

# **El Paso County Agreement Regarding Participation, Cost Allocation and Reimbursement for Reinvestment Zone Number One Town of Horizon City**

This Interlocal Agreement (“Agreement”) is made and entered into by and between the **County of El Paso, Texas (“County”)** and **Reinvestment Zone Number One Town of Horizon County (“Zone”)** on the day the last party executed it, to memorialize the manner in which the County will participate in projects within the Zone and contribute financially and in kind.

**WHEREAS**, the Town of Horizon City, Texas (“City”) pursuant to Ordinance No. 0264 adopted, created, designated, and established the Zone;

**WHEREAS**, the City has committed to constructing a Transit Oriented Development/ Town Center and to site municipal facilities within the boundaries of the Zone;

**WHEREAS**, the City has agreed to contribute one hundred percent (100%) of its share of the property tax increment generated by the Zone to the TIRZ;

**WHEREAS**, the City has committed to making in-kind contributions to advance the purposes of the Zone;

**WHEREAS**, the City has expended specific funds for the creation and administration of the Zone;

**WHEREAS**, the City will continue to contribute specific costs for the development of the Transit Oriented Development/Town Center and other TIRZ projects and will be reimbursed with Tax Increment Funds;

**WHEREAS**, the County has agreed to contributing on hundred percent (100%) of its share of the tax increment generated by the Zone to the TIRZ;

**WHEREAS**, the County and its residents will both benefit from the development and improvements that will be paid for by the Tax Increment funds;

**WHEREAS**, the County shall not be obligated to contribute additional funds to the TIRZ Projects other than those specifically designated by the County Commissioners Court (“Court”);

**WHEREAS**, the parties desire to provide a framework for the expenditure of funds dedicated to the TIRZ projects by each Party;

**NOW, THEREFORE**, the County and TIRZ, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

## **ARTICLE I TERM OF AGREEMENT**

**1.1 Term.** This agreement shall commence on the day the last party executed it and continue through the close of business on December 31, 2051.

**1.2 Annual Review.** The Parties agree to annually revisit and review this Agreement by July 1<sup>st</sup> of each year to reaffirm Parties' goals and commitments and to consider amendments that reflect altered circumstances.

## **ARTICLE II DEFINITIONS**

**2.1** In addition to any terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

County Tax Increment. County Tax Increment means the amount of property taxes levied and collected by the County on the Captured Appraised Value of real property taxable by the County and located in the Zone.

Captured Appraised Value. Captured Appraised Value in a given year means the total appraised value, less any applicable exemptions, of all TIRZ real property taxable by the County for that tax year less the Tax Increment Base.

Creation Cost. Costs the City incurred creating the TIRZ.

"Days" means "calendar days" unless otherwise expressly specified.

Act means the Tax Increment Financing Act, as amended, and as codified as Chapter 311 of the Texas Tax Code.

Project Management and Coordination Costs are costs incurred in management of the TIRZ projects as a whole or to multiple projects within the TIRZ, but not readily attributable to a single project.

Project Plan means the project plan for the TIRZ as adopted by the TIRZ Board and the Town of Horizon City along with amendments to this plan that are adopted by the Board of Directors of TIRZ Number One and approved by the City Council of the Town of Horizon City from time to time. The Project Plan includes maps of all property in the Zone.

Reimbursable Costs are costs incurred by the City in furtherance of the TIRZ projects. Reimbursable Costs do not include Creation Costs as defined above. Reimbursable Costs only relate to direct costs incurred by the parties in relation to the planning and assessment

phase of any eligible project, program or initiative authorized by the TIRZ Board, to include attorney's fees incurred directly related to said projects, programs or initiatives, together with the allocable share of Project Management and Coordination costs, and do not include the reimbursement of actual construction and/or implementation costs of any project beyond the planning and assessment phase unless agreed to in a separate Interlocal Agreement.

Tax Increment Fund (TIF) means that fund created by the City pursuant to Section 311.014 of the Act and the Ordinance, which will be maintained by the City, and into which all revenues of the TIRZs will be deposited, including deposits of Tax Increment by the City and by such other taxing units with jurisdiction over real property in the TIRZs that may enter into agreements for such contributions.

TIRZ Board means the governing board of directors of the TIRZs appointed in accordance with Section 311.009 of the Act, the Ordinance, and this Agreement.

