

DENTON COUNTY COMMISSIONERS COURT

12/11/2018

Month 12 Day 11 Year 2018
Court Order Number

16. A.

THE ORDER:

Adoption of Resolution declaring Denton County's Participation in Tax Increment Reinvestment Zone Number Three, City of Lewisville, and approval of Agreement to Participate in Tax Increment Reinvestment Zone Number Three, City of Lewisville, by and between the City of Lewisville and Denton County, Texas, as recommended by Commissioner Precinct 2, and any appropriate action.

Motion by Marchant

Seconded by Eads

County Judge
Mary Horn

Yes ☒
Abstain ☐
No ☐
Absent ☐

Commissioner Precinct No 1
Hugh Coleman Yes ☒
Abstain ☐
No ☐
Absent ☐

Commissioner Precinct No 2
Ron Marchant Yes ☒
Abstain ☐
No ☐
Absent ☐

Commissioner Precinct No 3
Bobbie J. Mitchell Yes ☐
Abstain ☐
No ☐
Absent ☒

Commissioner Precinct No 4
Andy Eads Yes ☒
Abstain ☐
No ☐
Absent ☐

Motion Carried 4-0-0

Other Action: Pulled from Consent ☐ No Action ☐ Postponed ☐

BY ORDER OF THE COMMISSIONERS COURT:

ATTEST:

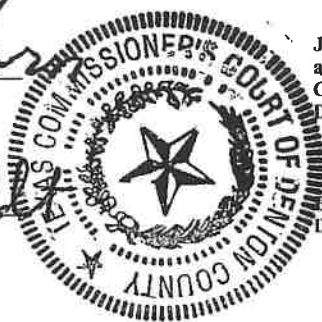
Mary Horn
Presiding Officer

Julie Luke County Clerk
and ExOfficio Clerk of the
Commissioners Court of
Denton County, Texas

APPROVED AS TO FORM:

John Zelt
Assistant District Attorney

BY: Julie Luke
Deputy County Clerk



**City of Lewisville
And
Denton County
Agreement to Participate
In**

Tax Increment Reinvestment Zone, Number Three, City of Lewisville

THIS AGREEMENT, ("Agreement") is made and entered into by and between the City of Lewisville ("City"), a municipal corporation, and Denton County, ("County"), Texas.

WHEREAS, in accordance with the provisions of the Tax Increment Financing Act, Tax Code, Chapter 311 (the "Act"), the City Council adopted an Ordinance (the "Ordinance") on December 3, 2018, in the form attached hereto as Exhibit A and incorporated herein by reference, creating, establishing and designating "Reinvestment Zone Number Three, City of Lewisville, Texas" (hereinafter called the "Reinvestment Zone") under the Act; and

WHEREAS, the City also adopted a preliminary Project Plan and Financing Plan (collectively the "Plan") for the Reinvestment Zone in substantially the form of the Plan attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, the Act provides that each taxing unit levying taxes on real property in a Reinvestment Zone is not required to pay into the Tax Increment Fund any of its tax increment produced from property located in the reinvestment zone unless such taxing unit enters into an agreement to do so with the governing body of the municipality that created the Reinvestment Zone; and

WHEREAS, an agreement to participate in a Reinvestment Zone created under the Act may be entered into any time before or after the Reinvestment Zone is created, and such agreement may include any conditions for payment of the tax increment into the Tax Increment Fund and must specify the portion of the tax increment to be paid into the Tax Increment Fund and the years for which that tax increment is to be paid into the Tax Increment Fund.

NOW, THEREFORE, the City and the County, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

Section 1. The City and County hereby agree to pay into the Tax Increment Fund established by the City for the Reinvestment Zone a percentage of the ad valorem tax collections on the captured appraised value of real property in the Reinvestment Zone as follows and subject to the following terms and conditions.

a) **City of Lewisville.**

- I. The City hereby agrees to pay into the Tax Increment Fund, one hundred percent (100%) of the ad valorem tax collections on the captured appraised value of real property in the Reinvestment Zone from the date the Zone is

established (the "City Tax Increment") until the earlier of: (i) December 31, 2048, (ii) the date on which the Plan has been fully implemented and all project costs, tax increment bonds, interest on such tax increment bonds, interest on any other obligations at set forth in the Plan, contractual reimbursement obligations or other contractual obligations payable from the Tax Increment Fund have been paid in full, as set forth in the Plan and (iii) December 31, 2023 if Denton County Fresh Water Supply District No. 1-G ("1-G") and Denton County Fresh Water Supply District No. 1-H ("1-H") are not annexed into the City by such date. The City Tax Increment shall be used (i) first to pay debt service on debt obligations issued by 1-G and 1-H or any refunding bonds issued by the City to refund such obligations, as set forth in the Plan and (ii) second, to reimburse Project Costs up to the amount set forth in that certain TIRZ Reimbursement Agreement between the City, the Reinvestment Zone and Bright Realty, LLC (the "Agreement") and in the Plan.

