

INTERLOCAL AGREEMENT

THE STATE OF TEXAS

§

§

COUNTY OF COLLIN

§

This **INTERLOCAL AGREEMENT** (the “Agreement”) is made by and between the **CITY OF MCKINNEY, TEXAS** (the “City”), a municipal corporation and home-rule municipality of the State of Texas situated in Collin County, acting by and through its governing body, the City Council; **COLLIN COUNTY, TEXAS**, a body corporate and politic under the laws of the State of Texas, acting by and through its governing body, the Collin County Commissioners Court (the “County”); and **REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY** (the “Zone”), a reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code, as amended, acting by and through its Board of Directors. This Agreement is made pursuant to Chapter 791 of the Texas Government Code, and Chapter 311 of the Texas Tax Code, as amended.

The City, the County and the Zone hereby agree to the following terms and conditions of this Agreement.

I. DEFINITIONS

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

“Agreement” means this Interlocal Agreement between the City, the County and the Zone.

“Captured Appraised Value” means the captured appraised value of the Zone, as defined by Chapter 311 of the Texas Tax Code, as amended.

“City” means the City of McKinney, Texas, and its successors and assigns.

“Countersignature Date” means that date shown as the date countersigned by the City Attorney on the signature page of this Agreement.

“County” means Collin County, Texas, and its successors and assigns.

“County Tax Increment Participation” means the amount of the County tax levy on the

Captured Appraised Value which the County agrees to contribute to the Zone pursuant to of Sections III (A) and (B) of this Agreement.

"Project" means the development of transportation improvements, and any supporting improvements, facilities, and infrastructure related thereto on property within the boundary of the reinvestment zone, and as further described in the Project Plan.

"Project Plan" means the project plan and reinvestment zone financing plan for the Zone, a true and correct copy of which is attached to this Agreement as **Exhibit "B"**, and such amendments and revisions to such plan as may be adopted by the Board of Directors of the Zone and approved by the City Council of the City.

"Tax Increment Fund" means the tax increment fund created by the City in the City's Depository Accounts for the Zone.

"Zone" means Reinvestment Zone Number One, City of McKinney, Texas, created by the City on September 21, 2010, by Ordinance No. _____, a true and correct copy of said ordinance is attached to this Agreement as **Exhibit "A"**. Otherwise, the terms used herein have the meanings ascribed to them in Chapter 311 of Texas Tax Code, as amended.

II. BACKGROUND

On September 21, 2010, the City created the Zone by adoption of City Ordinance No. _____, for the purposes of development and redevelopment of the property within the Zone pursuant to the Project Plan. The City has agreed to participate in the Zone by contributing tax increments produced in the Zone to the Tax Increment Fund. The County desires to participate in the Zone in consideration for the agreements set forth below. The parties now desire to enter into an Interlocal Agreement pursuant to Section 311.013(f) of the Texas Tax Code, as amended.

III. OBLIGATIONS OF COUNTY

A. Tax Increment Participation.

For and in consideration of the agreements of the parties set forth herein, and subject to the remaining subsections of this section, the County agrees to participate in the Zone by contributing to the Tax Increment Fund during the term of this Agreement fifty percent (50%) of the tax increment attributed to the Captured Appraised Value in the Zone attributable to the County, and shall fund Projects identified in the approved Project Plan, as amended, for the zone.

B. County Tax Increment Limitation

The County is not obligated to pay the County Tax Increment Participation from any source other than taxes collected on the Captured Appraised Value. Furthermore, the County has no duty or obligation to pay the County Tax Increment Participation from any other County taxes or revenues, or until the County Tax Increment Participation in the Zone is actually collected. The obligation to pay the County Tax Increment Participation accrues as taxes representing the County Tax Increment Participation are collected by the County, and payment shall be due on May 1 of each year the County participates in the reinvestment zone. No interest or penalty will be charged to the County for any late payment received from the County; provided, however, the penalty and interest received by the County on any delinquent taxes from the County Tax Increment Participation shall be paid to the Tax Increment Fund. Any portion of the taxes representing the County Tax Increment Participation that are paid to the County and subsequently refunded pursuant to a provision of the Texas Tax Code, as amended, shall be offset against future payments to the Tax Increment Fund. Further, as provided in Section 311.013(d) of the Texas Tax Code, as amended, the County is not required to pay a tax increment into the Tax Increment Fund of the zone after three (3) years from the date the zone is created unless the following conditions exist or have been met within the three

(3) year period: (1) bonds have been issued for the zone under Section 311.015 of the Texas Tax Code, as amended; or, (2) the City has acquired property in the zone pursuant to the Project Plan; or (3) construction of improvements pursuant to the Project Plan has begun in the zone; or (4) a development agreement (or agreements) has been approved for Project costs in the zone.

