

FORM 132.M
(Approving/Authorizing)

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contracts, agreements, obligations or expenditures contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- (X) Other - Contingent on receipt of tax increment.

Date: August 12, 1999 City Controller of the City of Houston *John H. Garcia*
 FUND REF: N/A AMOUNT: N/A ENCUMB. NO.: NF 70002-00

City of Houston Ordinance No. 1999-914

AN ORDINANCE APPROVING AND AUTHORIZING THE FIRST AMENDMENT TO INTERLOCAL AGREEMENTS BETWEEN THE CITY OF HOUSTON, TEXAS; HOUSTON INDEPENDENT SCHOOL DISTRICT; REINVESTMENT ZONE NUMBER ONE, CITY OF HOUSTON, TEXAS (ST. GEORGE PLACE ZONE); REINVESTMENT ZONE NUMBER TWO, CITY OF HOUSTON, TEXAS (MIDTOWN ZONE); REINVESTMENT ZONE NUMBER THREE, CITY OF HOUSTON, TEXAS (MARKET SQUARE ZONE); REINVESTMENT ZONE NUMBER FIVE, CITY OF HOUSTON, TEXAS (MEMORIAL HEIGHTS ZONE); AND REINVESTMENT ZONE NUMBER SEVEN, CITY OF HOUSTON, TEXAS (OLD SPANISH TRAIL/ALMEDA CORRIDORS ZONE) FOR THE PARTICIPATION OF THE HOUSTON INDEPENDENT SCHOOL DISTRICT IN THE REINVESTMENT ZONES; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

me
9/15/99

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. The City Council hereby approves and authorizes the contracts, agreements or other undertakings described in the title of this Ordinance, in substantially the form as shown in the documents which are attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute the First Amendments described in the title of this Ordinance and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contracts without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 18th day of August, 1999.

APPROVED this _____ day of _____, 1999.

Mayor of the City of Houston

FORM 132.M
 (Approving/Authorizing)

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG 24 1999.

Russell
 City Secretary

(Prepared by Legal Dept. DEBORAH FAICHER)
 (DFM:dfm 8/17/99 Senior Assistant City Attorney)
 (Requested by Robert M. Litke, Director, Planning & Development)
 (L.D. File Nos. 61-92053-19; 34-94360-30; 61-95030-16; 34-96031-11; 34-97130-18)

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AYE	NO	
/		MAYOR BROWN
••••	••••	COUNCIL MEMBERS
✓		TATRO
ABSENT-OUT OF THE CITY		YARBROUGH
ABSENT-OUT OF CITY BUSINESS		WONG
✓		BONEY
✓		TODD
✓		DRISCOLL
/		KELLEY
/		FRAGA
ABSENT-IN PERSONAL BUSINESS		CASTILLO
✓		PARKER
✓		ROACH
✓		SANCHEZ
✓		BELL
✓		ROBINSON
CAPTION	ADOPTED	

99-0914
36933

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

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF HARRIS §

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 Three, City of Houston, Texas, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the "Market Square Zone").

WITNESSETH:

WHEREAS, pursuant to Ordinance No. 96-910 adopted on September 11, 1996, the City, the Market Square 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 Market Square Zone (the "Original Agreement"), pursuant to which HISD agreed to participate in the Market Square Zone; and

WHEREAS, the City, HISD and the Market Square Zone desire to amend the Original Agreement in order to modify the participation of HISD in the Market Square 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 Market Square 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:

"Administrative Costs" means the costs of organizing the Market Square Zone, the costs of operating the Market Square Zone and the imputed administrative costs associated with the Market Square Zone, including reasonable charges, but not to exceed \$25,000 per year, for the time spent by employees of the City in connection with the implementation of the Project Plan.

"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 Market Square Zone pursuant to Subsections A, B and G of Section IV of this Agreement.

"Market Square Area" shall mean the Market Square area of the City and neighboring areas, as more particularly described in Ordinance No. 95-1323 attached hereto as Exhibit "A" and incorporated into this Agreement for all purposes, and Ordinance No. 98-1204.