- II. The City hereby agrees to pay into the Tax Increment Fund, all ad valorem taxes collected on the base value of the Reinvestment Zone until the earlier of (i) December 31, 2048 or (ii) the payment in full of all reimbursements due to the Developer pursuant to the Agreement.

b) Denton County.

- I. Subject to the conditions set forth in subsection II below, the County hereby agrees to pay into the Tax Increment Fund, eighty percent (80%) of the ad valorem tax collections on the captured appraised value of real property in the Zone from the date the Zone is established (the "County Tax Increment") until the earlier of: (i) December 31, 2048, (ii) the date on which the Plan has been fully implemented and all project costs, tax increment bonds, interest on such tax increment bonds and all other obligations, contractual or otherwise, payable from the Tax Increment Fund have been paid in full, or (iii) December 31, 2023 if 1-G and 1-H are not annexed into the City by such date. In no event will Denton County be liable for payment of ad valorem tax collections on the captured appraised value of real property in the Reinvestment Zone after December 31, 2048.
- II. The County shall not pay into the Tax Increment Fund the applicable portion of its tax increment that is attributable to delinquent taxes. The County Tax Increment shall be used solely to pay or reimburse cash expenditures for:
 - A. Project Costs incurred after the execution of this Agreement; or
 - B. Principal of and interest on any tax increment bonds or notes issued after the execution of this Agreement to finance Project Costs incurred after the execution of this Agreement that are properly chargeable under the Act and under generally accepted accounting principles to the administration of the Reinvestment Zone. No amounts paid by the

County into the Tax Increment Fund shall be used to pay for any refinancing bonds, bonds, notes, or any other instruments of debt that are incurred for the purpose or that have the effect of paying for bonds issued or Project Costs or developer reimbursement incurred before the execution of this Agreement.

- c) **Boundary.** The boundaries of the Reinvestment Zone are and shall be those boundaries described in the Ordinance, or an amendment thereto revising the boundaries duly approved by the Reinvestment Zone Board of Directors and the City Council of the City.
- d) **Purpose and Program.** Public infrastructure improvements, are to be constructed as nearly as possible in conformity with the Plan. Any additions, changes, revisions or modifications to the Plan made after the date of this Agreement may only be made by the Board of Directors of the Reinvestment Zone and the City Council of the City.
- e) **Appraised Value.** The real property within the boundaries of the Reinvestment Zone is to be appraised January 1, 2018 for ad valorem tax purposes and for establishing the tax increment base referenced in Section 311.012 of the Act.
- f) **Bond Limit.** The Reinvestment Zone Board of Directors, the City Council of City of Lewisville and the Commissioners Court of Denton County shall authorize the total principal amounts of bonds or notes containing a pledge of the Tax Increment.
- g) **Use of TIF Funds.** All amounts paid into the Tax Increment Fund shall be used solely to pay or reimburse cash expenditures for project costs or the principal of and interest on any tax increment bonds or notes issued to finance project costs under the Act, and to pay direct costs properly chargeable under the Act and under generally accepted accounting principles to the administration of the Reinvestment Zone, all in accordance with the Plan.
- h) **Deposit of TIF Funds.** The City and the County shall provide for the collection of its taxes in the Reinvestment Zone as for any other property taxed by the City or County. Each participating taxing authority shall pay into the Tax Increment Fund an amount equal to the tax increment produced by the authority. The City shall invoice the County not later than thirty (30) days after the delinquency date of property taxes in the Tax Increment Zone. Pursuant to the Act, (Section 311.013(c)) the City and County shall make payment to the Tax Increment Fund, pursuant to this agreement, not later than ninety (90) days after the delinquency date of property taxes in the Zone.
- i) **Limits of Obligation of the County.** Except for payment to the Tax Increment Fund as specified in this Agreement of the County ad valorem tax collections on the captured appraised value of real property in the Reinvestment Zone, and subject to the terms and conditions set forth herein, the County shall have no obligation for any costs or expenses associated with the operation of the Reinvestment Zone, including, without limitation, any obligation to pay or repay any debt issued by the City, the Reinvestment Zone, or the Board of Directors of the Reinvestment Zone relating to the Reinvestment Zone or any

costs associated with the operation of Reinvestment Zone or any projects relating thereto.