C. Expansion of the Zone.

The obligation of the County to participate in the Zone is limited to the area described in the Project Plan. The County's participation does not extend to the tax increment on any additional property added to the Zone unless the County specifically agrees to participate in the additional area.

D. Board of Directors

Notwithstanding anything to the contrary in City's Ordinance creating the Zone, pursuant to the provisions of Section 311.009(a) of the Texas Tax Code, as amended, the County shall have the right to appoint and thereafter at all times maintain one (1) member on the Board of Directors of the Zone. Failure of the County to appoint a person to the Board of Directors of the Zone shall not be deemed a waiver of the County's right to make an appointment at a later date. The County will make good faith efforts to appoint and maintain a person to serve on the Board of Directors.

IV. OBLIGATIONS OF THE CITY AND THE ZONE

A. Project Plan

Any member of the County Commissioners Court may review and comment upon any amendment to the Project Plan prior to its approval by the City Council. The City agrees to provide the County with any proposed amendments to the Project Plan at least fourteen (14) days prior to their submission to the City Council for approval. The City agrees to work with the Zone Board of Directors to implement the Project Plan.

B. Disposition of Tax Increments

Upon termination of the Zone, and after all obligations and bonded indebtedness of the Zone have been paid, the City and the Zone shall pay to the County, within sixty (60) days of said termination, all monies remaining in the Tax Increment Fund that are attributable to the County Tax Increment Participation paid by the County into the Tax Increment Fund.

C. Audits

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

V. TERM AND TERMINATION

A. Agreement Term

This Agreement becomes effective as of the Countersignature Date. The term of this Agreement shall commence with the tax year beginning on January 1, 2011. This Agreement shall terminate on December 31, 2040, unless earlier terminated by the parties hereto. Nothing in this Agreement limits the authority of the Collin County Commissioners' Court to extend the term of this Agreement. Upon termination of this Agreement, the obligation of the County to contribute to the Tax Increment Fund for the Zone shall end; however, any refund obligations of the City, the Zone or any related redevelopment authority shall survive such termination.

B. Early Termination

The Zone may terminate pursuant to the provisions of Section 311.017 of the Texas Tax Code, as amended.

VI. MISCELLANEOUS

A. Severability

In the event any term, covenant or condition herein contained is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained.

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

B. Entire Agreement

This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and 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.

C. Written Amendment

Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of each party.

D. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3rd) day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address set out below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

The initial addresses of the parties, which any party may change by giving written notice of its changed address to the other parties, are as follows:

City of McKinney:

City of McKinney
222 E. Tennessee
McKinney, Texas 75069
Attn: City Manager's Office
Telephone: 972-547-7510
Facsimile: 972-547-2607

Collin County:

County Judge Keith Self
2300 Bloomdale Road, Suite 4192
McKinney, Texas 75071
Telephone: 972-548-4623
Facsimile: 972-548-4699

Zone:

Reinvestment Zone Number One

Attn: _____

Telephone: _____

Facsimile: _____

E. 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, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any other right or remedy occurring as a result of any future default or failure of performance.

F. Assignment

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

G. Successors

This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer, agent or employee of the City, County, or the Zone.

H. No Waiver of Immunity

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

IN WITNESS HEREOF, the City, the County and the Zone have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER, Mayor
City of McKinney
Date: _____

ATTEST:

SANDY HART, TRMC, MMC, City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER, City Attorney
Date:_____

COLLIN COUNTY, TEXAS

By: _____
Name: KEITH SELF
Title: County Judge
Date: _____

ATTEST:

County Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: County Attorney
Date: _____

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

By: _____
Name: _____
Title: Chairman, Board of Directors
Date: _____

ATTEST:

By: _____
Name: _____
Title: Secretary, Board of Directors
Date: _____

Exhibit "A"

**Ordinance No. _____
Establishing
Reinvestment Zone Number One, City of McKinney, Texas**

Exhibit “B”

Project Plan and Reinvestment Zone Financing Plan

