

THIRD AMENDED TAX INCREMENT FINANCING AGREEMENT

THIS THIRD AMENDED TAX INCREMENT FINANCING AGREEMENT ("**Third Amendment**") is made and entered into and effective as of the _____ day of _____ 2013 (the "**Effective Date**"), by and between WILLIAMSON COUNTY, TEXAS (the "**County**") and the CITY OF GEORGETOWN, TEXAS (the "**City**"), political subdivisions of the State of Texas, with respect to the creation of, and the level of participation in, the City of Georgetown Rivery Park Tax Increment Reinvestment Zone a/k/a Reinvestment Zone Number _____, City of Georgetown, Texas (the "**Zone**"). The City and the County are sometimes referred to jointly herein as the "Parties." This Second Amendment amends, restates, and wholly replaces both the Original Agreement (defined below) and the First Amendment (defined below).

WITNESSETH:

WHEREAS, on December 11, 2007, after complying with all requirements of Chapter 311 of the Texas Tax Code, the City adopted Ordinance No. 2007-91 creating the Zone over the property shown on the attached **Exhibit A** (the "**Property**") for a term beginning on the effective date of the ordinance and extending until December 31, 2031 (unless earlier terminated as allowed by law) for the purpose of encouraging and enabling development of the Property with a hotel, conference center, and improvements to the City's Rivery Park (the "**Project**"); and

WHEREAS, pursuant to Section 311.013(f) of the Texas Tax Code, which allows other taxing jurisdictions to participate in the Zone by entering into an agreement with the City, the Commissioners Court of the County executed that certain Tax Increment Financing Agreement dated to be effective on September 16, 2008 (the "**Original Agreement**"), pursuant to which the parties established their respective contributions to the Tax Increment Fund for the Zone and the County imposed several conditions to its participation in the Zone including, among other conditions, a minimum size and construction deadline for the conference center and the right of the County to appoint members to the board of directors for the Zone; and

WHEREAS, on May 15, 2012 the Original Agreement was amended by the "First Amended Tax Increment Financing Agreement" (the "**First Amendment**"), pursuant to which the County agreed to: (a) formalize its consent to the removal of the 8.33 acre +/- tract of land from the Zone; and (b) extend the deadline for completion of construction of the conference center from October 1, 2011 to September 30, 2015; and

WHEREAS, on January 16, 2014, the Original Agreement was amended by the "Second Amended Tax Increment Financing Agreement" (the "**Second Amendment**"), pursuant to which the County agreed to include additional portions of real property into the District; and

WHEREAS, the changes in the timing, type and nature of some of the development in the Zone make it necessary and desirable to amend and restate the Original Agreement and the First Amended Agreement to extend the date of completion of construction from December 31, 2015 to June 30, 2016.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the City and the County agree as follows:

AGREEMENT

I. GENERAL

1. **Effect of Recitals.** The recitals set forth above are incorporated herein for all purposes and are found by the Commissioners Court of the County and the City Council of the City to be true and correct statements of fact. It is further found and determined that the City and the County have authorized and approved this Third Amendment by ordinance, resolution, order or minute action adopted by their respective governing bodies.
2. **Conference Center Completion Date.** Section 8(d) of the Second Amended Agreement is hereby amended by deleting Section 8(d) in full and replacing it with the following:

(d) The conference center as described herein shall be fully constructed by June 30, 2016 subject to events of Force Majeure (defined herein). If, for any reason, the conference center is not fully constructed by June 30, 2016, the County reserves the right to terminate this Agreement and cease Tax Increment Payments as stated herein. If the conference center is not fully constructed by June 30, 2016, all sum previously deposited into the Tax Increment Fund by the County shall be returned to the County. If funds are returned to the County pursuant to this subsection (d), then the County shall be also be required to return all sales taxes received from the City pursuant to subsection 8(a), above.

II.

MISCELLANEOUS

- (a) **Prior Written Agreements.** This Third Amendment shall be read in conjunction with the Agreement and the Second Amendment, which remain in full force and effect.
- (b) **Governmental Immunity.** Nothing in this Third Amendment shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claim on behalf of any third party. Neither the City nor Williamson County waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- (c) **Amendments and Modifications.** Unless otherwise specified herein, this Third Amendment may not be amended or modified except in writing executed by both the City and Williamson County, and authorized by their respective governing bodies.

- (d) **Severability.** If any provision of this Second Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Second Amendment will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Second Amendment is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, to give effect to the intent of this Second Amendment and be deemed to be validated and enforceable.
- (e) **Gender, Number and Headings.** Words of any gender used in this Second Amendment shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.
- (f) **Compliance Documentation.** On or before February 1st of each year during the term of this Second Amendment, City hereby agrees to provide County with any and all certifications and/or reports necessary to provide evidence that all parties to this Second Amendment are in compliance with the terms and conditions hereof and that all conditions set forth in this Second Amendment have been satisfied as of the date in which the City provides said certifications and/or reports.
- (g) **Execution in Counterparts.** This Second Amendment may be executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the Effective Date, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

EXECUTED to be effective as of _____ (the “**Effective Date**”) by the duly authorized representatives of the Parties as shown below.

WILLIAMSON COUNTY, TEXAS

By: _____

DAN A. GATTIS
County Judge
Williamson County, Texas

Attest:

By: _____

Nancy E. Rister
Nancy Rister, County Clerk

CITY OF GEORGETOWN, TEXAS

By: _____

Mayor

Attest:

By: _____

Jessica Brettle, City Secretary