

**RESOLUTION 2011 -150 R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS CONCERNING THE PROPOSED SAN MARCOS, TEXAS TAX INCREMENT REINVESTMENT ZONE NO. 5 IN DOWNTOWN SAN MARCOS; APPROVING AN INTERLOCAL AGREEMENT BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS PROVIDING FOR THE COUNTY TO MAKE PAYMENTS TO THE CITY OF SEVENTY PERCENT OF THE COUNTY'S TAX INCREMENT REVENUES FROM INCREASED PROPERTY VALUES IN THE ZONE; AUTHORIZING THE CITY MANAGER TO EXECUTE THIS AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**


**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The attached Interlocal Agreement between Hays County and the City of San Marcos Related to San Marcos, Texas Tax Increment Reinvestment Zone No. 5 is approved.

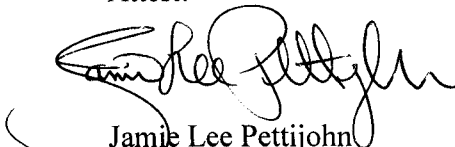
**PART 2.** The City Manager is authorized to execute the Interlocal Agreement on behalf of the City.

**PART 3.** This Resolution shall be in full force and effect immediately from and after its adoption.

**ADOPTED** on December 6, 2011.

  
Daniel Guerrero  
Mayor

Attest:

  
Jamie Lee Pettijohn  
City Clerk

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**INTERLOCAL AGREEMENT**

**Between the**

**CITY OF SAN MARCOS, TEXAS**

**AND**

**HAYS COUNTY, TEXAS**

**Relating to**

**City of San Marcos, Texas**

**Tax Increment Reinvestment Zone No. 5**

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**THE STATE OF TEXAS   §**

**COUNTY OF HAYS           §**

**INTERLOCAL AGREEMENT  
BETWEEN HAYS COUNTY AND THE CITY OF SAN MARCOS RELATED TO SAN  
MARCOS, TEXAS TAX INCREMENT REINVESTMENT ZONE NO. 5**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is made by and between the **CITY OF SAN MARCOS, TEXAS** (the "City"), a home rule municipality of the State of Texas, acting by and through its governing body, the City Council, and **HAYS COUNTY, TEXAS** (the "County"), acting by and through its governing body, the Commissioners Court. 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 **REINVESTMENT ZONE NUMBER FIVE, CITY OF SAN MARCOS, TEXAS** (the "Reinvestment Zone"), a reinvestment zone to be created by the City pursuant to Chapter 311 of the Texas Tax Code.

**RECITALS:**

The City Council has determined that it is necessary to create a tax increment reinvestment zone, in the area more particularly described in the attached Exhibit A and on the map attached hereto as Exhibit B. The Reinvestment Zone consists of approximately 244 acres in the downtown core of San Marcos, Texas.

The general purpose of the Reinvestment Zone is to promote the redevelopment of the property in the Reinvestment Zone and in surrounding areas in the City and County pursuant to the tax increment finance provisions of Section 311.005(a)(1) and (2) and (a-1) of the Texas Tax Code. The specific purpose of the Reinvestment Zone is to provide a financing mechanism to pay for a portion of the costs associated with the redevelopment of the site of the current Hays County Justice Center Building through a public-private partnership. A list of the projects, including but not limited to streetscape improvements, is attached as Exhibit C (the "Project Costs.")

The financial plan for the Project is to fund the costs associated with the design and construction of the Project (the "Project Costs"), and for the City, with assistance from the County as provided in this Agreement, to pay for or reimburse a private sector partner for a portion of the Project Costs from tax increment revenues derived from increases in property values resulting from new development in the Reinvestment Zone.

The City and the County wish to provide in this Agreement for the County to make payments to the City of a portion of the County's tax increment revenues derived from increases in property values resulting from new development in the Reinvestment Zone, which payments are to be used by the City to reimburse the Developer for a portion of the Project Costs under the terms and conditions described in this Agreement.

