance Plan.

1.20 "Project" shall have the meaning given in the Project and Finance Plan.

1.21 "Project and Finance Plan" shall mean the final Project Plan and Financing 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 "B".

1.22 "Project Costs" shall mean the costs of the Public Infrastructure Improvements as described in the Project and Finance Plan. The Project Costs in the aggregate for the life of ZONE are estimated to be Two Hundred and Thirty-Two Million Three Hundred and Ninety-Six Thousand Three Hundred and Fifteen dollars and No/100 (\$232,396,315.00), plus an estimated Twenty Six Million One Hundred and Forty-Five Thousand Five Hundred and Eighty-Five dollars and No/100 (\$26,144,585,00) in applicable qualifying interest costs for a total of Two Hundred and Fifty-Eight Million Five Hundred and Forty Thousand Nine Hundred and One Dollars and No/100 (\$258,540,901.00) as more completely set forth in Exhibit "B".

1.23 "Public Entity" shall mean the governmental entity to which the DEVELOPER is required



to dedicate and convey Public Infrastructure Improvements under this Agreement, and which will be responsible for maintenance of the infrastructure after dedication. In most cases the Public Entity will be CITY, but in other cases such as with major drainage improvements or technology improvements (fiber optic conduits, surveillance cameras, smart poles, etc.) it will be the County, PID, etc.

1.24 "Public Infrastructure Improvements" shall mean those certain public improvements to be constructed as part of the Project and described in the Project and Finance Plan as being public improvements the cost of which will be reimbursed out of either (i) the Available Tax Increment or (ii) Tax Increment Bonds which will be repaid out of the Available Tax Increment.

1.25 "Project Master Development Plan" or "Project MDP" shall mean the master development plan attached as Exhibit "A" as may be amended by the Board of Directors for the ZONE from time to time.

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

1.27 "TIF Funds" shall mean all funds which are subject to this Agreement, including the Available Tax Increments collected by the CITY and any other participating taxing authority.

1.28 "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.

1.29 "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, 2014 the year in which the ZONE was designated.

1.30 "Tax Increment Bonds" shall mean bonds, notes, or other obligations issued pursuant to Chapter 311 of the Texas Tax Code for the financing of Project Costs.

1.31 "Tax Increment Fund" means the tax increment fund created by CITY for the deposit of Available Tax Increments for ZONE entitled "Reinvestment Zone Number One, 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.

1.32 "Term" shall mean a period of 30 years, beginning on the later of the creation of the ZONE or the approval of this Agreement, and ending on the 30<sup>th</sup> anniversary of said date.

1.33 "ZONE" means Tax Increment Reinvestment Zone Number One, City of McAllen, Texas, created by the CITY containing the Property identified in Exhibit "A" on December 22, 2014, by Ordinance No. 2014-75, and "ZONE" as used in the active tense, shall mean the ZONE acting by and through the Board of Directors for the ZONE.

1.34 "Zone Property" shall mean the Property.

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

## II. REPRESENTATIONS

2.1 DEVELOPER represents that it understands that any expense incurred by made by DEVELOPER in anticipation of reimbursement from Tax Increments shall not be, nor construed to be, financial obligations of CITY or of other taxing entities, but only of Zone, to the extent they are approved by the Zone for pledge and contribution or reimbursement by the ZONE. DEVELOPER shall bear all risks associated with reimbursement from incorrect estimates of tax increment, changes in tax rates or tax collections, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in development code requirements for which the Project does not enjoy statutory or constitutional vested rights, unanticipated effects covered under legal doctrine of *force majeure*, and/or other unanticipated factors. This Section shall not prevent the extension of time for a Party to perform an obligation due to *force majeure* as described in Section 4.8 of this Agreement.

## III. THE PROJECT

3.1 Incorporation by Reference. The rights, duties, and obligations of the Parties under the Zone Ordinance, Interlocal Agreement, and Project and Finance Plan are incorporated as rights, duties, and obligations of the Parties under this Agreement as if fully set forth in this Agreement.

3.2 Pre-TIRZ Administrative Costs. The CITY has paid or incurred the Pre-TIRZ Administrative Costs as described in the Project and Finance Plan. The CITY shall submit to the ZONE (with a copy to DEVELOPER) evidence (in reasonable detail) of the actual Pre-TIRZ Administrative Cost paid or incurred by the CITY. If the ZONE verifies that the CITY paid or incurred the Pre-TIRZ Administrative Costs, then the CITY shall be reimbursed for such verified, actual costs from the Tax Increment Fund as provided in Section 3.7.2, which in no event shall exceed \$70,000.00.

3.3 Administrative Costs. The CITY will pay or incur on an annual basis Administrative Costs for the administration of the Zone as described in the Project and Finance Plan, with the CITY and the County each receiving 1/30 of their pro-rata amount per year, as funds are available in the Tax Increment Fund. The CITY shall receive priority reimbursement of the Pre-TIRZ Administration Costs incurred by it.

3.4 City Project Costs. Upon construction of the City Public Improvements, CITY will submit to the ZONE evidence in reasonable detail, of the actual City Project Costs paid or incurred by CITY in connection therewith. Upon doing so, the CITY shall be entitled to submit a request for reimbursement to the ZONE which meets the necessary requirements of this Agreement, and provided said requirements are met, the CITY shall be entitled to reimbursement for the City Project Costs from the Tax Increment Fund according to the priority of payment set forth in Section



3.7.2, up to but not exceeding the amount for each such sub-category of City Project Costs identified in the Project and Finance Plan (+/- \$4,050,000.00), subject to any allowable increases or decreases thereto as set forth in this Agreement.

### 3.5 Project Costs.

3.5.1 DEVELOPER will pay or incur Project Costs for Public Infrastructure Improvements (but not City Project Costs) constructed in phases as determined by DEVELOPER and in accordance with all applicable ordinances, regulations and procedures of the CITY, as amended. The Public Infrastructure Improvements are described in detail in the Project and Finance Plan. The Project Costs to be reimbursed from the Tax Increment Fund are described in the Project and Finance Plan, as well.

3.5.2 Following the completion of Public Infrastructure Improvements and the acceptance thereof by the CITY (as evidenced by a "Letter of Acceptance" or other document pursuant to the City's development regulations), DEVELOPER shall convey the improvements to the appropriate Public Entity by plat dedication or, in the case of off-site improvements, by separate instrument if necessary. DEVELOPER, at no cost to the respective Public Entity, shall provide, dedicate, and grant to the respective Public Entity all necessary easements and rights-of-way for the Public Infrastructure Improvements within the Property. Conveyance to the Public Entity shall include an assignment of all contractors' warranties, if any. Prior to the acceptance of such conveyances by the Public Entity, DEVELOPER shall provide the CITY with releases from all prime contractors, major subcontractors, and major suppliers who have provided labor and materials for the Public Improvements showing that they have been paid in full for such labor and materials.

3.5.3 Upon receipt of a Letter of Acceptance for any of the Public Infrastructure Improvements (other than the City Public Improvements), DEVELOPER shall submit to the ZONE (with a copy to the CITY) evidence (in reasonable detail) of the actual Project Costs of the Public Infrastructure Improvement in question paid or incurred by DEVELOPER. If the ZONE verifies through ZONE action that DEVELOPER paid or incurred the Project Costs, and certifies such fact to the CITY, then DEVELOPER shall be reimbursed for such actual Project Costs, plus interest, as allowed in the Project and Finance Plan and subject to the priority of payment set forth in Section 3.7.2 of this Agreement, from the Tax Increment Fund.

3.5.4 The above subsections, 3.5.1, 3.5.2 and 3.5.3, shall not apply to non-infrastructure Project Costs, Common Hard Costs or Administrative Expenses or Interest, as defined by the Finance and Project Plan (hereinafter "Soft Costs"). Request for reimbursement for qualifying Soft Costs shall be submitted to the ZONE with supporting documentation confirming the payment of the respective Soft Costs have been made and to whom they were made. Upon verification by the ZONE that such costs have been incurred and paid by the DEVELOPER, and certification of the same by the CITY to the ZONE, then DEVELOPER shall be reimbursed for such actual Soft Costs.

3.6 Reliance; Indemnification. The ZONE and the CITY shall be entitled to rely on the information provided by DEVELOPER in verifying costs and seeking reimbursement for such

costs from the Tax Increment Fund and are under no duty or obligation to independently verify the truth, accuracy, or completeness of such information. DEVELOPER release, hold harmless, and indemnify the ZONE and the CITY (and their respective elected and appointed members, officers, and employees) from any claims by third parties to the costs for which DEVELOPER seek reimbursement pursuant to this Agreement.

3.7 Tax Increment Fund.

3.7.1 The CITY shall deposit annually the Available Tax Increment in to the Tax Increment Fund each year as same is collected, on or before May 31<sup>st</sup> of each year for the term of the ZONE.

3.7.2 The CITY shall maintain the Tax Increment Fund as a segregated account which shall not be commingled with any other funds of the CITY. The Tax Increment Fund shall be invested in the same manner as other municipal funds, and all interest earned shall be part of the Tax Increment Fund. The CITY shall only make disbursements from the Tax Increment Fund for the purposes and in the priority set forth below. No payment from the Tax Increment Fund shall be made by the CITY unless the ZONE has approved the expense or request for payment by the ZONE's action. Disbursements shall be made from the Tax Increment Fund no less frequently than annually on or before May 31<sup>st</sup> of each year, beginning immediately after the ZONE verifies the Project Costs to be reimbursed. Disbursements from the Tax Increment Fund shall be made only for the following purposes and only in the following order of priority unless otherwise approved by the CITY and DEVELOPER:

3.7.2.1 FIRST, to reimburse the CITY for Pre-TIRZ Administrative Costs approved by the ZONE;

3.7.2.2 SECOND, payment of Administrative Costs to the CITY and County pursuant to the Interlocal Agreement;

3.7.2.3 THIRD, 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 pay the debt service on any Tax Increment Bonds issued by the ZONE/CITY which are and payable in whole or in part from the Available Tax Increment provided they are used to pay costs allowed under this Section 3.7.2;

3.7.2.5 FIFTH, to reimburse CITY or DEVELOPER for Project Costs, plus Interest, as provided for in the Project and Finance Plan incurred by the CITY or DEVELOPER, for Public Infrastructure Improvements constructed by either on a first in, first out basis; and

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

All payments approved for reimbursement by the ZONE shall gain interest at the rate allowed by

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Auditor's Office

the Project and Finance Plan from the date of such approval, until such payment is made, and such approved reimbursements shall be paid on a first in, first out basis, subject only to the priority of payments identified in this Section 3.7.2.

3.7.3 The CITY shall maintain complete books and records showing all deposits to and disbursements from the Tax Increment Fund, which books and records shall be kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination and copying by DEVELOPER during normal business hours. The CITY shall maintain such books and records throughout the term of this Agreement and for two years thereafter.

3.8 **The Project.** The Project shall constitute and include the design, construction, assembly, installation and implementation of a multi-phase mixed use development as set forth in the land plan depicted on Exhibit "A", and as more particularly set forth in the Project and Finance Plan, and built pursuant to applicable CITY standards prescribed by the applicable CITY Subdivision Rules and Regulations, and variances thereto.

The CITY hereby acknowledges and agrees that the following waivers and exceptions to the City of McAllen platting regulations as set forth in Exhibit "D" are hereby granted by CITY by and through the passage of the Ordinance authorizing this Agreement.

3.9 **Use of TIF Funds.** The TIF Funds will be used to pay the Developer for Public Infrastructure Improvements and Project Costs built by or caused to be built by the Developer and shall be paid to the CITY and to other public entities for payment of Public Infrastructure Improvements and Project Costs that are constructed by the DEVELOPER or CITY and which have a positive impact on other public infrastructure in and/or related to the Zone, and related costs only (the "Costs"). Such payments will either be in the form of check, wire transfer or transfer by direct deposit.

3.10 **Construction of Public Improvements.** Project Costs eligible for reimbursement through TIF proceeds shall be publicly bid in compliance with the requirements of the Texas Local Government Code by the Developer, depending on the contracting party for the Improvements.

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

a. Funds obtained by the DEVELOPER from:

- (1) DEVELOPER'S capital investment;
- (2) Loans or Lines of Credit secured by DEVELOPER;
- (3) Venture Capital raised by or on behalf of DEVELOPER;
- (4) The offering or sell of Partnership shares or stock;
- (5) The sale by DEVELOPER of property owned by DEVELOPER within the ZONE;
- (6) Other funds lawfully obtained by or on behalf of DEVELOPER or the General or Limited Partners of DEVELOPER; and

(7) Issuance of Bonds by the CITY secured only by the Tax Increment of the Zone and not as general obligations of the CITY, pursuant to Section 311.015 of the Act.

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

To the extent costs are paid for from sources a.(1) through a.(6) above, CITY and Board of Directors of ZONE pledge to use Available Tax Increment funds, up to the maximum amount provided herein, to reimburse DEVELOPER for Project Costs. In order to obtain such reimbursement, DEVELOPER must complete the improvements in compliance with this Agreement and promptly submit a Certificate of Completion and Payment Request to the ZONE. Upon verification of completion, the ZONE shall promptly reimburse the DEVELOPER from the Tax Increment Fund using collected tax increment, bond funds, or other available funds; or

3.12 DEVELOPER may use any or part of the Property owned by DEVELOPER as collateral for construction loan(s), loans, or other sources of financing as required for the financing of the Project. DEVELOPER may also use its rights to reimbursements under this Agreement for such purposes provided they are solely related to providing funds for construction of improvements or payment of professional services and all other costs related to establishing the ZONE or constructing improvements within the ZONE.

#### IV. DUTIES AND OBLIGATIONS OF DEVELOPER

4.1 Subject to the receipt of the consideration from and performance of this Agreement by the CITY and ZONE, DEVELOPER agrees to complete, or cause to be completed, the improvements described in the Project and Finance Plan which include, but are not limited to, street excavation and installation, curbing, drainage, lighting, traffic control, road improvements, signage and fencing, on-site sewer, on-site water utilities, recycled water system, parks and open space, landscaping and other improvements identified in the Project and Finance Plan in a master planned, environmentally sensitive high technology and secure development. DEVELOPER agrees to provide, or cause to be provided, all materials, labor and services for completing the Project, except for the City Public Improvements. DEVELOPER also agrees, when required in connection with improving the Project, to obtain or cause to be obtained, all necessary permits and approvals from CITY (subject to the exceptions and waivers attached identified in Exhibit "D") and/or all other governmental agencies having jurisdiction over the construction of improvements in ZONE. All improvements will be completed in accordance with the Project and Finance Plans and this Agreement.

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

4.3 DEVELOPER agrees to use its best efforts to start and complete the Project in accordance with the Project and Finance Plan.



4.4 DEVELOPER shall submit to CITY and to the Board of Directors for ZONE written annual reports, through the duration of the Project, on its construction progress and expenses. The first reports will be due on or before June 30, 2015 and annually on or before June 30, of each successive year during the term of the ZONE.

4.5 DEVELOPER shall diligently work to successfully complete, or have completed, any and all required improvements as set forth in the Project and Finance Plan.

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

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

4.8 If substantial completion of the Project or performance of other obligations by a Party is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, necessary condemnation proceedings, interference by third parties or drop in overall economic conditions, or any other circumstances reasonably beyond the Party's control, then following a written request of the Party, the deadlines set forth in any relevant provision hereof shall be extended by the period of each such delay, and shall not be used by any Party as a basis of a claim of default against any other Party.

4.9 The Parties expressly acknowledge that this Agreement requires the Developer to provide the Goods and Services to the CITY and the Zone are quality goods and services, including all infrastructure constructed and development services that are performed hereunder, and this Agreement shall be enforceable subject to State Law, and shall be subject to Chapter 271, Subchapter I of the Texas Local Government Code.

4.10 Developer's Obligations Regarding Technology. The CITY and DEVELOPER hereby enter into certain mutual agreements with regard to the installation, maintenance and funding of fiber optic technology and high speed internet and data service, which terms and conditions are set forth in Exhibit "E", attached hereto and made a part hereof for all purposes.

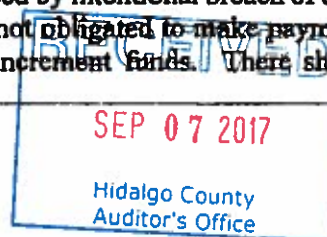
4.10 Assignment. The Parties agree that the DEVELOPER shall have the right to assign the right to receive reimbursements to a third party for the purpose of obtaining financing or any other purpose, or to a related third party without obtaining consent of the CITY, provided that such reimbursements have been approved by the ZONE.

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

5.1 CITY and ZONE shall use only Available Tax Increment funds to pay DEVELOPER up to a maximum total payment of Two Hundred and Fifty Eight Million Five Hundred and Forty Thousand Nine Hundred and One and No/100 Dollars (\$258,540,900.00) as full reimbursement for designing and constructing the Public Infrastructure Improvements required under the Project and Finance Plan and this Agreement. This payment includes infrastructure improvements, interest payments and other qualifying project costs. 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. The CITY shall receive the actual cost of the CITY Public Improvements, currently estimated at \$4,050,000.00, and the remainder of the Available Tax Increment, after deducting amounts reserved for Pre-TIRZ Administrative Costs, Administrative Costs and interest, shall be used to reimburse the Developer for the Project Costs incurred by it. As described above, the Tax Increment Fund may also be used to pay a maximum of \$400,000.00 in administrative expenses to the CITY and County, and a maximum of \$26,144,585.00 may be used to pay interest on reimbursement payments approved by the Board of Directors for the ZONE until paid, at a rate of 4.5%.

5.2 **Issuance of Bonds.** CITY and ZONE acknowledge that reimbursing DEVELOPER for public improvements is necessary and essential to the successful completion of the Project, and to the CITY's goal of continued economic development. As such, CITY and ZONE agree to cause Tax Increment Bonds and/or Tax Increment Notes to be issued pursuant to Section 311.015 of the Act as soon as possible based on underwriting considerations. The CITY agrees that it shall issue Tax Increment Bonds or Tax Increment Notes upon 900 homes being built within the ZONE which are being assessed taxes generating Tax Increment within the ZONE. The Tax Increment Bonds to be issued pursuant to this section shall be issued in the maximum amount as is reasonably and prudently determined by the CITY and its financial advisors that can be underwritten at reasonably acceptable interest rates based on the Tax Increment being generated per year in the ZONE at the time of issuance according to the CITY's debt issuance policies and State of Texas public finance requirements. The proceeds of the Tax Increment Bonds shall be used to pay reimbursements to the CITY and DEVELOPER according to the payment priority as established in the Project and Finance Plan for the ZONE under the paragraph entitled 'Priority of Payment' (see page 9 of the Project and Finance Plan).

5.3 If Available Tax Increment funds do not exist in an amount sufficient to make any payments in full when the payment is due to CITY or DEVELOPER under this Agreement, CITY shall make partial payments in the order of priority described above and pay the remainder as Available Tax Increment funds become available. CITY shall have no obligation to pay, or liability for failure to pay, any portion of the Available Tax Increment to be contributed by the County until such funds are actually received by the CITY from the County. Although DEVELOPER shall receive interest on approved reimbursements until paid (subject to the overall interest limitation set forth in Section 5.1 above), no fees, costs, expenses, or penalties shall be paid to DEVELOPER on any late payment, unless caused by intentional breach of this Agreement by the party making such late payment. The CITY is not obligated to make payment above and beyond what is actually collected as Available Tax Increment funds. There shall also be no



recourse against any Participating Taxing Entity, public official, ZONE, or ZONE BOARD if all or part of the DEVELOPER contributions or costs are not reimbursed due to insufficient tax revenue generated by the Zone.

5.4 The Parties understand that Sharyland Water Supply Corporation holds the certificate of convenience and necessary for the Property within the ZONE and as such shall provide all public potable water utility service to the ZONE. The CITY, acting by and through the McAllen Public Utilities Board, shall provide sewer and recycled water service to the ZONE as per the terms set forth in Exhibit "F", attached hereto and incorporated by reference as if fully set forth herein.

5.5 CITY's Obligations Regarding Technology. The CITY's obligation with regard to the installation, maintenance and funding of fiber optic technology and high speed internet and data service shall be as set forth in Section 4.10 above and as more fully described in Exhibit "E".

5.6 Sports Complex. The CITY has indicated that they may create a sports complex (the "Sports Complex") on approximately 80 or more acres located across Ware Road immediately to the east of the Property on CITY-owned land.

5.7 The CITY shall acknowledge the value of donations made by the DEVELOPER as a result of this Agreement through the approval and execution of required IRS forms based upon appraisal value of the properties donated to CITY, if any, as established by a licensed appraiser, the cost of which must be paid by the DEVELOPER.

## VI. INSURANCE

6.1 DEVELOPER's financial integrity is of interest to CITY; therefore, subject to DEVELOPER's right to maintain reasonable deductibles in such amounts as are approved by CITY, DEVELOPER shall obtain and maintain in full force during construction of all Public Infrastructure Improvements required by the Project Plan and Finance Plan at DEVELOPER's sole and reimbursable expense, insurance coverage written on an occurrence basis, except for professional liability coverage which shall be on a claims made basis, by companies authorized and admitted to do business in the State of Texas and rated A - or better by A.M. Best Company and/or otherwise acceptable to CITY, initially in the types and amounts set forth on Exhibit "G" attached hereto and incorporated by reference as if fully set forth herein.

6.2 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may require such deletions, revisions or modifications of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CITY shall also have the right to require additional or different coverage from time to time and to require increased policy limits from time to time as CITY deems appropriate in its discretion, provided that such change is required by the law of the State of Texas. Upon such request by CITY, DEVELOPER shall accomplish such changes in policy coverage and shall pay the cost thereof.

6.3 Nothing herein contained shall be construed as limiting in any way the extent to which

DEVELOPER may be held responsible for payments of damages to persons or property resulting from the performance of work by DEVELOPER or any of its subcontractors covered under this Agreement.

**6.4 DEVELOPER SHALL, AND HEREBY DOES, INDEMNIFY CITY, ZONE, THE BOARD OF DIRECTORS FOR ZONE, AND ALL OTHER TAXING ENTITIES PARTICIPATING IN THE ZONE AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES (COLLECTIVELY "CLAIMS") RAISED BY THIRD PARTIES ARISING OUT OF ACTIONS RELATED TO THE PERFORMANCE OF THIS AGREEMENT AND THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS BY DEVELOPER AND DEVELOPER'S CONTRACTORS, SUBCONTRACTORS, BUT NOT OTHERWISE.**

6.5 DEVELOPER shall also require each of its contractors and subcontractors working on this Project to indemnify the Board of Directors for the ZONE, CITY and all other taxing entities participating in the ZONE and their respective officials and employees from and against any and all claims, losses, damages, causes of actions, suits and liabilities arising out of their actions related to the performance of this Agreement, utilizing the same indemnification language contained herein, in its entirety, or to carry insurance to contractually transfer such risk under policies naming both the CITY and the County, as a named additional insured.

## VII. DEFAULT

7.1 The following events, if not cured within 120 (one-hundred and twenty) calendar days after receipt of written notice by a Party, shall constitute a "Default": (i) any Party fails to pay any taxes or special assessments levied against it or any part of the Property owned by it prior to the time said taxes or special assessments are delinquent; or (ii) any Party fails to commence performing an obligation or complete performance of an obligation required to be performed by that Party under this Agreement. In the event the Default is by the DEVELOPER, the CITY or the Board of Directors for ZONE may terminate this Agreement, after a final judgment by a Court of competent jurisdiction that a Default has occurred by the DEVELOPER hereunder. If this Agreement or the ZONE is terminated and the DEVELOPER has incurred expenditures at the time of termination for Public Infrastructure Improvements that were specifically approved by the Board of Directors for the ZONE and such infrastructure has been completed at the time of termination, then DEVELOPER shall be reimbursed for such expenditures out of the Tax Increment Fund, despite termination of this Agreement or ZONE. In the event that the default is by the ZONE or CITY, then the DEVELOPER shall have the right to seek any and all equitable remedies through Courts of competent jurisdiction to abate the defaults through injunctive relief and or specific performance. The remedies of the Parties as set forth above shall be in addition to and cumulative of any other rights and remedies available to them at law or in equity in the event of a default by any other Party. The Parties expressly agree that in an action to establish that a Party has committed a default under this Agreement all legal fees and expenses by all Parties to the action shall be paid for by the Party bringing the action if the court finds that no Default occurred.



## VIII. INDEMNIFICATION

**8.1 DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY, ZONE, THE BOARD OF DIRECTORS FOR THE ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN THE ZONE FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY A THIRD PARTY, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, ZONE, THE BOARD OF DIRECTORS FOR THE ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN THE ZONE DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF DEVELOPER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS DEVELOPMENT AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ZONE, THE BOARD OF DIRECTORS FOR THE ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN THE ZONE. IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, ZONE, THE BOARD OF DIRECTORS FOR THE ZONE AND THE OTHER TAXING ENTITIES PARTICIPATING IN THE ZONE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AS TO SAID CLAIMANTS. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR DEVELOPER KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES UNDER THIS AGREEMENT.**

## IX. SITE INSPECTION

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

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

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

#### X. EXAMINATION OF RECORDS

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

#### XI. NON-WAIVER

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

#### XII. ENTIRE AGREEMENT

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

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

#### XIII. CHANGES AND AMENDMENTS

13.1 Any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by CITY, ZONE and DEVELOPER and evidenced by passage of a subsequent



CITY Resolution or Ordinance, as to City's approval.

13.2 It is understood and agreed by the parties hereto that changes in CITY rules, regulations or laws applicable to the ZONE and DEVELOPER's services hereunder may occur during the term of this Agreement and the parties agree to amend this Agreement to reflect such changes in rules, regulations or laws. It is further understood and agreed that DEVELOPER shall enjoy, and has not by this Agreement waived, its right to complete the Project under and according to the rules and regulations in effect as of the date of this Agreement, as modified by any waivers and exceptions approved and granted herein.

13.3 The Parties agree that the Board of Directors for the ZONE, without consent of CITY, may amend the Project Master Development Plan, Project schedule, or the amounts in the categories of the Project and Finance Plan, provided such changes do not: cause a change in the amount of contribution required by the CITY or County; or change the timing of the schedule by more than 25%; and do not increase the Term of or the area of the ZONE. Any increase or decrease in either the Project Costs or the scope and scale of the Project greater than twenty-five percent (25%) (hereinafter a "Material Change") would require written consent by the CITY. The ZONE shall have the right to amend and modify the Project and Finance Plan without providing prior written notice to the CITY and County so long as such amendment or modification does not constitute a Material Change. The CITY and the ZONE agree to provide prior written notice to the County of 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.

#### **XIV. SEVERABILITY**

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

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

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

15.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in City of McAllen, Texas. CITY acknowledges that any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement results in CITY's waiver of liability to suit and damages under the terms of this Agreement and under Texas law. The parties agree that any dispute that may arise under this

Agreement shall first be submitted to mediation, or to alternative dispute resolution proceedings before litigation is filed.

## XVI. TAXES

16.1 DEVELOPER shall pay, on or before their respective due dates to the appropriate collecting authority, all Federal, State, and local taxes and fees that are now or may hereafter be levied upon property owned by DEVELOPER within the Zone Property, and cooperate in assuring that the value of all sales of the property from the DEVELOPER to any third party, or any part thereof, are timely reported to the City of McAllen and the Hidalgo County Appraisal District.

## XVII. NOTICE & ESCROW

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

**CITY:**

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

**DEVELOPER:**

Rhodes Enterprises, Inc.  
Attn: Mike Rhodes, President  
200 S. 10<sup>th</sup> Street  
McAllen, Texas 78501  
Phone: (956) 287-2800

With Copy To:

Earl & Associates P.C.  
Mr. David L. Earl and Megan J. Clay  
601 NW Loop 410, Ste. 390  
San Antonio, Texas 78216  
Phone: (210) 222-1500

**ZONE:**

City of McAllen Tax Reinvestment Zone Number One  
Attn: Mike Rhodes, Presiding Officer  
200 S. 10<sup>th</sup> Street  
McAllen, Texas 78501  
Phone: (956) 287-2800



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

#### XVIII. CAPTIONS

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

#### XIX. EFFECTIVE DATE

19.1 This Agreement shall become effective from the date of execution. This Agreement shall terminate on the earlier of: (i) the date DEVELOPER receives the final payment to which the Developer is entitled for constructing the Public Infrastructure Improvements for the Project pursuant to this Agreement; (ii) the date of a termination by default (provided that all required cure periods have been provided and the default remains uncured and all existing warranties on the Project shall survive termination of this Agreement); or (iii) expiration of the ZONE pursuant to the dated Resolution of the CITY creating the ZONE, unless extended by the City.

#### XX. MISCELLANEOUS

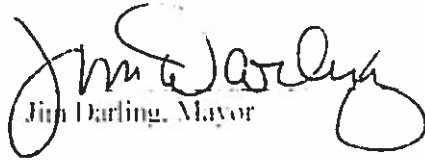
20.1 Venue. This Agreement is performable in Hidalgo County, Texas, and venue of any action arising out of this Agreement shall be exclusively in Hidalgo County, Texas. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

20.2 Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all prior or contemporaneous oral or written agreements between the Parties and relating to subject matter of this Agreement (other than the Zone Ordinance, the Interlocal Agreement, and the Project and Finance Plan).

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed this 9<sup>th</sup> day of March 2015.

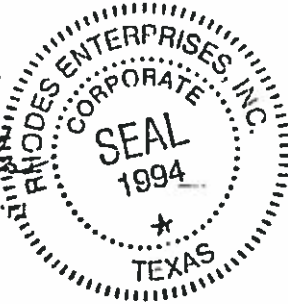
*[SIGNATURES ON FOLLOWING PAGE]*

CITY OF MCALLEN

By:   
Jim Darling, Mayor

RHODES ENTERPRISES, INC.

