

THE STATE OF TEXAS

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TAX INCREMENT REINVESTMENT ZONE  
PARTICIPATION AGREEMENT

COUNTY OF HAYS

THIS TAX INCREMENT REINVESTMENT ZONE PARTICIPATION AGREEMENT ("Agreement") is made by and between the CITY OF KYLE, Texas, a municipal corporation and home-rule city of the State of Texas, principally situated in Hays County, acting by and through its governing body, the City Council; the COUNTY OF HAYS, Texas, a political subdivision of the State of Texas, acting by and through its governing body, the County Commissioners; and the REINVESTMENT ZONE NUMBER ONE, CITY OF KYLE, TEXAS, a reinvestment zone created by the City of Kyle, Texas, pursuant to Chapter 311 of the Texas Tax Code, acting by and through its Board of Directors. This Agreement is made pursuant to Chapter 311, Texas Tax Code, as amended (the "Act") and Chapter 791 of the Texas Government Code.

WITNESSETH

WHEREAS, the City Council of the City, after due and proper notice and public hearing adopted the Ordinance creating Reinvestment Zone Number One, City of Kyle, Texas, pursuant to the Chapter 311, Tex. Tax Code;

WHEREAS, in the Zone Creation Ordinance, the City Council created the Zone Board as the governing board of directors of the Zone and charged it with the responsibility of preparing, developing, and submitting to the City Council for its consideration and approval the "Project Plan" and the "Financing Plan," as herein defined, as required by Section 311.011 of the Act, all to be done in consultation with the County as one of the Taxing Units;

WHEREAS, the Hays County Commissioners Court recognizes that Hays County's participation in the creation of the tax increment reinvestment zone will have the desired effect of developing the area to the benefit of all taxing units which levy taxes in the proposed reinvestment zone;

WHEREAS, the City has undertaken to seek State financial assistance to expedite the construction of roadways and improvements to Interstate Highway 35 which will create accessibility and usefulness of property which has not developed; and

WHEREAS, the County, as one of the "Taxing Units," the City, and the Zone Board are authorized by Section 311.013 of the Act to enter into an agreement pursuant to which the County agrees to make the Tax Increment Payments for the purpose of implementing the Project Plan;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

SECTION 1. Definitions

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

*“Administrative Costs”* means the costs of organizing the Zone and any related local government corporation created to manage the Zone, the costs of operating the Zone and any related local government corporation created to manage the Zone and the imputed administrative costs associated with the Zone and any related local government corporation created to manage the Zone, including reasonable charges.

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

*“Captured Appraised Value”* means, for any given year as of January 1, the captured appraised value of the real property taxable by a taxing unit for a year is the total appraised value of all real property taxable by the unit and located in a reinvestment zone for that year less the tax increment base of the unit.

*“City”* means the City of Kyle, Texas.

*“County”* means Hays County, Texas.

*“Ordinance”* means City’s Ordinance No. 457, attached as Exhibit A.

*“Project Costs”* shall mean the obligations of the Zone and City to make payments to the State Infrastructure Bank for the series of loans to improve FM 1626 and access improvements along Interstate Highway 35, including other costs for projects approved by the Board from time to time.

*“Project Plan”* means the proposed project plan and reinvestment zone financing plan for the Zone adopted by the board of directors of the Zone and approved by the City Council of the City.

*“Tax Increment”* means the total amount of ad valorem taxes levied and collected each year by the County in the Zone on the Captured Appraised Value.

*“Tax Increment Base”* of the County is the total appraised value of all real property taxable by the County and located in a reinvestment zone on November 4, 2004.

*“Tax Increment Fund”* means the special tax increment fund created by the City into which all Tax Increment Payments are to be deposited in accordance with the requirements of the Act.

*“Tax Increment Payment”* means the amount of the Tax Increment that the County agrees to deposit annually in the Tax Increment Fund in accordance with the requirements of this Agreement, the Financing Plan, and the Act.

*“Zone”* means Reinvestment Zone Number One, City of Kyle, Texas created by the Ordinance of the City of Kyle.

