

**CITY OF ATHENS AND TRINITY VALLEY COMMUNITY COLLEGE, TEXAS
AGREEMENT TO PARTICIPATE IN REINVESTMENT ZONE NUMBER ONE,
CITY OF ATHENS, TEXAS**

This **AGREEMENT TO PARTICIPATE IN REINVESTMENT ZONE NUMBER ONE, CITY OF ATHENS** (the “Agreement”) is entered into between the City of Athens, Texas (the “City”) and Trinity Valley Community College, Texas (the “College”).

The City and the College hereby agree that the following statements are true and correct and constitute the basis upon which the City and the College have entered into this Agreement:

WHEREAS, on November 25, 2024 the City Council of the City (the “City Council”), in accordance with Chapter 311 of the Texas Tax Code (the “Act”), adopted Ordinance No. 2024-189 (the “Creation Ordinance”) designating certain real property in the corporate limits and extraterritorial jurisdiction of the City and establishing *Reinvestment Zone Number One, City of Athens, Texas* (the “Zone”). The Creation Ordinance, with all its accompanying exhibits, is hereby incorporated for reference for all purposes and is attached hereto as “**Exhibit 1**”; and

WHEREAS, designation of the Zone will enable development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. As a result of designation of the Zone, it is intended that public infrastructure will be funded to support the development of the area in and around the Zone and this overall development will result in increased tax revenues and other benefits for both the City and the College; and

WHEREAS, the base value of the Zone was established in 2024 (“Base Value”) and therefore one-hundred percent (100%) of the ad valorem taxes collected from the base value of the zone will be retained by the College; and

WHEREAS, only the ad valorem taxes captured on the increase in property values above the Base Value in the Zone may be utilized by the College for TIRZ funding as determined by this agreement; and

WHEREAS, pursuant to Section 311.013(f) of the Act, the College is not required to pay any TIRZ Increment into the TIRZ No. 1 fund of the Zone unless it enters into an agreement with the City to do so; and

WHEREAS, The College wishes to enter into such an agreement with the City.

NOW, THEREFORE, for and in consideration of the conditions set forth herein. The sufficiency of which is hereby acknowledged, the City and the College do hereby contract, covenant and agree as follows:

1. INCORPORATION OF RECITALS.

The parties hereby agree that the recitals set forth above are true and correct and form the basis upon which they have entered into this Agreement.

2. DEFINITIONS.

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

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

“Board” means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and Section 3 of the Creation Ordinance. The College shall have the option to appoint and maintain at least one (1) member on the Board, and may appoint non-voting ex-officio members or staff members who shall also be notified of all Board meetings and actions.

“Captured Appraised Value” in a given year means the total appraised value of all real property taxable by the College and located in the Zone for that year less the Tax Increment Base. It does not include any value of personal property.

“College TIRZ Increment” in a given year means the amount of property taxes levied and actually collected by the College for that year on the Captured Appraised Value of real property taxable by the College and located in the Zone.

“Creation Ordinance” means Ordinance 2024-O-189 with all its exhibits, attached hereto as **“Exhibit 1.”**

“Project Plan” means the *Reinvestment Zone Number One, City of Athens, Texas Final Project and Finance Plan* for the development and/or redevelopment of the Zone as adopted by the Board and approved by the City Council via Ordinance No. 24-006 on February 6, 2024 and attached hereto as Exhibit 3.

“Tax Increment Base” means the total appraised value as of January 1, 2024 of all real property taxable by the College and located in the Zone.

“TIRZ No. 1 Fund” means the fund created by the City as a separate and individual account pursuant to Section 311.014 of the Act and Section 7 of Creation Ordinance, which will be maintained by the City, into which all revenues of the Zone will be deposited, including: (i) deposits of TIRZ Increment by the City and by other participating taxing units with jurisdiction over real property in the Zone, including the College, and (ii) all accrued interest earned on the cash balance of the fund.

“Zone” means the certain real properties and boundaries as described in the Creation Ordinance, attached hereto as **“Exhibit 1”**.