By:   
Michael B. Rhodes, President



TAX REINVESTMENT ZONE NUMBER ONE,  
CITY OF MCALLEN, TEXAS

By:   
Michael B. Rhodes, Chairman



**EXHIBIT "A"**

**Zone Property**



Revised: September 18, 2014  
Revised February 10, 2000  
Revised January 13, 2000  
June 15, 1999

**METES AND BOUND DESCRIPTION  
2561.402 ACRES OF LAND OUT OF  
SECTIONS 223, 224, 227, 230, 232  
TEXAS-MEXICAN RAILWAY CO. SURVEY  
AND OUT OF LOT 54-7  
WEST ADDITION TO SHARYLAND SUBDIVISION  
HIDALGO COUNTY, TEXAS**

A tract of land containing 2561.402 acres situated in the County of Hidalgo, Texas, being 2571.402 acres comprised of 1.) 18.865 acres being a part or portion of LOT 54-7, OUT OF THE AMENDED MAP OF LOTS 53-6, 54-6, 55-6, 56-6, 57-6, 58-6, 59-6, 53-7, 54-7, 55-7, 56-7, 57-7, 58-7, 59-7, 53-8 & 53-9, WEST ADDITION TO SHARYLAND SUBDIVISION, according to the plat thereof recorded in Volume 6, Page 42, Hidalgo County Map Records, 2.) ALL OF SECTION 223, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 8, Page 54, Hidalgo County Map Records; 3.) ALL OF SECTION 224, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 411, Page 149-150, Hidalgo County Deed Records; 4.) a part or portion of SECTION 227, TEXAS-MEXICAN RAILWAY CO. SURVEY; 5.) a part or portion of SECTION 230, TEXAS-MEXICAN RAILWAY CO. SURVEY; 6.) a part or portion of SECTION 232, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the patent issued by the State of Texas, to W. S. Daugherty recorded in Volume 4, Page 142-143, Hidalgo County Deed Records, SAVE AND EXCEPT 10.00 acres conveyed to Hidalgo County Irrigation District No. 7 by virtue of a Warranty Deed recorded in Volume 622, Page 638, Hidalgo County Deed Records, said 2571.402 acres also being more particularly described as follows:

BEGINNING at an iron rod found for the Northeast corner of this tract, said iron rod bears N 80° 46' 37" W a distance of 59.15 feet, and S 09° 13' 23" W a distance of 40.00 feet from the Northeast corner of said Section 232;

1. THENCE, S 33° 30' 29" E along the West right-of-way line of Ware Road (F. M. 2220) as dedicated by Volume 10, Page 42, Volume 1082, Page 81, and Volume 1073, Page 92, Hidalgo County Deed Records, a distance of 28.53 feet to an iron rod set for an outside corner of this tract;
2. THENCE, S 08° 36' 44" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 4939.99 feet to an iron rod found for an angle point;
3. THENCE, S 11° 29' 22" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 200.19 feet to an iron rod found for an angle point;
4. THENCE, S 11° 08' 08" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 22.24 feet to an iron rod found for an angle point;
5. THENCE, S 55° 13' 13" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 33.07 feet to an iron rod found for an inside corner of this tract;
6. THENCE, S 08° 36' 44" W along the West right-of-way line of said Ware Road (F. M. 2220), at a distance of 9.81 feet pass the North right-of-way line of Mile 9 Road, and continuing a total distance of 29.81 feet to the Northernmost Southeast corner of this tract;
7. THENCE, N 80° 23' 30" W along the South line of said Section 232, the North line of Lots 35-68, Section 229, Tex-Mex as per plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, and within Mile 9 Road right-of-way, a distance of 5175.14 feet to an iron pipe found for the Southwest corner of said Section 232, and the Northeast corner of Section 230 for an inside corner of this tract;


8. THENCE, S 09°05' 05" W along the East line of said Section 230, and the West line of Section 229, as per said plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, at a distance of 2519.05 feet pass an iron pipe found in line, and now continuing along the West line of Section 229, Tex-Mex, as per plat thereof recorded in Volume 12, Page 22, Hidalgo County Map Records, and continuing a total distance of 3295.30 to an outside corner of this tract;
9. THENCE, N 80° 48' 32" W a distance of 251.52 feet (250.00 feet) to an iron rod set for an inside corner of this tract;
10. THENCE, S 08° 44' 55" W, at a distance of 20.00 pass an iron pipe found in line, and continuing a total distance of 250.00 feet to an iron pipe found for an outside corner of this tract;
11. THENCE, N 80° 55' 38" W a distance of 2503.36 feet (2503.2 feet) to an iron pipe found for an inside corner of this tract;
12. THENCE, S 09° 02' 13" W at a distance of 1611.44 feet pass the North right-of-way line of Mile 8 Road, and continuing a total distance of 1631.44 feet to the Southernmost Southeast corner of this tract;
13. THENCE, N 80° 48' 07" W along the South line of said Section 230, and within said Mile 8 Road right-of-way, a distance of 627.20 feet to an iron rod found for the centerline of Glasscock Road, and for an angle point of this tract;
14. THENCE, N 80° 47' 57" W along the South line of said Section 230, said Section 223, and within said Mile 8 Road right-of-way, a distance of 2644.96 feet to a concrete monument found for the centerline of Stewart Road, and for an angle point of this tract;
15. THENCE, N 81° 10' 51" W along the South line of said Section 223, and within said Mile 8 Road right-of-way, at a distance of 2658.21 feet pass an iron rod found in line and for the center line of Bryan Road, and continuing a total distance of 4164.66 feet to the Southwest corner of said Section 223, and for the Southernmost Southwest corner of this tract;
16. THENCE, N 08° 59' 01" E along the West line of said Section 223, a distance of 1564.21 feet to an iron rod set for an inside corner of this tract;
17. THENCE, N 81° 02' 31" W along the South line of said Section 223, and said Section 224, at a distance of 1161.82 feet pass an iron rod found in line, at a distance of 2462.04 feet pass an iron rod found in line, and continuing a total distance of 2915.12 feet to an iron pipe found for the Southwest corner of said Section 224 and to a point on the East line of said Lot 54-7, for an inside corner of this tract;
18. THENCE, S 08°59' 01" W along the East line of said Lot 54-7, a distance of 110.00 feet to the Southeast corner of said Lot 54-7, for an outside corner of this tract;
19. THENCE, N 81° 17' 16" W along the South line of said Lot 54-7, at a distance of 761.50 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 791.50 feet to the Southwest corner of said Lot 54-7, for the Northernmost Southwest corner of this tract;
20. THENCE, N 08°42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 280.00 feet to an outside corner of this tract;
21. THENCE, S 81°17' 16" E at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing along the South line of The Frass Subdivision (Vol.25, Pg.134-A H.C.M.R.), for a total distance of 205.00 feet to a No.4 rebar set at the Southeast corner of said The Frass Subdivision, for an inside corner of this tract;
22. THENCE, N 08°42' 46" E along the East line of said The Frass Subdivision, a distance of 125.00 feet to a No.4 rebar set at the Northeast corner of said The Frass Subdivision, for an inside corner of this tract;



23. THENCE, N 81°17'16" W along the North line of said The Frass Subdivision, at a distance of 175.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 205.00 feet to an outside corner of this tract;
24. THENCE, N 08°42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 692.13 feet to the Southernmost Northwest corner of this tract;
25. THENCE, S 81°17' 16" E along the South line of a certain 3.82-acre tract, at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 748.69 feet to a No.4 rebar set for an outside corner of this tract;
26. THENCE, S 08° 59' 01" W along the West line of a tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No.7 (now United Irrigation District) by virtue of a Deed recorded in Vol.519, Pg.65, Hidalgo County Deed Records, a distance of 477.14 feet to a No.4 rebar set for an inside corner of this tract;
27. THENCE, S 81°17' 16" E along the South line of said tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No.7, a distance of 50.00 feet to a No.4 rebar set for an inside corner of this tract;
28. THENCE, N 08° 59' 01" E along the West line of said Section 224, a distance of 2284.35 feet to an iron pipe found for the Northwest corner of said Section 224, and for an outside corner of this tract;
29. THENCE, S 81° 02' 31" E along the North line of said Section 224, a distance of 2554.12 feet to an iron rod set for the Northeast corner of said Section 224, and for an inside corner of this tract;
30. THENCE, N 08° 59' 01" E along the West line of said Section 223, a distance of 854.95 feet to an iron pipe found for the Northwest corner of said Section 223, and for an outside corner of this tract;
31. THENCE, S 80° 46' 58" E along the North line of said Section 223, a distance of 3177.65 feet to an iron pipe found for an angle point of this tract;
32. THENCE, S 80° 45' 29" E along the North line of said Section 223, a distance of 2102.46 feet to an iron pipe found for the Northeast corner of said Section 223, and for an inside corner of this tract;
33. THENCE, N 09° 03' 26" E along the West line of said Section 227, at a distance of 3795.04 feet pass an iron pipe found in line, and continuing a total distance of 5216.19 feet to an iron pipe found for the Northernmost Northwest corner of this tract;
34. THENCE, S 80° 40' 40" E along the South right-of-way line of Monte Cristo Road (F. M. 1925) as dedicated by Volume 933, Page 430, Volume 904, Page 241, Volume 896, Page 277, and Volume 930, Page 57, Hidalgo County Deed Records, a distance of 3276.69 feet to an iron rod set for a curve to the right;
35. THENCE, along said curve to the right and the South right-of-way line of said Monte Cristo Road (F. M. 1925), with a central angle of 02° 28' 09", a radius of 7018.19 feet, an arc length of 298.37 feet, a tangent of 148.21 feet, and a chord that bears S 79° 27' 35" E a distance of 298.35 feet to an iron rod set;
36. THENCE, S 78° 14' 30" E along the South right-of-way line of said Monte Cristo Road (F. M. 1925), a distance of 363.73 feet to an iron rod set for a curve to the left;
37. THENCE, along said curve to the left and the South right-of-way line of said Monte Cristo Road (F. M. 1925), with a central angle of 02° 25' 58", a radius of 7107.46 feet, an arc length of 301.77 feet, a tangent of 150.91 feet, and a chord that bears S 79° 27' 29" E a distance of 301.75 feet to an iron rod set;
38. THENCE, S 80° 40' 28" E along the South right-of-way line of said Monte Cristo Road (F. M. 1925), a distance of 1325.10 feet to an iron rod set for a curve to the left;

39. THENCE, along said curve to the left and the South right-of-way line of said Monte Cristo Road (F. M. 1925), with a central angle of  $03^{\circ} 00' 32''$ , a radius of 5860.53 feet, an arc length of 307.78 feet, a tangent of 153.92 feet, and a chord that bears  $S 82^{\circ} 10' 44'' E$  a distance of 307.74 feet to an iron rod set;
40. THENCE,  $S 83^{\circ} 41' 00'' E$  along the South right-of-way line of said Monte Cristo Road (F. M. 1925), a distance of 400.58 feet to an iron rod set for a curve to the right;
41. THENCE, along said curve to the right and the South right-of-way line of said Monte Cristo Road (F. M. 1925), with a central angle of  $02^{\circ} 54' 23''$ , a radius of 5866.71 feet, an arc length of 298.62 feet, a tangent of 149.34 feet, and a chord that bears  $S 82^{\circ} 13' 48'' E$  a distance of 298.59 feet to an iron rod set;
42. THENCE,  $S 80^{\circ} 46' 37'' E$  along the South right-of-way line of said Monte Cristo Road (F. M. 1925), a distance of 3858.87 feet to the POINT OF BEGINNING, and containing 2571.402 acres, SAVE AND EXCEPT the above mentioned 10.00 acres conveyed to Hidalgo County Irrigation District No. 7, leaving 2,561.402 acres of land, more or less.

I, FRED L. KURTH, REGISTERED PROFESSIONAL LAND SURVEYOR DO HEREBY AFFIRM THAT THIS METES AND BOUNDS DESCRIPTION REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND ON 04/15/99 & 02/05/04 UNDER MY DIRECTION AND SUPERVISION.

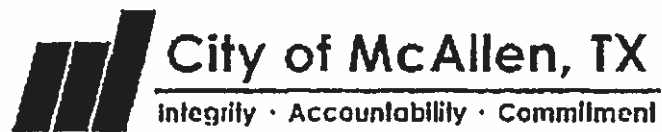
  
 FRED L. KURTH, R.P.L.S. #4750      DATE: 9-17-14



**EXHIBIT "B"**

**Project and Finance Plan**

CITY OF McALLEN, TEXAS



**Tres Lagos  
Tax Increment Reinvestment Zone Number One  
Project and Finance Plan**

Participation Levels:  
City of McAllen (80%) & Hidalgo County (77%)



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EXECUTIVE SUMMARY

Overview of Plan

Tax Increment Reinvestment Zone Number One, City of McAllen, Texas, (the "Zone" or the "IRZ") represents an important opportunity for the future of the City of McAllen (the "City"). It will promote and encourage construction of approximately 2,571 acres of mixed use development including single-family, multi-family, retail, office and commercial development (the "Project"), and the creation of more than eight thousand new jobs.

Creation of the IRZ and implementation of the Project will:

- (1) Increase the population and tax base of the area;
- (2) Remove low valued vacant land from the tax rolls and replace it with higher value development;
- (3) Include creation of a public improvement district pursuant to Chapter 372 of the Texas Local Government Code ("PID") as a mechanism to ensure that the development, rather than the existing City taxpayers, pay for the upkeep and maintenance of some of the public roads and infrastructure in the development; and
- (4) Start a new model for development in the area that is more sensitive to the environment (i.e., recycled water, green spaces, curving design, etc.) and is more sustainable (higher employment base, superior technology, enhanced security, etc.).

This tract of land has remained vacant and undeveloped because either (1) the costs associated with developing the land in the preferred manner prohibited the efficient use of the property, or (2) the property was unavailable for development when development should have occurred and current development costs for the desired development are uneconomical. Creation of the IRZ will allow for construction of infrastructure and other improvements including single-family subdivisions, multi-family projects, commercial projects, retail developments and thousands of new jobs and related economic development that will cause public benefits that would otherwise be very difficult, if not impossible, to obtain due to costs that include off-site utility extensions, on-site and off-site utility plant expansions, on-site street and utility extensions, drainage improvements, community Wi-Fi, surveillance cameras, Fiber-to-the-Home infrastructure and significant park and recreational installations.

The Zone is located at the southwest corner of Ware Road and Monte Christo Road (the "Property"). Please see Exhibit 1 for a location map of the Property. This Project and Finance Plan will be implemented through the execution of a Development Agreement between the City of McAllen, the Board of Directors of the Zone, and Rhodes Enterprises Inc., its successors and assigns, (acting as the "Developer"), which sets forth the rights and obligations of the parties to assure successful completion of the proposed Project. Unless otherwise defined herein, all defined terms in this Project and Finance Plan shall have the meanings set forth in the Development Agreement.



### Anticipated Benefits of Development

The projected benefits of the Zone are as follows:

- The original plan for the Property was to develop a rural subdivision with lots ranging from 1 acre to 10 acres, with the entire development remaining in the County. However, the proposed mixed use development has greater density, supports retail, multifamily, office and institutional uses, creates additional employment and will generate a superior tax base.
- The entire 2,571 acres are currently located in the city limits of the City and within Hidalgo County, Texas. The Property was annexed through a Developer petition conditioned on (1) the City approving participation in the TIRZ in an amount equal to 80% of the revenue generated from the CITY M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE, and the remaining 20% being retained by the City, and (2) Hidalgo County approving participation in the ZONE by contributing to the Tax Increment Fund an amount equal to 77% of the revenue generated from the COUNTY M&O Tax Rate (as defined in the Interlocal Agreement) as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE, and the remaining 23% being retained by the County, during the term of the Zone.
- Over 125 acres of parkland that will be developed and dedicated to the City for public use.
- The Developer will dedicate drainage right-of-way that will improve drainage issues for the community upstream and downstream of the Zone with an estimated value of \$6,000,000.00.
- Recycled water will be used to water the green spaces providing enhanced water conservation.
- The Tres Lagos development will be the first in the region to provide Fiber-to-the-Home (FTTH) for high-speed internet access (up to 1 Gbps).
- Enhance and increase the population within the area, and the economy of the overall general area.
- Provide for pedestrian safety and access through walking trails and street light construction.
- Provide for public use sites and assist in funding emergency access networks.
- Enhance the quality of life within the development and surrounding areas through parks landscaping and increased recreational opportunities.
- Create a sustainable housing initiative for the benefit of landowners inside and outside of the Zone through encouraging green build and ENERGY STAR construction of homes and buildings.

- Generate significant revenue in the form of ad valorem tax, utility fees, property tax, et al, and help extend utility (water, sewer, recycled water, cable, and data) service to adjoining tracts and other areas for future development.
- Add over - \$2,600,000,000.00 to the tax base of the City and County over the life of the Zone.
- Require only the taxes from within the Zone, and not existing taxpayers in the City or the County, to pay all the costs of the installation of all utilities required for the Project.
- Create a new and replicable standard for better and more sustainable development within the City that encourages new development to pay for itself in a greater amount and does not place the burden unfairly on the City's current budget or on the current and existing taxpayers.

**The TIRZ Concept**

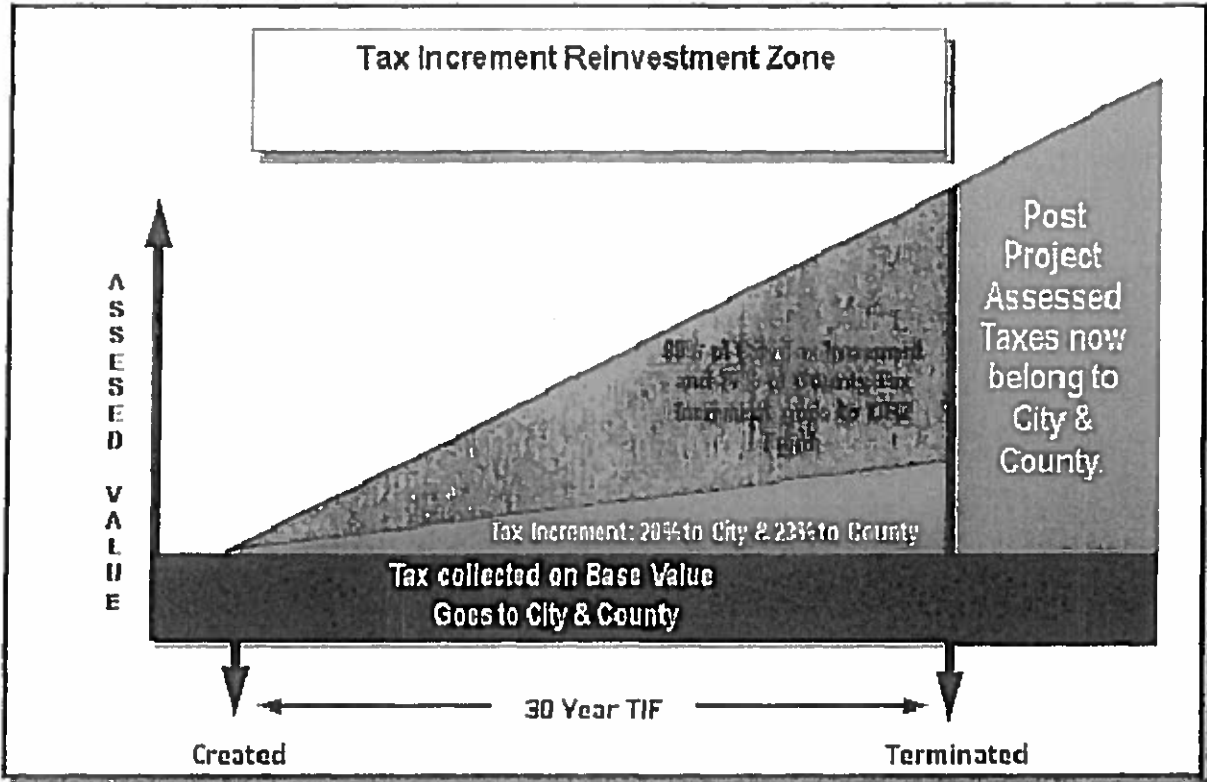
A TIRZ or Tax Increment Reinvestment Zone is a financing tool authorized by the State of Texas Legislature in Chapter 311 of the Texas Tax Code. The purpose of the statute is to allow cities and counties to provide an incentive to develop areas that lack the infrastructure or have other impairments to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

When a zone is created, the "base value" of the area is frozen for tax purposes. The existing taxing entities continue to receive tax revenues as before. However the increased tax revenue ("the increment") generated by new development within the zone will be used to reimburse costs related to public improvements within the zone as well as other related allowable expenses. The zone will have a life equal to a predetermined number of years. Upon reaching that date, or upon all costs having been reimbursed, whichever comes first, the zone will terminate. Upon termination, the increased tax revenue belongs to the respective taxing entities. The investment in public infrastructure and public amenities will cause the tax revenue received by the City and County to be much greater both during the TIRZ and afterwards than would have been received without the TIRZ. Comparison charts below illustrate the level of tax revenue and public benefit received through the TIRZ Project and Finance Plan compared to ordinary non-TIRZ development.

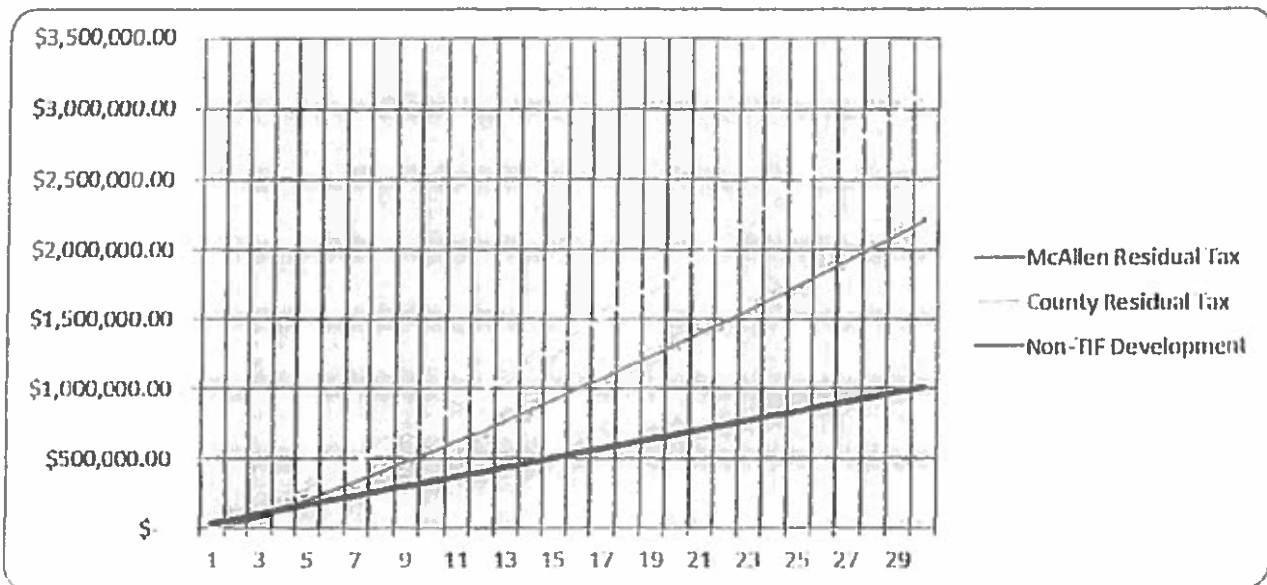
*(Charts on Following Page)*



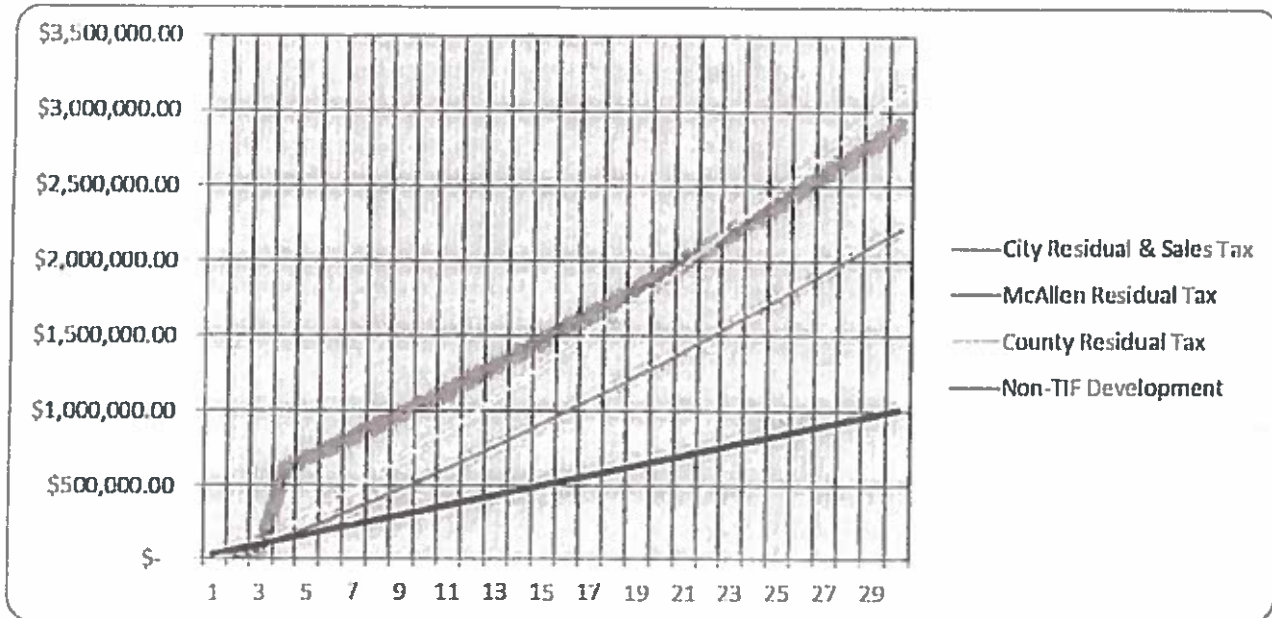
**TIRZ ASSESSED VALUE (AV) OVER PROJECT LIFE**



**INCOME COMPARISON BETWEEN EXISTING DEVELOPMENT METHOD AND "NEW TIRZ METHOD"**



### INCOME COMPARISON BETWEEN EXISTING DEVELOPMENT METHOD AND "NEW TIRZ METHOD" continued



### PROJECT PLAN

The Reinvestment Zone Number One, City of McAllen, Texas Project and Finance Plan provide a long-term method to increase economic vitality, tax base, and population within the Zone.

The economics of attracting market rate housing, new businesses, retail establishments, commercial uses and new employment opportunities will be greatly enhanced utilizing the TIRZ to finance public infrastructure improvements and economic development initiatives.

The following specific objectives set the framework for the planned public improvements within the Zone:

- Complete infrastructure to support +/-2,571 acres of mixed use development with an estimated developed tax base value of over \$2,500,000,000.00.
- Fund reimbursement of construction of primary public streets and public utility work to create access for future planned high technology and secure mixed use developments.
- Provide attractive, safe pedestrian environments through landscaping, lighting and construction of public walkways in the single-family areas and open space areas of the development.
- Construct wastewater collection, recycled water mains and storage and reuse facilities to enhance and encourage environmentally sensitive and water conscious regional development.



- Make utilities (sewer, water, recycled water, cable, and fiber optic) available to adjoining properties in the City and County for future growth.
- Relieve the City and County of some of the maintenance costs of the community by establishing a PID, which will also establish a model community that incorporates availability of gigabit speed internet access to every home and business in the community; community high-speed Wi-Fi access; community security, data, video and surveillance services; interconnected linear hike and bike and park systems, and unique subdivision designs to create a secure and sustainable living and working environment.
- Create, and prove the feasibility of a new model of 'smart growth' development for the City and County which is socially and financially sustainable, environmentally sensitive, and which conserves water and has a lower carbon footprint.

#### **Planned Private Development and Investment**

The total private development investment stimulated by creation of the Zone is forecasted to be \$2,569,780,976.14 in the form of vertical construction of homes, apartments, office buildings, retail buildings and commercial uses.

#### **Public Infrastructure Improvements**

The Public Infrastructure Improvements (hereinafter may be referred to as "Public Improvements") which will be completed pursuant to the Project and Finance Plan are detailed in Exhibits 4 through 9 of this Project and Finance Plan, and the amount of public investment for reimbursement of the Public Improvements totals \$258,540,901.00. If the interest cap is reached no additional interest payments may be made.

#### **Public Infrastructure Improvements and Related Eligible Expenses**

The Public Infrastructure Improvements to be constructed and financed pursuant to the Project and Finance Plan and related capital costs include, but are not limited to, reimbursements associated with the following internal and external project costs for infrastructure to be constructed and dedicated to a Public Entity: Mile 9 Russell Rd. improvements, Shary & Bryan Road improvements, Glasscock/Stewart/Mayberry Road improvements, public parks, together with all site work, internal streets and drainage, onsite and offsite water and sewer and recycled water infrastructure, sidewalks, fiber optic dedicated to the City, PID, or other Public Entity, communication, Wi-Fi and surveillance infrastructure dedicated to the PID, as well as all other related infrastructure, soft project costs, and costs of creation as shown Exhibit 5 and Exhibit 9. The capital cost is estimated to be \$232,396,315.00 of the full eligible build-out amount plus interest on such amount until reimbursed.

*[Remainder of Page Intentionally Left Blank Project Plan and Finance Plan Continue on Next Page]*

### Existing and Proposed Uses

The existing uses in the area in which the Zone is located consist of open undeveloped or underdeveloped land and farming operations.

The proposed uses in the Zone are those uses set forth in **Exhibit 2** which have been master-planned and organized in phases to provide the maximum value enhancement and benefits to the Zone, the City and the surrounding community.

### Description of Zone

The Zone will be located in the northwest sector of the City of McAllen ETJ. The exact location and legal description of the Zone are identified in the survey and field notes attached as **Exhibit 1**.

### Project Feasibility

The feasibility of the Project has been analyzed by an independent economist and the Developer. The results of this analysis establish that the Project is both economically feasible and is within market absorption capabilities. According to national employment creation statistics by type and square footage of development, it is estimated that the Project could create in excess of 8,000 new jobs, and over \$200,000,000.00 in annual payroll within the McAllen area, which will provide tremendous benefits to the municipality in the form of increased economic stimulus, ad valorem, and sales tax revenues.

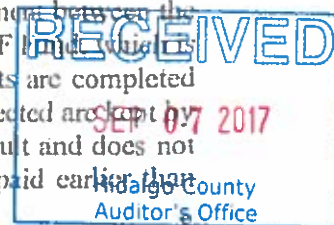
Based on the above economic factors, creation of the Zone and approval of the Project and Finance Plan is in the best interest of the City and is in furtherance of its municipal and governmental purposes.

## FINANCE PLAN

### Tax Increment Financing

The Tax Increment Financing Act (Chapter 311 of the Tax Code), provides for counties and cities to create "reinvestment zones" within which various public works and improvements can be undertaken, using tax increment revenues, bonds or notes, to pay for those improvements. The Act also allows the Zone to participate in the funding of improvements outside the Zone if the improvements benefit the Zone. At the time an area is designated a reinvestment zone for tax increment financing, the existing total of appraised value of real property in the zone is identified and designated as the Tax Increment Base. The Zone will not receive any sales tax revenue collected by the City of County.

Public improvements are made in the area to attract private development that would not otherwise occur. As the costs of new development are added to the tax rolls, property values will rise, and there will be an increase in sales tax revenue as well. This rise in new ad valorem value is called the "captured appraised value." The taxes that are collected by the participating taxing jurisdictions on the increment between the frozen value and the new higher value, or the Tax Increment, are then deposited into a TIF fund which is used to reimburse or pay for the approved improvements. Once the public improvements are completed and reimbursed, the TIF and Zone are dissolved and any remaining amounts of taxes collected are kept by the taxing jurisdiction. In addition the TIF will be dissolved if the Developer is in Default and does not cure the Default, or if the reimbursements for Public Infrastructure Improvements are paid earlier than



anticipated. In effect, the taxing jurisdictions are “investing” future earnings to receive the benefit of higher tax revenues from new development. Taxing jurisdictions are not restricted from reassessing property value or changing their tax rate as allowed by State law during the life of the Zone.

### Financing Plan Overview

The Tax Increment Base is \$1,064,613.00 (hereinafter also referred to “Base Value”). The City has agreed to participate in the ZONE by contributing to the Tax Increment Fund an amount equal to 80% of the revenue generated from the CITY M&O Tax Rate as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE. In no event shall the CITY contribution to the Tax Increment Fund be greater than \$120,990,149.00 over the life of the ZONE beginning with the 2014 tax year. The County has indicated that it will participate in the ZONE by contributing to the Tax Increment Fund an amount equal to 77% of the revenue generated from the COUNTY M&O Tax Rate (as defined in the Interlocal Agreement) as assessed and collected on the Captured Appraised Value for each respective tax year during the term of the ZONE. In no event shall the COUNTY contribution to the Tax Increment Fund be greater than \$143,318,484.00 over the life of the ZONE beginning with the 2014 tax year.

