

99-0914

**FIRST AMENDMENT
TO INTERLOCAL AGREEMENT BY AND BETWEEN THE
CITY OF HOUSTON, TEXAS,
THE HOUSTON INDEPENDENT SCHOOL DISTRICT
AND REINVESTMENT ZONE NUMBER FIVE, CITY OF HOUSTON, TEXAS**

STATE OF TEXAS
COUNTY OF HARRIS

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§
§

KNOW ALL PERSONS BY THESE PRESENTS:

This First Amendment to Interlocal Agreement ("First Amendment") is made and entered into by and between the City of Houston, Texas, a municipal corporation and a home-rule city in the State of Texas (the "City"); the Houston Independent School District ("HISD"), located at 3830 Richmond Avenue, Houston, Texas 77027; and Reinvestment Zone Number Five, City of Houston, Texas, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the "Memorial-Heights Zone").

WITNESSETH:

WHEREAS, pursuant to Ordinance No. 97-565 adopted on May 21, 1997, the City, the Memorial-Heights Zone and HISD have previously entered into that certain Interlocal Agreement By and Between the City of Houston, Texas, the Houston Independent School District and the Memorial-Heights Zone (the "Original Agreement"), pursuant to which HISD agreed to participate in the Memorial-Heights Zone; and

WHEREAS, the City, HISD and the Memorial-Heights Zone desire to amend the Original Agreement in order to modify the participation of HISD in the Memorial-Heights Zone and provide for the provision of tax increment funds for the payment of educational facilities project costs;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration and the mutual benefits herein expressed, the City, HISD and the Memorial-Heights Zone agree as follows:

ARTICLE I

Section II of the Original Agreement entitled "DEFINITIONS" is hereby amended by adding (or substituting, as appropriate) the following definitions in their appropriate alphabetical order to read as follows:

"Educational Facilities" means equipment, real property and other facilities, including a public school building, that are used or intended to be used jointly by the City and HISD and that are acquired, constructed or reconstructed pursuant to the Project Plan.

"HISD Tax Increment Participation" means the amount of the HISD tax levy on the Captured Appraised Value which HISD agrees to contribute to the Memorial-Heights Zone pursuant to Subsections A, B and G of Section IV of this Agreement.

"Project Costs" means the costs identified as "project costs" or costs for Educational Facilities in the Project Plan for the Memorial-Heights Zone.

"Project Plan" means the project plan and the reinvestment zone financing plan for the Memorial-Heights Zone adopted by the board of directors of the Memorial-Heights Zone and approved by the City Council of the City on May 21, 1997, by Ordinance No. 97-594, as amended by the Board of Directors of the Memorial-Heights Zone and approved by the City Council of the City on August 11, 1999, by Ordinance No. 1999-823, and as may be further amended from time to time.

ARTICLE II

Section III of the Original Agreement entitled "BACKGROUND" is amended to read as follows:

By Ordinance No. 96-1337, adopted December 18, 1996, the City created the Memorial-Heights Zone for the purposes of development and redevelopment in the Memorial-Heights Area. The Board of Directors of the Memorial-Heights Zone initially adopted a project plan and reinvestment zone financing plan, which was approved by the City on May 21, 1997, by City of Houston Ordinance No. 97-594. The Board of Directors of the Memorial-Heights Zone has adopted and the City Council has approved the First Amendment to the Project Plan pursuant to City of Houston Ordinance No. 1999-823. The City currently contributes tax increments produced in the Memorial-Heights Zone to the Tax Increment Fund. HISD desires to participate in the Memorial-Heights Zone in consideration for the agreements set forth below. HISD has waived the 60-day notice requirement of Section 311.003(e), Texas Tax Code, with respect to the initial creation of the Memorial-Heights Zone.