- j) **Expansion of Zone.** The obligation of the County to participate in the Zone is limited to the area described in City of Lewisville Ordinance 0087-18-ORD. The County's participation does not extend to the tax increment on any additional property added to the Zone by the City or any amendment to the Project Plan by the Zone and the City that would increase the total amount of project costs unless the County specifically agrees to participate in the additional area or amendment to the Project Plan. In addition, the County's participation does not extend to any dedication of revenue from the Tax Increment Fund by the Zone for projects outside the Zone, unless the County agrees to participate in the dedication.
- k) **County Representation.** The County shall have the right to appoint and maintain two (2) voting member on the Board of Directors of the Reinvestment Zone at all times.
- l) **City Representation.** The City shall have the right to appoint and maintain five (5) voting members on the Board of Directors of the Reinvestment Zone at all times.
- m) **Termination of Zone.** Upon the expiration or termination of the Reinvestment Zone, (i) any County Increment remaining in the Project Reimbursement Account shall be returned to the County, and (ii) any City Tax Increment on deposit in the Project Reimbursement Account or Debt Service Account shall be returned to the City.
- n) **Termination of Agreement.** This Agreement shall expire upon the earlier of the following to occur: (i) the payment of the Project Costs up to eighty-eight million six hundred eighty-five thousand nine hundred fifteen dollars (\$88,685,915) upon completion of the Public Improvements, (ii) the expiration of the Zone, or (iii) December 31, 2023 if Districts 1-G and 1-H are not annexed into the City by such Date.

Section 2. The City agrees that City bonds or tax increment bonds of the Reinvestment Zone will not be issued to finance projects contemplated in the Plan until (a) a final Plan has been prepared and adopted by the Board of Directors of the Reinvestment Zone and approved by the City Council of City, and (b) the City has furnished documentation, evidence and assurances satisfactory to the Board of Directors of the Reinvestment Zone to the effect that funds necessary to support cash expenditures and/or the retirement of tax increment bonds will be available either from revenues of the Tax Increment Fund or from other funds provided by the City.

Section 3. This Agreement shall become effective as of the date of the final signature hereto and shall remain in effect until the earlier of: (i) December 31, 2048, or (ii) the date on which the Plan has been fully implemented and all project costs, tax increment bonds, interest on such tax increment bonds , interest on any other obligations at set forth in the Plan, contractual reimbursement obligations or other contractual obligations payable from the Tax Increment Fund have been paid in full, as set forth in the Plan.

Section 4. To the extent of their respective liabilities, the City and the County shall 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 City and County, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without however, waiving any governmental immunity available to the City and County under Texas law and without waiving any defenses of the parties under Texas law.

Section 5. This agreement shall be administered by the City Manager or designee.

Section 6. Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the consent, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to the party intended to receive it at the addresses shown below:

If intended for City, to:

City Manager
City of Lewisville
P. O. Box 299002
Lewisville, Texas 75029

If intended for County, to:

County Judge
Denton County
110 West Hickory Street
Denton, Texas 76201-4168

or to such other addresses as the parties may request, in writing from time to time.

Section 7. This Agreement is made subject to the provisions of the charter and ordinances of the City, as amended; the policies of the County's Commissioners Court; the Texas Constitution, codes, and statutes; and all other applicable state and federal laws, regulations and requirements, as amended. Venue shall be exclusively in Denton County, Texas.

Section 8. This Agreement embodies the complete understanding of City and County with respect to the subject matter hereof superseding all oral or written previous and contemporary agreements between the parties relating to matters herein. The Agreement may be amended, modified, or supplemented only by an instrument in writing executed by City and County.

Section 9. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision. It is the intention of the parties that each provision hereof be construed in a manner designed to effectuate the purposes of such provision to the maximum extent enforceable under applicable law.

Section 10. Failure of either party hereto to insist on the strict performance of any of the covenants or agreements herein contained 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.

Section 11. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees or agents as a result of its execution of this Agreement and performance of the covenants contained herein.

Executed by the parties, by and through their respective authorized officials following approval by their respective governing bodies, on the dates set forth below.

CITY OF LEWISVILLE, TEXAS

Mayor

Date: _____

City Manager

Date: _____

ATTEST

APPROVED AS TO FORM

COUNTY OF DENTON, TEXAS


County Judge

Date: 12.11.18


ATTEST


APPROVED AS TO FORM