The Zone provides funding for approximately +/- \$258,940,901.00 of planned Public Infrastructure Improvements which are eligible for reimbursement, including interest, and Administrative Costs paid to the City and County for administering the Zone. In addition, this Project and Finance Plan authorizes reimbursement of the Pre-TIRZ Administrative Costs to the City in an amount not to exceed \$70,000.00, with said amount to be paid from the contingency or surplus funds as shown on the Sources & Uses Table set forth on **Exhibit 5**. The Finance Plan indicates that the Zone will yield adequate revenues to provide for incremental financing of the Project as indicated in **Exhibits 4 through 9**. The total projected revenue of the Zone is \$264,308,634.00.

Financing Method: Initial financing is being accomplished through equity invested by the Developer through private investments and conventional land development bank loans, the issuance of Tax Increment Bonds (hereinafter also referred to as “Bonds”) when available, as well as other funding sources. No taxing jurisdiction is guaranteeing the repayment of these loans; they remain the obligation of the Developer. In the event Bonds are issued they will not become obligations of the City or County. When Bonds are issued by the City, only the pledged Available Tax Increment can be looked to for repayment of those obligations. Other Public Infrastructure Improvements included in the Project and Finance Plan will be funded through similar financing sources and reimbursed to the Developer, as Available Tax Increment is available. Bonds are projected to be issued for the Project with the assistance of the City upon the completion of 900 homes which are built and assessed in the Project. If Bonds are issued, the Available Tax Increment from the Zone will serve as the only repayment source for the Bonds.

Priority of Payment: The City and the Board shall disburse funds from the Tax Increment Fund (or Bond revenues) to pay expenditures in the following order or priority of payment:

1. FIRST, to reimburse the City for reasonable Pre-TIRZ Administrative Costs approved by the Zone;
2. SECOND, payment of Administrative Costs to the City and County pursuant to the Interlocal Agreement;

3. THIRD, to reimburse the City for the City Project Costs, plus interest, as provided in the Project and Finance Plan, for the City Public Improvements;
4. FOURTH, to pay the debt service on any Tax Increment Bonds issued by the Zone/City which are due and payable in whole or in part from the Available Tax Increment provided they are used to pay costs as set forth in the Project and Finance Plan;
5. FIFTH, to reimburse Developer or City for Project Costs, plus Interest, as provided for in the Project and Finance Plan incurred by the City or Developer, for Public Infrastructure Improvements constructed by either on a first in, first out basis; and
6. SIXTH, to reimburse or pay the cost of any project or improvement that was not included in the original Project and Finance Plan, but was later added as a subsequent project with approval of the ZONE and the CITY.

The foregoing, notwithstanding, no funds will be paid from the Tax Increment Fund to the City or County for its financial and legal services in any dispute arising under the Development Agreement with another participating taxing entity.

Capital Costs: The total capital costs to be incurred for Public Infrastructure Improvements total \$232,396,315.00. The Developer's portion of this amount is estimated to be \$230,696,315.00, the City's portion of this amount, the City Public Improvements, to be incurred for off-site improvements (extension of fiber optic strands and conduits to the Zone, extension of sewer mains to the Zone, the extension of recycled water trunk mains to the Zone, and the construction of a new fire station to serve the Zone and other areas) are estimated to be \$4,050,000.00. The City and County have negotiated a maximum reimbursement to the Developer. It is projected that neither the City nor the Developer will receive any payments until fiscal year 2016. The earliest projected payoff of the capital cost would occur in fiscal year 2044 and includes an estimated reimbursement of the Developer contribution of \$230,696,315.00 out of the Project Costs totaling \$258,540,901.00.

TIRZ Collections: The TIRZ collections for this project shall not extend beyond December 31, 2045 and may be terminated earlier once each taxing entity has deposited its respective maximum dollar contribution amount described in the table below. Some taxing entities may reach their maximum dollar contribution prior to others and/or prior to the end of the TIRZ; the term of the TIRZ will continue through December 31, 2045 or will terminate once all taxing entities have deposited their maximum dollar contribution, and all obligations of the Zone have been satisfied pursuant to Section 311.017 of the Texas Tax Code.

<b>Participating Taxing Entities</b>	<b>Maximum Dollar Contribution</b>	<b>Maximum Length of Contribution</b>
City of McAllen, Texas	\$120,990,149.00	December 31, 2045
Hidalgo County	\$143,318,484.00	December 31, 2045
<b>Maximum Contribution Amount</b>	<b>\$264,308,634.00</b>	



Developer's Risk: All financing, development costs, construction costs, improvements, damages, or other costs incurred by the Developer with respect to this project are at the sole risk of the Developer. Neither the City nor County shall incur any risk of loss whatsoever associated with the development, construction, completion, or failure of the Project, if such loss is due to Developer. In the event that the Project fails, is abandoned by the Developer, or for any reason is not completed, the City shall have the right to terminate the TIRZ, and any funds remaining in the TIRZ account after payment of approved reimbursements shall be distributed to the City and County on a pro-rata basis in accordance with each entity's participation level.

Limited Obligation of the City and County: Except for the financial obligation of the City to construct the City Public Improvements the City and County obligations shall be limited to the City imposing and collecting taxes and the County imposing taxes, and both the City and the County depositing such tax receipts into the Tax Increment Fund during the term of the TIRZ for so long as the Project is viable, the Developer is not in Default, and eligible project costs and capital costs (and interest thereon) incurred by the Developer have not been fully paid. The TIRZ collections for this Project shall not extend beyond 30 years or past the collection of taxes assessed for the year 2044 (and collected in 2045), and may be terminated prior to December 31, 2044 upon payment of the total amount of reimbursement for Project Costs to the Developer as provided in the Development Agreement, or for Default by the Developer as set forth in the Development Agreement, or as allowed by Section 311.017 of the Texas Tax Code.

Any costs incurred by the Developer are not, and shall not in any event become, general obligations or debt of the City or County. The Project Costs incurred by the Developer shall be paid solely by the TIRZ revenues contributed to the Zone and shall never constitute a debt, indebtedness, or a pledge of the faith and credit or taxing power of the State, the City, County, or any political corporation, subdivision, or agency of the State of Texas, other than the TIRZ, which is funded solely by the pledged Tax Increment of the City and County.

Financing Policy: This Project and Finance Plan limits the amount of City and County Available Tax Increment (80% of the CITY M&O Tax Rate and 77% of the County M&O Tax Rate) paid to finance repayment of the City and Developer expenditures for reimbursable public improvements.

Short Term Financing: The short term financing for the Project will be paid through initial capital investment and conventional development loans provided by the Developer for Public Infrastructure Improvements installed by the Developer. The City will fund the initial cost of the City Public Improvements (\$4,050,000.00) through advancing City budgeted funds. The Project costs advanced by the Developer and City for construction of their respective public improvements will be reimbursed according to the approved priority of payment as TIF Funds become available in the balance of the Tax Increment Fund.

Long Term Financing/Bonds: To minimize the cost of interest incurred by the Project, the Zone will recommend the issuance of, and the City will issue (contingent upon City Commission approval), Tax Increment Bonds when 900 homes have been completed within the Zone and are being assessed ad valorem taxes. It is projected that the Tax Increment Bonds will be issued in the fourth year of the Project and Finance Plan (2018). The amount of the issuance will be the maximum amount as is reasonably and prudently determined by the City and its financial advisers that can be debt-serviced and underwritten at reasonably acceptable interest rates at the time of issuance based upon the amount of the pledged tax

increment that is being generated within the Zone according to the City's debt issuance policies and State of Texas public finance requirements.

### Financial Assumptions

The Finance Plan is based upon conservative assumptions. Accordingly, the Finance Plan assumes that there will be no tax rate changes during the project term, and assumes an increase in assessed values of existing tax base of only 1.015% per year rather than the actual average appreciation rate which is historically in excess of 3% per year.

The Finance Plan also assumes that the taxing entities will continue to collect tax revenues at the same rate and that homestead and other exemption rates will remain unchanged. Build-out rates of tax base within the Finance Plan are based on conservative rates of absorption established from historical market data collected from the Rio Grande Valley demographics.

### Financial Feasibility

Based on the private development plans, public improvement program, budgets and general financing strategy, financial assumptions, and the feasibility study prepared by H.E. Skip Preble, MAI, CCIM, of Boerne, Texas, and as required by Section 311.011(c)(3) of the Texas Tax Code, the City of McAllen City Commission finds that the Finance and Project Plan is economically feasible.

### Financial and Governance Policies

Pursuant to Chapter 311 of the Texas Tax Code, the Zone will be governed by a nine-member Board of Directors appointed by the City Commission, the Board of Directors of the ZONE (hereinafter also referred to as the "TIRZ Board"). The TIRZ Board members shall include: a City designee, a County designee, and five other initial members all of whom must be the owners of real property within the Zone, or an agent or employee of an owner of real property in the Zone; the other two board members shall be the State Senator and State Representative representing the districts in which the Zone is located. The chairperson of the TIRZ Board will be designated by the City Commission.

The TIRZ Board will operate pursuant to Robert's Rules of Order and will adopt rules governing the management of the TIRZ. These rules are designed to ensure conformity with all Texas Tax Code rules and regulations, including but not limited to the requirement that all Public Infrastructure Improvements are publically bid and that all meetings are held in compliance with the Texas Open Meetings Act. The TIRZ Board may make non-Material Changes within the Project and Finance Plan, provided that said changes do not violate the competitive bidding requirements for public infrastructure improvements as required by Texas law. Additional guidelines and requirements for carrying out the Project and additional rights and obligations of the City, County, and Developer are contained in the City ordinances creating the Zone, approving the Finance Plan and Project Plan, as well as in the Development Agreement and the Interlocal Agreement related to the Project.

Compliance: The Developer shall comply with all applicable federal, state and local laws, rules and regulations, including all those relating to the construction of public improvements.



Reporting: The Developer shall submit a project status report and financial report on a semi-annual basis to the City.

Inspection: The Developer shall allow the City, County and/or the Board of Directors for the ZONE reasonable access to the Project site or sites for inspections during and upon completion of construction upon reasonable notice.

The TIRZ Board may from time-to-time recommend amendments to these financial policies to the City which, if adopted by the City, may affect the operation of the Zone.

### **Conclusions**

Based upon a set of conservative assumptions and an analysis of the Zone Project and Finance Plan, the TIRZ Board and the Commission of the City of McAllen has concluded that the TIRZ Project and Finance Plan is economically feasible in compliance with Chapter 311 of the Texas Tax Code.

The success of the Project within the Zone will encourage other large planned mixed-use developments with higher values. The new residential population base: will support an expanding retail base, will supplement the existing job market by adding over 8,000 new jobs, and will attract additional private development into the Zone and surrounding area. In addition, the Zone will serve to stabilize and enhance future property values in the City of McAllen and Hidalgo County, and will serve the municipal and governmental purpose of protecting the public safety and welfare.

*[Remainder of Page Intentionally Left Blank-Project Plan and Finance Plan Continue on Next Page]*

**APPENDIX & EXHIBITS**  
**TIRZ REQUIREMENTS**

Section 311 of the Texas Tax Code (Tax Increment Financing Act) specifies that TIRZ Project and Finance Plans meet certain requirements. These requirements are listed below, along with a reference indicating where these elements can be located in the Project and Finance Plan. All of the exhibits identified below in this Appendix are incorporated into the Project and Finance Plan of the Zone as if fully set forth herein, and are made a part hereof for all purposes:

**Project Plan**

- |   |                                       |
|---|---------------------------------------|
| 1. Survey and Field Notes of Property   | Exhibit 1                             |
| 2. Map of proposed improvements and uses-<br>Tres Lagos Master Plan                                   | Exhibit 2A                            |
| Map of existing uses and conditions   | Exhibit 2B                            |
| 3. Proposed changes of zoning ordinances, waivers and exceptions to subdivision rules and regulations | Exhibit 3                             |
| 4. Estimated non-project costs  | None claimed                          |
| 5. Relocation plan for current residents  | Not Applicable (no current residents) |

**Finance Plan**

- |  |                              |
|--|------------------------------|
| 1. Summary   | Exhibit 4                    |
| 2. Detailed estimate of Project Costs including Administrative Costs     | Exhibit 5 & Exhibit 7        |
| 3. Proposed Public Improvements (location, kind, number)                 | Exhibit 5 & Exhibit 9        |
| 4. Finding that Plan is economically feasible/economic feasibility study | Pages 8 & 12                 |
| 4. Project timeline  | Exhibit 4 & Exhibit 8        |
| 5. Estimated amount of bonded indebtedness                               | Exhibit 6 & Page 12          |
| 6. Time when costs/obligations will be incurred                          | Exhibit 5 & Pages 11 & 12    |
| 7. Methods of financing, sources of revenue                              | Exhibit 6 & Pages 9, 11 & 12 |
| 8. Current total appraised value   | Exhibit 4                    |
| 9. Estimated captured appraised value                                    | Exhibit 6 & Exhibit 7        |
| 10. Duration of Zone   | Exhibit 4                    |



Exhibit I  
Field Notes of Property & Survey

Revised September 14, 1974  
Original February 27, 1958  
Revised January 12, 1958  
April 15, 1978

**METES AND BOUND DESCRIPTION  
2571.402 ACRES OF LAND OUT OF  
SECTIONS 223, 224, 227, 230, 232,  
TEXAS-MEXICAN RAILWAY CO. SURVEY  
AND OUT OF LOT 54-7  
WEST ADDITION TO SHARYLAND SUBDIVISION  
HIDALGO COUNTY, TEXAS**

A tract of land containing 2571.402 acres situated in the County of Hidalgo, Texas, being 2571.402 acres composed of 1.) 18.865 acres being a part or portion of LOT 54-7, OUT OF THE AMENDED MAP OF LOTS 51-8, 54-6, 55-6, 58-6, 57-6, 58-8, 59-8, 62-7, 54-7, 35-7, 58-7, 57-7, 58-7, 59-7, 53-8 & 53-9, WEST ADDITION TO SHARYLAND SUBDIVISION, according to the plat thereof recorded in Volume 8, Page 42, Hidalgo County Map Records, 2.) ALL OF SECTION 223, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 8, Page 54, Hidalgo County Map Records; 3.) ALL OF SECTION 224, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the plat thereof recorded in Volume 111, Page 149-150, Hidalgo County Deed Records, 4.) a part or portion of SECTION 227, TEXAS-MEXICAN RAILWAY CO. SURVEY, 5.) a part or portion of SECTION 230, TEXAS-MEXICAN RAILWAY CO. SURVEY; 6.) a part or portion of SECTION 232, TEXAS-MEXICAN RAILWAY CO. SURVEY according to the patent issued by the State of Texas, to W. S. Daugherty recorded in Volume 4, Page 142-143, Hidalgo County Deed Records, SAVE AND EXCEPT 10.00 acres conveyed to Hidalgo County Irrigation District No. 7 by virtue of a Warranty Deed recorded in Volume 622, Page 838, Hidalgo County Deed Records, and 2571.402 acres also being more particularly described as follows:

**SECTION 210** at an iron rod found for the Northeast corner of this tract, said iron rod bears N 60° 46' 37" W a distance of 82.15 feet, and S 69° 13' 23" W a distance of 40.00 feet from the Northeast corner of said Section 222.

1. THENCE, S 33° 50' 26" E along the West right-of-way line of Ware Road (F. M. 2220) as dedicated by Volume 10, Page 42, Volume 1082, Page 87, and Volume 1073, Page 82, Hidalgo County Deed Records, a distance of 28.53 feet to an iron rod set for an outside corner of this tract;
2. THENCE, S 08° 38' 44" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 4959.59 feet to an iron rod found for an angle point;
3. THENCE, S 11° 28' 32" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 200.19 feet to an iron rod found for an angle point;
4. THENCE, S 11° 08' 04" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 22.24 feet to an iron rod found for an angle point;
5. THENCE, S 55° 15' 13" W along the West right-of-way line of said Ware Road (F. M. 2220), a distance of 33.07 feet to an iron rod found for an inside corner of this tract;
6. THENCE, S 08° 38' 44" W along the West right-of-way line of said Ware Road (F. M. 2220), at a distance of 9.61 feet pass the North right-of-way line of Mile 9 Road, and continuing a total distance of 29.84 feet to the Northwestern-Southeast corner of this tract;
7. THENCE, N 00° 23' 20" W along the South line of said Section 232, the North line of Lots 35-68, Section 229, Tex-Mex no pat plat thereof recorded in Volume 12, Page 85, Hidalgo County Map Records, and within Mile 9 Road right-of-way, a distance of 5175.14 feet to an iron pipe found for the Southeast corner of said Section 232, and the Northeast corner of Section 230 for an inside corner of this tract;

8. THENCE, S 09°06' 05" W along the East line of said Section 230, and the West line of Section 229, as per said plat thereof recorded in Volume 12, Page 55, Hidalgo County Map Records, at a distance of 2510.05 feet pass an iron pipe found in line, and now continuing along the West line of Section 229, Tax-Map, as per plat thereof recorded in Volume 12, Page 22, Hidalgo County Map Records, and continuing a total distance of 3296.30 to an outside corner of this tract;
9. THENCE, N 80° 16' 32" W a distance of 251.52 feet (250.00 feet) to an iron rod set for an inside corner of this tract;
10. THENCE, S 08° 44' 55" W, at a distance of 29.00 feet pass an iron pipe found in line, and continuing a total distance of 250.00 feet to an iron pipe found for an outside corner of this tract;
11. THENCE, N 60° 55' 35" W a distance of 2503.38 feet (2503.2 feet) to an iron pipe found for an inside corner of this tract;
12. THENCE, S 32° 02' 13" W at a distance of 1631.44 feet pass the North right-of-way line of Mile 8 Road, and continuing a total distance of 1631.44 feet to the Southwestern Southeast corner of this tract;
13. THENCE, N 80° 49' 07" W along the South line of said Section 230, and within said Mile 8 Road right-of-way, a distance of 627.20 feet to an iron rod found for the centerline of Glasscock Road, and for an angle point of this tract;
14. THENCE, N 80° 47' 57" W along the South line of said Section 230, said Section 223, and within said Mile 8 Road right-of-way, a distance of 2544.00 feet to a concrete monument found for the centerline of Stokan Road, and for an angle point of this tract;
15. THENCE, N 81° 10' 51" W along the South line of said Section 223, and within said Mile 8 Road right-of-way, at a distance of 2658.21 feet pass an iron rod found in line and for the center line of Bryan Road, and continuing a total distance of 4164.68 feet to the Southwest corner of said Section 223, and for the Southwestern Southwest corner of this tract;
16. THENCE, N 00° 55' 01" E along the West line of said Section 223, a distance of 1954.21 feet to an iron rod set for an inside corner of this tract;
17. THENCE, N 81° 02' 31" W along the South line of said Section 223, and said Section 224, at a distance of 1101.62 feet pass an iron rod found in line, at a distance of 2482.04 feet pass an iron rod found in line, and continuing a total distance of 2915.12 feet to an iron pipe found for the Southwest corner of said Section 224 and to a point on the East line of said Lot 54-7, for an inside corner of this tract;
18. THENCE, S 085° 01" W along the East line of said Lot 54-7, a distance of 110.00 feet to the Southeast corner of said Lot 54-7, for an outside corner of this tract;
19. THENCE, N 81° 17' 16" W along the South line of said Lot 54-7, at a distance of 751.50 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 721.50 feet to the Southwest corner of said Lot 54-7, for the Northwestern Southwest corner of this tract;
20. THENCE, N 08°42'44" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 220.00 feet to an outside corner of the tract;
21. THENCE, S 81° 17' 16" E at a distance of 30.00 feet pass a No.4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing along the South line of The Fraga Subdivision (Vol.25, Pg.134-A H.C.M.R.), for a total distance of 205.00 feet to a No.4 rebar set at the Southeast corner of said The Fraga Subdivision, for an inside corner of this tract;
22. THENCE, N 00°42' 48" E along the East line of said The Fraga Subdivision, a distance of 125.00 feet to a No.4 rebar set at the Northeast corner of said The Fraga Subdivision, for an inside corner of this tract;

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23. THENCE, N 81° 17' 15" W along the North line of said The Press Subdivision, at a distance of 175.00 feet past a No. 4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 205.50 feet to an outside corner of this tract;
24. THENCE, N 68° 42' 14" E along the West line of said Lot 54-7 and within the right-of-way of F.M. Road 2993 (Cantu Road), a distance of 352.13 feet to the Southeastmost Northwest corner of this tract;
25. THENCE, S 34° 17' 15" E along the South line of a certain 3.82-acre tract, at a distance of 30.00 feet past a No. 4 rebar set for the East right-of-way line of F.M. Road 2993 (Cantu Road), continuing a total distance of 738.00 feet to a No. 4 rebar set for an outside corner of this tract;
26. THENCE, S 03° 59' 01" W along the West line of a tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No. 7 (now United Irrigation District) by virtue of a Deed recorded in Vol. 519, Pg. 65, Hidalgo County Deed Records, a distance of 477.14 feet to a No. 4 rebar set for an inside corner of this tract;
27. THENCE, S 81° 17' 18" E along the South line of said tract conveyed to Hidalgo Co. Water Control & Imp. Dist. No. 7, a distance of 68.00 feet to a No. 4 rebar set for an inside corner of this tract;
28. THENCE, N 06° 55' 31" E along the West line of said Section 224, a distance of 2264.35 feet to an iron pipe found for the Northwest corner of said Section 224, and for an outside corner of this tract;
29. THENCE, S 81° 02' 31" E along the North line of said Section 224, a distance of 2554.12 feet to an iron rod set for the Northeast corner of said Section 224, and for an inside corner of this tract;
30. THENCE, N 08° 55' 01" E along the West line of said Section 223, a distance of 854.85 feet to an iron pipe found for the Northwest corner of said Section 223, and for an outside corner of this tract;
31. THENCE, S 00° 40' 58" E along the North line of said Section 223, a distance of 2177.85 feet to an iron pipe found for an angle point of this tract;
32. THENCE, S 80° 45' 29" E along the North line of said Section 223, a distance of 2402.49 feet to an iron pipe found for the Northwest corner of said Section 223, and for an inside corner of this tract;
33. THENCE, N 02° 03' 28" E along the West line of said Section 227, at a distance of 3795.04 feet past an iron pipe found in line, and continuing a total distance of 3415.10 feet to an iron pipe found for the Northwest Northeast corner of this tract;
34. THENCE, S 80° 40' 45" E along the South right-of-way line of Monte Cristo Road (F. M. 1925) as dedicated by Volume 933, Page 430, Volume 904, Page 241, Volume 896, Page 277, and Volume 930, Page 57, Hidalgo County Deed Records, a distance of 3279.69 feet to an iron rod set for a curve to the right;
35. THENCE, along said curve to the right and the South right-of-way line of said Monte Cristo Road (F. M. 1925), with a central angle of 02° 26' 09", a radius of 7018.19 feet, an arc length of 299.37 feet, a spangar of 149.21 feet, and a chord that bears S 70° 27' 35" E a distance of 298.35 feet to an iron rod set;
36. THENCE, S 70° 14' 36" E along the South right-of-way line of said Monte Cristo Road (F. M. 1925), a distance of 353.73 feet to an iron rod set for a curve to the left;
37. THENCE, along said curve to the left and the South right-of-way line of said Monte Cristo Road (F. M. 1925), with a central angle of 02° 25' 56", a radius of 7167.86 feet, an arc length of 301.77 feet, a tangent of 150.91 feet, and a chord that bears S 70° 27' 29" E a distance of 301.73 feet to an iron rod set;
38. THENCE, S 20° 41' 29" E along the South right-of-way line of said Monte Cristo Road (F. M. 1925), a distance of 1325.10 feet to an iron rod set for a curve to the left;



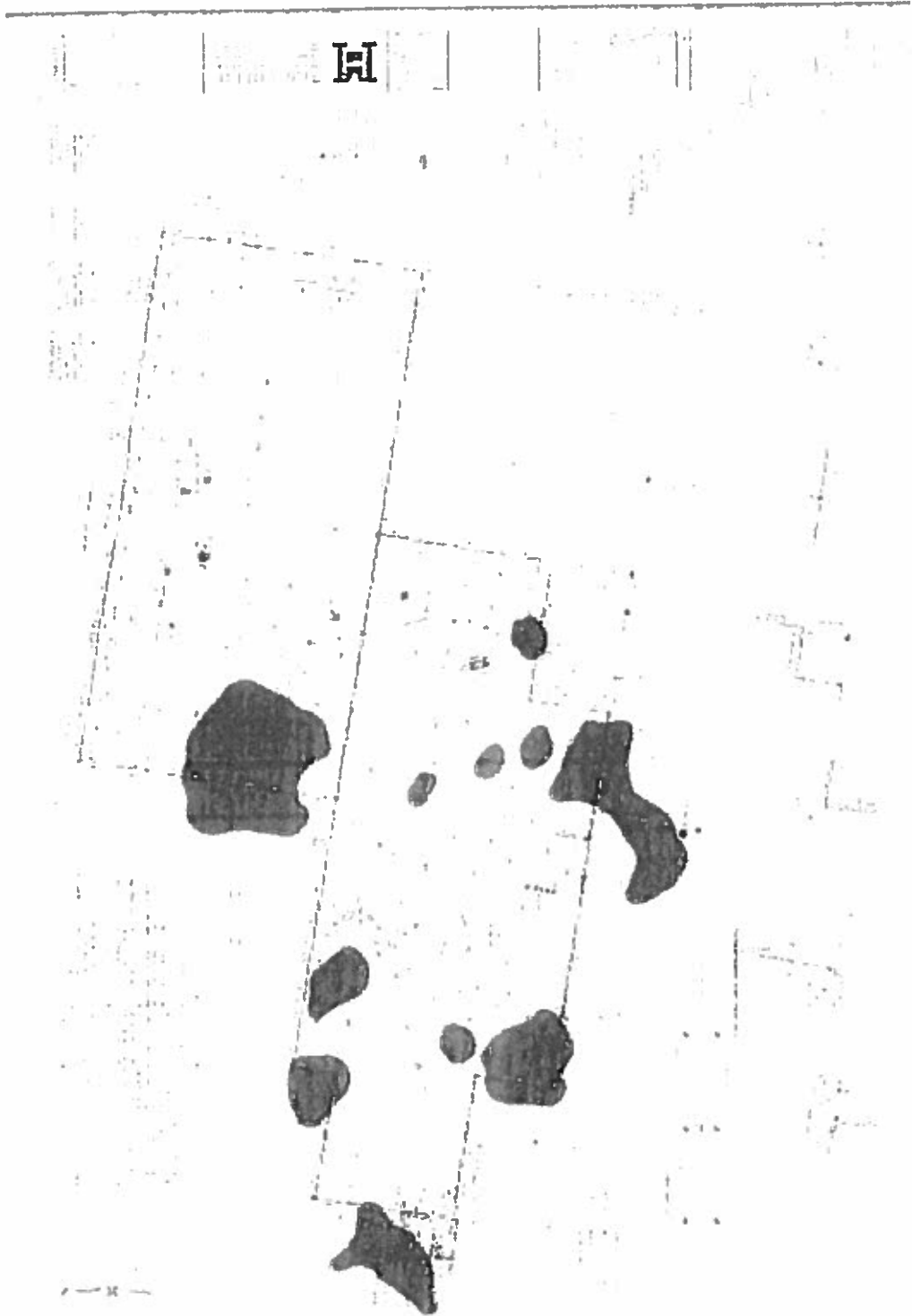
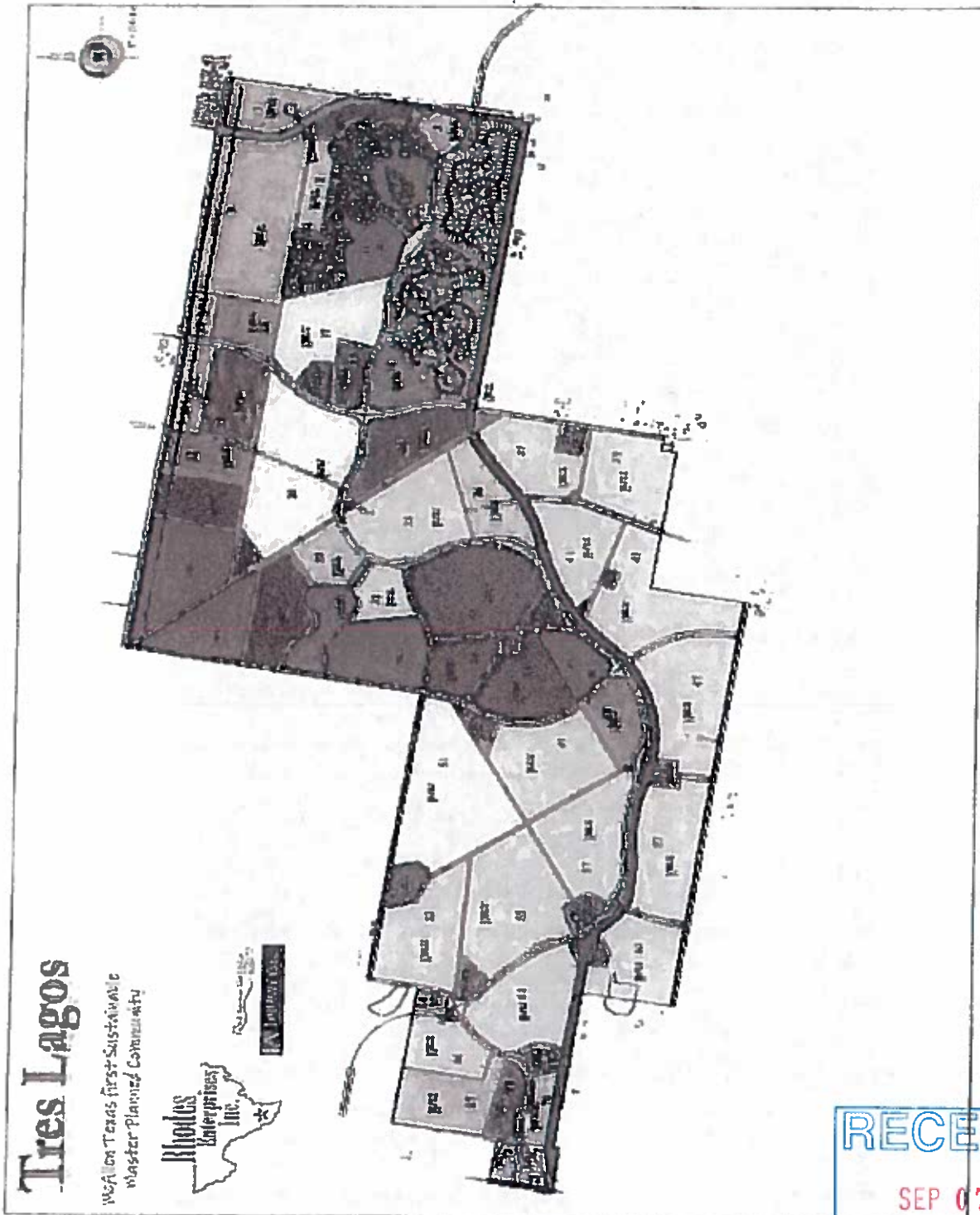


Exhibit 2  
A. Map of Proposed Improvements and Uses



**Tres Lagos**

We'll be Texas first + Sustainable  
Master Planned Community



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B. Map of Existing Uses and Conditions





Exhibit 3  
A. Waivers and Exceptions to the City of McAllen Planning Regulations

The following specific waivers and exceptions will be required for the Project.

1. The requirement that two access points must be provided into any subdivision with over 20 lots shall not apply to this Project. Emergency access walks/drives shall be recognized as secondary access points for emergency service vehicles.
2. The requirement that the maximum street length ending in a cul-de-sac shall be 600 feet will not apply to this Project provided the unit of development enjoying the variance is designed and plated using the 'coving method' and there are emergency access walks/drives serving the unit of development.
3. The requirements pertaining to sidewalks contained in the City's Development Code will not apply to this Project provided a sidewalk having a width of at least adequate for pedestrian and bike traffic is provided in a plan that is sealed by the registered engineer designing the unit of development.