ARTICLE III

Subsection IV. B. of the Original Agreement entitled "Tax Increment Limitation" is amended to read as follows:

1. Subject to the limitations set out in this Agreement, the amount to be contributed by HISD (the "HISD Tax Increment Participation") is the amount of taxes collected by HISD each year during the term of this Agreement by levying a tax at the then-current tax rate per \$100 valuation on the Captured Appraised Value.

2. HISD's Tax Increment Participation and obligation to participate in the Memorial-Heights Zone shall be restricted to its tax increment collected on the Captured Appraised Value in the Memorial-Heights Zone. HISD shall not be obligated to pay its HISD Tax Increment Participation from other HISD taxes or revenues or until the HISD Tax Increment Participation in the Memorial-Heights Zone is actually collected. The obligation to pay the HISD Tax Increment Participation shall accrue as taxes representing the HISD tax increment are collected by HISD and payment shall be due as provided in section 311.013(c) of the Texas Tax Code. The City and the Memorial-Heights Zone agree that no interest or penalty will be charged to HISD for any late payment received from HISD. Taxes collected by HISD in any year on actual Captured Appraised Value that exceeds the estimate of Captured Appraised Value for that year shown in the Project Plan approved before September 1, 1999, shall be retained by HISD.

ARTICLE IV

Subsection IV.C. of the Original Agreement entitled "Shared Educational Facilities" is amended to read as follows:

HISD agrees that the City will be permitted to use the grounds and facilities of any Educational Facilities acquired, constructed or reconstructed with or financed by monies from the Tax Increment Fund, and that HISD and the City will negotiate use agreements for such use. HISD will allow the City to use, at no cost to the City other than proportionate utility, maintenance and building personnel costs of HISD, ballfields, tennis courts and other outdoor recreational areas, indoor recreational areas, lunchrooms, and other assembly areas of the Educational Facilities constructed with or financed by monies from the Tax Increment Fund for municipal recreational and meeting purposes, at all reasonable times to be agreed to by the City and HISD that HISD is not conducting school or other related activities at the facilities. HISD shall identify annually for the City and the Memorial-Heights Zone those Educational Facilities that are acquired, constructed or

reconstructed or financed with monies from any City reinvestment zone created pursuant to Chapter 311, Texas Tax Code.

ARTICLE V

Subsection IV.D. of the Original Agreement entitled "Changes in Applicable Laws" is amended to read as follows:

Notwithstanding any other provision of this Agreement, in the event and to the extent that Texas law applicable to HISD or tax increment reinvestment zones is changed subsequent to August 31, 1999, or there is any interpretation, ruling, order, decree or court decision interpreting existing or subsequently enacted law applicable to HISD or tax increment reinvestment zones, whether administratively by the Texas Education Agency, the Comptroller of Public Accounts of the State of Texas, the Attorney General of the State of Texas, or by a court of competent jurisdiction, with the result that the participation of HISD in the Memorial-Heights Zone decreases the aggregate amount of the state and local funds available to or received in any school year by HISD during the term of this Agreement that would otherwise be available to or received by HISD in such school year if HISD was not participating in the Memorial-Heights Zone during that year, as determined by HISD subject to the review by the City as to the accuracy of the calculations, HISD's Tax Increment Participation shall, at the option of HISD, be reduced in an amount equal to the amount of the decrease in the aggregate state and local funding available to or received in that school year by HISD during the term of this Agreement as a result of HISD's participation in the Memorial-Heights Zone. HISD shall provide the City sufficient information for the City to review the accuracy of the calculation of loss. Educational Facilities Project Costs shall be reduced by the portion of the reduction that is equal to the amount of the reduction multiplied by a fraction the numerator of which is the amount otherwise to be paid to HISD pursuant to Section V.C. in that year and the denominator of which is the HISD Tax Increment Participation; Non-Educational Facilities

Project Costs shall be reduced by the remaining portion of the reduction, provided that the total amount of any reduction in Non-Educational Facilities Project Costs shall not exceed two-thirds of the total amount of any reduction that would have resulted if HISD's participation was at a tax rate of \$0.96 per \$100 valuation. "State and local funds" for purposes of this section are defined in chapters 41, 42 and 46 of the Education Code but do not include the amounts paid by HISD into the Tax Increment Fund pursuant to this Agreement. Nothing in this Agreement shall require the City, the Memorial-Heights Zone or the Memorial-Heights Redevelopment Authority to pay HISD Educational Facilities Project Costs with funds other than the portion of the Tax Increment Fund attributable to the HISD Tax Increment Participation.