"Market Square Zone" means Reinvestment Zone Number Three, City of Houston (Market Square), created by the City on December 13, 1995, by Ordinance No. 95-1323, and enlarged on December 16, 1998, by Ordinance No. 98-1204, and includes its successors and assigns.

"Project Costs" means the costs identified as "project costs" or costs for Educational Facilities in the Project Plan for the Market Square Zone.

"Project Plan" means the project plan and the reinvestment zone financing plan for the Market Square Zone adopted by the board of directors of the Market Square Zone and approved by the City Council of the City on September 11, 1996, by Ordinance No. 96-911, as amended by the Board of Directors of the Market Square Zone and approved by the City Council of the City on December 16, 1998, by Ordinance No. 98-1205, and on August 11, 1999 by Ordinance No. 1999-828, 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. 95-1323, adopted December 13, 1995, the City created the Market Square Zone for the purposes of development and redevelopment in the Market Square Area. By Resolution adopted on December 5, 1979, the City approved the creation of the HHFC for the purpose of providing, among other things, a means of financing the cost of residential development at affordable prices and to perform the other purposes described in its Articles of Incorporation. The Board of Directors of the Market Square Zone initially adopted a project plan and reinvestment zone financing plan, which was approved by the City on September 11, 1996, by City of Houston Ordinance No. 96-911. The City has enlarged the boundaries of the Market Square Zone pursuant to City of

Houston Ordinance No. 98-1204 dated December 16, 1998. The Board of Directors of the Market Square Zone has adopted and the City Council has approved amendments to the Project Plan pursuant to City of Houston Ordinance Nos. 98-1205 and 1999-828. The City currently contributes tax increments produced in the Market Square Zone to the Tax Increment Fund. HISD desires to participate in the Market Square 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 Market Square 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 Market Square Zone shall be restricted to its tax increment collected on the Captured Appraised Value in the Market Square 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 Market Square 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 Market Square 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 "Deficit Obligations of HISD" is amended to read as follows:

If in any year HISD's Tax Increment Participation is less than \$410,000, HISD shall be obligated to use the HISD Tax Increment Participation in a future year or years to pay the deficit, plus interest compounded annually at the rate of the lesser of (1) the rate HHFC pays on its note to Wells Fargo Bank or (2) 8% per annum.

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 Market Square 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 Market Square 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 Market Square 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. In no event shall the HISD Tax Increment Participation be decreased below \$410,000 per year. The City agrees to reimburse HISD for 50% of the amount of the decrease below \$410,000, not to exceed \$205,000 per year, and the City may make such reimbursements to HISD from (i) tax increments remaining after payment of the \$750,000 per year obligation to HHFC and any unpaid accrued obligations to HHFC, or (ii) other available City funds. "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. Except as provided in this Section, nothing in this Agreement shall require the City, the Market Square Zone or the Main Street Market Square 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 Market Square 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.F. of the Original Agreement entitled "Expansion of Market Square Zone" is amended to read as follows:

HISD's participation shall not extend to the tax increment on any additional property added to the Market Square Zone by the City unless the Board of Education of HISD approves the participation.

ARTICLE VII

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 the greater than (i) \$0.64 per \$100 valuation, or (ii) the rate that would result in the payment by HISD to the Tax Increment Fund of \$410,000 plus the amounts necessary to pay any deficit and interest that has accrued pursuant to Section IV.C. of this Agreement. 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 VIII

Section IV.H. entitled "Shared Educational Facilities" is added 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 Market Square 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 IX

Section V of the Original Agreement entitled "CONTRACT WITH HHFC" is renamed "OBLIGATIONS OF CITY AND MARKET SQUARE ZONE" and is amended to read as follows:

A. Street Right of Way

To the extent requested by HISD, the City and the Market Square Zone agree that monies from the Tax Increment Fund shall be used, at no cost to HISD, to pay to the City the following costs that otherwise would be incurred by HISD with respect to the construction and operation of any educational facilities constructed by or on behalf of HISD in the Market Square Zone pursuant to

the Project Plan: (a) the cost of abandonment of any street right of way by the City on behalf of HISD for HISD Educational Facilities in the Market Square Zone and (b) the cost of water and sewer utility connections and construction outside the boundaries of HISD property for HISD Educational Facilities in the Market Square Zone (collectively, "School Support Expenses"). The City shall use the proceeds obtained from payments made pursuant to the preceding sentence for infrastructure improvements or other projects identified in the Market Square Zone Project Plan.