### **AGREEMENT:**

In consideration of the mutual covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the County agree as follows:

#### **SECTION 1. DEFINITIONS.**

In this Agreement:

A. *Captured appraised value* for a year means the total appraised value of all real property taxable by the City or County and located in the Reinvestment Zone for that year, less the respective tax increment base of the City or County.

B. *Project* means, initially, the Project as set forth in Exhibit C. The Project may be revised or supplemented by amendments to the Project Plan that are adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City from time to time.

C. *Project Plan* means the Project Plan and Reinvestment Zone financing plan for the Reinvestment Zone adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City, and amendments to these plans that are adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City from time to time.

D. *Tax increment* for a year means the amount of property taxes levied and collected by the City or County for that year on the captured appraised value of real property taxable by the City or County and located in the Reinvestment Zone.

E. *Tax increment base* means the total appraised value of all real property taxable by the City or County and located in the Reinvestment Zone for the year 2011 according to the certified Hays County Tax Roll.

F. *Tax Increment Fund* means the tax increment fund created by the City for the Reinvestment Zone.

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

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

## **SECTION 2. OBLIGATIONS OF THE COUNTY.**

**A. Payments to the City.** The County agrees to make payments to the City during the term of this Agreement, for deposit in the Tax Increment Fund, in the amount of 70% of the tax increment attributed to the captured appraised value of the County in the Reinvestment Zone. The County's obligation to make these payments will accrue only as taxes on the captured appraised value are collected by the County. Payments shall be due on May 1 of each year during the term of this Agreement. No interest or penalty will be charged to the County for any payments made by the County based on collections that occur after this due date; however, the County will pay to the City, for deposit in the Tax Increment Fund, 70% of any penalty or interest received by the County on any delinquent taxes on the captured appraised value of the County. The County may offset against future payments to the Tax Increment Fund any portion of payments to the City under this Agreement that the County subsequently refunds to taxpayers pursuant to the provisions of the Texas Tax Code.

**B. Limitations on Payments.** The County is not obligated to make payments under this Agreement 1) unless and until taxes on the captured appraised value are actually collected by the County, or 2) from any source other than taxes actually collected on the County's captured appraised value, or 3) from any County taxes or revenues other than taxes actually collected on the County's captured appraised value. Notwithstanding any provisions contained herein, this Agreement is expressly contingent upon the availability of funds for each obligation herein for the term of this Agreement and any extension thereto. In the event that either no funds or insufficient funds are appropriated for the payments due under this Agreement for the period covered by such budget or appropriation, the contract shall terminate without penalty to the County.

**C. Expansion of the Reinvestment Zone; Supplemental Projects.** The County's obligation to make payments under this Agreement is limited to the county's captured appraised value on property in the Reinvestment Zone as described in this Agreement. The County is not obligated to make payments based on the addition of property to the Reinvestment Zone unless the County specifically agrees to do so by amendment to this Agreement. The County's obligation to make payments under this Agreement is also limited to use by the City for partial reimbursement of the Project Costs, as described herein. The County is not obligated to make payments towards the costs of any other improvements unless the County specifically agrees to do so by amendment to this Agreement. Any member of the County Commissioners Court may review and provide comments to the Board of Directors of the Reinvestment Zone or the City Council of the City on any proposed expansion of the Reinvestment Zone or amendment to the Project Plan prior to its approval by the City Council.

**D. County Appointment to Board of Directors of the Reinvestment Zone.** The Board of Directors of the Reinvestment Zone shall consist of five (5) voting members. The Commissioners Court of the County and the San Marcos City Council shall each have the unequivocal right to appoint two (2) qualified voting members. The fifth voting member shall be appointed by mutual agreement and approval of said governing bodies. Members of the Board of Directors shall meet the qualifications set forth in Section 311.009 of the Texas Tax Code. Failure of the Commissioners Court to appoint a person to the Board of Directors of the Reinvestment Zone shall not be deemed a waiver of the County's right to make an appointment at a later date. The Commissioners Court will make best faith efforts to appoint a qualified person to serve on the Board of Directors, and to fill vacancies in this position as needed.