For any HISD fiscal year that HISD intends to decrease its participation in the Memorial-Heights Zone pursuant to this Article, HISD's calculation of the decrease will be provided to the City no later than 15 months following the end of such fiscal year or six months following such interpretation, ruling or decree, and the City shall have 2 months to review HISD's calculations. If HISD submits the calculation after the payment of its tax increment for the applicable year, the deductions shall be made from HISD's future payments of HISD Tax Increment Participation.

ARTICLE VI

Subsection IV.G. of the Original Agreement entitled "Option to Reduce Participation" is added to read as follows:

In circumstances where there is not a loss caused by a change in law such that Section IV.D. applies, upon written notice to the City, HISD may reduce its HISD Tax Increment Participation from year to year and for any tax year beginning in January of the year after the notice is given and subsequent years to a rate not less than \$0.64 per \$100 valuation. Any such reduction shall reduce the aggregate amount paid to HISD for Educational Facilities Project Costs pursuant to Section V.C.

by the total aggregate amount of the reduction of tax increments paid to the City as a result of such reduction in the HISD Tax Increment Participation.

ARTICLE VII

Subsection V.B. of the Original Agreement entitled "Project Plan" is amended to read as follows:

The parties agree that the Superintendent of Schools of HISD shall be permitted to review and comment upon any amendments to the Memorial-Heights Zone Project Plan before the amendments are submitted to the City Council for City approval. Any Memorial-Heights Zone Project Plan shall provide Educational Facilities Project Costs for HISD Educational Facilities within the Memorial-Heights Zone or the City. The parties further agree that an amendment to the Project Plan occurring after September 1, 1999, shall not apply to HISD unless the Board of Trustees of HISD or its duly authorized designee approves the amendment to the Project Plan, if the amendment to the Project Plan:

- (1) has the effect of directly or indirectly increasing the percentage or amount of tax increment to be contributed by HISD;
- (2) requires or authorizes the City to issue additional tax increment bonds or notes; or
- (3) eliminates or reduces Educational Facilities Project Costs.

In the event the City and the Memorial-Heights Zone use any portion of the Tax Increment Fund for costs of elementary or secondary school facilities for any entity other than HISD without the prior consent of the Board of Trustees of HISD, HISD shall have the right to terminate this agreement. The City and the Memorial-Heights Zone shall not use any portion of the HISD Tax Increment Participation for the construction, renovation, repair, maintenance, lease, purchase or financing of any educational facilities serving postsecondary students without the prior written

approval of the HISD Superintendent of Schools, but may use the Tax Increment Participation contributed by participating taxing units other than HISD for such purposes, provided that a taxing unit providing educational services to postsecondary students in such educational facilities contributes 100 percent of its tax increment produced in the Memorial-Heights Zone to the Tax Increment Fund from the date of its participation until the termination of the Memorial-Heights Zone.

ARTICLE VIII

Subsection V.C. of the Original Agreement entitled "Financing and Construction of Educational Facilities" is amended to read as follows:

A portion of the HISD Tax Increment Participation equal to the amount of taxes collected by HISD each year during the term of this Agreement by levying a tax at a rate of \$0.64 per \$100 valuation on the Captured Appraised Value, and interest earned thereon, shall be applied to the payment of Developer Debt and Non-Educational Facilities Project Costs, including Administrative Costs and School Support Expenses. The remaining portion of the HISD Tax Increment Participation, and interest earned thereon, shall be paid to HISD by the City, the Memorial-Heights Zone or the Memorial-Heights Redevelopment Authority on an annual basis to be used by HISD for Educational Facilities Project Costs within the Memorial-Heights Zone or the City.