4. The requirements pertaining to side yard set-backs from property line will be five (5) feet rather than six (6) feet as required by the City Development Code.

5. The requirements pertaining to front yard set-backs for R-1 zoning will be 20 feet rather than the 25 feet as required by the City Development Code.

6. There will be no park fee collected because the parkland dedication will exceed the CITY's requirements as of 10/30/2014.

B. Current and Future Land Use/Zoning

Tract	Average	Current Land Use	Zoning District
1	28,7199 acres	Open Space-Agricultural	C-4- Commercial Industrial
2	15,000 acres	Open Space-Agricultural	R-3A- Apartment Residential
3	11,500 acres	Open Space-Agricultural	C-4- Commercial Industrial
4	55,000 acres	Open Space-Agricultural	R-1- Single Family Residential
5	81,000 acres	Open Space-Agricultural	R-1- Single Family Residential
6	2,000 acres	Open Space-Agricultural	C-4- Commercial Industrial
7	12,000 acres	Open Space-Agricultural	R-1- Single Family Residential
8	15,000 acres	Open Space-Agricultural	R-3A- Apartment Residential
9	100,000 acres	Open Space-Agricultural	C-4- Commercial Industrial
10	4,465 acres	Open Space-Agricultural	R-1- Single Family Residential
11	20,000 acres	Open Space-Agricultural	C-4- Commercial Industrial
12	5,4285 acres	Open Space-Agricultural	R-1- Single Family Residential
13	79,000 acres	Open Space-Agricultural	R-1- Single Family Residential
14	19,6183 acres	Open Space-Agricultural	C-4- Commercial Industrial
15	15,000 acres	Open Space-Agricultural	C-4- Commercial Industrial
16	8,1425 acres	Open Space-Agricultural	C-4- Commercial Industrial
17	52,000 acres	Open Space-Agricultural	R-1- Single Family Residential

Project and Finance Plan

Tres Lagos

18	20.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
19	7.1507 acres	Open Space-Agricultural	C-4- Commercial Industrial
20	18.3713 acres	Open Space-Agricultural	C-4- Commercial Industrial
21	35.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
22	25.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
23	30.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
24	56.9548 acres	Open Space-Agricultural	C-4- Commercial Industrial
25	39.7438 acres	Open Space-Agricultural	C-4- Commercial Industrial
26	40.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
27	5.6970 acres	Open Space-Agricultural	R-1- Single Family Residential
28	99.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
29	21.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
30	29.1412 acres	Open Space-Agricultural	R-3A- Apartment Residential
31	43.7021 acres	Open Space-Agricultural	R-3A- Apartment Residential
32	18.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
33	60.5814 acres	Open Space-Agricultural	R-1- Single Family Residential
34	42.4782 acres	Open Space-Agricultural	C-4- Commercial Industrial
35	1.6301 acres	Open Space-Agricultural	C-4- Commercial Industrial
36	33.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
37	41.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
38	6.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
39	49.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
40	67.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
41	40.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
42	12.2107 acres	Open Space-Agricultural	R-1- Single Family Residential
43	68.6857 acres	Open Space-Agricultural	R-1- Single Family Residential
44	23.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
45	41.7396 acres	Open Space-Agricultural	C-4- Commercial Industrial
46	20.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
47	67.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
48	23.9745 acres	Open Space-Agricultural	R-3A- Apartment Residential
49	62.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
50	6.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
51	92.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
52	10.3235 acres	Open Space-Agricultural	R-1- Single Family Residential
53	57.3405 acres	Open Space-Agricultural	R-1- Single Family Residential
54	6.3298 acres	Open Space-Agricultural	C-4- Commercial Industrial
55	79.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
56	8.0321 acres	Open Space-Agricultural	R-1- Single Family Residential
57	57.5000 acres	Open Space-Agricultural	R-1- Single Family Residential
58	6.2000 acres	Open Space-Agricultural	R-1- Single Family Residential
59	57.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
60	46.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
61	3.1158 acres	Open Space-Agricultural	R-1- Single Family Residential
62	1.5466 acres	Open Space-Agricultural	R-1- Single Family Residential
63	59.0000 acres	Open Space-Agricultural	R-1- Single Family Residential
64	3.9616 acres	Open Space-Agricultural	C-4- Commercial Industrial
65	0.7792 acres	Open Space-Agricultural	C-4- Commercial Industrial
66	29.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
67	42.0000 acres	Open Space-Agricultural	R-3A- Apartment Residential
68	16.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
69	6.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
70	12.0000 acres	Open Space-Agricultural	C-4- Commercial Industrial
71	0.6336 acres	Open Space-Agricultural	C-4- Commercial Industrial

**Project and Finance Plan**

**Tres Lagos**

72	6.9196 acres	Open Space-Agricultural	C-4- Commercial Industrial
73	5.9685 acres	Open Space-Agricultural	C-4- Commercial Industrial
74	72.2971 acres	Open Space-Agricultural	C-4- Commercial Industrial

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## Exhibit 4

## A. Summary Fact Sheet

<b>Proposed Tres Lagos Tax Increment Finance Zone</b>			
<i>Estimated 30 Year Build out of Residential, Multi Family, &amp; Commercial</i>			
<b>Summary Fact Sheet</b>			
February 20, 2015			
<b>Site Area</b>		<b>2,571 +/- Acres</b>	
<b>2014 Base Value</b>		<b>\$1,064,613.00</b>	
			<b>Taxable Value</b>
<i>Residential Units (SF/MF) 2.5 du/acre</i>	<b>239 Acres</b>		<b>\$ 289,261,974.70</b>
<i>3.5 du/acre</i>	<b>513 Acres</b>		<b>\$ 646,356,673.82</b>
<i>4.5 du/acre</i>	<b>697 Acres</b>		<b>\$ 575,364,753.07</b>
<b>Multifamily 10 du/acre</b>	<b>48 Acres</b>		<b>\$ 58,642,983.99</b>
<b>Multifamily 15 du/acre</b>	<b>70 Acres</b>		<b>\$ 90,841,924.27</b>
<b>Townhomes 8 du/acre</b>	<b>75 Acres</b>		<b>\$ 110,833,324.31</b>
<b>Sales Center</b>	<b>4 Acres</b>		<b>\$ 1,000,000.00</b>
<b>Commercial / Retail</b>	<b>192 Acres</b>		<b>\$ 319,976,279.19</b>
<b>Commercial / Office</b>	<b>97 Acres</b>		<b>\$ 267,955,187.64</b>
<b>University Campus/Flex</b>	<b>105 Acres</b>		<b>\$ 209,547,875.14</b>
<b>School Site</b>	<b>80 Acres</b>		<b>\$ -</b>
<b>Church, Mosque, Synagogue</b>	<b>90 Acres</b>		<b>\$ -</b>
<b>Roadway</b>	<b>135 Acres</b>		<b>\$ -</b>
<b>Drainage</b>	<b>76 Acres</b>		<b>\$ -</b>
<b>Parks</b>	<b>121 Acres</b>		<b>\$ -</b>
<b>Totals</b>	<b>2,542 Acres</b>		<b>\$ 2,569,780,976.14</b>
<b>Estimated Taxable Value Created</b>		<b>\$ 2,569,780,976</b>	
<b>McAllen TIF Assessed Rate</b>		<b>\$ 0.4313</b>	
<b>County TIF Assessed Rate</b>		<b>\$ 0.5308</b>	
<b>Tax Collection Rate</b>		<b>100.00%</b>	
<b>Est. Infrastructure Costs</b>		<b>\$ 258,940,901</b>	
<b>Est. Total Net TIF Revenues</b>		<b>\$ 264,308,634</b>	
<b>Excess (Shortage) TIF Revenues</b>		<b>\$ 5,367,733</b>	
<b>Est. TIF Life</b>		<b>30 Years</b>	
The projections and estimates contained in this Finance and Project Plan are subject to and may be impacted by market & economic conditions both domestic & international. Actual completion & construction of the Project may take more or less time than described herein. However it is understood that the Developer will use its best efforts to complete the project as quickly as economically feasible. A growth rate of 1.015% per year has been used to establish value of future tax basis.			

# Project and Finance Plan

Tres Lagos

## B. Overall Summary with Escalators Table

**Proposed Tres Lagos Tax Increment Finance Zone  
Finance Plan - Overall Summary with Escalators (30 year)  
Tax Value added by year with escalator**

Development Type/ by acre	Total Current Value	2015	2016	2017	2018	2019	2020
Single Family 2.5 du/acre	293,025,000	-	8,035,345	8,155,875	8,278,213	8,402,388	8,528,422
Single Family 3.5 du/acre	520,695,000	-	17,953,000	18,224,325	18,497,690	18,775,155	19,056,783
Single Family NLS du/acre	463,505,000	-	15,582,831	16,222,675	16,866,015	17,513,005	18,163,700
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	171,517,500	-	-	-	6,352,500	6,447,763	6,544,504
Multifamily 80 du/acre	48,000,000	-	-	-	1,777,778	1,804,444	1,831,511
Multifamily 85 du/acre	82,990,000	-	-	-	-	6,980,769	-
Townhomes 8 du/acre	80,000,000	-	-	3,214,286	3,262,500	3,311,438	3,361,109
Retail & Commercial	261,904,500	-	-	-	9,700,167	9,845,569	9,991,754
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	1,000,000	250,000	-	-	-	-	250,000
Office Use	219,324,600	-	-	-	8,123,133	8,244,980	8,368,655
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>2,081,921,600</b>	<b>250,000</b>	<b>41,978,276</b>	<b>45,817,351</b>	<b>72,457,996</b>	<b>79,925,695</b>	<b>74,898,089</b>
<b>Projected Construction Costs</b>	<b>732,996,915</b>	<b>22,609</b>	<b>3,785,823</b>	<b>4,143,442</b>	<b>6,552,687</b>	<b>7,228,018</b>	<b>8,773,851</b>

Development Type/ by acre	2021	2022	2023	2024	2025	2026	2027
Single Family 2.5 du/acre	8,656,348	8,786,194	8,917,987	9,051,756	9,187,533	9,325,346	9,465,226
Single Family 3.5 du/acre	19,342,634	19,632,774	19,927,265	20,225,174	20,529,567	20,837,511	21,150,073
Single Family NLS du/acre	17,218,156	17,476,428	17,738,575	18,004,653	18,274,729	18,548,844	18,827,077
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	6,642,672	6,742,312	6,843,447	6,946,098	7,050,290	7,156,044	7,263,385
Multifamily 80 du/acre	1,858,934	1,886,869	1,915,172	1,943,899	1,973,058	2,002,653	2,032,693
Multifamily 85 du/acre	6,476,481	-	6,573,628	-	6,672,232	-	6,772,316
Townhomes 8 du/acre	3,411,526	3,462,699	3,514,639	3,567,359	3,620,869	3,675,182	3,730,310
Retail & Commercial	10,143,255	10,295,403	10,449,834	10,606,582	10,765,681	10,927,165	11,091,073
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Parks in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	-	-	-	-	250,000	-	-
Office Use	8,494,185	8,621,598	8,750,922	8,882,185	9,015,418	9,150,619	9,287,909
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>82,244,240</b>	<b>76,904,706</b>	<b>81,631,468</b>	<b>79,228,708</b>	<b>87,339,571</b>	<b>81,628,395</b>	<b>80,620,062</b>
<b>Projected Construction Costs</b>	<b>7,437,699</b>	<b>6,954,784</b>	<b>7,653,587</b>	<b>7,364,992</b>	<b>7,888,474</b>	<b>7,581,554</b>	<b>8,104,727</b>

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Overall Summary with Escalators Table (Continued)

Development Type/ by acre	2028	2029	2030	2031	2032	2033	2034
	14	15	16	17	18	19	20
Single Family 2.5 du/acre	9,667,204	9,751,912	9,897,582	10,046,046	10,196,736	10,349,689	10,504,933
Single Family 3.5 du/acre	21,467,324	21,789,334	22,316,174	22,447,917	22,781,636	23,126,405	23,473,301
Single Family H.S du/acre	19,109,483	19,396,125	19,687,067	19,982,373	20,282,108	20,586,340	20,895,155
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	7,377,336	7,482,921	7,595,164	7,709,092	7,824,728	7,942,069	8,061,231
Multifamily 80 du/acre	2,063,184	2,094,131	2,125,543	2,157,427	2,189,788	2,222,635	2,255,974
Multifamily 85 du/acre	-	6,873,901	-	6,977,009	-	7,081,661	-
Townhomes 8 du/acre	3,786,264	3,843,058	3,900,704	3,959,215	4,018,603	4,078,882	4,140,065
Retail & Commercial	11,257,439	11,426,301	11,597,056	11,771,661	11,949,236	12,127,459	12,309,371
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Park in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	-	-	250,000	-	-	-	-
Office Use	9,427,278	9,568,636	9,712,166	9,857,848	10,005,716	10,155,802	10,308,139
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>84,090,462</b>	<b>82,725,720</b>	<b>86,887,097</b>	<b>94,908,587</b>	<b>89,250,552</b>	<b>97,670,974</b>	<b>91,948,150</b>
<b>Projected Construction Costs</b>	<b>7,604,661</b>	<b>8,340,367</b>	<b>7,857,121</b>	<b>8,582,991</b>	<b>8,071,910</b>	<b>8,832,805</b>	<b>8,915,266</b>

Development Type/ by acre	2035	2036	2037	2038	2039	2040	2041
	21	22	23	24	25	26	27
Single Family 2.5 du/acre	10,667,507	10,827,444	10,984,781	11,149,553	11,316,796	11,486,548	11,658,846
Single Family 3.5 du/acre	23,825,401	24,182,782	24,545,523	24,913,706	25,287,412	25,666,723	26,051,724
Single Family H.S du/acre	21,208,562	21,526,691	21,849,591	22,177,335	22,509,995	22,847,645	23,190,360
School Site	-	-	-	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-	-	-	-
Technology Park/Campus	8,182,349	8,304,881	8,429,455	8,555,896	8,684,235	8,814,498	8,946,716
Multifamily 80 du/acre	2,289,814	2,324,161	2,359,024	2,394,409	2,430,325	2,466,780	2,503,781
Multifamily 85 du/acre	7,187,089	-	7,295,708	-	7,405,143	-	7,515,220
Townhomes 8 du/acre	4,202,166	4,265,199	4,329,177	4,394,114	4,460,026	4,526,927	4,594,830
Retail & Commercial	12,494,012	12,681,422	12,871,643	13,064,718	13,260,689	13,459,599	13,661,493
Perimeter ROW	-	-	-	-	-	-	-
Interior ROW	-	-	-	-	-	-	-
Drainage way & Park	-	-	-	-	-	-	-
Park in Street Islands	-	-	-	-	-	-	-
Park with Main Trail	-	-	-	-	-	-	-
Sales Center	-	-	-	-	-	-	-
Office Use	10,467,781	10,619,702	10,778,999	10,940,683	11,104,793	11,271,365	11,440,435
Major Drainage way	-	-	-	-	-	-	-
<b>Added Value</b>	<b>100,515,283</b>	<b>94,727,282</b>	<b>100,443,899</b>	<b>97,580,415</b>	<b>105,459,414</b>	<b>100,540,865</b>	<b>108,564,406</b>
<b>Projected Construction Costs</b>	<b>9,090,106</b>	<b>8,566,594</b>	<b>9,354,875</b>	<b>8,825,520</b>	<b>9,627,581</b>	<b>8,092,771</b>	<b>9,908,379</b>

Project and Finance Plan

Tres Lagos

Overall Summary with Escalators Table (Continued)

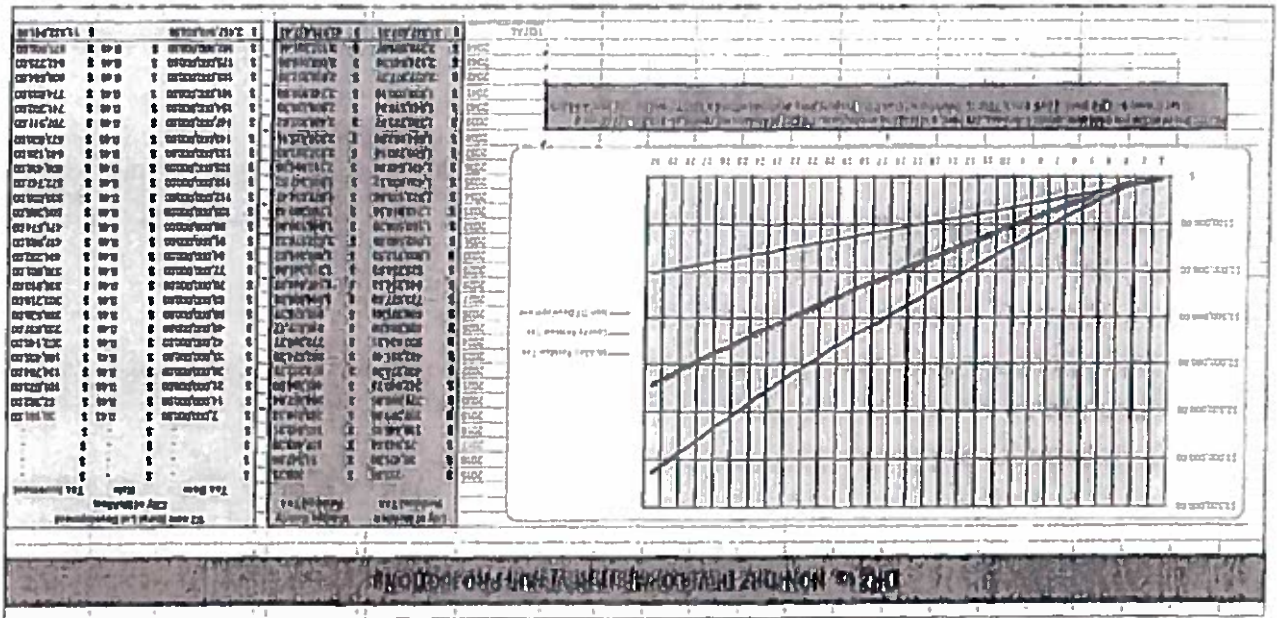
Development Type/ by acre	2012	2013	2014	TOTALS
	28	29	30	
Single Family 2.5 du/acre	11,833,729	12,011,235	12,141,403	289,261,975
Single Family 3.5 du/acre	26,442,500	26,839,157	27,241,724	646,356,674
Single Family R.5 du/acre	23,538,215	23,891,288	24,249,657	575,364,753
School Site	-	-	-	-
Church, Mosque, Synagogue	-	-	-	-
Technology Park/Campus	9,080,917	9,217,150	9,355,387	209,547,875
Multifamily 80 du/acre	2,541,938	2,579,458	2,618,150	58,642,984
Multifamily 85 du/acre	-	7,528,964	-	90,841,924
Townhomes 8 du/acre	4,660,753	4,733,709	4,804,715	110,839,324
Retail & Commercial	19,866,416	14,074,412	14,285,578	319,976,279
Perimeter ROW	-	-	-	-
Interior ROW	-	-	-	-
Drainage way & Park	-	-	-	-
Parks in Street Islands	-	-	-	-
Park with Main Trail	-	-	-	-
Sales Center	-	-	-	1,000,000
Office Use	11,612,047	11,786,223	11,963,016	267,955,188
Major Drainage way	-	-	-	-
<b>Added Value</b>	<b>109,578,909</b>	<b>112,761,556</b>	<b>106,709,580</b>	<b>2,569,780,976</b>
<b>Projected Construction Costs</b>	<b>9,367,085</b>	<b>10,197,511</b>	<b>9,650,205</b>	<b>292,396,315</b>

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Exhibit 5  
Sources & Uses Table

Proposed Tres Lagos Tax Increment Finance Zone						
Sources & Uses						
<b>Sources of Funds</b>						
	Net TIF Revenue City of McAllen	\$	120,990,143			
	Net TIF Revenue Hidalgo County	\$	143,318,484			
<b>Total Sources of Funds</b>			\$	264,308,634		
<b>Uses of Funds</b>						
	Units	Amount	Cost Per Unit	Location	Total Infrastructure Improvements	
<b>Public Improvements</b>						
<b>Internal Hard Project Costs</b>						
Site Work	Acres	1550	\$ 2,500.00	Project Site	\$ 3,875,000	
Mike O Russell Rd Pav/Drain/light	L.F.	27500	\$ 513.00	Site	\$ 14,138,280	
Shary & Bryan Pav/Drain/light	L.F.	11900	\$ 479.50	Site	\$ 5,706,050	
Glascock/Stewart/Mayberry	L.F.	10400	\$ 354.50	Site	\$ 3,696,800	
Int. Streets & Drainage	L.F.	154580	\$ 214.50	Project Site	\$ 53,596,698	
Water Reuse System; and Lakes	L.F.	154,480	\$ 39.00	Project Site	\$ 14,969,651	
Water	L.F.	154,560	\$ 50.00	Project Site	\$ 20,198,890	
Spine Water Main	34,100 LF of 20 in. & 18 in	LS	na	Offsite and Onsite	\$ 3,400,000	
Spine Sanitary Sewer Main	15 to 21 inch SS	LS	na	Onsite	\$ 2,200,000	
Drain Ditch Xrags	10' x 10' Box Culvert Xrag	5	\$ 150,000.00	Ditch Xrag with Roads	\$ 750,000	
Spine Water Reuse	Lake Lining/pumps/trunks	LS	na	50 ac of lake reservoir	\$ 3,000,000	
Sewer	L.F.	154,560	\$ 62.00	Project Site	\$ 29,682,269	
Parks w/amenities & Landscaping	Acres	121	\$ 100,000.00	Project Site	\$ 12,100,000	
Man Entrances	Each	3	\$ 350,000.00	Project Site	\$ 1,050,000	
Minor Entrances	Each	21	\$ 78,000.00	Project Site	\$ 1,578,000	
Roundabouts	Each	3	\$ 85,000.00		\$ 255,000	
Bus Stops	Each	5	\$ 35,000.00	Project Site	\$ 175,000	
Mail Box Clusters	Each	8500	\$ 100.00	Project Site	\$ 850,000	
Water Impact Fees	AcFt	3125	\$ 2,500.00	Project Site	\$ 7,812,500	
Sewer Impact Fees				Project Site	\$ -	
Sidewalks	S.F.	765,117	\$ 4.00	Project Site	\$ 3,020,468	
Purchase of Real Property	Acres	40	\$ 15,000.00	South Area	\$ 600,000	
Masonry Walls	LF	52800	\$ 83.00		\$ 4,224,000	
<b>Common Hard Costs</b>						
IT/ITL Comm. WI-FI, Surveillance		varies	varies	Project Site	\$ 13,779,000	
					Sub Total:	\$ 202,022,596
<b>Soft Project Costs</b>						
Engineering/Surveying/Consulting					\$ 16,209,609	
Construction Management					\$ 2,532,782	
Formation Costs & Consulting					\$ 900,000	
Contingency & City Public Improvements (approx. \$1,050,000.00) plus Pre-TIRZ Administrative Costs (up to \$70,000)					\$ 10,131,130	
<b>Subtotals</b>					<b>\$ 232,396,315</b>	
<b>EXPENSE:</b>						
Total Infrastructure		\$	232,396,315			
Interest Expense / Finance Costs (estimated) @ 4.5%		\$	26,144,688			
<b>Total</b>		\$	258,540,901			
Admin. Expenses (City & County)		\$	400,000			
<b>Grand Total</b>		\$	259,940,901			
<b>REVENUE:</b>						
Total TIF Revenue		\$	264,308,634			
Project Financing Surplus (Shortage)		\$	6,367,733			

The above allocation of costs are estimated and may be changed or adjusted by action of the Board of the TIRZ to meet project requirements pursuant to Section 13.3 of the Development Agreement, however the total maximum contributions of the participating taxing entities and term of the Zone may not be increased without approval by the City Commission and County Commissioners Court.



B. TIRZ v. Non-TIRZ Revenue Projections

The base year (2015) value of the land within the Zone is 47,100 and does not include the base value, as the base value is not paid to the benefit of the property. (See page 1 and 2 of the TIRZ.)

Revenue Total: \$120,000,000  
 Property Tax: \$100,000,000  
 Total: \$220,000,000

Year	Proposed TIRZ Revenue	Proposed Non-TIRZ Revenue	Total Revenue
2015	50,000,000	50,000,000	100,000,000
2016	55,000,000	55,000,000	110,000,000
2017	60,000,000	60,000,000	120,000,000
2018	65,000,000	65,000,000	130,000,000
2019	70,000,000	70,000,000	140,000,000
2020	75,000,000	75,000,000	150,000,000
2021	80,000,000	80,000,000	160,000,000
2022	85,000,000	85,000,000	170,000,000
2023	90,000,000	90,000,000	180,000,000
2024	95,000,000	95,000,000	190,000,000
2025	100,000,000	100,000,000	200,000,000
2026	105,000,000	105,000,000	210,000,000
2027	110,000,000	110,000,000	220,000,000
2028	115,000,000	115,000,000	230,000,000
2029	120,000,000	120,000,000	240,000,000
2030	125,000,000	125,000,000	250,000,000
2031	130,000,000	130,000,000	260,000,000
2032	135,000,000	135,000,000	270,000,000
2033	140,000,000	140,000,000	280,000,000
2034	145,000,000	145,000,000	290,000,000
2035	150,000,000	150,000,000	300,000,000

A. TIRZ Revenue Build Out Assumptions  
 Exhibit 6



C. TIRZ v. Non-TIRZ Revenue Projections (w/Sales Tax)

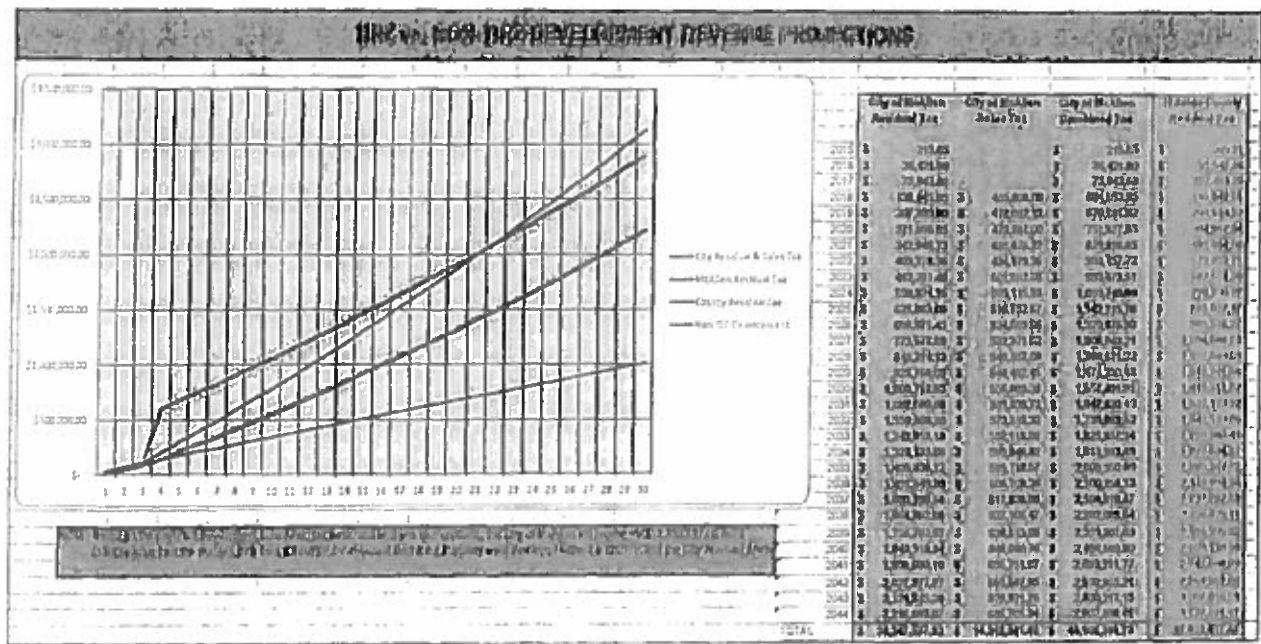


Exhibit 7  
Projected Value of Taxable New Improvements

McAllen - Tax Increment Finance Zone #1											
Projected Value of Taxable New Improvements											
Construction Costs of Public Improvements (figures do not include interest, formation or other allowable project costs)											
Year									Total		
2018	\$250,000								\$ 250,000		
2018		\$ 41,973,276							\$ 41,973,276		
2017			\$ 46,817,161						\$ 46,817,161		
2018				\$ 72,457,206					\$ 72,457,206		
2019					\$ 79,925,635				\$ 79,925,635		
2020						\$ 74,638,079			\$ 74,638,079		
2021							\$ 82,244,240		\$ 82,244,240		
2022								\$ 76,904,278	\$ 76,904,278		
2023								\$ 84,621,668	\$ 84,621,668		
2024								\$ 79,228,703	\$ 79,228,703		
2025								\$ 87,358,371	\$ 87,358,371		
2026								\$ 81,623,333	\$ 81,623,333		
2027								\$ 89,628,062	\$ 89,628,062		
2028								\$ 84,030,462	\$ 84,030,462		
2029								\$ 92,225,723	\$ 92,225,723		
2030								\$ 88,882,097	\$ 88,882,097		
2031								\$ 94,908,637	\$ 94,908,637		
2032								\$ 89,259,632	\$ 89,259,632		
2033								\$ 97,676,974	\$ 97,676,974		
2034								\$ 91,848,150	\$ 91,848,150		
2035								\$ 100,518,281	\$ 100,518,281		
2036								\$ 84,727,282	\$ 84,727,282		
2037								\$ 120,443,809	\$ 120,443,809		
2038								\$ 87,530,415	\$ 87,530,415		
2039								\$ 120,459,414	\$ 120,459,414		
2040								\$ 100,540,085	\$ 100,540,085		
2041								\$ 120,584,406	\$ 120,584,406		
2042								\$ 120,578,329	\$ 120,578,329		
2043								\$ 112,781,558	\$ 112,781,558		
2044								\$ 103,732,581	\$ 103,732,581		
	\$ 250,000	\$ 41,973,276	\$ 46,817,161	\$ 72,457,206	\$ 79,925,635	\$ 74,638,079	\$ 82,244,240	\$ 76,904,278	\$ 84,621,668	\$ 2,016,579,888	\$ 3,562,792,976

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Exhibit 8  
Estimated Construction Schedule

**McAllen - Tax Increment Finance Zone #1**  
Projected Uses of Tax Increment  
Estimated Construction Schedule of Public Improvements (figures do not include interest, formation or other allowable project costs)