### **SECTION 3. OBLIGATIONS OF THE CITY.**

**A. Initial Project Plan.** The City agrees that the Project, as described herein will comprise the Project in the initial Project Plan to be adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City. The City agrees that the Reinvestment Zone financing plan in the initial Project Plan to be adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of the City shall provide for use of the County's payments under this Agreement solely to fund a portion of the Project Costs.

**B. Use of County Payments.** The City agrees to use payments made by the County under this Agreement solely to fund Project Costs.

**C. Notice to County of Amendments to Project Plan.** The City agrees to provide the County with written notice of any proposed amendments to the Project Plan at least 14 days prior to their submission to the City Council for approval. The City agrees to work with the Reinvestment Zone Board of Directors to implement the Project Plan.

**D. Disposition of Tax Increments.** Upon termination of the Reinvestment Zone, and after all obligations of the Reinvestment Zone have been paid, the City agrees to pay to the County, within 60 days of the termination, all monies remaining in the Tax Increment Fund that represent the County's pro rata amount of participation authorized under this Agreement.

**E. Annual Reports.** The City agrees to provide to the County an annual report regarding the Reinvestment Zone as required under Texas Tax Code Section 311.016.

**F. Audits - Redevelopment Authority.** In the event the City creates a redevelopment authority in connection with the Reinvestment Zone, the City shall provide to the County a copy of each of the audits required by the agreement between the City, the Reinvestment Zone and any such redevelopment authority within 30 days of receipt of each audit.

#### **SECTION 4. TERM AND TERMINATION.**

**A. Agreement Term.** This Agreement will take effect only upon designation of the Reinvestment Zone by ordinance of the City and will be in effect for the earlier of 1) six (6) years from the date of the designation of the Reinvestment Zone or 2) the date all Project Costs have been paid or reimbursed unless earlier terminated by the parties hereto. Nothing in this Agreement limits the authority of the County or City to extend the term of this Agreement. Upon termination of this Agreement, the obligation of the County to make payments to the City shall end; however, any refund obligations of the City shall survive the termination.

**B. Early Termination of Reinvestment Zone.** The City may terminate the Reinvestment Zone pursuant to the provisions of Section 311.017 of the Texas Tax Code.

#### **SECTION 5. MISCELLANEOUS.**

**A. Cooperation.** This City and the County agree to cooperate with each other, in good faith, at all times during the term hereof in order to achieve the purposes and intent of this Agreement.

**B. Entire Agreement; Amendments.** This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by the parties and Developer.

**C. Interpretation.** The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. All terms and provisions hereof are to be construed and interpreted consistently with that Act.

**D. Invalid Provisions.** Any clause, sentence, paragraph or article of this Agreement which is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion.

**E. Applicable Laws.** This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

**F. Authorization; Funding.** Each party hereto acknowledges and represents that his Agreement has been duly authorized by its respective governing body, and that funding from

each party for the performance of this Agreement will be provided from current revenues available to the parties.

**G. Notices.** Notices required by this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following address/fax numbers:

City

City Manager  
City of San Marcos  
630 East Hopkins Street  
San Marcos, Texas 78666

Hays County

Hays County Judge  
Hays County Courthouse  
111 E. San Antonio St., Ste. 300  
San Marcos, Texas 78666

**H. 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.

**I. 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 the Reinvestment Zone or any officer, agent or employee of the County.


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

**K. Third Party Beneficiary.** There are no third party beneficiaries to this Agreement.



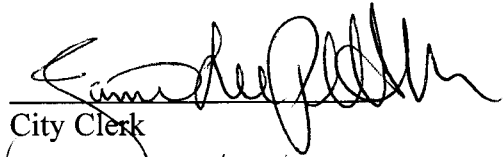
**IN WITNESS HEREOF**, the City and the County have made and executed this Agreement in multiple copies, each of which is an original.