TIRZ means the Tax Increment Reinvestment Zone Number One approved by the town of Horizon City pursuant to Ordinance No. 0264.

**2.2** Terms other than those defined above shall: (1) have their meanings as given in Chapter 311, Texas Tax Code; or (2) if not so defined, their usual and ordinary meanings.

**2.3** References to state statutes shall include amendments to those statutes that are duly enacted from time to time.

### **ARTICLE III OBLIGATIONS OF THE TIRZ BOARD**

**3.1** The TIRZ Board agrees to keep an accurate accounting of expenditures on each project concerning the Parties and to accurately report those expenditures to the Parties.

**3.2** The TIRZ Board agrees to provide access to any accounting of the TIRZ to the other parties to this Agreement.

**3.3** The TIRZ Board agrees to keep an accurate accounting of Project Management Coordination Costs and related costs associated with all projects concerning the Parties.

**3.4** The TIRZ Board agrees to keep an accurate accounting of tax increments paid by Parties into the Tax Increment Fund or paid for specific costs.

**3.5** The TIRZ Board agrees to consider the provisions of this Agreement when expending funds dedicated to the TIRZ projects and when requesting additional funding, if any, from any Party.

**3.6** If requested by the City, the TIRZ Board will reimburse the City for Creation Expenses as funds become available in the Tax Increment Fund. The TIRZ Board may, at its discretion reimburse the City in one lump sum or defer payment until such time as there are sufficient funds to make reimbursement and continue operation of the Zone.

**3.7** The TIRZ Board has engaged the City to act as fiscal agent for the TIRZ and will, if requested by the City, reimburse the City for the services. Otherwise, the services will be considered in-kind contributions to the TIRZ.

**3.8** The TIRZ Board will reimburse the City for Reimbursable Costs as that term is defined in Article 2.1 of this Agreement.

**3.9** The TIRZ Board shall amend the appropriate sections of the TIRZ Bylaws within 90 days of execution of this agreement to provide the County with three appointments to the TIRZ Board, to include a) the County Judge, b) the County Commissioner who represents a majority of the total area of the TIRZ, and c) an El Paso County elected official who represents a majority of the total area of the TIRZ (including elected officials that are elected County or district-wide) and is selected at the sole discretion of the Court.

The terms of County appointees shall be by virtue of, dependent on, and concurrent with their terms on Commissioners Court. If a County appointee leaves his or her county elected position for any reason, the County appointee shall be deemed to have resigned his or her TIRZ position automatically. Additionally, the County appointments shall not be subject to term limits.

Should a County appointee to the TIRZ Board be removed as outlined below in Section 3.10, the County may appoint an alternate member 1) of the Court to replace the County Judge or County Commissioner, or 2) an El Paso County elected official who represents a majority of the total area of TIRZ to the TIRZ Board. If the TIRZ Board votes to replace either the County Judge or County Commissioner, the term of the alternate appointment shall be concurrent with the term of the original, and removed, member of the Court.

**3.10** The TIRZ Board shall amend the appropriate sections of the TIRZ Bylaws within 90 days of execution of this agreement to state that 1) the TIRZ Board alone, and not the City Council, shall have the authority to remove TIRZ Board Members, including the County appointees as outlined in Section 3.9, and 2) any TIRZ Board Member may only be removed for “cause and in the interest of the public,” which shall be defined as: a) any violation of Texas State Laws regarding ethics, conflict of interests, or crimes of moral turpitude, b) any violation of the El Paso County Code of Ethics, c) any violation of the Horizon City Ordinance Regulating Ethical Conduct or d) two cumulative absences within a single fiscal year, beginning on October 1st and ending in September 30<sup>th</sup> if the TIRZ Board meets fewer than six times within the fiscal year or three cumulative absences within a single fiscal year, beginning on October 1<sup>st</sup> and ending in September 30<sup>th</sup> if the TIRZ Board meets more than six times within a single fiscal year.

**3.11** If the TIRZ Board fails to amend the bylaws as described in Sections 3.9 and 3.10 of this agreement, the County shall have the right to terminate this agreement immediately.

During the term of this Agreement, if the TIRZ Board amends the Bylaws in a manner that reduces the number of County appointees on the Board or the way County appointees are designated or removed without the concurrence of the Court that action shall be an event of default and may result in termination of the Agreement as set forth in Section V below.