ARTICLE IX

Subsection V.D. of the Original Agreement entitled "Control of Educational Facilities" is amended to read as follows:

The parties agree that all decisions regarding location, acquisition, construction and reconstruction and educational content of HISD Educational Facilities will be in the control of HISD.

Nothing in this subsection shall be construed to relieve HISD of the obligation to comply with all City ordinances and regulations applicable to the acquisition, construction, reconstruction and operation of any Educational Facility by or on behalf of HISD.

ARTICLE X

Article VI.C. of the Original Agreement entitled "Disposition of Tax Increments" is amended to read as follows:

Upon termination of the Memorial-Heights Zone, and if all Developer Debt has been paid, the City and the Memorial-Heights Zone shall pay to HISD all monies, including any interest thereon, remaining in the Tax Increment Fund that are attributable to the HISD Tax Increment Participation paid into the Tax Increment Fund and shall pay to the City all monies, including any interest thereon, then remaining in the Tax Increment Fund attributable to the City.

ARTICLE XI

Subsection VII.I. of the Original Agreement entitled "Access to Financial Information" is added to read as follows:

Each party to this Agreement shall have reasonable access to all financial information and audit reports regarding the Memorial-Heights Zone and expenditures from the Tax Increment Fund.

ARTICLE XII

Except as modified herein, the Original Agreement will remain in full force and effect. In the event of a conflict between the Original Agreement and this First Amendment, this First

Amendment shall prevail. This First Amendment shall be effective as of August 31, 1999, and shall remain in effect for the term of the Original Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment, in multiple copies, each of which shall be an original.

CITY OF HOUSTON, TEXAS

By: _____
Mayor



ATTEST/SEAL:

By: _____
City Secretary



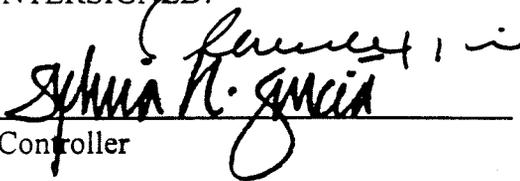
APPROVED:

Director, Planning and Development Department



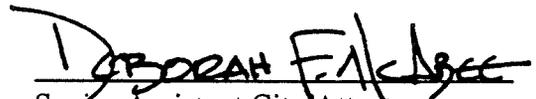
COUNTERSIGNED:

City Controller



APPROVED AS TO FORM:

Senior Assistant City Attorney


L.D. File No. 34-96378-18

DATE COUNTERSIGNED:

03.07.00

HOUSTON INDEPENDENT SCHOOL DISTRICT

James Owen 8/30/99
President, Board of Trustees Date

Arthur M. Zwijski
Secretary, Board of Trustees Date

Rod Taylor
Superintendent of Schools Date

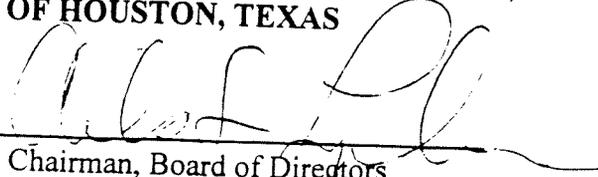
APPROVED AS TO FORM:

Donald Boehm Aug. 27, 1999
Attorney Date

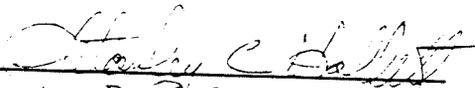
J. David Thompson Aug 27, 1999

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**REINVESTMENT ZONE NUMBER FIVE,
CITY OF HOUSTON, TEXAS**

By: 
Chairman, Board of Directors

ATTEST:

By: 
Secretary, Board of Directors