

**AGREEMENT TO PARTICIPATE IN  
TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR,  
CITY OF EULESS, TEXAS  
(MIDTOWN)**

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This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR, CITY OF EULESS, TEXAS** (“**Agreement**”) is entered into by and between the **CITY OF EULESS, TEXAS** (the “**City**”) and **TARRANT COUNTY, TEXAS** (the “**County**”).

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

- A.** On September 22, 2015, the City Council of the City of Euless, Texas (the “**Council**”) adopted City Ordinance No. 2089 designating certain real property located along the southern edge of Airport Freeway encompassing 56 acres as Tax Increment Reinvestment Zone Number Four, City of Euless, Texas (the “**Zone**”). The Zone is informally known as “Midtown” and the “Midtown TIF”. City Ordinance No. 2089 is hereby incorporated by reference for all purposes and collectively attached hereto as **Exhibit “A”**.
- B.** Designation of the Zone will cause development of property in and around the Zone to occur that would not occur otherwise in the foreseeable future. It is anticipated that other complementary development in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the County.
- C.** Pursuant to Section 311.013(f) of the Texas Tax Code, the County is not required to pay any tax increment into the tax increment fund of the Zone unless it enters into an agreement to do so with the City. The County 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 County 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 as codified in Chapter 311 of the Texas Tax Code.

**Captured Appraised Value** in a given year means the total appraised value of all real property taxable by the County and located in the Zone for that year less the Tax Increment Base.

**Project Plan** means the project plan for the development and/or redevelopment of the Zone, as adopted by the TIF Board and approved by the City Council of the City on December 8, 2015 by City Ordinance No.2096, attached hereto as **Exhibit “B”**.

**TIF Board** means the governing board of directors of the Zone appointed in accordance with Section 311.009 of the Act and pursuant to Section 4.4 of this Agreement.

**Tax Increment** in a given year means the amount of property taxes levied and collected by the County for that year on the Captured Appraised Value of real property taxable by the County and located in the Zone.

**Tax Increment Base** means the total appraised value as of January 1, 2015 of all real property taxable by the County and located in the Zone.

**Tax Increment Fund** means that fund created by the City pursuant to Section 311.014 of the Act and Section 4 of City Ordinance No. 2089, which will be maintained by the City as a separate and individual account into which all revenues of the Zone will be deposited, including (i) deposits of Tax Increment by the City and by other taxing units with jurisdiction over real property in the Zone, including the County, and (ii) all accrued interest earned on the cash balance of the fund.

**TIF Ordinance** means City Ordinance No. 2089 adopted on September 22, 2015, attached hereto as **Exhibit “A”**.

**Zone** means the certain real properties and boundaries as described in City Ordinance No. 2089

## 3. **DEPOSIT OF TAX INCREMENT.**

Pursuant to a Resolution duly adopted by the governing body of the County, which Resolution is attached hereto as **Exhibit “C”** and is hereby made a part of this Agreement

for all purposes, and specifically subject to Section 4 of this Agreement, the County hereby agrees to deposit each year during the first fifteen years of the Zone, beginning with the 2016 tax year, seventy-five percent (75%) of the County's Tax Increment into the Tax Increment Fund and each year for the next ten years, beginning with the 2031 tax year, fifty percent (50%) of the County's Tax Increment into the Tax Increment Fund. The calculation to determine the dollar amount of the County's Tax Increment to be deposited shall be made in accordance with the County'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 County's participation over the life of the Zone is capped at \$5,163,357 (the "**Maximum County Contribution**"). Deposits will continue at the percentage rates set forth herein until the Maximum County Contribution is reached, at which point the County's obligation to the Tax Increment Fund is complete.

The County is not obligated to pay the County Tax Increment 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 from any other County taxes or revenues, or until the County Tax Increment in the Zone is actually collected. Any portion of the taxes representing the County Tax Increment that are paid to the County and subsequently refunded pursuant to the provision of the Texas Tax Code shall be offset against future payments to the Tax Increment 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 County's right to enforce the conditions contained herein by injunction or any other lawful means in the event one or more of such conditions are not satisfied.

##### **4.1 Amendments to TIF Ordinance.**

The TIF Ordinance designates the boundaries, the eligible real properties for the calculation of Tax Increment for the Zone and the specific participation level of the City. If the TIF Ordinance is amended, the County shall suspend payment into the TIF Fund as described in Section 3 until the amendment is approved by the governing body of the County as an amendment to this Agreement.

##### **4.2. Certain Zone Project Costs Excluded.**

The Tax Increment deposited into the Tax Increment Fund by the County shall be used to pay project costs for purposes as set forth and identified in the Project Plan. All TIF Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIF Board in accordance with the Project Plan. If the Project Plan as approved by Ordinance 2096, passed by the City Council on December 8,

2015 is further 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 public improvement costs of the Project Plan, the County may suspend payment into the TIF Fund as described in Section 3 until the amendment is approved by the governing body of the County as an amendment to this Agreement.