Year												Total
2015	22,609.57											\$ 22,609
2016		\$ 3,795,823										\$ 3,795,823
2017			\$ 4,143,442									\$ 4,143,442
2018				\$ 6,532,687								\$ 6,532,687
2019					\$ 7,228,918							\$ 7,228,918
2020						\$ 6,773,351						\$ 6,773,351
2021							\$ (437,639)					\$ 7,437,699
2022												\$ 6,954,784
2023												\$ 7,633,687
2024									\$ 7,164,932			\$ 7,164,932
2025										\$ 7,893,474		\$ 7,893,474
2026										\$ 8,371,189		\$ 8,371,189
2027										\$ 7,657,639		\$ 8,104,737
2028										\$ 8,499,258		\$ 7,004,661
2029										\$ 7,188,057		\$ 8,342,367
2030										\$ 6,651,140		\$ 7,657,121
2031										\$ 7,265,636		\$ 8,682,991
2032										\$ 6,763,146		\$ 8,071,310
2033										\$ 7,697,139		\$ 8,832,805
2034										\$ 6,899,085		\$ 8,315,266
2035										\$ 7,616,792		\$ 9,090,028
2036										\$ 7,037,766		\$ 8,566,634
2037										\$ 7,757,278		\$ 9,354,976
2038										\$ 7,179,215		\$ 8,824,620
2039										\$ 7,306,643		\$ 9,627,581
2040										\$ 7,323,517		\$ 9,032,271
2041										\$ 8,058,944		\$ 9,908,379
2042										\$ 7,470,730		\$ 9,367,695
2043										\$ 8,214,241		\$ 10,197,511
2044										\$ 7,620,892		\$ 9,650,205
		\$ 3,795,823	\$ 4,143,442	\$ 6,532,687	\$ 7,228,918	\$ 6,773,351	\$ 7,437,639	\$ 6,954,784	\$ 7,633,687	\$ 7,164,932	\$ 146,296,236	\$ 732,298,315

The projections and estimates contained in this schedule are subject to and may be impacted by macro and economic conditions both domestic & international. Actual completion & construction of the project may take more or less time than described herein. However it is understood that the Developer will use its best efforts to complete the project as quickly as economically feasible. In the event the Developer spends more for infrastructure in a year than required, the amount spent in excess of the required amount shall be carried forward to the next year and applied as if the funds were spent in that year for the purpose of determining

Exhibit 9  
Allocated Land Uses and Values Table

Tres Lagos Allocated Land Uses and Values			ALL TAXABLE VALUES ONLY						
Designation	Description	Category	Square Feet	Acres	POV/Unit	Per Unit (\$/Sq Ft)	Type Use D	Value (VA)	Total Value
SF-A	Single Family 2.5 du/acre	Single Family		239		\$390,000.00	House	\$975,000.00	\$233,025,000.00
SF-B	Single Family 3.5 du/acre	Single Family		513		\$290,000.00	House	\$1,015,000.00	\$520,595,000.00
SF-C	Single Family 4.5 du/acre	Single Family		697	1344	\$150,000.00	House	\$665,000.00	\$463,505,000.00
NR-E	School Site	Commercial/Other	3,475,137	80		\$0.00	Acre	\$0.00	\$0.00
NR-G	Church, Mosque, Synagogue	Commercial/Other	3,920,400	90		\$0.00	Acre	\$0.00	\$0.00
NR-D	Technology Park/Campus	Commercial/Other	4,573,800	105	379.8	\$150.00	Usable S.F.	\$1,633,500.00	\$171,517,500.00
MF-B	Multifamily 10 du/acre	Multifamily	2,030,680	48		\$100,000.00	Unit	\$1,000,000.00	\$48,000,000.00
MF-C	Multifamily 15 du/acre	Multifamily	3,049,200	70		\$79,000.00	Unit	\$1,185,000.00	\$82,950,000.00
MF-A	Townhomes 8 du/acre	Multifamily	3,267,000	75	193	\$150,000.00	Unit	\$1,200,000.00	\$90,000,000.00
NR-A	Retail & Commercial	Retail	8,381,835	192	192.4	\$125.00	Usable S.F.	\$1,361,250.00	\$261,604,500.00
Roadway	Perimeter ROW	Public Use/ROW	1,206,538	28			Acre	\$0.00	\$0.00
Roadway	Interior ROW	Public Use/ROW	5,424,051	125	152.2		Acre	\$0.00	\$0.00
OS-C	Drainage way & Park	Public Use/Amenities	246,660	6			Acre	\$0.00	\$0.00
OS-D	Parks in Street Islands	Public Use/Amenities	479,689	11			Acre	\$0.00	\$0.00
OS-B	Park with Main Trail	Public Use/Amenities	4,770,220	110	126.2		Acre	\$0.00	\$0.00
Sales Center	Sales Center	Office	174,240	4		\$250,000.00	Acre	\$250,000.00	\$1,000,000.00
NR-B	Office Use	Office	4,212,252	97	100.7	\$200.00	Usable S.F.	\$2,178,000.00	\$219,324,600.00
OS-A	Major Drainage way	Public Use/Flood Plain	3,073,334	71	70.6	\$0.00	Acre	\$0.00	\$0.00
<b>Totals</b>			<b>111,463,996</b>	<b>2,559</b>	<b>2558.9</b>				<b>\$2,091,921,600.00</b>

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**EXHIBIT "C"**

**Interlocal Agreement**

**EXHIBIT "D"**

**Waivers and Exceptions to the City of McAllen Platting Regulations**

To the extent waivers and exceptions to the City of McAllen platting regulations are reasonably required to complete the Project, such waivers shall be deemed granted by the CITY provided they are approved by a majority vote of the ZONE Board. The CITY shall reserve the right to rescind any such waiver provided such action is taken by the CITY within seven (7) business days after the waiver is granted by the Board of the Zone and provided the City has received written notice of such waiver (excluding CITY holidays).

In addition to any waivers granted through the above process, the following specific waivers and exceptions are hereby granted by action of the CITY Commission approving this Agreement:

1. The requirement that two access points must be provided into any subdivision with over 20 lots shall not apply to this Project. Emergency access walks/drives shall be recognized as secondary access points for emergency service vehicles.
2. The requirement that the maximum street length ending in a cul-de-sac shall be 600 feet will not apply to this Project provided the unit of development enjoying the variance is designed and platted using the 'coving method' and there are emergency access walks/drives serving the unit of development.
3. The requirements pertaining to sidewalks contained in the CITY's Development Code will not apply to this Project provided a sidewalk having a width of at least adequate for pedestrian and bike traffic is provided in a plan that is sealed by the registered engineer designing the unit of development.
4. The requirements pertaining to side yard set-backs from property line will be five (5) feet rather than six (6) feet as required by the CITY Development Code.
5. The requirements pertaining to front yard set-backs for R-1 zoning will be 20 feet rather than the 25 feet as required by the CITY Development Code.
6. There will be no park fee collected because the parkland dedication will exceed the CITY's requirements as of 10/30/2014.



**EXHIBIT "E"**

**Technology and Fiber Provisions**

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**Introduction & Terms**

1. The special provisions contained in this Exhibit "E" and its Attachments are intended by the Parties to be a part of the overall Development Agreement and shall be binding on each Party and enforceable pursuant to the terms of the Development Agreement and this Exhibit.

2. These special provisions are set forth in three parts:

**Part I – Providing the terms and conditions under which the PID and the Developer shall use one designated and contiguous Buffer Tube (as defined below) of 12 fiber optic strands to connect the Tres Lagos Project's network operations center ("TL-NOC") to the network operations centers located in the Alliance River Crossing Development ("ARC-NOC"), the Bentsen Palm Development ("BP-NOC"), and the network operations center located in the Developer's corporate offices at the Chase Tower in McAllen ("Chase-NOC"), for the benefit of the Project, the PID and the Zone;**

**Part II – Providing the terms and conditions under which the City will cause Developer, at no cost to the City, to install and dedicate fiber optic infrastructure to the City, which the City will connect to the City's existing fiber optic network to expand said network, to encourage competition, to increase the value of the City's fiber, and make fiber optic access available to more areas in the City for the public benefit of growing the City's economy and tax base; and**

**Part III – Providing other general terms and conditions applicable to this Exhibit "E" and its Attachments and the Parties agreement hereunder.**

3. All defined terms in this "Exhibit E" and its Attachments shall have the same meaning as set forth in the Development Agreement to the extent other specific defined terms are not otherwise provided in this Exhibit or its Attachments,

4. All Parties acknowledge that City is acting only in its proprietary capacity and that nothing in this "Exhibit E" or its Attachments shall be considered a waiver of the City's governmental capacity to perform customary regulatory oversight of the activities of the Developer.

**PART I – Fiber Optic Connection to the Zone**

1. The Parties agree that in consideration of the Developer: a) voluntarily annexing +/- 2,561 acres into the City; b) agreeing to install and dedicate over \$220,000,000.00 in public infrastructure to the City; and c) agreeing to install and dedicate of over 800 miles of fiber optic strands to the City for expansion of the City's existing fiber network, the City shall provide the Developer and the PID with the exclusive irrevocable right of use (the "IRU") of the certain fiber optic strands in the black colored buffer tube being one of the 8 color coded



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

buffer tubes making up the City's fiber optic network (the "Black Buffer Tube"). The IRU held by the PID shall exist for so long as the PID exists, and the IRU held by the Developer shall exist pursuant to the terms and conditions contained in the Infeasible Right of Use Agreement attached hereto as Attachment 4. Unless otherwise allowed under Part II of this Exhibit E, the fibers contained in the Black Buffer Tube shall be used by the Developer to connect the Tres Lagos Network Operations Center, which the Developer shall install at "Point A" as identified in Attachment 1, which is attached hereto and incorporated by reference as if fully set forth herein, to:

- a. The vault located at 200 S. 10th St., McAllen, Texas 78501, to be installed by Developer at "Point B" as identified in Attachment 1, which is attached hereto and incorporated by reference as if fully set forth herein;
  - b. The vault located in the Alliance River Crossing Project, in Donna, Texas, to be installed by Developer at "Point C" as identified in Attachment 1; and,
  - c. The vault located in the Bentsen Palm Project, in Mission, Texas, to be installed by Developer at "Point D" as identified in Attachment 1.
2. To facilitate the connection of City's existing fiber optic network to the Zone for the benefit of the Zone and the PID, the City agrees to:
- a. Construct a new segment of the Black Buffer Tube and connect the fibers therein between:
    - i. "Point A" and "Point E", as identified in Attachment 1, within six (6) months from the execution hereof - said Point E being the northern extent of the City's existing fiber optic network as of the date hereof; and
    - ii. "Point B" and "Point F", as identified in Attachment 1, within ninety (90) days from the execution hereof - said "Point F" being the termination point of the City's existing fiber optic network that is closest to "Point B" as of the date hereof.
  - b. Connect "Point G" and "Point H", as identified in Attachment 1, to the fibers in the Black Buffer Tube within ninety (90) days from the execution hereof – said "Point G" being a Developer vault to be installed near the intersection of West Military Highway and S. Ware Road, and said "Point H" being a Developer vault to be installed near the intersection of West Military Highway and FM 396.
3. To cause the expansion of the City's existing fiber optic network within the corporate limits of the City, as depicted in Attachment 1, and allow such network to be connected to and through the Zone and the Tres Lagos Project, the Developer agrees to construct and dedicate

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

to the City as part of City's overall fiber optic network a full 96 strand bundle of fiber optic cable of comparable type and quality currently used by City (subject to the Developer's IRU in the Black Buffer Tube therein):

- a. Between "Point G" and "Point I" as identified in Attachment 1, - said "Point I" being a Developer vault to be installed near the intersection of West Military Highway and S. 10<sup>th</sup> Street; and
  - b. Within the rights-of-way in each major collector street built by Developer within the Zone to connect "Point A" and the outside boundaries of the Zone only within such major collector street rights-of-way identified on Attachment 2, to be installed at the time each such segment of said major collector street is platted and constructed by Developer.
4. City hereby grants Developer a limited license during the term of the IRU in the portions of the street rights-of-way identified in subsections a. and b. to allow the Developer to install fiber and dedicate it to the City for City's connection to its fiber network; to-wit:
- a. Said rights-of-ways which are highlighted in purple as identified on Attachment 1 for the purpose of installing the fiber-optic infrastructure under this Agreement and dedicating the same to the City; and
  - b. Said rights-of-way located between the City's existing fiber optic network (at the location identified by City) and each pedestal or vault installed by Developer as a connection point. Once installed and dedicated to the City, the City shall connect the fiber in the Black Buffer Tube to the connection point in the respective pedestal or vault within 90 days from the City being notified the pedestal or vault has been installed.
5. The Parties expressly agree that, in consideration for the value received by the City expressed above, the fibers in the Black Buffer Tube in all route segments of the City's fiber optic network between Points A & E, E & B, B & G, G & H, and G & I (hereafter referred to as the "PID Segments" or "PID Points") shall be set aside exclusively for the IRU held by Developer and the IRU held by the PID for providing services to the PID. The PID shall use the required number of fibers within the Black Buffer Tube to provide such services as "fiber-t-the home" technologies, high-speed Internet capabilities, IP Telephony, etc. It is expressly understood that this Agreement relates only to the granting of an IRU to the "dark fiber" in the Black Buffer Tube, and DOES NOT grant a right of service of any nature to any future customers that may be served by the Developer, the PID, or any other party within the City or elsewhere using such dark fiber. The City shall have no obligation to activate or "light-up" the said dark fiber and shall only be responsible for physical maintenance, upkeep, and connections to such fiber located within the Black Buffer Tube within the City fiber network pursuant to the terms of this Agreement, the IRU Agreement and the SLA. The City



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

agrees that it shall not permit any other connections to or splices into the Black Buffer Tube within the City network during the term of the IRU granted to the PID or the Developer.

6. The City and Developer have agreed to a Service Level Agreement (herein ("SLA") with respect to the level of service to be provided by the City related to the City's Fiber Optic Network which SLA is attached hereto and made a part hereof as Attachment 5 to this Exhibit E. The Parties expressly agree that all access to and splicing into the Black Buffer Tube in the City limits as of the date of this Agreement shall be exclusively performed by City, or its designated third-party contractors pursuant to the terms of this Agreement, the IRU Agreement, and the SLA.
  
7. The Parties agree that the Developer shall install as part of this Agreement wireless microwave equipment (transmitters, receivers and repeaters) at sites to be acquired by the Developer (the "Developer Sites") to provide bandwidth redundancy between the PID Points and Points A, B, C, & D, and to provide emergency back-up services (i.e. high-speed Internet access, IP telephony, etc.) to fiber-fed Developer-owned assets (the "Redundancy Equipment"). The City and Developer agree to cooperate in good faith to identify City-owned structures (i.e. fire stations, antennas, water towers, libraries, etc.) that could reasonably be used as a location for Developer to install Redundancy Equipment due to the height or strategic location of such sites (the "City Sites"). Any use of a City Site by Developer for installation of Redundancy Equipment shall be subject to terms and conditions contained in a separate site specific license agreement to be negotiated in good faith between the Parties. In return for the City agreeing to allow the Developer to use up to five (5) City Sites for the installation and operation of Redundancy Equipment, the Developer agrees at each said City Site to:
  - a. at the City's request, deliver back-up wireless service(s), where available, at the actual pro rata cost paid by Developer for such service from the provider;
  
  - b. jointly identify up to Five (5) Developer Sites on which Developer will provide City a back-up wireless service connection for use by the City as a connection point along the City Network to the City owned fibers serving the City owned buildings and facilities at the actual pro rata cost paid by Developer for such service from the provider.

The City Sites and the Developer Sites to be agreed on by the parties for providing signal redundancy hereunder (the "Redundancy Structures") shall be listed on Attachment 3 hereto, which is attached hereto and made a part hereof. The Parties expressly agree that said Attachment 3 may be amended from time to time as mutually agreed to by the Parties. Approval of the City and the Developer to any such amendment shall be reflected in writing dated and signed by both the City Manager and the authorized agent of the Developer.

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

8. The Parties agree that the work performed by the Developer and the City in extending the fiber-optic network in Sections 1, 2, 3, and 7 above shall be reimbursable to the Party incurring the same from the ZONE (as defined in the Development Agreement), and that the City will have a priority of reimbursement for the cost of fiber installed by the City hereunder (see Section 3.7.2 of the Development Agreement). To the extent that any of such costs have not been previously identified and included in the original TIRZ Project and Finance Plan, the Parties agree to revisit these costs as they are identified and consider presentation of a request to the Board of Directors for the ZONE for approval of a non-Material Modification to the Project Plan and Finance Plan to allow reimbursement of said costs.

**PART II- Expansion of City Fiber Network**

1. As a condition of this Agreement, and in furtherance of the benefits to be conveyed to the City hereunder, the Parties agree as follows:

- a. **Inner-City Limits Expansion.** Developer shall have an IRU under the terms of the IRU Agreement attached hereto. The City will perform services and maintenance of the City fiber in which the Developer holds an IRU under the terms of the attached SLA.

b. **Outer-City Limits Expansion**

1. Both Parties agree that upon expansion of their respective networks outside the City limits in public rights-of-way, the expanding Party (the "OCL Owner") agrees to give the other Party (the "OCL Tenant") an IRU in one Buffer Tube containing 12 strands of fiber in the respective expanded network together with a corresponding license for access, maintenance, and use, thereof (Developer shall be assigned the Black Buffer Tube of the City's outer City limit infrastructure);

- a. The obligation of the Developer to comply with this Section 1.b. of Part II hereof shall only apply to fiber optic infrastructure in public rights-ofway that is extended by the Developer outside the City's corporate limits that is connected to:

1. the City's existing fiber optic network; or
2. a City-owned facility (i.e. international bridge or rail yard) that is existing or proposed to be constructed by or in partnership with City that can be connected to the City-owned fiber optic network or used to create an overall loop for redundancy of the City fiber network.

2. Both Parties agree that an IRU provided by an OCL Owner to an OCL Tenant under this Part II shall be on the same terms and conditions contained in the IRU Agreement and the SLA, and such terms shall



**Exhibit "E"**

**Fiber Optic Infrastructure and Special Technology Provisions**

govern and apply to an OCL Tenant's use of the OCL Owner's Fiber. For the purpose of applying this section, the terms of the IRA Agreement and SLA will be considered modified as follows: the term "City" shall be replaced with the term "OCL Owner" and the term "Developer" shall be replaced with the term "OCL Tenant", and all addresses and parties requiring to make or receive payment shall also be modified in a like manner.

**PART III - General Terms and Conditions**

1. To facilitate the intent of the Parties under this Agreement, at the time the tracts within the Project are platted, the City agrees the Developer shall:
  - a. Dedicate and show all necessary easements in the plat of every unit of the Project to allow installation of the infrastructure required to provide Fiber-to-the-Home and bundled services within the ZONE;
  - b. Install and or provide the required NOC's, co-location facilities, smart poles, and fiber backbone facilities required to support the provision of Gigabit Internet capability via fiber optic strands, and provide a WiFi network capable of providing wireless signal in designated areas throughout the Zone;
  - c. Design and install a network of interconnected security cameras located in each phase of the Development to allow for video monitoring and video feeds with images to be collected and stored at the Tres Lagos NOC and/or dedicated cloud storage facility;
  - d. Include a "Technology Easement" on each plat filed within the Zone at the time of submittal to the City. The Technology Easement shall have two components, the first being an easement located within and adjacent to the perimeter of the outside boundary of each unit platted; and the second being a non-exclusive easement held by the Developer and the PID and located within the right-of-ways identified on the plat for the purpose of allowing the co-location of technology, including but not limited to surveillance cameras, Wi-Fi facilities, fiber optic, etc., as well as the maintenance, replacement, ingress and egress required for the use, operation and upkeep of said facilities. The above notwithstanding, after initial installation and platting, the Developer may only have access to the Black Buffer Tube within the City-owned fiber network by following the provisions set out in IRU Agreement and the SLA.
2. The City shall not have any responsibility for the installation or maintenance of the Smart Poles within the Project, and the City shall agree to allow the Developer to convey such facilities to the PID at the time of platting. The City will agree to reimburse the PID a mutually agreed upon flat rate per pole comparable to the rate the City would ordinarily pay for electrical power consumption elsewhere in the City.

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

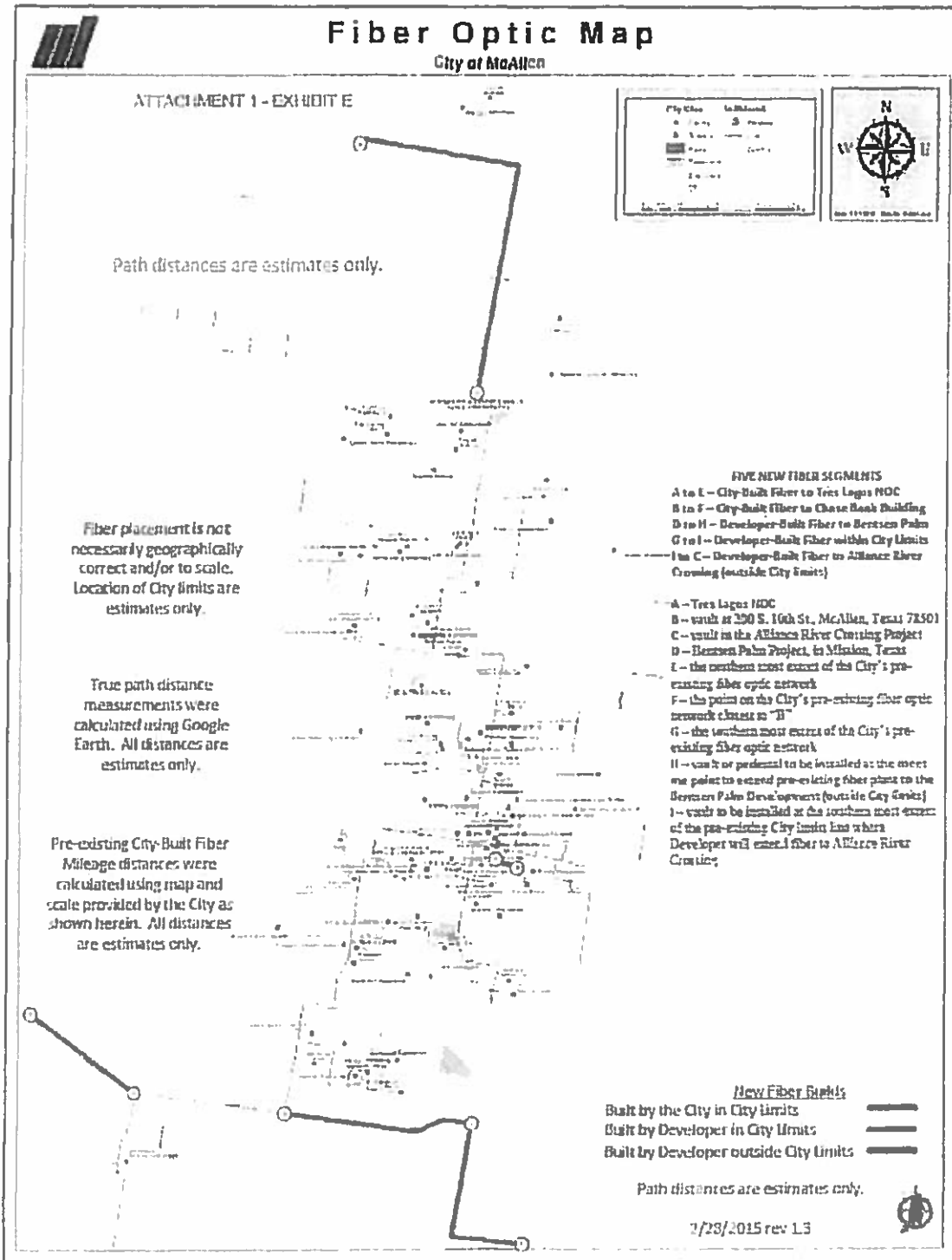
3. Both Parties agree to respect and observe any pre-existing easements within the Zone when platting and developing the Project and or reviewing, regulating, and approving such development. It is the specific intent of the City that nothing in the platting of or establishment of City-owned easements over the property shall be used to prevent any future resident from obtaining communications services from the provider of their choice.
4. In the event that either party causes harm or damage to the other party's fiber optic strands within the PID during the process of the operation of their respective fiber optic strands or otherwise, the damaging party shall notify the damaged party immediately and shall be responsible for the cost of all necessary splicing and/or repair of the damage caused.
5. In addition to the 96 strands of fiber that is to be built by the Developer and dedicated to the City ("City's Fiber Bundle"), Developer may install other discreet bundles or cables containing fiber optic strands within the PID. Such additional discreet bundles or cables installed by the Developer within the PID must be clearly marked (the "Developer's Fiber Bundles") and may be installed within the same conduit containing the City's Fiber Bundle. The Developer and its agents may access the Developer's Fiber Bundle at any time without consultation with the City; however the City's fiber bundle **MAY NOT BE ACCESSED** by Developer unless the Developer or its agents follow the requirements of the IRU Agreement and the SLA.
6. The Parties expressly agree that the City shall have no liability related to or obligation for maintenance, control, or operation of the technology infrastructure or facilities conveyed, leased, or licensed by the Developer to the PID under this agreement (including the security cameras, smart poles, NOC's and associated buildings, structures, right-of-ways, or easements); and, that all such obligations shall be assumed by the PID or the Provider selected by the PID to perform such functions.
7. The Parties agree that after construction and dedication of streets and rights-of-way within the Zone to the City by the Developer, to the extent permitted by law, the City shall not allow the future cutting of: streets, curbs, gutters, and/or driveways by any third parties for the installation of future utilities unless such cutting is required for emergency repairs. Again, to the extent permitted by law, the City agrees that all such new utilities to be installed within the Project after platting must be done through boring performed after mandatory location of all existing utilities and technology improvements. This provision shall not apply to emergency repairs carried out by the City, the PID, or any other public utility in the event such emergency repairs are needed to prevent imminent harm or damage. Further, this provision shall not apply to any holder of an easement which existed prior to the time of platting and dedication or any party that by right of law has access to the public rights-of-way of McAllen.

*[Attachments start on following page]*



Exhibit "E"  
**Fiber Optic Infrastructure and Special Technology Provisions**

ATTACHMENT 1 (Pg. 1)



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**ATTACHMENT L (Pg. 2)**

<sup>2</sup>Fiber Path Mileage Totals

Path	Underground Mileage	City-Built Fiber Count Granted to Developer	City-Built Fiber Miles Granted to Developer	<sup>5</sup> Developer-Built Fiber Count Granted to City	Developer-Built Fiber Miles Granted to City
<sup>1</sup> A to E	5.10	12	61.20		0.00
<sup>1</sup> B to F	0.29	12	3.48		0.00
<sup>1</sup> D to H	5.10		0.00	12	61.20
<sup>1</sup> G to I	1.99		0.00	84	167.16
<sup>1</sup> J to C	16.09		0.00	12	193.08
<sup>2</sup> Existing City-Built Fiber	29.50	12	354.00		0.00
<sup>1</sup> A to P	1.00		0.00	84	84.00
<sup>1</sup> P to Q	1.10		0.00	84	92.40
<sup>1</sup> A to R	1.00		0.00	84	84.00
<sup>1</sup> A to S	2.91		0.00	84	244.44
		<b>Total Fiber Path Miles</b>	<b>418.68</b>		<b>926.28</b>
		<sup>3</sup> <b>Total Fiber Value</b>	<b>\$218,061.10</b>		<b>\$482,434.41</b>

<sup>1</sup> True path distance measurements were calculated using Google Earth. All distances are estimates only.

<sup>2</sup> Pre-existing City-Built Fiber Mileage distances were calculated using map and scale provided by the City. All distances are estimates only.

<sup>3</sup> Total Fiber Value is based on the new build cost of \$50,000 per mile.  $\$50,000 / 96 \text{ strands} = \$520.83 \text{ per strand mile}$

<sup>4</sup> Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with the Hidalgo County Regional Mobility Authority ("HCRMA") Short Term Strategic Plan 2014-2022. This future build may or may not take place and is not a guarantee or commitment to be included in this Agreement. The Developer and the City will work closely together in an effort to secure this contract. In the event that the Developer is successful in procuring this contract and extends fiber within the HCRMA, then the Developer will grant 12 fiber strands within the Developer-Built fiber count to the City. (Refer to Exhibit E, Attachments).

<sup>5</sup> Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with future fiber plant extensions within the public right of way inside City limits to deliver services to new customers.

2/28/2015 rev 1.3



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

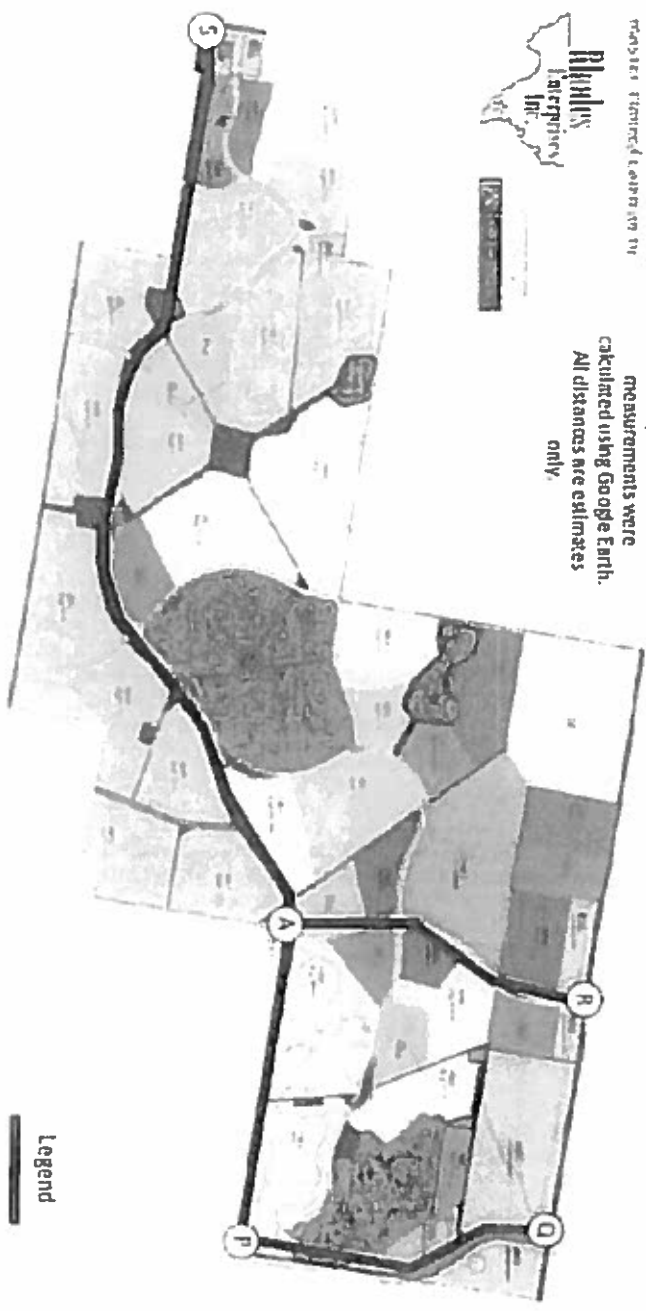
**ATTACHMENT 2**

# Tres Lagos

Western Texas Fiber Solutions  
provides fiber optic services to  
residential, commercial and government



True path distance  
measurements were  
calculated using Google Earth.  
All distances are estimates  
only.



Refer to Attachment 3 for list of path distances.  
Path distances are estimates only.

Purple = Developer-Built Fiber in  
Tres Lagos Project Granted to the  
City of McAllen

2/19/2015 rev 1.1

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**ATTACHMENT 3**

**List of Redundancy Structures**

<u>Point No.</u>	<u>Address or Location of Structure</u>	<u>Owner/Controller</u>	<u>Contact Point &amp; Number</u>
1	Trede /one water tower, Location Military and Ware Rd.	City/MPOB	956-681-1700
2	S. McCall Water Tower, Location 2051 S. McCall Rd.	City/MPOB	956-681-1700
3	Boys water tower, Location, Boys and 73rd St.	City/MPOB	956-681-1700
4	Nolana water tower, Location Nolana and 6th St.	City/MPOB	956-681-1700
5			
6			
7			
8			
9			
10			

The City and Developer hereby confirm that the above points shall be used for the installation and operation of Redundancy Equipment pursuant to the terms of the Development Agreement and Exhibit "E", thereto. All such use shall be limited by and subject to the separate License Agreement between the Parties related to such matters.