**3.12** If the TIRZ, Town of Horizon City, El Paso County, Horizon Regional Municipal Utility District or other community partners or agencies provide external funding, to include, but not limited to, grants, loans, investments or any other non-TIRZ funding, toward any phase of any of the projects identified in the Project Plan, the TIRZ Board shall amend the Project Plan to reflect the restructuring of programmed project costs as a result of the external funding within 90 days of receiving formal notice that the funds have been awarded, granted, loaned or received by the TIRZ. Amendments to the Project Plan shall be conducted in accordance with the notice and review provisions provided in Section 3.13 of this agreement.

**3.13** From time to time, the TIRZ Board may find it necessary to amend the Project Plan to account for relevant changes and updates within the Project Plan, including revisions to project scope of work or budgets, development of new projects, or to include other eligible programs and initiatives within the Project Plan. The TIRZ Board agrees to make reasonable efforts to limit the County's pledged incremental tax revenue for projects that serve a public need or facilitate private-sector investment within the TIRZ.

Upon approval of any amendments to the Project Plan, the TIRZ Board shall provide written notice to the County including supporting information or a narrative outlining how the amendment is in accordance with the areas listed above within 60 Days of the approved amendment for the County's review. The TIRZ Board may not expend the County's pledged incremental tax revenue, without approval and concurrence of the Court, if the new project, program, or initiative is 1) is an investment in healthcare facilities, 2) provides a direct cash subsidy to private businesses unless incorporated into a comprehensive agreement under Chapter 381 of the Texas Local Government Code, 3) creates partnerships with a public or private agency, organization, business or entity that, is in default of any payments, fees, taxes, or other financial obligations to the County or 4) creates partnerships with a public or private agency, organization, business, or entity with active litigation against the County at the time of the proposed amendment.

Within 30 days of receipt of written notice from the Board that the Project Plan has been amended the County must advise the Board in writing of its objection to the use of County's pledged incremental income for the reasons stated above. Failure of the County to provide such notice within 30 days of receipt of notice from the TIRZ will constitute a waiver.

**3.14** The TIRZ Board agrees to work with the County regarding identifying opportunities to locate, construct, and partner with a variety of County offices to establish a County facility presence in any of the facilities proposed as initial projects in the Project Plan. Design and construction estimates for these facilities should account for the possible co-location of the County within the proposed municipal facilities.

## **ARTICLE IV OBLIGATIONS OF THE COUNTY**

**4.1** The County agrees to contribute 100% of the Tax Increment to the Tax Increment Zone Fund upon receipt through Fiscal Year 2051 (Tax Year 2050) and to allow those funds to be used for TIRZ Projects identified in the Project Plan, except for TIRZ Projects outlined in Section 3.13. The County's maximum incremental tax contribution to the TIRZ shall be \$31,820,640.54, (*See Exhibit A— Low Scenario: 20 Year Bell Curve Development Schedule*). If property valuations throughout the TIRZ rise faster than originally forecasted by the City and TIRZ Board, and the County's incremental tax contribution is paid in advance of Fiscal Year 2051 (Tax Year 2050), the County may in its sole discretion decide to terminate this Agreement by providing the TIRZ with 30 days advance written notice.

**4.2** If the County advances Project Management and Coordination Costs, the County will submit a statement of the Project Management and Coordination Costs it has incurred, during its fiscal year, in connection with the management and operation of the Zone within 90 days of the close of its fiscal year to receive reimbursement within 60 days of submitting the statement. The County shall be reimbursed the full amount of the expenses incurred as an administrative fee. The County will not be entitled to reimbursement for expenses that are not timely submitted under this paragraph.

**4.3** The County shall not be required to provide funding or guarantee in any way TIRZ debt service payments by utilizing the County's funds 1) in excess of revenue pledged to the TIRZ or 2) to provide funding to the TIRZ if property values within the TIRZ do not increase at the levels forecasted by the City Council or TIRZ Board.

**4.4** Prior to incurring any expenses that the County would like reimbursed, the County shall seek the preapproval of the TIRZ Board. Failure to obtain approval prior to incurring the expense may, at the discretion of the TIRZ Board, disqualify the County for reimbursement.