**CITY OF SAN MARCOS**

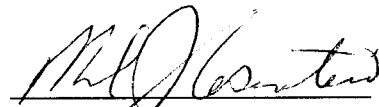
  
\_\_\_\_\_  
Mayor

12-7-11  
\_\_\_\_\_  
Date

**ATTEST/SEAL:**

  
\_\_\_\_\_  
City Clerk  
12/7/11  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
City Attorney

**HAYS COUNTY**

*Forrest Cobb*

Hays County Judge

*November 22, 2011*

Date

**ATTEST:**

*Liz A. Dwyer*

County Clerk

*11/22/11*

Date



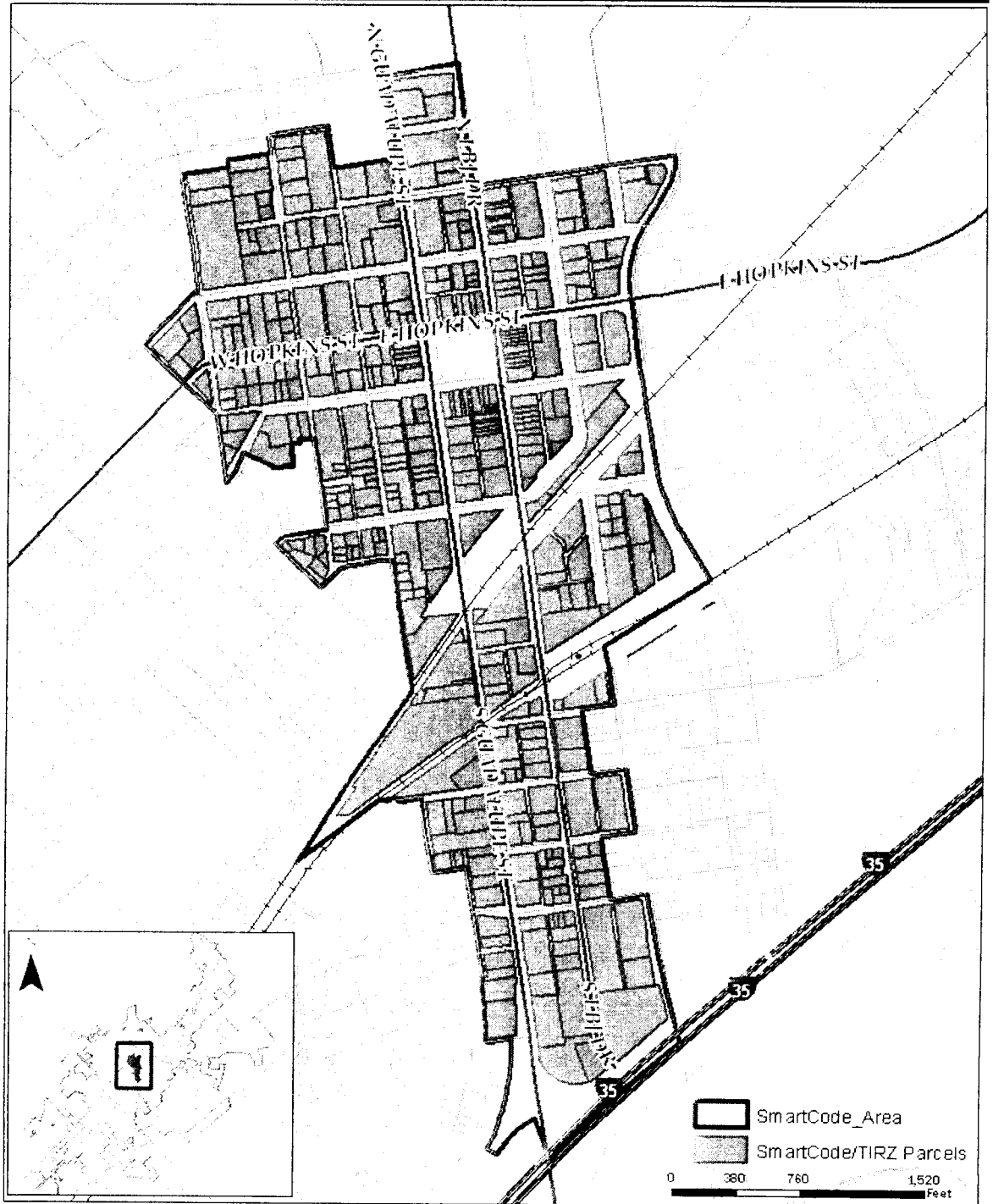
## **EXHIBIT A**

THE AREA OF LAND BOUNDED BY CONCHO STREET, MOORE STREET, NORTH STREET, COMANCHE STREET, SHADY LANE, FREDERICKSBURG STREET, HULL STREET, GUADALUPE STREET, IH-35, MCKIE STREET, LBJ DRIVE AND CM ALLEN STREET, APPROXIMATELY 244 ACRES

## EXHIBIT B

### Downtown SmartCode Area

City of San Marcos  
Map Date - November 8, 2011



## EXHIBIT C

### Project Overview and Project Costs

This Table 1 summarizes the currently anticipated Project Costs to be financed within Zone No. 5.

3% av increase with 70% contribution

Year	Assessed Value	Tax AV Increment	City of San Marcos Revenue Share		Hays County Revenue Share		Cumulative
			Tax Rate	Annual	Tax Rate	Annual	Total
2011	105,712,363						
2012	108,883,734	3,171,371	0.37114	\$ 11,770	0.29736	\$ 9,430	\$ 21,201
2013	112,150,246	6,437,883	0.37114	\$ 23,894	0.29736	\$ 19,144	\$ 43,037
2014	115,514,753	9,802,390	0.37114	\$ 36,381	0.29736	\$ 29,148	\$ 65,529
2015	118,980,196	13,267,833	0.37114	\$ 49,242	0.29736	\$ 39,453	\$ 88,695
2016	122,549,602	16,837,239	0.37114	\$ 62,490	0.29736	\$ 50,067	\$ 112,557
				\$ 183,776		\$ 147,243	\$ 331,019

**Assumptions:**

70% City Contribution (\$0.5302\*.7=\$0.37114)

70% County Contribution (\$0.4248\*.7=\$0.29736)

3% increase per year after 2011