Executed and agreed to by the Parties authorized agents on the 9<sup>th</sup> day of March, 2015.

CITY:

By: *Jim Darling*  
 \_\_\_\_\_  
 Jim Darling  
 Printed Name  
 Mayor  
 Title

DEVELOPER:

By: *Mike Rhodes*  
 \_\_\_\_\_  
 Mike Rhodes  
 Printed Name  
 Pres Rhodes Enterprises, Inc.  
 Title



Exhibit "E"  
Fiber Optic Infrastructure and Special Technology Provisions

ATTACHMENT 4 to EXHIBIT E

INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE (IRU) AGREEMENT (the "Agreement") is effective this 9th day of March, 2015 (the "Effective Date"), by and between the City of McAllen, Texas, a Texas Home Rule Municipality, acting by and through its duly elected City Commission, and having its principal offices at 1300 Houston Avenue, McAllen, TX 78501 (hereinafter, "City"), and Rhodes Enterprises Inc., a Texas Corporation with its principal offices at 200 South 10<sup>th</sup> Street, McAllen, TX 78501 (hereinafter, "Developer"). Collectively, City and Developer may be referred to as "the parties" or individually as "a party."

WHEREAS, City owns Cable containing Fibers, and will construct or cause to be constructed Cable containing Fibers, and City will accept dedication of Cable containing Fibers along the Route specified in Exhibit A; and

WHEREAS, Developer desires to acquire from City an exclusive and indefeasible right of use in certain fibers located in the Cables along the Route.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS**

Capitalized terms not otherwise defined herein shall have the following meanings:

- 1.1 Acceptance. Defined in Section 5.1.2.
- 1.2 Acceptance Testing. Defined in Section 5.1.
- 1.3 Acceptance Date. Defined in Section 5.1.2.
- 1.4 Access Point(s). Each splice point(s) on the Trunk Route, as determined by Developer, where an Access Point Route connects to the Trunk Route, and any other splice point(s) or handholds along the Route, as determined by Developer. Access Points where Access Point Routes connect to the Trunk Route are identified in Exhibit A.
- 1.4 Associated Rights. Defined in Section 2.1.
- 1.5 Cable. Fiber optics cable owned and controlled by City with fibers (contained in industry-standard jacketing or sheath) in the Trunk Route and or Route which makes up the portion of the fiber optic network owned by the City.
- 1.6 Claim. Any claim, liability, suit, action, proceeding, demand, assessment, judgment, cost, expense or other damage.

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

1.7 **Connections**. The joinder at splice boxes or protective fiber enclosures of the Developer Fibers to the Developer Equipment across the Demarcation Points located along the Route.

1.8 **Customer**. Any third party (save and except those located in the Zone) to whom Developer provides lit bandwidth and/or other connectivity and network services using, in whole or in part, the Developer Fibers.

1.9 **Demarcation Point(s)**. Locations at which Connections are made. Demarcation Points shall be located at the Endpoints and other points along the Route as the parties may mutually agree.

1.10. **Endpoints**. Physical locations along the Route described in Exhibit A.

1.10 **Effective Date**. The execution date of this Agreement as set forth in the preamble.

1.11 **Equipment**. The power, electronic and optronic equipment, including repeaters, junctions, patch panels, alarm monitoring equipment and other equipment necessary to provide a network of fiber optics transmission capacity located on either side of the Demarcation Points. The word "equipment" when not capitalized refers to equipment of any type.

1.12 **Event of Default**. Defined in Section 10.5 below.

1.13 **Fibers**. The fiber optic strands contained in the Cable.

1.14 **Fiber Specifications or Specifications**. Defined in Exhibit C.

1.15 **Government**. The United States government and any department, agency or instrumentality thereof.

1.16 **IRU Fee**. Defined in Section 3.1 below.

1.17 **Indefeasible Right of Use or IRU**. An exclusive, irrevocable, and indefeasible right to use certain Fibers subject to the terms and conditions of this Agreement.

1.18 **Insolvent**. The occurrence of any of the following events, whereby a party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it; (iii) makes an assignment for the benefit of all or substantially all of its creditors; or (iv) enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations.

1.19 **Maintenance**. Defined in Section 8.1, below.



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**Fiber Optic Infrastructure and Special Technology Provisions**

1.20 **Developer Equipment.** Equipment installed by Developer on the Premises Side of the Demarcation Points, and any fiber optic strands or other transmission facilities connected to Developer Fibers at any Endpoints or Access Points.

1.21 **Developer Fibers.** The twelve (12) Fibers in the black protective sheath contained within the Cable owned by the City along the Trunk Route and twelve (12) Fibers in the black protective sheath contained within the Cable owned by the City along each of the Access Point Routes. The number of Developer Fibers may be increased or decreased by mutual written agreement.

1.22 **Network.** The fiber optics network operated by City, a portion of which includes the Route.

1.24. **Impositions.** All taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement that are imposed upon the Developer Fibers by any federal, state or local government (save and except City) or other public taxing authority, but shall not include taxes, fees or similar levies based on income or calculated based on revenues derived by Developer from the Network. All taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, franchise, license and permit (fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement that are imposed exclusively upon the Developer by City shall only be charged pursuant to this Agreement, or a written amendment hereto.

1.23 **Network Side.** The side of the Demarcation Points at the Endpoints described on Exhibit A on which City will place its Equipment and connect the Developer Fibers to the Developer Equipment.

1.24 **Premises Side.** The side of the Demarcation Points on which Developer connects its Equipment to the Developer Fibers.

1.25 **Protective Fiber Enclosure(s).** The handholes or other enclosures, as agreed upon by the parties, installed at the Demarcation Points.

1.26 **Route.** The Trunk Route and the Access Point Routes, collectively.

1.30. **Route Mile.** The actual number of linear route miles traversed by the Cable as constructed along the Route, and based on the As-Built Drawings, without regard for the number fiber strands therein.

1.27 **Structures.** The structures supporting the Cable, including poles, risers, attachment and suspension hardware, and associated civil works located on or in easements, street licenses, rights-of-way and/or property underlying the Route.

1.28 **Term.** Defined in Section 2.2, below.

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**Fiber Optic Infrastructure and Special Technology Provisions**

1.29 **Trunk Route.** The segment of the Route from and between Points A, B, E, F, G, H and I as depicted and, and being the distance in miles as specified in Exhibit A.

1.30 **Access Point Route(s).** Each route extending from Access Points along the Trunk Route to the Endpoints specified in Exhibit A.

1.31 **Zone.** The Tax Increment Reinvestment Zone Number One, City of McAllen, Texas, created by the CITY containing the Property identified in Exhibit "A" to City of McAllen Ordinance No. 2014-75, passed and approved on December 22, 2014. "Zone" as used in the active tense, shall mean the Zone acting by and through the Board of Directors for the Zone.

1.32 **PID.** The Public Improvement District for the Tres Lagos Project created by the CITY on the \_\_\_\_ day of \_\_\_\_\_, 2015 establishing the "Tres Lagos Public Improvement District" acting by and through its Board of Directors created pursuant to the Texas Local Government Code Chapter 372, Subchapter A.

**2. INDEFEASIBLE RIGHT OF USE**

2.1 Effective upon the Acceptance Date and upon Developer's payment of the IRU Fee, City grants to Developer an IRU that includes (1) the exclusive, indefeasible right to use Developer Fibers along the Trunk Route and the Access Point Routes for any lawful purpose, including but not limited to, the transport of telecommunications signals, whether for itself or its Customers; (2) the exclusive right for Developer to connect Developer's Equipment to the Developer Fibers at the Demarcation Points and Access Points, and (3) the non-exclusive rights: (a) to access and use the Cable and the Structures, (b) to access the Chase Bank network operations cabinet location, and other locations as the parties may mutually agree to connect Developer's Equipment, other telecommunications services or facilities to the Trunk Route, and (c) to use Developer's Required Rights ("the Associated Rights"). Collectively, these exclusive rights and the Associated Rights constitute the "Developer IRU." The above notwithstanding, this Agreement shall be effective upon its execution by the Developer and City provided the Developer has complied with the requirements of section 3.1 (a) thru (c), which compliance shall be evidenced by Developer's execution of the Development Agreement with the City for the development of the Zone.

2.2 The Developer IRU is granted on the terms of and is subject to the covenants and conditions set forth herein.

(a) The term of the Developer IRU shall be for twenty five (25) years from the Acceptance Date (the "Term").

(b) This Agreement may be renewed for up to four (4) periods of twenty five (25) years, each ("a Renewal Term").

(c) Providing that neither party is in default, the Term of this Agreement shall be automatically extended for each allowed Renewal Term without further action unless the City notifies the Developer of its ~~intent not to automatically~~



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renew the Agreement. To be effective a notice of non-automatic renewal must be in writing and must be served on the Developer by certified mail at least 180 days, but no less than 90 days, prior to the expiration of the Term or each Renewal Term, as applicable. If a notice of non-automatic renewal is properly and timely served hereunder, then any further renewal shall be upon such terms and conditions as may be mutually agreed to and approved by the parties in writing.

(d) If the parties do not agree to renew the Agreement, upon the expiration hereof, the Developer IRU shall cease upon ninety (90) days' notice by either party to the other at which time Developer may not access or maintain Connections to any Fibers along the Route and its Associated Rights shall cease. A termination of this Agreement shall have no effect on the Developer's right to access or maintain Connections to any Fibers that are located within the Zone and that are used to provide service within the Zone.

2.3 The Developer IRU granted herein does not convey to Developer any legal title to any real or personal property interest in any portion of the Developer Fibers, the Cable, the Structures or the Network, which are owned by City, or which become owned by the City during the term of this Agreement through dedication, donation, grant, or purchase.

2.4 The Developer IRU granted herein does not provide Developer with any right to physically access, control, modify, replace, relocate or encumber the Developer Fibers or the City Network, except as expressly set forth herein. Developer may not physically access the City-owned portions of the Network, including but not limited to the Trunk Route, the Access Point Routes or enter onto any City-owned property underlying the Network, except as provided herein. For the avoidance of doubt, the foregoing shall not limit the right of Developer to access the Developer Fibers and Equipment on the Premises Side of the Demarcation Points and at the Access Points.

2.5 City will not maintain or repair the Developer Fibers, except as provided in Service Level Agreement attached hereto and made a part hereof as Exhibit B.

2.6 Operations. Each party shall have full and complete control and responsibility for determining any network and service configuration or designs, routing configurations, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of that party's fiber.

2.7 Equipment. Developer acknowledges and agrees that City is not supplying nor is City obligated to supply to Developer any optronics or electronics or optical or electrical equipment or other facilities, including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment, all of which are the sole responsibility of Developer, nor is City responsible for performing any work other than as specified in this Agreement.

2.8 The parties shall mutually cooperate to take such additional action as may be reasonably necessary or appropriate to document and publish their respective rights under this Agreement, including the execution and acknowledgement of a memorandum

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of IRU (or similar document) for recordation in the appropriate governmental office or for transmittal to service providers to constructively notify third parties of the rights granted hereunder.

**3. PAYMENTS**

3.1 Developer agrees to pay City the equivalent of an IRU fee of One Million Eight Hundred Fourth-Four Thousand and No/100 Dollars (\$1,844,000.00) (the "IRU Fee"). All Parties agree that this fee will be met through Developer:

- (a) voluntarily annexing +/- 2,561 acres into the City;
- (b) agreeing to install and dedicate of over \$220,000,000.00 in public infrastructure to the City; and
- (c) agreeing to install and dedicate no less than 800 strand miles of fiber optic strands to the City for expansion of the City's existing fiber network.
- (d) agreeing to the TIRZ reimbursing the City's cost (as set forth in the Project and Finance Plan) as necessary to make all the required connections for the PID to deliver services to the Zone.

3.2 In addition to the fees provided for in Exhibit B, Developer also agrees to pay City as an annual "Maintenance Fee of 5% of gross revenues generated by the Developer Fibers from the Developer's Customers within the City limits, save and except those located within the PID, for Maintenance during the Term. This Maintenance Fee will not apply to Developer Fibers or Customers located outside of the City limits as such limits existed on December 21, 2014, or to Developer Fibers to the extent they are used to serve the PID.

3.3 Payments made to City are non-refundable, except as provided herein.

3.4 Payments made to City shall be made by company check to the City of McAllen, and shall be have the following memo: "For Deposit to City of McAllen Fiber Fund" and shall be delivered to City at the following address:

CITY OF MCALLEN  
c/o Accounts Receivable  
1300 Houston Avenue  
McAllen, TX 78501

The method of payment and the above address is subject to change from time to time upon notice to Developer.

3.5 In the event Developer fails to make any payment under this Agreement when due, such amounts shall accrue interest from the date such payment is due until paid in full, including accrued interest, at a monthly rate equal to 1.0 percent (1.0%).



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**Fiber Optic Infrastructure and Special Technology Provisions**

3.6 Splicing Charge is addressed in Service Level Agreement attached hereto as Exhibit B.

3.7 The provisions of section 2.1 above notwithstanding, this Agreement shall be effective upon its execution by the Developer and City provided the Developer has complied with the requirements of section 3.1 (a) thru (c), which compliance shall be evidenced by Developer's execution of the Development Agreement with the City for the development of the Tres Lagos Project.

**4. REQUIRED RIGHTS**

4.1 City shall be solely responsible for and bear fully and exclusively the costs of obtaining and maintaining during the Term (subject to Section 9 - Relocation and Eminent Domain), all rights-of-way, easements, access rights, permits, licenses, and governmental authorizations required by applicable law or otherwise necessary for the construction, installation, operation, and maintenance of the Network and the Developer Fibers and the Developer IRU granted to the Developer under this Agreement (the "Required Rights").

4.2 The foregoing notwithstanding, the Developer IRU is subject to the terms, conditions, limitations, restrictions and reservations of the Required Rights, including but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession. Nothing herein shall be construed to be a representation, warranty or covenant that City possesses all Required Rights for the Route or of City's right, title or interest with the respect to the Required Rights, all of which are disclaimed. The above notwithstanding, during the Term hereof the City agrees that it shall take no action that is intended or designed to cause harm to Developers rights under this Agreement, and that it shall fully consider its obligations under this Agreement, and Developer's reliance thereon, when taking any future action that may cause harm to the Developer or a disruption to the services provided by Developer or the City-owned fiber used by Developer hereunder.

4.3 Compliance. Developer agrees to use the Developer Fibers only in a manner consistent with the Required Rights, and agrees that its rights shall in all respects be subject to the terms and conditions of the Required Rights. Developer agrees not to intentionally cause or allow to be caused any default under the Required Rights.

4.4 Access. Throughout the Term hereof, Developer is solely responsible for securing and maintaining permission to access the Premises Side of the Demarcation Points except, the Redundancy Structures (as defined in Exhibit E to the Development Agreement) and such other locations as the parties may agree.

**5. INSTALLATION AND ACCEPTANCE**

5.1 Following payment of the first installment of the IRU Fee, City shall coordinate with Developer in good faith on the configuration of the splicing of the Developer Fibers in the Trunk Route to the Developer Fibers in the Access Point Routes.

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City shall perform fiber acceptance testing of the Developer Fibers along Trunk Route and Access Point Routes and provide test deliverables in accordance with Exhibit C ("Acceptance Testing") for verification that such testing complies (or does not comply) with the Fiber Specifications. Developer shall have the right to be present for such testing. In the event that City fails to provide test deliverables to Developer within thirty (30) days following payment of the first installment of the IRU Fee, Developer shall have the right but not the obligation to terminate this Agreement, or in the alternative to pay for such testing to be done by a properly trained testing company, and to provide the results of the testing to the City. In the event the Developer is required to have such remedial testing performed, the Developer shall be entitled to reimbursement by the City for the cost thereof in the form of an offset against the Maintenance Fee charged hereunder.

5.1.1 If the Acceptance Testing indicates that any portion of the Developer Fibers along the Trunk Route or the Access Point Routes does not meet the Acceptance Testing criteria set forth in Exhibit C, City shall take such action as shall be reasonably necessary to cause such portion of the Developer Fibers to meet the Acceptance Testing criteria.

5.1.2 The date upon which Developer provides City with written notification of Acceptance for all of the Developer Fibers along the Trunk Route and Access Point Routes shall be the Acceptance Date of the Developer Fibers. If Developer fails to provide City with any written notice of Acceptance or Rejection within the ten (10)-business-day period after receiving the test results or deliverables from City, then Developer will be deemed to have provided its Acceptance of such Fibers.

5.2 Developer shall pay to install, construct, maintain, repair and otherwise be responsible for Developer's Equipment on the Premises Side of the Demarcation Points and at Access Points.

**6. USE OF THE DEVELOPER FIBERS**

6.1 Developer represents and warrants that its use of the Developer Fibers shall comply with all applicable laws, ordinances, rules, regulations and restrictions. Developer shall use commercially reasonable efforts to require its Customers to comply with all applicable laws, ordinances, rules, regulations and restrictions.

6.2 Developer shall keep the Developer Fibers free from any liens, rights or claims of third parties attributable to Developer, its Customers, and/or its use of the Trunk Route and the Access Point Routes. If Developer breaches its obligations under this Section 6.2, it shall immediately notify City in writing, shall promptly cause such lien to be discharged and released of record without cost to City, and shall indemnify City against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such lien.

6.3 Developer shall be responsible for the configuration and operation of Developer's Equipment and its use of the Developer Fibers, including but not limited to



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supplying, maintaining, testing, repairing and replacing all Premises Side accessories, facilities and Equipment necessary for Developer's use.

6.4 Developer shall comply with City's operating procedures and interconnection requirements, as updated from time to time, provided that any such updated operating procedures and interconnection requirements have been previously provided to Developer. True and correct copies of City's operating procedures and interconnection requirements as of the Effective Date shall be provided to Developer within thirty (30) days of the execution of this Agreement.

6.5 No use, however extended, of the Developer Fibers, or payment of any fees under this Agreement by Developer, shall create or vest in Developer any ownership or property rights in the City-owned portions of the Network or Developer Fibers except as set forth herein.

**7. FACILITIES AND CONNECTIONS**

7.1 Developer's Equipment must be located on the Premises Side of the Demarcation Points or at Access Points. Developer's Equipment shall at all times remain the sole property of Developer. Neither Party shall make any representations or take any actions inconsistent with Developer's ownership of said equipment or facilities.

7.2 The Trunk Route, Access Point Routes, certain Access Points, and the Endpoints are depicted on Exhibit A.

7.3 Developer shall not be obligated to pay for any Equipment on the Network Side of the Demarcation Points. City shall not be obligated to pay for any Equipment (including installation and maintenance charges) on the Premises Side of the Demarcation Points.

7.4 Within thirty (30) days of the Acceptance Date, Developer shall provide as-built drawings for the Route consistent with the requirements set forth in Exhibit D.

**7. A. IMPOSITIONS**

7.A.1 In addition to the IRU Fee and other amounts set forth in this Agreement, Developer agrees to pay its share of Impositions. The parties agree to cooperate with each other (a) to minimize the aggregate Impositions payable with respect to the Network that includes the Developer Fibers, and (b) to share such Impositions according to their respective interests in the Network along the Route.

7.A.2 City Payment. Developer shall be responsible for and shall timely pay any and all Impositions with respect to the construction or operation of the portion of the Network along the Route which Impositions are (a) imposed or assessed prior to the Acceptance Date; or (b) imposed or assessed in exchange for the approval of the original construction of the Network along the Route; or (c) that were assessed in return for the original right to install the Network along the Route on public property or in public right-of-way.

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**Fiber Optic Infrastructure and Special Technology Provisions**

**7.A.3 Developer's Obligations.** Except as to Impositions described in Section 7A.2, following the Acceptance Date, Developer shall be responsible for and shall pay all third party Impositions (a) imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Developer with respect to the ownership or use of the Developer Fibers; or (b) which have been separately assessed, allocated to, or imposed by reference to the Developer Fibers; or (c) which are imposed, based on, or otherwise measured with respect to construction services performed by City for Developer. In addition, Developer shall pay its allocable share of any Impositions imposed on the conduits, manholes and hand holes that are part of the Network along the Route that are used in connection with the Developer Fibers or the cable of which the Developer Fibers are a part. To the extent the Impositions on the Developer Fibers are not separately assessed, allocated to or imposed on the Developer Fibers, Developer will pay City for only the Developer's allocable share of all such Impositions. For purposes of this Section 7.A.3., the "allocable share" shall be based on the ratio of the number Developer Fibers within the Cable owned by the City to the total number of Fibers in the Cable owned by the City along the Route, the Trunk Route or one more Access Point Routes, as applicable.

**7.A.4 Cooperation.** City and Developer agree to cooperate fully in the preparation of any returns or reports relating to the Impositions, and in the efforts of either party to contest an Imposition.

**8. SPECIFICATIONS AND MAINTENANCE**

**8.1** City shall perform all routine maintenance, emergency restoration, and locate services for the Network, the Network Side Equipment, the Demarcation Points, the Connections, and the Trunk Route and the Access Point Routes including the Developer Fibers, at its own cost and expense ("Maintenance"). City shall ensure that the Route and the Network Side Equipment are maintained in serviceable condition in accordance with industry standards and practices, and the Specifications, and shall have sole responsibility for the completion of emergency repairs to the Developer Fibers, Network, Demarcation Points, Connections, and the Network Side Equipment. Maintenance and repairs shall be completed pursuant to the standards set forth in Exhibit B.

**8.2** City has the right to contract with third parties in the performance of its obligations under this Agreement. The use of any such contractors, subcontractors, or designees shall not release Developer from any of its obligations under this Agreement. The City and its contractors shall be liable for any damage caused to the equipment or fiber owned by Developer and located on the Premises Side of the City Network; and, the City shall require its contractors to be insured and bonded adequately to assure they are capable of timely paying for any damage caused to Developer or its equipment or fiber in performing services on behalf of the City.

**8.3** City and Developer each shall work together in good faith to prevent damage to each other's equipment and to each other's ability to use the Network. Developer shall not use equipment, technologies, or methods of operation that interfere in



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any way with or adversely affect the Network, or City's use of the Network to transmit their own signals. Developer shall not use equipment, technologies, or methods of operation that interfere in any way with or adversely affect any third party's use of the Network. City shall manage the Network such that a third party's use of the Network or Developer's or an affiliate's use of the Network does not interfere with or adversely affect Developer's use of the Developer Fibers.

8.4 If, at any time during the Term or subsequent Renewal Term, any of the Developer Fibers fail to operate in conformance with the Specifications, Developer shall provide notice of such failure, and within thirty (30) days thereafter City shall correct such failure or replace such failing Developer Fiber(s) with other fibers in the Cable containing the Developer Fibers which are capable of functioning in accordance with such Specifications ("Substituted Fibers"). Such Substituted Fibers shall thereafter be Developer Fibers for all purposes of this Agreement and the replaced failed fibers shall revert to City and Developer shall have no further rights with respect thereto. If City is unable to correct or replace the failed Developer Fibers within thirty (30) days from the date of Developer's notice, Developer may, with the pre-approval by City of the expense (which approval shall not be unreasonably withheld, conditioned or delayed), procure substitute assets (including pulling new fiber in existing City-owned conduit) at Developer's expense, and this Agreement shall continue in full force and effect as to the remaining Developer Fibers and Associated Rights. In the event that City is unable to correct or replace the failed Developer Fibers, and Developer is unable to procure substitute assets under this section, City and Developer shall expeditiously negotiate in good faith a reasonable in-kind compensation to be paid by City to Developer for the loss of the failed Developer Fibers.

**9. RELOCATION AND EMINENT DOMAIN**

9.1 In the event that any portion of the Network that includes the Trunk Route and/or the Access Point Routes, or the Demarcation Points, needs to be relocated, replaced or rebuilt, for the following reasons:

a. If a regulatory agency or governmental authority (other than City) or third party with legal authority to do so orders or threatens to order such relocation (e.g., through filing or threatening to file a condemnation suit or other exercise of eminent domain, nationalization, or expropriation),

b. As directed by a grantor of Required Rights or by a person that declines to reasonably grant Developer Required Rights,

c. To abate interference with or interruption of its Network or the Developer Fibers, or an unreasonable risk thereof, due to the existence of physical conditions (e.g., soil subsidence, rockslides, seismic conditions, or other force majeure event),

d. In the event of the actual or threatened loss, termination or expiration of Required Rights, or

e. as reasonably determined by City ("Discretionary Changes")

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City shall notify Developer as soon as is practical. City shall further notify Developer of the cause therefor (identifying a. through e. as applicable), and the impact said relocation, replacement or rebuilding is expected to have on the Trunk Route, the Access Point Routes, Demarcation Points, Equipment, and the Connections.

9.2 Notwithstanding any provisions or implications to the contrary in this Agreement, the precise route of the Network, the Trunk Route and/or the Access Point Routes, the Equipment, the Connections and/or the Demarcation Points may change from time to time. The Parties will work together in good faith to effectuate any changes required to be made for the reasons described in 9.1 during the Term. However:

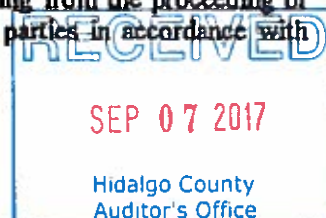
(i) Changes made must provide Developer with substantially the same quality of service and approximately the same route as existed before the Trunk Route and/or the Access Point Routes, Connections and/or Demarcation Points were moved. In no event may the number of Fibers comprising the Developer IRU be reduced, nor may Developer's rights pursuant to this Agreement be diminished or reduced.

(ii) The costs of any changes made due to causes listed in Section 9.1 (b) or (d), including all reasonable costs incurred by Developer in moving Developer's Equipment and Developer's Fibers to the new locations of the Demarcation Points, as reasonable necessary, shall be borne as provided under Section 9.4. or 9.4.A. as applicable.

(iii) For changes made due to causes listed in Section 9.1(a) or (c), Developer shall pay a portion of the costs of any such changes to the Trunk Line, the Access Point Routes and/or the Demarcation Points that are not reimbursed by a third party. Developer's portion shall equal the product of (a) the ratio that the number of months remaining in the Term bears to 300 months; multiplied by (b) the ratio 12 to the total number of fibers maintained by City along the affected portions of the Trunk Route or Access Point Route, as applicable. In addition, Developer shall bear the entire cost of moving Developer's Equipment, and of extending its network to the new location of the Connections and Demarcation Points.

(iv) The costs of any changes made due to causes listed in Section 9.1 (e) including all reasonable costs incurred by Developer in moving Developer's Equipment and Developer's Fibers and extending Developer's network to the new locations of the Demarcation Points shall be borne solely by City.

9.3 Should any portion of the Trunk Route and/or the Access Point Routes be acquired by eminent domain, nationalization, or expropriation by any authority or entity possessing such power (other than City), or sold to such authority or entity under threat of eminent domain, nationalization, or expropriation (either of which will constitute a "Taking"), both Parties shall each be excused from performance of their obligations under this Agreement to the extent the Taking renders performance impossible or not feasible. In the proceeding for any such Taking in which the interests of the parties in the affected portion of the Route are severed, any awards resulting from the proceeding or otherwise provided shall be fairly apportioned between the parties in accordance with



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such interests. As between The Parties, the provisions of Section 9.2(iii) shall apply to any relocation resulting from a Taking

9.3.a. For purposes of clarity, the costs of any relocation of an Access Point Route caused or required by the relocation of an Endpoint by the owner or operator of such Endpoint or the establishment of another Access Point Route to another Endpoint shall be subject to good faith negotiations by the parties and shall not be governed by the provisions in this Section 9.

9.4 City shall be solely responsible for and bear fully and exclusively the costs of relocation or rebuild of an Access Point Route as a result of any event described in Section 9.1(b), (d), or (e) except as excused herein below. In the event a relocation or rebuild of an Access Point Route or any portion thereof is required as a result of an event described in Section 9.1 (b), (d) or (e), and taking into account the interests of the parties in maintaining the Access Point Route or any portion thereof and Developer's use of the Developer Fibers as provided herein, if City determines in good faith in its reasonable judgment, after consultation with Developer, that it is technically or economically infeasible to relocate or rebuild an Access Point Route or any portion thereof to operate within the Fiber Specifications, City shall notify Developer in a timely manner. Unless otherwise agreed, no sooner than (30) days after City's notice to Developer, Developer shall notify City, and Developer shall, at Developer's option, either (i) abandon the affected Access Point Route pursuant to Section 10.3, or (ii) terminate its obligations under this Agreement with respect to the affected Access Point Route.

9.5 Legal title to the Developer Fibers located in Cable owned by City remains with City at all times during the Term of this Agreement, including but not limited to, in the case of where either Party becomes Insolvent; provided that, in the event City becomes Insolvent, any action to terminate this Agreement shall not affect the grant of the Developer IRU in the Developer Fibers or the grant of the Developer Associated Rights, which collectively shall be deemed to be a fully performed separate transaction severable from any other provisions of this Agreement. The parties acknowledge the Developer IRU constitutes an indefeasible grant to Developer of an IRU in the Developer Fibers and that the grant of the IRU is intended to be non-executory in nature, and shall not be subject to assumption or rejections in any City bankruptcy proceeding. Moreover, in the event of City becoming Insolvent, any action to terminate or reject this Agreement shall give Developer the right to access the Developer Fibers at the Demarcation Points and preserve the Developer Associated Rights for the limited purpose of using the Developer Fibers as contemplated in this Agreement, including the placement and maintenance of Developer's Equipment on the Premises Side of the Demarcation Points and the right to use the Developer Fibers.

## **10. TERMINATION AND BREACH**

10.1 Unless terminated in accordance with this Section 10, this Agreement shall continue in force and effect for the Term. Upon expiration of the Term or Renewal Term, as applicable, Developer's right to use the Developer Fibers and/or the Trunk Route and the Access Point Routes shall terminate as provided under Section 2.2, above,

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and City shall owe no additional duties or consideration to Developer with respect to such use.

10.2 In the event that Developer fails to timely pay the IRU Fee, as provided under Section 3.1, above, City may terminate the Agreement upon thirty (30) days' notice, unless such failure to pay is cured within that thirty (30)-day period.

10.3 In the event that, prior to the expiration of the Term, City decides or acts to abandon any portion of the Trunk Route, an Access Point Route, Cable along the Route and/or the Network Side Access Facilities, Developer's right to use such Developer Fibers and the Associated Rights granted hereunder during the Term shall not be affected, and prior to any such abandonment, City shall transfer to the Developer at no cost the legal title to the Cable in which the Developer Fibers that are the subject of the Developer IRU are located. In such circumstances, City agrees to work with and undertake commercially reasonable efforts to assign the rights to attach the Cable to the Structures to Developer, and otherwise cooperate with Developer to take such action to maintain and preserve Developer's use and enjoyment of the Developer Fibers, including but not limited to granting Developer an License in the City rights-of-way to maintain, repair, replace, use and access the Developer Fiber.

10.4 City or Developer may terminate this Agreement immediately without liability and without prior written notice in the event either Party is ordered in a final and non-appealable order by a court of law, regulatory authority or governmental authority (other than City) to terminate this Agreement.

10.5 In addition to Section 10.2, a party shall be deemed in breach of this Agreement only upon its failure to cure a default, subject to the following procedures:

10.5.1 Upon the occurrence of an Event of Default, the non-defaulting party must provide written notice of the default to the defaulting party. The defaulting party will have thirty (30) days following receipt of the written notice to cure the default. If the nature of the default is such that the default cannot be cured within thirty (30) days, the time for curing the default shall be extended for such period of time as may be necessary to complete the cure, but in any event such period of time shall not exceed ninety (90) days.