## **ARTICLE V DEFAULT, REMEDIES, TERMINATION**

**5.1 Defaults, Generally.** A default shall occur ("Default") if either Party fails or refuses to perform any of its obligations under this Agreement and such Default continues for thirty consecutive (30) calendar days after written notice from the non-defaulting parties to the defaulting party designating such Default (or for such longer period as may be reasonably required to cure such Default in the exercise of all due diligence but not in excess of ninety (90) days).

**5.2 Remedies after Default.** If a Default occurs, the non-defaulting party shall have all the remedies available to the non-defaulting party at law or in equity, including the right to bring an action for specific performance against the defaulting party.

**5.3 Notice of Default; Opportunity to Cure.** If this Agreement is breached, the party alleging the default or breach shall give the breaching party thirty (30) days' written notice, measured from the date of certified mailing, specifying the nature of the alleged default, and when appropriate, the manner in which the alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within the period.

**5.4 Notice of Intent to Terminate.** At any time following the thirty-day cure period, the complaining party may institute legal proceedings and/or give written notice of intent to terminate the Agreement by certified mail. The written notice of intent to terminate shall specify the nature of the alleged grounds for termination.

**5.5 Termination of Agreement.** Each party shall be able to terminate this Agreement by giving a thirty (30) day written notice to each other Party for any reason; provided however, if the TIRZ has incurred debt or any other obligations secured by the increment provided by the County, the County shall be obligated to continue to provide the Increment (if any) until such time as the debt is paid off or the financial obligation is otherwise secured.

Upon termination of the Agreement, the terms of the individuals appointed to the TIRZ Board as specified above will expire and the County will no longer be entitled to participate in the TIRZ Board. However, if any previously approved projects, with any funding provided by the County, remains pending the TIRZ Board shall provide quarterly updates to the County with regards to these projects.

**5.6 Cancellation of Agreement.** Except as otherwise permitted herein, this Agreement may be cancelled, in whole or in part, only by mutual written consent of the Parties.

**5.7 Time of Essence to Agreement.** The Parties agree that time is of the essence to this Agreement.

## **ARTICLE VI GENERAL PROVISIONS**

**6.1 Notice.** Any notice or statement required or permitted to be delivered by one of the Parties to this Agreement to the other shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the address shown below, or at such other address (or addressees) provided by the parties to each other:

TIRZ Board:

Chairperson of the Board  
14999 Darrington Road

Horizon City, Texas 79928  
ATTN: TIRZ Board Secretary

With copy to:

Planning Director  
Town of Horizon City  
14999 Darrington Road  
Horizon City, Texas 79928

County:

El Paso County Judge  
500 East San Antonio Street Suite 301  
El Paso, Texas 79901

With copy to:

Director of Capital Planning & Performance Management  
County Administration Department  
500 East San Antonio Street Suite 302  
El Paso, Texas 79901

**6.2 No Joint Venture; No Third-Party Beneficiaries.** The Parties agree that the terms hereof are not intended to, and shall not, constitute a partnership or joint venture between the parties. The Parties, their officials, officers, and agents, do not assume any responsibility or liability to any third parties in connection with the design, construction, operation or maintenance of any structures or improvements associated with the TIRZ,

**6.3 Applicable Law and Venue.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas, and venue to enforce or interpret any aspect of this Agreement shall lie in El Paso County, Texas.

**6.4 Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein, and this instrument supersedes any prior agreements or understandings between the parties. Nothing in this Agreement shall supersede or preempt other agreements related to funding of the TIRZ projects between the Parties but shall instead govern when other agreements related to funding of the TIRZ projects are silent or vague.

**6.5 Savings Clause.** If any portion of this Agreement is deemed to be invalid or unenforceable, the remaining terms and condition remain in full force and the Agreement shall be unaffected.

EXECUTED on this the \_\_\_\_ day \_\_\_\_\_, 2022 ("Effective Date").



**El Paso County, Texas**

**By:**

\_\_\_\_\_  
**Ricardo Samaniego**  
**County Judge**

**Date:** \_\_\_\_\_

**Reinvestment Zone Number**  
**One Town of Horizon City**

**By:** \_\_\_\_\_

\_\_\_\_\_  
~~**Ruben Mendoza**~~  
**Chairperson**

**Date:** \_\_\_\_\_