B. Project Plan

The parties agree that the Superintendent of Schools of HISD shall be permitted to review and comment upon any amendments to the Market Square Zone Project Plan before the amendments are submitted to the City Council for City approval. Any Market Square Zone Project Plan shall provide Educational Facilities Project Costs for HISD Educational Facilities within the Market Square 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 Market Square 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 Market Square 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 Market Square Zone to the Tax Increment Fund from the date of its participation until the termination of the Market Square Zone.

C. Financing and Construction of Educational Facilities

A portion of the HISD Tax Increment Participation equal to the greater of (i) 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, or (ii) \$410,000 plus the amounts necessary to pay any deficit and interest that has accrued pursuant to Section IV.C. of this Agreement, shall be applied to the payment of 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 Market Square Zone or the Main Street Market Square Redevelopment Authority on an annual basis to be used by HISD for Educational Facilities Project Costs within the Market Square Zone or the City.

All funds paid to HISD pursuant to this Agreement shall come from the Market Square Zone HISD Tax Increment Participation. Neither the City nor the Market Square Zone shall ever be obligated to set aside for or pay to HISD any funds other than HISD's portion of funds derived from the Market Square Zone, nor shall the City or the Market Square Zone ever be obligated to expend any funds other than funds made available by HISD after payment pursuant to this Agreement to finance, acquire, construct or reconstruct any Educational Facilities Project Cost.

D. Contract with HHFC

The City, the Market Square Zone, and HHFC entered into a contract which provides that for a twenty-five (25) year term, beginning January 1, 1997, the first \$750,000 per year of tax increments paid into the tax increment fund from all participating taxing units will be paid to HHFC to be used to finance the costs associated with the (1) acquisition and renovation of the Rice Hotel, (2) asbestos and lead paint removal from the Rice Hotel, (3) demolition of the present parking structure adjacent to the Rice Hotel and reconstruction of a new parking structure on that site, and (4) the construction of an extension of the downtown tunnel system to the Rice Hotel.

E. Control of Educational Facilities

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 and reconstruction and operation of any Educational Facility of or on behalf of HISD.

ARTICLE VIII

Article VI of the Original Agreement entitled "TERM AND TERMINATION" is amended to read as follows:

A. Agreement Term

This Agreement shall become effective as of the date of the final signature hereto, and shall remain in effect until December 31, 2026. The first payment of increment taxes by HISD under this Agreement shall be for those taxes levied by HISD in the year 1997 and the last payment by HISD under this Agreement is for those taxes levied by HISD in the year 2025.

B. Early Termination

The City shall not adopt an ordinance terminating the Market Square Zone earlier than the duration of the Zone established in Ordinance No. 95-1323, without the prior consent of HISD, provided that the Market Square Zone may otherwise terminate by operation of law.

C. Disposition of Tax Increments

Upon termination of the Market Square Zone, and if all Project Costs have been paid, the City and the Market Square 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 Market Square 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, as amended by this First Amendment.

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

Lee P. Brown

ATTEST/SEAL:

By: _____
City Secretary

[Signature]

APPROVED:

Director, Planning and Development Department

[Signature]

COUNTERSIGNED:

City Controller

[Signature]

APPROVED AS TO FORM:

Senior Assistant City Attorney

L.D. File No. 61-95030-16

[Signature]

DATE COUNTERSIGNED:

03 03 00

HOUSTON INDEPENDENT SCHOOL DISTRICT

James B. ... 8/30/99
President, Board of Trustees Date

Arthur M. ...
Secretary, Board of Trustees Date

Rob ...
Superintendent of Schools Date

APPROVED AS TO FORM:

Donald ... Aug. 27, 1999
Attorney Date

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REINVESTMENT ZONE NUMBER THREE,
CITY OF HOUSTON, TEXAS

By: *Zmethyl Aburney*
Chairman, Board of Directors

ATTEST:

By: *Maurice Boese*
Secretary, Board of Directors