Other terms used herein shall have the meanings specified herein or ascribed to them in Chapter 311, Texas Tax Code, as amended.

**SECTION 2. Tax Increment Participation.** The County hereby elects to participate in the Zone and make payments into the Tax Increment Fund, subject to the terms of this Agreement. The County's contribution of tax revenues into the Tax Increment Fund will be provided in Section 3 of this Agreement. The County hereby specifically reserves, pursuant to Section 311.013 of the Act, all of its ad valorem taxes that the County has not agreed to pay into the Tax Increment Fund in accordance with Section 3 of this Agreement.

**SECTION 3. Tax Contribution.** The County agrees to pay into the Tax Increment Fund, for each year during the term of this Agreement, 100% of the Tax Increment for the County (the "contribution"). The County contribution shall be used to pay for infrastructure improvements and other public improvements, including the improvements financed through the State Infrastructure Bank, and the administrative costs thereto. The County's payment into the Tax Increment Fund in respect of a given year will be due in the following calendar year, not later than 90 days after the delinquency date for the County's property taxes, as provided in Section 311.013 of the Act. The County will not be required to make any payment into the Tax Increment Fund after the Zone terminates, nor will the County be obligated to pay into the Tax Increment Fund any of the County's Tax Increment for any year after 2035, whether or not the Zone continues.

**SECTION 4. Tax Increment Limitation.** The County's contribution shall be based on and limited to ad valorem real property taxes actually collected by County on the Captured Appraised Value in the Zone. The County shall not be obligated to pay the County's contribution from other County taxes or revenues. The obligation to pay the County's contribution shall accrue as taxes representing the County's tax increments are collected by County on the Captured Appraised Value. The City and the Zone agree that any interest, penalties, or attorneys' fees incurred or accrued by County with respect to taxes included in the County contribution shall be retained by the County.

**SECTION 5. Expansion of Zone.** The obligation of County to participate in the Zone is limited to the area described in the Ordinance. The County's participation shall not extend to the tax increment on any additional property added to the Zone by the City unless the County Commissioners approve the County's participation in an amendment to this Agreement.

**SECTION 6. Board of Directors.** Notwithstanding anything to the contrary in the Ordinance, the County shall have the unequivocal right to appoint and maintain one (1) member on the Zone's Board of Directors. Failure of County to appoint a person to the Board of Directors of the Zone shall not be deemed a waiver of County's right to future appointment. However, if the County does not appoint a director by December 1, 2004, the City shall have the right to appoint a director to fill that position, pursuant to the terms of the Ordinance.

**SECTION 7. Project Changes.** The Tax Increment deposited into the Tax Increment Fund by the County shall be used to pay Project Costs. After approval of the initial Project Costs and Project Plan, the parties agree that the County shall be permitted to review any amendments to the Project Costs or changes to the Project Plan which would increase the Project Costs before they are submitted to the City Council for City approval.

**SECTION 8. Agreement Term.** This Agreement shall become effective on the date as of which both parties have executed it and shall remain in effect until December 31, 2035 or until the Project Costs have been paid, whichever occurs first. The first payment of increment taxes by County under this Agreement shall be for those taxes levied by County for the year 2005 and the last payment by County under this Agreement is for those taxes levied and collected by County in the year 2035.

**SECTION 9. Final Accounting.** After all Project Costs have been paid or at the time of the expiration of this Agreement, the City shall prepare and provide the County with a final accounting of the funds deposited to and disbursed from the Tax Increment Fund. Any funds remaining in the Tax Increment Fund following the final accounting by the City shall be paid to those taxing units participating in the TIF District in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment Fund.

**SECTION 10. Notices.** Any notice or other communication to a party relating to this Agreement will be effective only in writing. A notice or other communication will be effective if delivered to the applicable party's address specified in accordance with this section. Until changes in accordance with this section, the parties' addresses are as follows:

City of Kyle, Texas  
City Manager  
P.O. Box 40  
Kyle, Texas 78640-0040

Hays County Judge  
111 E. San Antonio St. Ste. 300  
San Marcos, TX 78666  
(512) 393-2205

Reinvestment Zone Number One, City of Kyle

[Insert]

**SECTION 11. 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 right or remedy occurring as a result of any future default or failure of performance.