#### 1. Redevelopment of Hays County "Justice Center" Property

If Hays County issues a request for qualifications, request for proposals or other similar vehicles in order to secure a public-private partnership approach or other disposition for the redevelopment or adaptive reuse of the "Justice Center" property, then tax increment revenues of the proposed Zone No. 5 shall be made available for infrastructure or other improvements allowed by law up to the amount collected by the TIRZ by capturing increment for 5 years for reimbursement of expenditures in infrastructure or other improvements by the successful entity or consortium in connection with the disposition of the "Justice Center" Property. Reimbursements shall be based on project investments that meet the priority policies delineated in the Executive Summary in coordination with Hays County.

#### 2. Infrastructure supporting cohesive redevelopment

Proposed Zone No. 5 tax increment revenues not used for the disposition of the "Justice Center" through the process described in Project No. 1 above shall be made available to facilitate investment in infrastructure or other improvements allowed by law that facilitate the following:

- a. Redevelopment projects adjacent to the Texas State Campus, providing improved usage of underutilized properties and better transitions between the campus and downtown.
- b. Redevelopment adjacent to Transit Oriented Development (TOD) associated with the area identified as potential future rail station by the Lone Star Rail District.
- c. Redevelopment or other projects that provide cohesive and sustainable development advancing the Downtown Master Plan and/or that improves the better linkages among the River, the future TOD/rail station area, the Square and the Texas State Campus.