#### **4.3. Zone Expansion.**

As defined, the Zone shall include real properties located within the boundaries as described in the TIF Ordinance. If the Zone is expanded, the County is not required to deposit into the Tax Increment Fund any Tax Increment generated from properties in the expanded area unless participation in the expanded boundary area is approved by the governing body of the County as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment Fund by the County may not be used for any permissible project costs in any portion of the expanded area of the Zone unless approved by the governing body of the County as an amendment to this Agreement.

#### **4.4 TIF Board Membership.**

During the term of the Zone, the TIF Board shall consist of seven members comprised of one (1) County representative, one (1) Tarrant County Hospital District representative, one (1) Tarrant County College District representative and the remaining members of the board shall be designated by the City Council. The governing body of the County, Tarrant County Hospital District and Tarrant County College shall provide the names and addresses of their designated representative(s) to the City Council of the City for appointment to the TIF Board. The City Council of the City shall appoint the designated representative(s) to the TIF Board. If the designated representatives are not appointed to the TIF Board or the TIF Board does not consist of the number of representatives stated above, the County shall suspend payment into the TIF Fund as described in Section 3 until such time that the requirements above are satisfied.

#### **5. TERM.**

This Agreement shall take effect on the date as of which both parties have executed it and shall expire upon expiration or termination of the Zone or the date on which all County obligations have been met, which currently is the earlier of (i) the date on which the tax increment for tax year 2040 has been paid, (ii) the date on which all project costs of the Zone, including, but not limited to, tax increment bonds and interest on those bonds, have been paid or otherwise satisfied in full or, (iii) the date on which the Maximum County Contribution is reached.

Nothing in this agreement limits the authority of the Tarrant County Commissioner's Court to extend the term of the Agreement. Upon termination of the 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 or the Zone shall survive such termination.

**6. TIF FUND ACCOUNTING.**

Throughout the term of the Zone, no later than 90th day following the end of each fiscal year of the City, following execution of this Agreement, the City shall provide the County with an annual accounting of the funds deposited to and disbursed from the Tax Increment Fund, including accrued interest. 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 Tax Increment Fund following the final annual accounting by the City shall be paid to those taxing units participating in the Zone in proportion to each taxing unit's share of the total amount of Tax Increment deposited into the Tax Increment 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 Tax Increment 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 Tax Increment deposited into the Tax Increment Fund derived from taxable real property in the Zone that were deposited in the Tax Increment.

**7. RESPONSIBILITY FOR ACTS.**

The City and the County shall each be responsible for the sole negligent acts of their officers, agents, employees or separate contractors. In the event of joint and concurrent negligence of both the City and the County, 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. 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 Euless  
Attn: City Manager  
201 North Ector Drive  
Euless, Texas 76039

**County:**

Tarrant County Administrator's Office  
100 East Weatherford, Suite 404  
Fort Worth, Texas 76196-0609

**9. 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.

**10. 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 Tarrant County, Texas or the United States District Court for the Northern District of Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

**11. NO THIRD PARTY RIGHTS.**

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.

**12. 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, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems and/or any other cause beyond the reasonable control of either party.

**13. INTERPRETATION.**

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.

**14. CAPTIONS.**

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

**15. ENTIRETY OF AGREEMENT.**

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 County as to the 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 unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**16. 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.

**EXECUTED** as of the later date below:

**TARRANT COUNTY, TEXAS:**

By: \_\_\_\_\_  
B. Glen Whitley, County Judge

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

ATTEST:

By: \_\_\_\_\_  
Deputy Court Clerk

APPROVED AS TO FORM\*:

By: \_\_\_\_\_  
Assistant Criminal District Attorney

*\*By law, the District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead those parties should seek contract review from independent counsel.*

The City of Euless acknowledges that it is a governmental entity and not a business entity as those terms are defined in Tex. Gov't Code § 2252.908, and therefore, no disclosure of interested parties pursuant to Tex. Gov't Code Section 2252.908 is required.

**CITY OF EULESS, TEXAS**

By: \_\_\_\_\_  
Loretta Getchell, City Manager

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

ATTEST:

By: \_\_\_\_\_  
Kim Sutter, City Secretary

APPROVED AS TO FORM:  
Wayne K. Olson, City Attorney

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

Draft

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TARRANT   §

**TARRANT COUNTY, TEXAS**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **B. GLEN WHITLEY**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TARRANT COUNTY, TEXAS**, and as the **County Judge** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TARRANT   §

**CITY OF EULESS, TEXAS**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **LORETTA GETCHELL** known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF EULESS**, a municipal corporation of Tarrant County, Texas, and as the **CITY MANAGER** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

**EXHIBIT "A"**

Draft

**EXHIBIT ‘B’**

Draft

**EXHIBIT "C"**

Draft