**SECTION 12. 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 prior written consent of the other parties.

**SECTION 13. 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 or agent of the City or of any trustee, officer, agent or employee of the County.

**SECTION 14. No Waiver of Immunity.** No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, students, and agents as a result of its execution of this Agreement and performance of the covenants contained herein. The provisions and conditions of this Agreement are solely for the benefit of the city and the County and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**SECTION 15. 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, provided that such invalidity does not materially prejudice either the County, the City, or the Zone in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

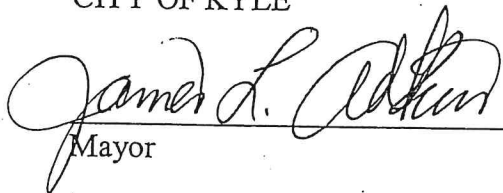
In the event any term, covenant or condition shall be held invalid and affects in any manner the limitations of the County's contributions or participation, then this Agreement shall be void as to said contribution or participation by the County.

**SECTION 16. Entire Agreement.** This Agreement merges the prior negotiations and understanding of the parties hereto 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. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly approved and executed on behalf of each party.

**SECTION 17. Venue and Jurisdiction.** If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of the Agreement, venue for such action shall lie in Hays County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

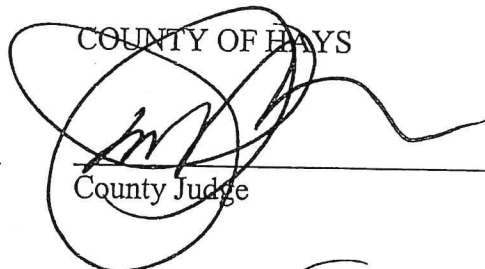
IN WITNESS HEREOF, the City, County and the Zone have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF KYLE

  
\_\_\_\_\_  
Mayor

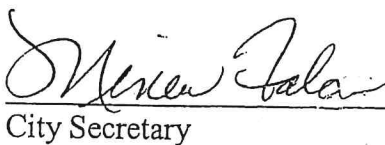
Date:

COUNTY OF HAYS

  
\_\_\_\_\_  
County Judge

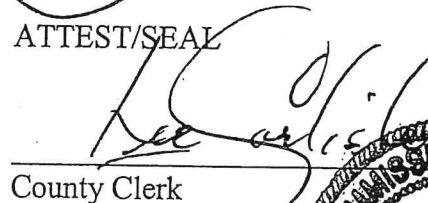
Date:

ATTEST/SEAL:

  
\_\_\_\_\_  
City Secretary

Date:

ATTEST/SEAL

  
\_\_\_\_\_  
County Clerk

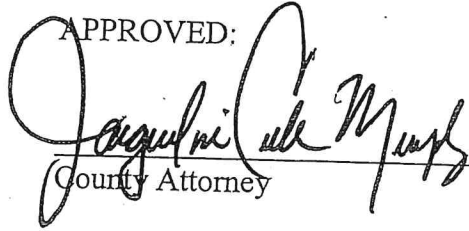
Date:




APPROVED:

  
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City Attorney Date:

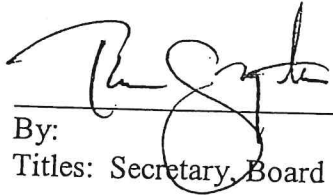
APPROVED:

  
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County Attorney Date: 11-23-04

TAX INCREMENT REINVESTMENT  
ZONE NUMBER ONE  
CITY OF KYLE, TEXAS

  
\_\_\_\_\_  
By: Date:  
Title: Chairman, Board of Directors

ATTEST/SEAL:

  
\_\_\_\_\_  
By: Date:  
Titles: Secretary, Board of Directors

**EXHIBIT A**

**City of Kyle Ordinance**