3. DEPOSIT OF COLLEGE TIRZ INCREMENT.

Pursuant to a Resolution duly adopted by the governing body of the College, which Resolution is attached hereto as **“Exhibit 2”** and is hereby made a part of this Agreement for all purposes, and specifically subject to Section 4 of this Agreement, the College hereby agrees to deposit each year for ten (10) years, beginning with the 2025 tax year and ending with the 2034 tax year (unless terminated earlier), fifty percent (50%) of the College TIRZ Increment into the TIRZ No. 1 Fund.

The calculation to determine the dollar amount of the College TIRZ Increment to be deposited shall be made in accordance with the College's Tax Increment Financing Policy and such deposits shall be made in accordance with the City's standard administrative procedures, but only following receipt of a bill from the City that outlines the City's calculation of the amount of the deposit that is required for that year. The College is not obligated to pay the College TIRZ Increment from any source other than taxes collected on the Captured Appraised Value. Furthermore, the College has no duty or obligation to pay the College TIRZ Increment from any other College taxes or revenues, or until the College TIRZ Increment in the Zone is actually collected. Any portion of the taxes representing the College TIRZ Increment that are paid to the College and subsequently refunded pursuant to the provision of the Texas Tax Code shall be offset against future payments to the TIRZ No. 1 Fund.

4. LIMITATIONS ON TAX INCREMENT DEPOSITS AND USE OF FUNDS.

This Agreement is based on the following conditions, and the City agrees and acknowledges the College's right to enforce the conditions contained herein by in junction or any other lawful means in the event one or more of such conditions are not satisfied.

4.1 Amendment to Creation Ordinance and/or Project Plan.

The Creation Ordinance designates the boundaries, the eligible real properties for the calculation of TIRZ Increment for the Zone, and the specific participation level by the City. A project and financing plan document ("Project Plan") is required by Section 311.011 of: the Act. All amendments to the Creation Ordinance and Project Plan shall be approved by the Board prior to approval by the City Council. The College shall receive timely notice of all amendments to the Creation Ordinance or Project Plan that are approved by the Board. If the City Council approves an amendment to the Creation Ordinance or Project Plan different from the amendment approved by the Board, the College shall suspend payment into the TIRZ No. 1 Fund as described in Section 3 until the amendment is approved by the College governing body. If the amendment to the Creation Ordinance or Project Plan is not approved by the College, then the amendment is not binding on the College.

4.2 Certain Project Costs Excluded.

The College TIRZ Increment deposited into the TIRZ No. 1 Fund shall only be used to pay for Project Costs, as defined in the Project Plan, and for purposes as set forth and identified in the Project Plan. All TIRZ No. 1 Fund allocations, including but not limited to any management and administrative costs, must be approved by the Board in accordance with the Project Plan. If the Project Plan, as included herein, is amended to substantially change the scope and nature of the projects included in the Project Plan or to include additional projects and associated costs that will increase the total costs of the Project Plan, the College may suspend payment into the TIRZ No. 1 Fund as described in Section 3 until the amended Project Plan is approved by the governing body of the College as an amendment to this Agreement. If the College does not approve any amendment to the Project Plan, then it is not binding on the College in any respect.

4.3 Zone Expansion.

As defined, the Zone shall include real properties located within the boundaries as depicted in the Creation Ordinance, attached hereto as “**Exhibit 1**”. If the Zone is expanded, the College is not required to deposit into the TIRZ No. 1 Fund any TIRZ Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the College governing body as an amendment to this Agreement, which is within the sole discretion of the College. Additionally, the College TIRZ Increment deposited into the TIRZ No. 1 Fund by the College may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the College governing body as an amendment to this Agreement.

5. TERM AND TERMINATION.

This Agreement shall be effective as of January 1, 2025 and shall expire upon the earlier of: (i) December 31, 2034, (ii) the date on which all Project Costs of the Zone have been paid in full, or (iii) the date the City terminates the Zone by ordinance. Nothing in this agreement limits the authority of the College Board of Trustees to extend the term of the Agreement.