10.5.2 Upon the failure of the defaulting party to timely cure any Event of Default pursuant to Section 10.5.1, the non-defaulting party may, subject to the terms of Sections 12 and 13 (Indemnification and Limitation of Liability), pursue any legal or equitable remedies it may have under applicable law or principles of equity relating to such breach, subject to the limitations in Section 22.

10.5.3 All rights and remedies of the non-defaulting party set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.



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10.6 In the event of a termination under Section 10.4: all of Developer's rights to the Developer IRU and Associated Rights shall terminate; and Developer and City shall meet to provide a means to achieve a reimbursement to Developer of that portion of the IRU Fee provided to City by Developer that is equal to the value of the percentage of IRU Term that can no longer be used by Developer due to the termination.

10.6.1 "Event of Default" by City shall mean the following: (i) breach of any material provision of this Agreement, including any representation, warranty or covenant; or (ii) City becomes Insolvent or ceases operations of its Network.

10.6.2 "Event of Default" by Developer shall mean: (i) the breach of any representation, warranty, obligation or covenant; (ii) the failure to make other payments hereunder other than the IRU Fee; or (iii) Developer becomes Insolvent or ceases operations.

**11. ASSIGNMENT**

11.1 Developer may not assign, delegate, license or sublicense this Agreement or any of its rights or obligations hereunder to any other party without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. By way of illustration and not limitation, it shall not be unreasonable for City to withhold consent if the proposed assignment, delegation, license or sublicense increases the financial, legal or operational risk to City or places additional burdens upon City.

11.2 Section 11.1 notwithstanding, upon notice in writing to City, this Agreement, and all of Developer's rights and duties hereunder, may be sold, assigned, or transferred at any time by Developer to: Developer's affiliates or wholly owned subsidiaries; any successor entity with or into which Developer is sold, merged or consolidated; or any entity created as a result of any reorganization of Developer. City has the right to contract with affiliates and third parties for the installation, inspection, maintenance and repair of the Trunk Route and the Access Point Routes. Any such sale, assignment or transfer shall explicitly be made subject to the Developer IRU and the Associated Rights granted hereunder. No approval by City to a transfer or assignment under this section is required provided notice of such transfer or assignment is given as required herein.

11.3 Nothing in this Agreement shall be construed or interpreted to prohibit Developer from (i) leasing or licensing the Developer Fibers or otherwise providing capacity to others, including without limitation, fiber optic capacity within the Developer Fibers during the term of the IRU, provided that Developer shall remain responsible and liable for all of its obligations under this Agreement; or (ii) granting to third parties IRUs and a right to use the Developer Fibers and Associated Rights, as applicable, which are cointensive with and subject to the rights that have been granted to it in the Developer Fibers and the Associated Rights under this Agreement.

11.4 In the event this Agreement or any interest therein, is sold, assigned, transferred or otherwise disposed of to any third party, including to or by any secured party or subsequent assignee or transferee in connection with an assignment for security

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or otherwise, such third party shall be subject to all conditions and terms of this Agreement.

**12. INDEMNIFICATION**

12.1 Developer agrees to release, indemnify, defend, and hold City's Indemnitees harmless from and defend City's Indemnitees against, and assumes liability for any Claim relating to, any injury, loss or damage by Developer's Customers for damages to or failure of the Developer Fibers or the Network, and for any claims by any person or government agency going to the content or information transmitted over the Developer Fibers by Developer, Developer's Customers, or their Customer's end-users or is caused in whole or in part by Developer's Equipment, including but not limited to any Claim arising or resulting, in whole or in part, from any breach of Developer's obligations under this Agreement

12.2 City, to the extent permitted by law, agrees to release, indemnify, defend, and hold harmless Developer's Indemnitees from and against, and to assume liability for, any Claim related to any injury, loss or damage to any individual, tangible property or facilities of any third person or entity to the extent it arises or results, in whole or in part, from any alleged or actual negligent act or omission of City or its agents or employees, including due to or arising from the Developer Fiber not being maintained by City as required by this Agreement or the Service Agreement.

12.3 Nothing contained herein shall operate as a limitation on either party's right to bring a claim for damages against any third party, such damages to include, but not be limited to, direct, indirect, special, consequential or punitive damages, based on any acts or omissions of a third party that might affect the construction, operation or use of the Trunk Route and/or the Access Point Routes. For purposes of this Section 12.4, Developer's and Developer's officers, directors, employees, agents and affiliates are not third parties.

12.4 Each party's obligations under this Section 12 are material obligations to the continuing performance of the other party's obligations hereunder.

**13. LIMITATION OF LIABILITY**

13.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT, BY INDEMNITY OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, MULTIPLE OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT (WHETHER ARISING OUT OF OUTAGES, TRANSMISSION INTERRUPTIONS OR PROBLEMS, FUNCTIONAL DEGRADATION, OR ANY OTHER REASON). ANY CLAIM FOR SUCH DAMAGES IS SPECIFICALLY WAIVED AND BARRED, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE OR A PARTY WAS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING,



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THIS LIMITATION OF LIABILITY ABOVE SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATION TO THE OTHER PARTY AS TO THIRD-PARTY CLAIMS.

13.2 In no event shall either parties' liability to the other for the breach of this Agreement, or Claims related to or connected in any way with this Agreement (other than with respect to third-party claims that are subject to indemnification), exceed, in the aggregate, one million dollars (\$1,000,000.00). The foregoing sentence, however, shall not operate as a limit on any obligation City might have to refund the IRU Fee and the Maintenance fee, in whole or in part, pursuant to a provision of this Agreement.

13.3 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, Developer MAKES NO WARRANTY TO City OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ROUTE, THE Developer FIBERS, OR THE NETWORK, OR ANY DELIVERABLE OR CONSTRUCTION PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, Developer DOES NOT WARRANT THAT THE TRUNK ROUTE OR THE ACCESS POINT ROUTES WILL BE UNINTERRUPTED OR ERROR-FREE.

13.4 City shall have no responsibility for or owe any duty to Customers under this Agreement. Developer's obligations to make payments for the IRU and/or Maintenance shall not be changed or relieved by virtue of any inability by Developer to collect payments or charges from Customers or other third parties. In the event of termination of this Agreement, it is Developer's sole responsibility to transition its Customers to alternative service arrangements.

13.5 The Parties agree Developer is solely responsible for any claims or losses that arise as a result of Developer installing fiber optic cable intended to be conveyed or dedicated to the City for expansion of and inclusion in the City-owned Network for the benefit of City under this Agreement until such time as the installed fiber optic cable is tested, and ownership thereof is accepted by the City in writing or through the City using or controlling the cable. This Agreement is intended to provide the essential terms for Developer providing fiber and related goods, and installation services thereof, to City for extending the City Network in conjunction with Developer requiring new extensions of the Network to serve the Developer's Customers. This Agreement shall be subject to Chapter 271, Subchapter I, of the Texas Local Government Code. The Parties agree that the final judgment in any action brought by a Party in reliance on said Chapter 271 shall require the losing Party to pay the reasonable legal fees and costs of the prevailing Party.

**14. WAIVER OF TERMS OR CONDITIONS**

14.1 The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or

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relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect. Nor shall either party, by mere lapse of time, be deemed to have waived any breach of any terms or provisions of this Agreement.

**15. FORCE MAJEURE**

15.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement resulting from the following events, to the extent such events are beyond the party's reasonable control: acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. In the event of any delay in the performance of a party's obligations under this Agreement resulting from one of the above events, the due date for the performance of the original obligation(s) shall automatically be extended by a term equal to the time lost by reason of the delay.

**16. INSURANCE**

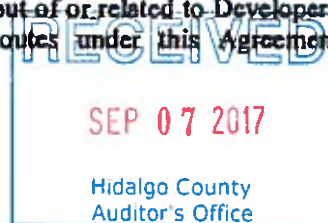
16.1 Throughout the period during which this Agreement remains in effect, both Parties shall take out and maintain the following minimum insurance:

16.1.1 Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations under this IRU. If any employee is not subject to the workers' compensation laws of Texas, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to Texas' compensation laws.

16.1.2 Public liability and property liability insurance covering all operations under this Agreement with limits for bodily injury or death of not less than \$1 million for each occurrence, limits for property damage of not less than \$1 million for each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.1.3 Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement, whether owned, non-owned or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$2 million each occurrence, and property damage limits of \$1 million for each occurrence. A single limit of \$2 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

16.2 The insurance policies shall be in such form and issued by such insurer as shall be satisfactory to each Party. The insurer shall be financially solvent with an AM Best Rating of A or better. In the event of a loss arising out of or related to Developer's use of the Trunk Route and/or the Access Point Routes under this Agreement,



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Developer's insurance shall be primary (pay first) with respect to any other insurance which may be available to Developer, regardless of how the "other insurance" provisions may read.

16.3 Developer shall furnish to City within thirty (30) days of the execution of this Agreement and at the request of City, but no more than annually, a certificate evidencing compliance with the foregoing requirements. This certificate will list City as additional insureds and will include the following cancellation, suspension, material change or nonrenewal language: "In the event of cancellation, suspension, material change or nonrenewal of any of the said policies, the insuring company shall give the party to whom this certificate is issued thirty (30) days prior notice of such event."

16.4 At Developer's expense, Developer shall have the right at any time to require public liability insurance and property damage liability insurance greater than the limits specified herein if such higher limits are the generally accepted industry standard.

**17. NOTICE**

17.1 Unless otherwise provided herein, all notices concerning this Agreement shall be in writing and addressed to the other party as follows:

**If to City:**

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

**With a copy to:**

City Attorney's Office  
Attn: Kevin Pagan  
1300 Houston Avenue  
McAllen, Texas 78501  
Phone: (956) 681-1000

**If to Developer:**

Rhodes Enterprises, Inc.  
Attn: Mike Rhodes, President  
200 S. 10<sup>th</sup> Street  
McAllen, Texas 78501  
Phone: (956) 287-2800

**With a copy to:**

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Earl & Associates P.C.  
Mr. David L. Earl and Megan J. Clay  
601 NW Loop 410, Ste. 390  
San Antonio, Texas 78216  
Phone: (210) 222-1500

or to such other address as either party may designate by notice from time to time in accordance with the terms of this section.

17.2 Except as otherwise provided herein, all required notices shall be transmitted to the parties' addresses specified in Section 17.1 by personal delivery, certified mail (return receipt requested), or by recognized national overnight delivery service, with a courtesy copy by facsimile or via electronic mail. Any notice that is given by either party may be given by the attorneys for that party and shall be deemed effective for all purposes herein. The notice shall be deemed received upon actual delivery or refusal of delivery as evidenced by the records of the U.S. Postal Service or delivery service, such as the case may be.

**18. CONFIDENTIALITY**

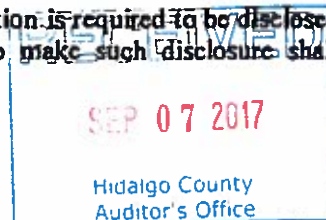
18.1 In the absence of a separate confidentiality agreement between the parties, if either party provides confidential and/or proprietary information to the other in writing and identified as such, to the extent permitted by law, the receiving party shall protect the confidential or proprietary information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, which, in any event, shall not be less than reasonable care.

18.2 All confidential and proprietary information, unless otherwise specified in writing, shall remain the property of the disclosing party and shall be used by the receiving party only for its intended purpose.

18.3 This Agreement in form and structure as well as its content, including its terms and conditions, is deemed confidential.

18.4 The parties agree to use their best efforts to avoid disclosing to each other confidential information that is not reasonably required for the administration of this Agreement.

18.5 Neither party shall be required to treat as confidential any information which: (i) becomes publicly available other than through the recipient; (ii) the recipient is required to disclose by law, rule or regulation, or by court order; (iii) is independently developed by the recipient; (iv) becomes available to the recipient without restriction from a third party; or (v) becomes relevant to the settlement of any dispute or enforcement of either party's rights under this Agreement in accordance with its terms and conditions. If any confidential or proprietary information is required to be disclosed pursuant to subsection (ii) above, the party required to make such disclosure shall



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immediately inform the other party of the disclosure, and shall take all reasonable protective measures to preserve the confidentiality of such confidential or proprietary information as fully as possible in the context of such permitted disclosure.

18.6 These confidentiality obligations shall survive the expiration or termination of this Agreement for a period of two (2) years.

**19. PUBLICITY AND ADVERTISING**

19.1 In connection with this Agreement, neither party shall publicize this Agreement.

**20. MERGER**

20.1 With the exception of the Development Agreement between the Parties, and Exhibit E to the Development Agreement, this Agreement constitutes the entire, full and complete agreement between the Parties with respect to the subject matter hereof, and supersedes any previous agreements, understandings or communications, whether written or oral, relating to Developer's use of the Trunk Route and the Access Point Routes and Developer Fibers.

**21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

21.1 Each party represents, warrants and covenants that on the Effective Date:

21.1.1 It has taken all requisite corporate and Commission action to approve the execution, delivery and performance of this Agreement;

21.1.2 City is a duly organized Texas Municipal Corporation, and Developer is a duly organized Texas Corporation validly existing and in good standing under the laws of its state of incorporation or formation;

21.1.3 It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

21.1.4 It is qualified to do business in all jurisdictions applicable to this Agreement where such qualification is required by applicable law, except where the failure to be so qualified could not reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and

21.1.5 It shall perform its obligations under this Agreement, route in a manner consistent with applicable law, and, in the case of Developer, shall not use or knowingly permit the Developer Fibers to be used for any illegal purpose or in any other unlawful manner.

21.1.6 To its reasonable knowledge and belief, there are no actions or lawsuits pending or threatened which might reasonably be expected to prevent or preclude it from performing its obligations hereunder.

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**22. MISCELLANEOUS**

22.1 Neither Party is under any obligation, express or implied, to amend, supplement, or otherwise change or modify any of the provisions of this Agreement. However, if both Parties agree to amend, supplement, or otherwise change or modify any of the provisions of this Agreement, then any such amendment, supplement, change or modification, to be enforceable, must be evidenced by written documentation duly executed by both parties. Any attempt to amend, supplement, change or modify this Agreement by oral agreement shall be void and not binding upon either Party.

22.2 This Agreement has been made and is made solely for the benefit of the parties and their successors. Nothing herein is intended to confer any rights or remedies upon any third party.

22.3 Use of the term "include" or "including" shall mean "include, without limitation" or "including, without limitation." The descriptive headings of the several sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction or scope of any of the provisions of this Agreement. All Exhibits hereto are hereby incorporated by reference and made a part hereof. In the event that any inconsistency exists between the provisions of this Agreement and any of its Exhibits, the provisions of the Agreement shall supersede the provisions of the Exhibits.

22.4 If a provision of this Agreement requires judicial interpretation, then the parties hereby stipulate that the court interpreting or construing said provision should not construe the terms of this Agreement more strictly against the party preparing this Agreement, it being acknowledged that the parties have sought and received advice of counsel, to the extent that each deems necessary for the full understanding of all the consequences hereof, and each has had an equal opportunity to negotiate the terms of this Agreement.

22.5 Each party shall take or cause to be taken such further actions to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further documents and instruments as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

22.6 This Agreement is deemed executed in and shall be construed under the laws of the State of Texas, without reference to choice of law principles. The parties hereby each agree that any and all disputes arising under or in connection with this Agreement are subject to the exclusive jurisdiction of the courts of Hidalgo County, Texas. Each party hereby acknowledges that it is subject to general personal jurisdiction in the State of Texas, and the District Courts of Hidalgo County, Texas for purposes of any legal action required or allowed to be brought hereunder.

22.7 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same document. This Agreement also may be executed via counterpart facsimiles on

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Hidalgo County  
Auditor's Office

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(i) the telecopy or facsimile by each party of a signed signature page thereof to the other party, with return receipt by telecopy or facsimile requested and received, and (ii) the parties' agreement that they will each concurrently post, by next business day courier, a fully executed original counterpart of the Agreement to the other party.

22.8 Should any court of law or administrative or governmental entity with jurisdiction declare any provisions of this Agreement to be void or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

22.9 Nothing contained in this document, or in any amendment or supplement thereto, shall be deemed or construed to: (i) make City the agent, servant, employee, joint venture, associate or partner of Developer or vice versa; or (ii) create any partnership, joint venture or agency relationship between City and Developer. Neither party shall have the right to obligate or bind the other party in any manner to any third party.

22.10 Nothing herein shall be construed to limit the right of City, by contract or otherwise, to confer upon others who are not parties to this Agreement rights or privileges to use the Network, provided any such conveyance of rights or privileges to a third party does not interfere with Developer's exclusive use of the Developer Fibers or its ability to exercise its rights and fulfill its obligations hereunder.

22.11 Unless otherwise provided, in any instance hereunder where City's approval or consent is required or the exercise of City's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of City, and City shall not, for any reason or to any extent, be required to grant such approval or consent or exercise its judgment in any particular manner, regardless of the reasonableness of the request or Developer's judgment.

22.12 The term "person" and words importing persons as used in this Agreement shall include firms, associations, partnerships (including limited partnerships), limited liability companies, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

22.13 Unless expressly herein, words having well-known technical or trade meanings shall be so construed.

22.14 Except as set forth to the contrary herein, any right or remedy of City or Developer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

22.15 City and Developer agree that a scanned or electronically reproduced copy or image of this Agreement, in executed form, shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

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**23. RESOLUTION OF CONFLICTING PROVISIONS**

23.1 The Parties recognize that they have entered into agreements contained in the Development Agreement (including but not limited to Exhibit E thereof) which relate to establishing fiber optic connections to the Zone for use by the Developer and PID to provide fiber related services within the Zone; as such terms are defined in such Development Agreement. The Parties expressly agreed that the language, terms, and agreements contained in the said Development Agreement (and in Exhibit E thereto) shall be controlling in the event of a conflict between such language, terms, and agreements and any of the language, terms, and agreements contained in this Agreement.

**24. NON-INTERRUPTION OF PID FIBER USE**

24.1 Both Parties agree that neither the City nor the Developer shall take any action that would interrupt or cause harm to the Cable or the Fiber which is relied on by the PID for providing service to the properties within the PID. The Parties agree that any interruption of signal or service to the PID as a result of an action by either Party shall be remedied immediately, and that in the event testing of the fiber indicates the span loss (span shall be FDP to FDP) in the portions of the Route serving the PID are greater than a bi-directional average of 0.50 dB/km, as calculated using an industry-accepted optical loss test set at 1550 nm, then if not remedied within 30 days the PID shall have the right to install a new fiber optic cable in the portions of the City owned conduit and/or Developer owned conduits within the Route containing the Fiber, Developer Fiber, in cooperation with the City, as needed to restore reliable signal to the PID. In the event the PID is required to take such remedial action and install new Cable, the cost for doing so shall be paid by the PID, and neither the Developer nor the City shall be entitled to compensation for the PID's use of said conduits. The PID is an intended third party beneficiary of this provision

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

*[Signatures follow on next page]*

**CITY**



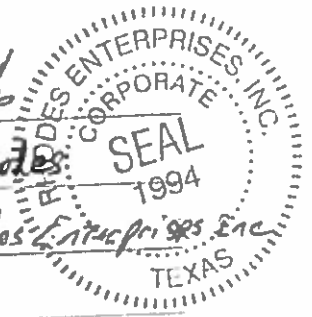
Exhibit "E"  
Fiber Optic Infrastructure and Special Technology Provisions



By: [Signature]  
Print Name: Jim Darling  
Print Title: Mayor  
Date: 3-10-15  
Attest: [Signature]

DEVELOPER

By: [Signature]  
Print Name: Mike Rhodes  
Print Title: Pres Rhodes Enterprises Inc  
Date: 3-9-15  
Attest: [Signature], Secretary



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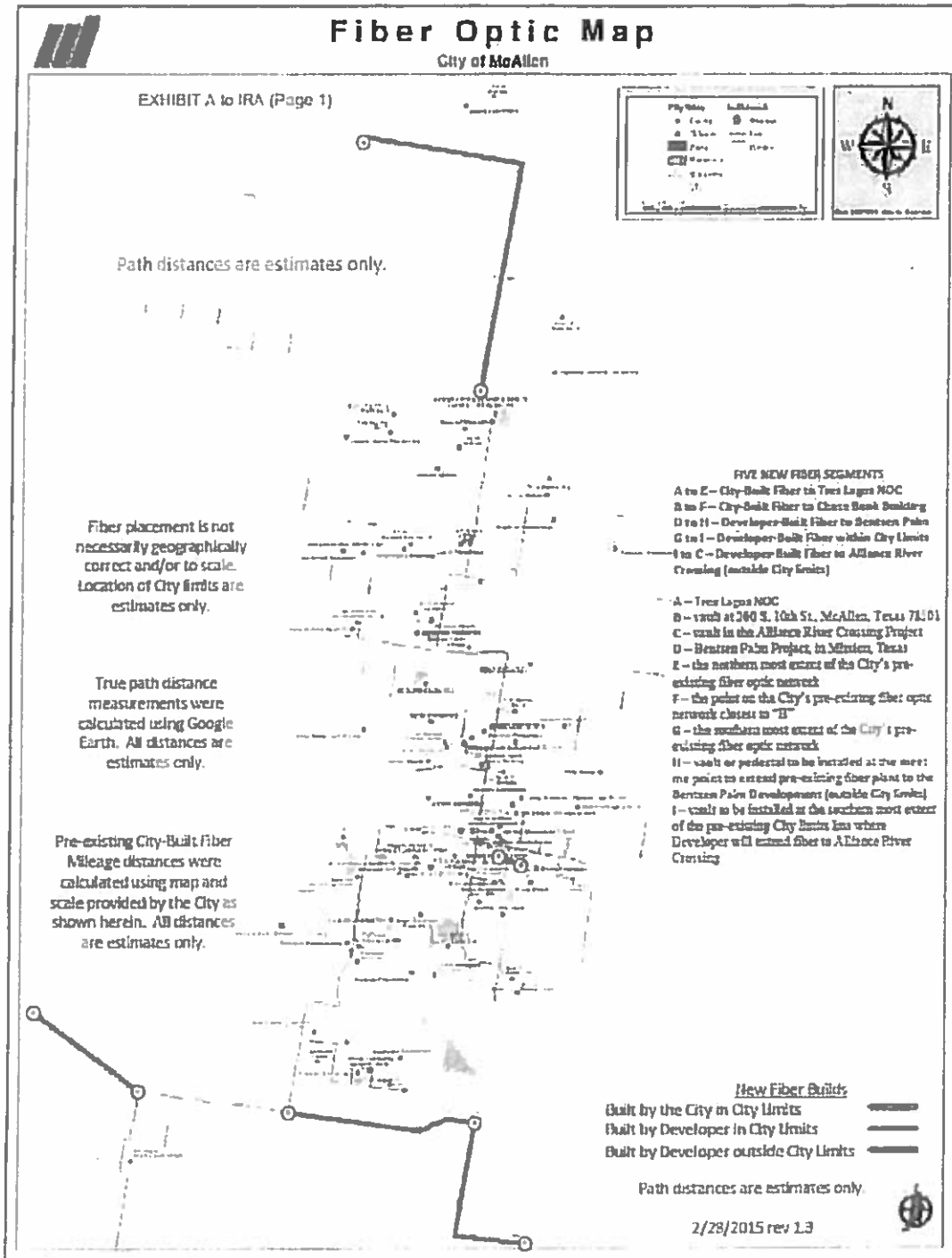
**EXHIBITS**

- Exhibit A**    **Diagram of Route, Endpoints and Demarcation Points**
- Exhibit B**    **Splicing and Maintenance Services Level Agreement (SLA)**
- Exhibit C**    **Fiber Specifications**
- Exhibit D**    **As-Built Drawings**



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**Exhibit A to IRU Agreement**



**EXHIBIT A**

Exhibit "E"  
Fiber Optic Infrastructure and Special Technology Provisions

\*Fiber Path Mileage Totals

Path	Underground Mileage	City-Built Fiber Count Granted to Developer	City-Built Fiber Miles Granted to Developer	<sup>2</sup> Developer-Built Fiber Count Granted to City	Developer-Built Fiber Miles Granted to City
<sup>1</sup> A to E	5.10	12	61.20		0.00
<sup>1</sup> B to F	0.29	12	3.48		0.00
<sup>1</sup> D to H	5.10		0.00	12	61.20
<sup>1</sup> G to I	1.99		0.00	84	167.16
<sup>1</sup> J to C	16.09		0.00	12	193.08
<sup>1</sup> Existing City-Built Fiber	29.50	12	354.00		0.00
<sup>1</sup> A to P	1.00		0.00	84	84.00
<sup>1</sup> P to Q	1.10		0.00	84	92.40
<sup>1</sup> A to R	1.00		0.00	84	84.00
<sup>1</sup> A to S	2.91		0.00	84	244.44
	<b>Total Fiber Path Miles</b>		<b>418.68</b>		<b>926.28</b>
		<b><sup>3</sup>Total Fiber Value</b>	<b>\$218,061.10</b>		<b>\$482,434.41</b>

<sup>1</sup> True path distance measurements were calculated using Google Earth. All distances are estimates only.

<sup>2</sup> Pre-existing City-Built Fiber Mileage distances were calculated using map and scale provided by the City. All distances are estimates only.

<sup>3</sup> Total Fiber Value is based on the new build cost of \$50,000 per mile.  $\$50,000 / 96 \text{ strands} = \$520.83 \text{ per strand mile}$

<sup>4</sup> Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with the Hidalgo County Regional Mobility Authority ("HCRMA") Short Term Strategic Plan 2014-2022. This future build may or may not take place and is not a guarantee or commitment to be included in this Agreement. The Developer and the City will work closely together in an effort to secure this contract. In the event that the Developer is successful in procuring this contract and extends fiber within the HCRMA, then the Developer will grant 12 fiber strands within the Developer-Built fiber count to the City. (Refer to Exhibit E, Attachments).

<sup>5</sup> Total Fiber path mileage (and Value) does not include additional Developer-Built Fiber Miles to be Granted to the City in association with future fiber plant extensions within the public right of way inside City limits to deliver services to new customers.

2/28/2015 rev 1.3

EXHIBIT A

Development Agreement for Tres Lagos TIR2 - Exhibit E



**Exhibit "E"**  
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**Exhibit B to IRU Agreement**

**Service Level Agreement**

**(SEE ATTACHMENT 5 to EXHIBIT E)**

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**Exhibit C to IRU Agreement**

**FIBER SPECIFICATIONS**

**1.0 Compliance.**

All work will be done in accordance with federal, state, local, and applicable rules and laws regarding safety and environmental issues, including those set forth by Occupational Safety and Health Administration and the Environmental Protection Agency. In addition, all work and the resulting fiber system will comply with the generally applicable industry standards.

**2.0 Route Detail Information.**

City will provide to Developer a description of the type of Fiber (i.e., underground or aerial) and splice points which shall be available to Developer under the IRU Agreement in the Route thereof. If Developer desires additional information concerning the Trunk Route or the Access Point Routes, the parties shall negotiate in good faith to determine the feasibility of providing the additional detail requested. Updates to information will be provided by City to Developer within ninety (90) days of completion of any change to the Trunk Route and/or the Access Point Routes, including any relocation projects affecting the Developer's Fibers.

**3.0 Deviations from Specifications.**

City may deviate from these Specifications when field conditions dictate and as provided in the Agreement.

**4.0 Fiber Cable Splicing Testing, and Acceptance Procedures.**

a. Subsequent to the Fiber optic splices being made, as provided herein, all strands of the Trunk Line, the Access Point Routes and the Connections shall be tested to ensure such strands meet the standards provided in this Agreement. The parties shall cooperate in accomplishing the testing so that City can expeditiously and at its expense test the Trunk Route and the Access Point Routes, and to allow Developer access to the test results to confirm the test results provided in this Agreement.

b. All splices will be performed with an industry-accepted fusion splicing machine. Testing will be documented on diskettes (or other acceptable media) in Laser Precision format and on trace analysis sheets reflecting bidirectional losses by fiber and installed span loss by fiber. One copy of trace diskettes and three copies of trace analysis sheets will be submitted by each party to the other party promptly upon completion of the testing. All testing will be performed at 1550 nm.

c. During initial unidirectional OTDR testing, a general indicator of the quality of each splice will be an objective loss of 0.15 dB or less. If, after three attempts, a party is not able to produce a loss value of less than 0.15 dB, then 0.25 dB will become the objective. If, after two additional attempts, a value of less than 0.25 is not achievable, then the splice will be marked as "Out-of-Spec" ("OOS") on a field data sheet. ~~The parties recognize that~~



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unidirectional OTDR test data is not an acceptance/rejection criterion. Attempts to improve the loss for existing splices that are marked OOS will not be made unless agreed upon by both parties.

d. The installed span loss (span shall be FDP to FDP) shall be a bi-directional average of 0.50 dB/km or less, as calculated using an industry-accepted optical loss test set at 1550 nm. The installed span loss includes the inherent attenuation of the glass, the backbone splice losses, the pigtail splice losses, the inherent loss in the pigtails, and the connector losses.

e. Optical Return Loss will be recorded on the testing documentation, for informational purposes only.

f. Customer fiber assignments will be consecutive in count. The maximum number of fibers within a single buffer tube (or ribbon or fiber bundle) shall be 12.

g. **Optical Fiber Specifications - Single Mode Fiber**

Operation Temperature	-60 c to 85 c
Optical Properties	• 1300-1550 nm
• Standard Attenuation	• < .35 dB/km @ 1550 nm
• Attenuation Uniformity	• 0.1 dB/km
• Splice Loss	• < .15 dB per splice bi-directional average
	• < .2 dB for DS fiber

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**Exhibit D to IRU Agreement**  
**AS-BUILT DRAWING SPECIFICATIONS**

City shall, within 90 days from the execution of this Agreement, provide to Developer As-Built drawings containing the specific identification, by appropriate designator, of the Trunk Route and the Access Point Routes. Developer shall cause the splice points with the Developer Fibers to be designated on Network maps and as-built drawings. Facilities shall be marked in the field. Any maps or drawings that must be updated shall be delivered as soon as practicable thereafter to City. Detailed as-built drawings will contain the following information presented in the format described below:

1. **Route Description:** The as-built will contain a geographical depiction of the Route containing the Trunk Route and the Access Point Routes, provided in the form of a hard-copy map. The depiction will identify each access point.
2. **Fiber Level Details:** The as-built will provide details on Developer's fiber assignment numbers within the Cable between each access point and the next contiguous POP, fiber distribution bay, Developer's individual fiber assignments, and Developer's circuit ID's to aid in identifying fibers within the Cable.
3. **Mileage:** Mileage will be the fiber distances via Optical Time Domain Reflectometer ("OTDR") traces between an access point and the next contiguous access point.
4. **Site Names:** City's access points will be identified using City's names for such sites, whether or not Developer uses the same names.
5. **Drawings shall contain cable information, and to the extent applicable, splice locations, assist point locations with permanent structures, survey stations, conduit information, Regen Space locations, and optical distances to the nearest Regen Space from each of Developer's splice locations.**
6. **Map Info should be used as the land base to include all locations, addresses and route mileage for the long-haul portion. In the metropolitan areas AutoCAD should be used at 1" = 200' scale. Drawings shall be "blue lines," as such term is understood in the industry or in CAD format revision 13 or a later revision. Developer may adopt any replacement method of creating or providing drawings that is generally accepted in the industry and that provides equivalent information.**
7. **Definition of type of cable and fiber installed.**



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ATTACHMENT 5 to EXHIBIT E  
&  
EXHIBIT B to IRU Agreement

**SERVICE LEVEL AGREEMENT**

This Service Level Agreement (the "SLA") is entered into as of this 9<sup>th</sup> day of March 2015, (the "Effective Date") by and between Rhodes Enterprises Inc., a Texas Corporation with its principal offices at 200 South 10th Street, McAllen, TX 78501 (hereinafter, "Developer"), and The City of McAllen, Texas, a Texas Municipal Corporation with its principal offices at 1300 Houston Avenue McAllen, TX 78501 (hereinafter, "City"). Collectively, Developer and City may be referred to as "the parties" or individually as "a party." Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the IRU Agreement.