The College may terminate its participation in this Agreement and thus its voluntary participation as to payment into the Fund upon the following Events of Default: (1) Failure to provide the annual accounting in Section 6 herein in a timely manner; (2) Failure to give timely notice to College of any amendment to the Project Plan or Creation Ordinance; (3) Failure to use the monies in the Fund in strict accordance with state law, this Agreement and the Project Plan; or (4) Any material breach of this Agreement that is not cured after thirty (30) days’ written notice to City. Upon termination of the Agreement, the obligation of the College to contribute to the TIRZ No. 1 Fund for the Zone shall end; however, any refund obligations of the City or the Zone shall survive such termination.

6. TAX INCREMENT FUND AND FINAL ACCOUNTING OF FUNDS.

No later than July 1 of each year following execution of this Agreement, the City shall provide the College with an annual accounting of the funds deposited to and disbursed from the TIRZ No. 1 Fund, including accrued interest. This annual accounting shall be in sufficient detail acceptable to the College. The College has the right not to pay any amount it reasonably disputes. After all Project Costs of the Zone have been paid or at the time of the expiration of this Agreement, any funds remaining in the TIRZ No. 1 Fund following the final annual accounting by the City shall be paid to each taxing unit participating in the Zone in proportion to each taxing unit’s share of the total amount of the TIRZ Increment deposited into the TIRZ No. 1 Fund.

Furthermore, if the projects to be undertaken pursuant to the Project Plan are not undertaken, are discontinued, or are terminated, all monies remaining in the TIRZ No. 1 Fund after satisfaction of lawful claims, shall be paid to the participating taxing entities in proportion to their respective share of the total amount of TIRZ Increment deposited into the TIRZ No. 1 Fund derived from taxable real property in the Zone that were deposited in the Tax Increment.

7. RESPONSIBILITY FOR ACTS.

Without waiving any entitlement to immunity in any way, the City and the College shall each be responsible for the sole negligent acts of their officers, agents, or employees or separate contractors. In the event of joint and concurrent negligence of both the City and the College, responsibility, if any, shall be apportioned comparatively with the laws of the State of Texas, with the understanding that neither party waives any governmental powers or immunities or any other defenses available to each individually.

8. ADMINISTRATION OF AGREEMENT.

This Agreement shall be administered on behalf of the City by the City Manager's Office of the City, or their designee.

9. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party may subsequently designate in writing, by certified mail, postage prepaid, or by hand delivery:

CITY:

City of Athens
Attn: City Manager
Elizabeth Borstad
508 E Tyler Street
Athens, TX 75751

COLLEGE:

Trinity valley community college
Attn: President
Dr. Jason Morrison
100 Cardinal Drive
Athens, TX 75751

10. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

11. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Henderson County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

12. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and the College and are not intended to create any rights, contractual or otherwise, to any person or entity.

13. FORCE MAJEURE.

The parties shall exercise every reasonable effort to meet their respective obligations as set forth in this Agreement, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of omission, acts of terrorism, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond reasonable control of either party.

14. INTERPRETATIONS.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

15. CAPTIONS

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

16. ENTIRETY OF AGREEMENT/AMENDMENTS

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and the College as to matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended, modified, or supplemented unless executed in writing by both parties and approved by the College and the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code, as amended.

17. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

[Remainder of this page intentionally left blank.]

EXECUTED as of the later date below:

CITY OF ATHENS, TEXAS

TRINITY VALLEY COMMUNITY COLLEGE

By: _____

Elizabeth Borstad, City Manager

By: _____

Jason Morrison, President

Date: _____

Date: _____

APPROVED AS TO FORM/LEGALITY:

APPROVED AS TO FORM

By: _____

Blake Armstrong, City Attorney

By: _____

Leigh Porter, College Attorney

ATTEST:

ATTEST:

By: _____

Bonnie Hambrick, City Secretary

By: _____

Steve Grant, TVCC Board
President

EXHIBIT 1

ORDINANCE NO. 2024-O-189 OF THE CITY OF ATHENS
ESTABLISHING REINVESTMENT ZONE NUMBER ONE, CITY OF ATHENS, TEXAS,
AND ALL ASSOCIATED EXHIBITS

[Remainder of this page intentionally left blank.]

EXHIBIT 2

RESOLUTION NO. [REDACTED] OF TRINITY VALLEY COMMUNITY COLLEGE APPROVING
PARTICIPATION IN REINVESTMENT ZONE NUMBER ONE, CITY OF ATHENS, TEXAS

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