**WHEREAS**, City has agreed to grant to Developer the exclusive, irrevocable and indefeasible right to use twelve (12) specific strands of Fiber (the "Developer Fiber" or "Black Buffer Tube") on the terms and conditions specified in the Indefeasible Right of Use Agreement (hereinafter, "IRU Agreement") to which this SLA is attached; and

**WHEREAS**, In exchange for the compensation established herein, City has agreed to provide splicing, certain routine maintenance, emergency restoration and locate services for the Developer as set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, City and Developer agree as follows:

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the IRU Agreement.

2. **MAINTENANCE SERVICES.**

2.1 **In General.** City shall provide maintenance services (the "Maintenance Services") for the Developer Fiber, Access Points and Cable as set forth herein, and shall have access to all splice points associated with connections to the Developer Fibers for the provision of such Maintenance Services. City shall provide Scheduled Maintenance and Unscheduled Maintenance, each as defined below, for the Developer Fiber.

2.2 **Scheduled Maintenance.** "Scheduled Maintenance" means (a) routine maintenance and repair of the Developer Fiber and Access Points; (b) patrol of the Developer Fiber, and Access Points on a regular basis; (c) maintenance of a "Call-Before-You-Dig" program as applicable and all required and related cable locates; (d) maintenance of sign posts as applicable, as permitted by the underlying right-of-way owner, along the subject Fiber and Cable routes with the number of the local "Call-Before-You-Dig" organization and the "800" number for its "Call-Before-You-Dig" program if allowed by applicable state and local laws; and (e)

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assignment of properly trained and certified maintenance technicians. Subject to the other provisions contained in this SLA, City shall maintain (or cause to be maintained) any hut, collocation facility, or other structure used to house Developer's Access Points.

2.3 **Unscheduled Maintenance.** "Unscheduled Maintenance" means non-routine maintenance, emergency repair, and restoration of the Developer Fiber and Access Points not included in Scheduled Maintenance, namely, (a) "Emergency Unscheduled Maintenance" to repair and restore the Developer Fiber in response to an alarm identification by either Party's OC (as defined below), notification by Developer, or notification by any third Party of any imminent failure, interruption, or impairment in the operation of the Developer Fiber, or to prevent failure, interruption or impairment of the Developer Fiber in response to any event imminently likely to cause such failure, interruption, or impairment; and (b) Non-emergency Unscheduled Maintenance in response to any potential (although not imminent) service-affecting situation to prevent any failure, interruption, or impairment of the operation of the subject Cable, Fibers, or Access Points.

2.4 **City Not Responsible for Developer Equipment.** Developer has exclusive control and responsibility to install, test, inspect, maintain, and repair the Developer's Equipment. City shall have no responsibility or obligation to perform any Maintenance Services hereunder (or otherwise perform maintenance, repair, or replacement) with respect to the Developer Equipment, and shall not be liable for any loss or damage attributable to any Developer Equipment that malfunctions or is not installed, tested or maintained properly by Developer.

3. **TERM.** The initial term of this SLA shall commence upon the Acceptance Date and continue in effect for the same term as the IRU Agreement unless terminated or modified earlier by mutual agreement of the Parties. (hereinafter, the "Maintenance Term"). Subject to renewal of the IRU Agreement, this SLA shall renew for additional terms commensurate with and equal to the Renewal Terms of the IRU Agreement unless either Party provides written notice of its intent not to renew in the same manner required for non-renewal of the IRU Agreement.

4. **SPLICING AND MAINTENANCE CHARGES.**

4.1 **Splicing Charge.** Developer agrees to pay City for the costs incurred with respect to any splicing. Splicing shall be billed to Developer at City's cost plus ten percent (10%), which payment shall be due within thirty (30) days after Developer's receipt of an invoice from City. In no event shall the City charge more for splicing services than is customary in the market for such services. The City shall base its pricing for such services on the rate charged by the lowest responsive bidder for such services received by the City in response to a request for bids for such services issued within no less 12 months prior to invoicing for such services.

4.2 **Annual Charge for Scheduled Maintenance.** Annual charge for Scheduled Maintenance shall only be applicable to City-owned fiber cable routes outside of those fiber cable routes required to serve the Zone or PID. This includes fiber cable extensions within the City limits performed by Developer and then dedicated to the City. Developer shall pay to City



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for the provision by City of Scheduled Maintenance hereunder, an annual maintenance charge of two hundred fifty dollars (\$250.00), or equivalent, per Route mile of active or lit Developer Fiber ("Annual Maintenance Charge"). The initial Annual Maintenance Charge for Scheduled Maintenance is set forth in Schedule A. The Annual Maintenance Charge shall be based exclusively on active or lit route miles of Fiber, and shall be irrespective of the number of Fibers Developer has in any particular Route Segment. The Annual Maintenance Charge is subject to periodic review and adjustment pursuant to Section 4.3 below, and must not exceed 110% of the cost for such maintenance than is customary in the market for such services. The City shall base its pricing for such services on the rate charged by the lowest responsive bidder for such services received by the City in response to a request for bids for such services issues within no less 12 months prior to invoicing for such services.

4.3 Invoices. City shall invoice Developer for the Annual Maintenance Charge on an annual basis in advance, and Developer shall pay the Annual Maintenance Charge, or equivalent, set forth in the invoice within thirty (30) days of its receipt thereof.

4.4 Periodic Review. The Annual Maintenance Charge is fixed at the rate set out in Exhibit A, and must not exceed 110% of the cost for such maintenance than is customary in the market for such services. The City shall base its pricing for such services on an amount not to exceed 110% of the rate charged by the lowest responsive bidder for such services received by the City in response to a request for bids for such services issued in compliance with Texas law on no less than an annual basis. At the time of issuance and publication of the request for bids the City shall send a copy of the request to Developer. This process for establishing the amount of fees and other pricing is referred to herein as the "Competitive Pricing Procedure" or "CPP".

4.5 In addition to adjustments made under the CPP, City may make non-standard adjustments to the Annual Maintenance Charge to reflect actual increased charges to City by Grantors under the Underlying Maintenance Agreements for Scheduled Maintenance in connection with the Grantor Segments containing the Developer Fiber that are in excess of the adjustment to the Annual Maintenance Charge based on the CPP. Any non-standard adjustments to the Maintenance Charges must include relevant Grantor invoices and other supporting information, and at least ninety (90) days' notice must be given prior to the commencement of the applicable period to which the adjustment would apply. Such additional non-standard adjustments shall be pro-rated between City and Developer based on the number of Fibers each has in the applicable Grantor Route Segment.

4.6 Costs for Unscheduled Maintenance. The Parties agree that Annual Maintenance Charge does not cover Unscheduled Maintenance or Relocation. Each Party shall be responsible for its pro rata share of Unscheduled Maintenance costs based on the ratio of each Party's Fibers in the particular Route Segment to the total number of Fibers in that Route Segment. For its share of any costs and expenses incurred for Unscheduled Maintenance, Developer shall pay the charges set forth in an invoice from City, accompanied, as applicable, by relevant invoices from Grantors or other service providers, and bid tabulations for such services, evidencing such costs and expenses, within thirty (30) days of its receipt thereof. Notwithstanding the foregoing, in the event that the need for Unscheduled Maintenance becomes

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necessary as a result of a Party's, its agent's, or its customer's negligence or willful misconduct, that Party shall be solely responsible for the entire **Unscheduled Maintenance** costs. In the event that the need for **Unscheduled Maintenance** becomes necessary as a result of the negligence or willful misconduct of a third party, City shall take commercially reasonable action to collect the costs thereof from such responsible third party, and shall, offset each Party's share of the costs for **Unscheduled Maintenance** on a pro rata basis, to the extent such costs have actually been recouped from such responsible third party. Each party's responsibility for **Relocation** costs shall be as described in Section 9 of the IRU Agreement.

4.7 **Expenses.** City is responsible for professional travel, meals, lodging, and such other expenses as it may incur ("**Expenses**") in performance of **Scheduled Maintenance**, and no charge shall be assessed to Developer for such costs. Reasonable **Expenses** incurred by City in connection with **Unscheduled Maintenance** including restoration and emergency repair activities, shall be allocated and may be invoiced by City as provided in Section 4.4, subject to the provision, upon Developer request, of back-up documentation.

**5. MAINTENANCE SPECIFICATIONS AND REQUIREMENTS.**

5.1 **Operations Center.** City shall itself or through a third party, operate and maintain an **Operations Center ("OC")** and have trained staff available twenty-four (24) hours a day, seven (7) days a week. City shall have a maintenance employee or contractor available for dispatch twenty-four (24) hours a day, seven (7) days a week.

5.2 **Scheduling; Response Parameters and Requirements.**

5.2.1 City shall respond to any notice of any failure of the Developer Fibers to operate in accordance with the **Fiber Specifications**, whether or not causing any interruption of Developer's use thereof (an "**Outage**") as quickly as reasonably possible (subject to delays due to a **Force Majeure Event**) in accordance with the procedures of this Section 5, and, in any event, City will use reasonable efforts to have a maintenance technician at the site requiring **Emergency Unscheduled Maintenance** on any **Route Segment** within five (5) hours after the time City becomes aware of an event requiring such **Emergency Unscheduled Maintenance**. City will restore the **Developer Fibers** and the connections on the same priority as other communications services within City's service area; however, City shall have no liability to Developer in the event City is unable, due to the demands of restoring other priority services such as service to fibers serving operation centers for emergency service providers or the **PID**.

5.2.2 City shall notify Developer at least three (3) business days in advance of **Scheduled Maintenance** for which it is responsible that will cause interruption of use by Developer or its customers of the **Developer Fibers**. In the event that **Scheduled Maintenance** of which Developer has been so notified is canceled or delayed for any reason, City shall notify Developer at City's earliest reasonable opportunity and will provide a new notice under this Section 5.2.2 to reschedule any such canceled or delayed maintenance.

5.2.3 Developer shall have the right to be present during the performance of any **Scheduled Maintenance** or **Unscheduled Maintenance** so long as this



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requirement does not interfere with City's ability to perform its obligations under this SLA or violate any applicable third party limitations or restrictions on access; provided that in the event of such third party limitations on access, City will cooperate with Developer in obtaining any necessary permissions from such third party to permit Developer to be present during the performance of such maintenance activities.

5.2.4 City shall perform Scheduled Maintenance between the hours of midnight and 6:00 a.m. or in accordance with its then current preventative maintenance procedures, which shall be consistent with industry practice. Unscheduled Maintenance may be performed at any time, but City agrees to use commercially reasonable efforts when conducting such Unscheduled Maintenance to minimize any interruption of Developer's use of the Developer Fibers or such use by its customers.

5.2.5 City shall use commercially reasonable efforts to remedy any problems related to the Developer Fiber or Access Points as quickly as possible, except that restoration of open fibers on fiber strands among the Developer Fiber not immediately required for service shall be completed in a mutually agreed upon manner and on a mutually agreed upon schedule. If any Developer Fiber is not being utilized by Developer, repairs may be scheduled for the next available Planned System Work Period ("PSWP"), which is a pre-arranged period of time reserved for performing certain work on the subject Cable that may potentially impact Developer's communications traffic. If, at any time, it becomes apparent that an Outage as to any Developer Fiber will extend beyond eight (8) hours, a manager or officer of each Party will work together to determine a plan to restore the subject Fibers as soon as possible.

5.2.6 Major system work (including fiber rolls and hot cuts on Developer Fiber) will be scheduled during a PSWP. Generally, this will be restricted to weekends, avoiding the first and last weekend of each month and holidays of high communications traffic.

5.2.7 In the case of any permitted rerouting activities, City shall notify Developer at least thirty (30) days in advance of any voluntary rerouting activities and as soon as reasonably possible in the case of any involuntary rerouting activities if the subject rerouting activities are intended to require any interruption of service by Developer related thereto.

5.2.8 City's representatives responsible for initial restoration of a cut Developer Fiber shall carry in their vehicles the appropriate equipment that would enable a temporary splice, with the objective of restoring Developer's fiber operation as quickly as reasonably possible. City or its representatives shall maintain an inventory of spare cable in one or more storage facilities to facilitate timely restoration. Each Party shall maintain sufficient capability to teleconference with the other Party during an Emergency Unscheduled Maintenance on fiber strands granted to Developer hereunder and to provide regular communication during the repair process.

5.2.9 When correcting or repairing Cable discontinuity or damage, including in the event of Emergency Unscheduled Maintenance, City shall use reasonable

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efforts to repair discontinuity having an impact on traffic within twenty-four (24) hours after City's maintenance employee, contractor, subcontractor or designee arrives at the problem site. To accomplish such objective, it is acknowledged that the repairs so affected may be temporary in nature. City or its representative, promptly upon arriving on the site of the cut or damage, shall determine the course of action to be taken to restore the fiber(s) and shall begin restoration efforts. City or its representative shall splice Fibers such that lit Fibers in all buffer tubes, ribbons or fiber bundles shall have priority over any dark fibers to allow transmission systems to come back on line; and provided further that City will continue such restoration efforts until all lit Fibers in all buffer tubes or ribbons are spliced and all traffic restored. The goal of emergency restoration splicing shall be to restore service as quickly as possible. This may require the use of some type of mechanical splice, such as the "3M Fiber Lock" to complete the temporary restoration. Within forty-eight (48) hours after completion of an Emergency Unscheduled Maintenance by City, City shall commence its planning for permanent repair if applicable, and shall notify Developer of such plans and shall implement and complete such permanent repair within seven (7) days. Permanent restorations will take place as soon as practicable after the temporary repairs are completed.

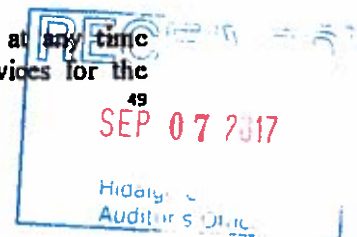
5.3 Cooperation. Each Party agrees to work in a cooperative manner with the other Party to attempt to identify maintenance and repair problems in the Developer Fiber and Access Points, and communicate in accordance with the contact/escalation list in Exhibit B hereto. Without limiting the generality of the foregoing and in the event that any Scheduled Maintenance or Unscheduled Maintenance requires a traffic roll or reconfiguration involving the Developer Fiber, electronic equipment or other facilities, then, each Party shall make its personnel available as reasonably necessary to accomplish the maintenance in a coordinated and cooperative manner.

5.4 Splice Enclosures. Neither Party shall open the splice enclosure of the other Party.

5.5 Contractors/Grantors. City may, in its reasonable discretion, contract with qualified third parties for the performance of the Services hereunder, provided it shall require its contractors, subcontractors, and designees to perform in accordance with requirements and procedures reasonably comparably to those set forth in this SLA. The use of any such contractors, subcontractors, or designees, shall not release City from liability for any of its obligations under this SLA.

6. CONTACT INFORMATION. Each Party shall provide the other Party with the names and telephone numbers of at least three (3) agents or representatives, in the order that the other Party shall contact them for reporting purposes and otherwise regarding the performance of Maintenance Services hereunder (the "Contact/Escalation List"). Each Party's initial Contact/Escalation List is set forth in Exhibit B, which such list may be updated from time to time by the applicable Party.

7. FAILURE TO PROVIDE MAINTENANCE SERVICES. If at any time during the Term of the IRU Agreement, City fails to provide restoration services for the Development Agreement for Tres Lagos TIR2 - Exhibit E



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

Developer Fibers in connection with City's provision of Maintenance Services, the Parties' respective rights therewith shall be governed by Section 6.2 of the IRU Agreement.

8. **CONFIDENTIAL INFORMATION.** If either party provides confidential and/or proprietary information to the other in writing and identified as such, the protection of such information by the receiving party shall be governed by Section 20 ("CONFIDENTIALITY") of the IRU Agreement.

9. **INSURANCE.** During the term of this SLA, both Parties shall maintain a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the State of Texas, covering use and activity contemplated by this SLA with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars \$2,000,000.00 aggregate, with Two Million Dollar (\$2,000,000.00) umbrella coverage. Each party shall name the other, including their officers, employees, and agents as Additional Insureds for the said purpose and use of this SLA. Each Party shall also maintain Workers' Compensation insurance to meet the requirements of the Workers' Compensation laws of Texas where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to the other Party upon request.

10. **ASSIGNMENT.** This SLA may not be assigned by either party without the prior written approval of other party. Notwithstanding the foregoing, nothing herein shall limit City, at its sole discretion and without notification to or consent of Developer, from retaining such qualified contractors and subcontractors as it deems appropriate to perform its obligations hereunder.

11. **USE OF NAMES AND MARKS.** Neither Party may use the marks or names of the other for any purposes without the prior written approval of that Party.

12. **GOVERNING LAW; EXCLUSIVE JURISDICTION.** This SLA shall be governed, construed, and enforced by the laws of the State of Texas, and venue over this SLA shall be in Hidalgo County, Texas.

13. **TERMINATION.** Either Party may terminate this SLA upon thirty (30) days prior written notice upon a Default by the other Party or termination of the IRU Agreement, provided that City shall be paid for satisfactory services rendered under this SLA prior to the effective date of its termination and Developer shall be refunded that portion of the Annual Maintenance Charge for the remaining number of days in the year from the date of termination. In the event of termination of this SLA, Developer shall have the right to provide or procure Maintenance Services for the Developer Fibers in accordance with Section 7, hereof.

14. **DEFAULT AND REMEDIES.**

14.1 **Default.** A default under this SLA ("Default") shall occur if a Party fails to perform, in any material respect, any of its obligations set forth in this SLA, and such failure is not excused by any provision of this SLA and continues un-remedied for a period of thirty (30) days following receipt of written notice from the non-breaching Party, provided that if the breach by its nature cannot be cured within thirty (30) days and the breaching Party within that time has

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

commenced to cure, there shall be no Default so long as the Party thereafter diligently continues such cure to completion.

14.2 Remedies. Upon the occurrence of a Default, the non-breaching Party shall have the right, subject to the express limitations contained in this SLA, to pursue any and all legal or equitable remedies it may have against the defaulting Party, including termination of the SLA and the rights of Developer (if it is the non-breaching Party) to obtain a refund of the portion of the Annual Maintenance Charge for the remaining number of days in the year from the date of termination.

14.3 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT, BY INDEMNITY OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ANY LOST BUSINESS DAMAGES IN THE NATURE OF LOST REVENUES OR PROFITS (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE) AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. ANY LIABILITY FOR INTERRUPTIONS OR OUTAGES, SHALL BE LIMITED TO REPLACEMENT OR REPAIR OF THE AFFECTED FIBER IN ACCORDANCE WITH THE TERMS OF THIS MAINTENANCE AGREEMENT.

14.4 Further Remedies – Right-of-First Refusal. In the event that the City is unable to perform services as required under this SLA, then the Developer may exercise its Right-of-First Refusal to purchase the existing fibers in use OR pull new fiber cable in existing City conduit to replace the existing Developer Fibers.

15. COMPLIANCE WITH STATE AND FEDERAL LAWS. The Parties shall comply with all applicable federal and State laws.

16. ENTIRE AGREEMENT. This SLA, along with the IRU Agreement, and the Development Agreement (including Exhibit E thereto), comprises and sets forth the entire agreement between the Parties as of the date of the final signature below with respect to the subject matter of the SLA, and supersedes any previous written or oral representations, statements, negotiations, or agreements, other than those contained in the Development Agreement and its Exhibits.

17. NO AGENCY OR EMPLOYMENT RELATIONSHIP. This SLA shall in no way be interpreted as creating an agency, joint venture, partnership, or other legally recognizable partnership entity, or employment relationship between the Parties.

18. SEVERABILITY. If any part of this SLA is held to be in violation of any law, the provisions held to be invalid shall be of no force and effect, but all of the other provisions of this SLA shall continue to be binding on the Parties.

19. MODIFICATION IN WRITING. This SLA may be modified only by written amendment executed by the authorized representatives of both Parties.



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

20. **SURVIVAL.** The rights and obligations of the Parties under this SLA that would by their nature survive the expiration or termination of this SLA shall survive the expiration or termination of this SLA. Notwithstanding the foregoing, the provisions of Sections 7, 9, 15, 21, 22 shall survive termination of this SLA.

21. **INDEMNIFICATION.**

21.1 **Indemnification by Developer.** Developer hereby agrees to indemnify, defend and hold harmless City, its officers, employees, agents and all successors of City, from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorneys' fees and all liabilities or obligations of any kind or nature whatsoever at law, in equity, or otherwise, asserted by third parties arising out of or relating to Developer's negligent or willful acts or omissions in performance of this SLA.

21.2 **Indemnification by City.** To the extent permitted by law, City hereby agrees to indemnify, defend and hold harmless Developer, its officers, employees, agents and all successors of Developer, from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorneys' fees and all liabilities or obligations of any kind or nature whatsoever at law, in equity, or otherwise, asserted by third parties arising out of or relating to City's negligent or willful acts or omissions in performance of this SLA

22. **NOTICES.** All notices, demands and requests required or permitted to be given under the provisions of this SLA shall be (a) in writing, (b) delivered by facsimile transmission with confirmation of delivery, or sent by overnight commercial delivery service or certified mail, return receipt requested. Notice shall be deemed to have been given on the date of transmission and receipt of facsimile transmissions, or the delivery date set forth in the records of the delivery service or on the return receipt when addressed as follows:

**If to City:**

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

With a copy to:

City Attorney's Office  
Attn: Kevin D. Pagan  
1300 Houston Avenue  
McAllen, Texas 78501  
Phone: (956) 681-1000

Exhibit "E"  
Fiber Optic Infrastructure and Special Technology Provisions

If to Developer:

Rhodes Enterprises, Inc.  
Attn: Mike Rhodes, President  
200 S. 10th Street  
McAllen, Texas 78501  
Phone: (956) 287-2800

With a copy to:

Earl & Associates P.C.  
Attn: David L. Earl & Megan J. Clay  
601 NW Loop 410, Ste. 390  
San Antonio, Texas 78216  
Phone: (210) 222-1500

or to any such other persons or addresses as the Parties may from time to time designate in a writing delivered in accordance with this Section 22.

EXECUTED ON THIS 9<sup>th</sup> DAY of March, 2015 to be effective on the date hereof.

CITY OF MCALLEN

By: [Signature]  
Name: Jim Daniels  
Title: Mayor

DEVELOPER

By: [Signature]  
Name: Mike Rhodes  
Title: pres Rhodes Enterprises Inc.



**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**Exhibit A- SLA\***

ROUTE SEGMENTS SUBJECT TO MAINTENANCE AGREEMENT**							
Route No.	Start Point	End Point	Distance	Number of Developer Fibers	Fee	Fee	Total Fee
1	B	A	14.79 mi	12			
2	F	G	7.30 mi	12			
3	G	I	1.99 mi	12			
4	G	H	2.50 mi	12			
Total Fee							***

\* NOTE – Only route segments listed above are included in this SLA. Route segments may be added to this SLA from time to time at the request of the Developer as it expands the City's fiber cable plant and such additions shall be shown by update and amendment to this Exhibit A – SLA.

\*\*For Route Segments, Start Points and End Points refer to Exhibit A of to the IRU Agreement.

\*\*\* See Attachment 4 to Exhibit E – Section 3 (Payments)

**Exhibit "E"**  
**Fiber Optic Infrastructure and Special Technology Provisions**

**Exhibit B - SLA**

**Contact/Escalation List**

<b>CITY ESCALATION LIST</b>					
<b>No.</b>	<b>Name</b>	<b>Email Address</b>	<b>1<sup>st</sup> Phone Number</b>	<b>2nd Phone Number</b>	<b>3<sup>rd</sup> Phone Number</b>
1					
2					
3					

<b>DEVELOPER ESCALATION LIST</b>					
<b>No.</b>	<b>Name</b>	<b>Email Address</b>	<b>1<sup>st</sup> Phone Number</b>	<b>2nd Phone Number</b>	<b>3<sup>rd</sup> Phone Number</b>
1	Joe Jarmusch	joef@mhrhodes.com	956-328-6644	956-316-4090 Ext.741	956-287-2800
2	Lorell Hathcock	lorell@mhrhodes.com	956-478-5955	956-316-4090 Ext.743	956-287-2800
3	Joe Farias	joef@mhrhodes.com	956-522-8512	956-316-4090 Ext.742	956-287-2800

**RECEIVED**  
 SEP 07 2017  
 Hidalgo County  
 Auditor's Office

**RE**  
 SEP 07 17  
 Hidalgo  
 Auditor

EXHIBIT "F"

**Sewer and Recycled Water Provisions**

- 1) The City of McAllen, acting by and through the Board of the McAllen Public Utilities Board (the "PUB") shall provide public retail sewer service to the Project within the Zone, as such service levels and capacities as are required by the Project pursuant to the terms and conditions of the PUB's Certificate of Convenience and Necessity issued by the Texas Commission on Environmental Quality and the regulations for sewer service passed and approved by the Board of the PUB and approved by the Commission of CITY.
  
- 2) The PUB agrees that it has reviewed the Development Agreement to which this **Exhibit "F"** is attached, and that it understands and agrees to the obligations for extension of sewer and recycled water service and utility infrastructure to the **ZONE** as set forth therein.
  
- 3) With respect to recycled water service to the **ZONE** for the use and benefit of the proposed PID, and the properties served thereby, the PUB agrees to:
  - a) Install the required recycled water mains to the Zone on or before the 31 day of March, 2017;
  - b) Return at no less than 80% of the potable water used by the retail water customers within the **ZONE** (as indicated by monthly meter readings) back to the PID for use in serving the **ZONE** with recycled water service delivered at a point identified by the PID; and
  - c) Assure that the recycled water delivered has a water quality equal to or better than the minimum water quality requirements set forth in 30 Texas Administrative Code §210.33(1).

Agreed to by and between **DEVELOPER** and PUB on this \_\_\_ day of \_\_\_\_\_, 2015.

**PUB:**

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**DEVELOPER:**

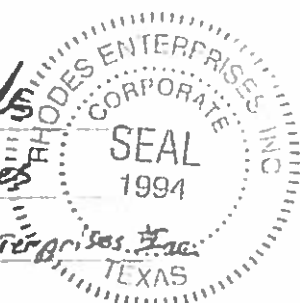
By: \_\_\_\_\_

*Mike Rhodes*  
*Mike Rhodes*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

*Pres Rhodes Enterprises, Inc.*  
\_\_\_\_\_  
Title



**EXHIBIT "G"**  
**Insurance Requirements**

RECEIVED  
SEP 07 2017  
Hidalgo County  
Auditor's Office

## **STANDARD INSURANCE REQUIREMENTS CONSTRUCTION/SERVICES/PROFESSIONAL SERVICES**

The Certificate of Insurance should be made to the City of McAllen, P.O. Box 220, McAllen, TX 78505-0220, (1300 Houston, McAllen, Texas 78501) and should reference the operation.

All certificates must be received prior to commencement of service/work. All Certificates of Insurance shall be approved by the Risk Manager and/or his/her designated representative prior to the commencement of any work.

In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The City must be notified at least thirty (30) days prior to any material change in and/or cancellation and/or non-renewals of such policies.

The term "City" shall include The City of McAllen and/or McAllen Public Utilities (MPU) and their employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.

The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage.

During the term of the Contract, the successful contractor/respondent/selected firm shall acquire and maintain, for the duration of the contract period the following insurances:

- A. **Comprehensive Commercial General Liability:** The Contractor/Respondent/Selected Firm shall provide minimum limits of \$250,000 each occurrence, \$500,000 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, personal and advertising injury, and contractual liability. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of McAllen" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Blanket "XCU" – Explosion, Collapse & Underground  
Independent Contractors  
Care, Custody and Control  
Contractual Liability

No endorsements excluding these coverage's are allowed.

**Additional Insured Requirement:**

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of McAllen and/or McAllen Public Utilities (MPU) shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

**STANDARD INSURANCE REQUIREMENTS - CONSTRUCTION/SERVICES/PROFESSIONAL SERVICES CONTINUED:**

- B. **Business Automobile Liability:** The Contractor/Respondent/Selected Firm shall maintain limits of no less than \$250,000 combined single limit per occurrence for bodily injury and property damage, and \$500,000 annual aggregate. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "City of McAllen" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Applicable as long as no fragile or perishable products are transported; otherwise, Cargo Insurance is required.

**Additional Insured Requirement:**

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, the City of McAllen and/or McAllen Public Utilities (MPU) shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

- C. **Builder's Risk/Fire & Extended Coverage**

The Contractor shall insure the building or other work included in this contract on an all-risk (special causes of loss) policy, with an insurance company or companies acceptable to the Owner. The amount of the insurance at all times to be at least equal to the amount paid on account of work and material and plus the value of the work or materials furnished or delivered but not yet paid for by the Owner. Builder's Risk Policies shall cover loss of materials by theft, vandalism, malicious mischief or other loss whether materials are incorporated in the work or not.

The policies shall be in the names of the City and the Contractor, as their interests may appear, and certificates of insurance shall be delivered to the Owner before monthly partial payments are made. The policy shall provide for the inclusion of names of all other contractors, subcontractors and other employed on the premises as ensured and shall stipulate that the insurance companies shall have no right to subrogation against any contractors, subcontractors or other parties employed on the premises for any work building alterations, construction or erection to the described property.

- D. **Workers' Compensation:** The contractor/respondent/selected firm shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Texas. Employer's Liability insurance shall be provided in amounts not less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease."

In addition, a Waiver of Subrogation Endorsement shall be provided by the contractor naming the City of McAllen in said policy for Worker's Compensation Insurance. Contractor/Respondent/Selected Firm shall further ensure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.



**STANDARD INSURANCE REQUIREMENTS - CONSTRUCTION/SERVICES/PROFESSIONAL SERVICES CONTINUED:**

- E. **Professional Services - Insurance Provisions:** Errors & Omissions (Professional Liability): \$1,000,000 Each Claim Limit \$1,000,000 Aggregate Limit. If coverage is written on a claims-made basis, the retroactive date shall be on or prior to the date of the contractual Agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual Agreement and for four (4) years following completion of the services provides under the contractual Agreement or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.
  
- F. **Deductible Clause:** Contractor/Respondent/Selected Firm to declare self-insured retention or deductible amounts in excess of \$25,000.
  
- G. **Other Provisions:** All insurance carriers shall be rated A6 or better and be published on a current A.M. Best Rating Guide, or some other recognized equivalent rating service (e.g., Moody's, Standard & Poor's). The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier. All Certificates of Insurance shall be provided on the Acord Form 25. All insurance requirements are imposed and must be complied with by any and all sub-contractors, and/or lower-tier sub-contractors. A copy of endorsements providing Additional Insured, Primary Insurance and Waiver of Subrogation wording shall be attached to the certificates of insurance.

**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 ("1<sup>st</sup> Amendment") is hereby made to that certain Development Agreement ("Agreement"), executed and effective as of March 9<sup>th</sup>, 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 1<sup>st</sup> 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 1<sup>st</sup> Amendment that are not otherwise defined in this 1<sup>st</sup> Amendment shall have the meanings assigned to such terms in the Agreement.

1.2 Purpose and Overview of 1<sup>st</sup> Amendment. This 1<sup>st</sup> 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 1<sup>st</sup> Amendment allows the 100 acre tract to be used as a site for a future Campus of Texas A & M University. This 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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