

# Exhibit B

REG 1-27-09  
ITEM # CA-4  
CCM/R 09-014R

## CITY COUNCIL MEMORANDUM

### AGENDA ITEM

**CONSIDER A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A TAX INCREMENT REINVESTMENT ZONE INTERLOCAL AGREEMENT WITH BELL COUNTY AND CENTRAL TEXAS COLLEGE.**

**ORIGINATING DEPARTMENT    PLANNING AND DEVELOPMENT SERVICES**

### **Background**

On November 4, 2008 City Council held a public hearing and created Tax Increment Reinvestment Zone (TIRZ) Number Two. Both Bell County and Central Texas College have agreed to dedicate one-hundred percent (100%) of the incremental taxes that will be generated by increased property value within the zone for the next twenty (20) years.

A TIRZ is a development tool used to finance public improvements in a specifically designated zone using tax increments. The purpose of a TIRZ is to facilitate development or redevelopment of an area that would not likely occur without city involvement. Increment financing refers to the amount of tax generated by the increased property value that results from new development projects. The tax revenue on the incremental or increased property value is dedicated back to the TIRZ to finance public improvements in the zone.

### **Discussion/Conclusion**

On December 16, 2008 the TIRZ Board held its first organizational meeting. The TIRZ Board discussed and considered the TIRZ Interlocal Agreements, to be executed by the City, with both Bell County and Central Texas College. The agreements set the terms and conditions for participation in the TIRZ by the other taxing jurisdictions (See Attachment A).

### **Fiscal Impact**

The projected bonding capacity of the TIRZ will be \$35,450,000 over the next twenty (20) years.

### **Recommendation**

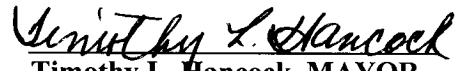
Staff recommends that City Council authorize the City Manager to execute a Tax Increment Reinvestment Zone Interlocal Agreement with Bell County and Central Texas College.

### **BE IT RESOLVED BY THE CITY OF KILLEEN:**

That the above stated staff recommendation is hereby approved and authorized.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Killeen, Texas this 27th day of Jan., 2009, at which meeting a quorum was present, held in accordance with the provisions of the V.C.T.A., § 551.001 *et seq.*

**APPROVED:**

  
Timothy L. Hancock, MAYOR

**ATTEST:**

  
Paula A. Miller, CITY SECRETARY

**APPROVED AS TO FORM:**

  
Kathryn Davis, CITY ATTORNEY

**Attachments:**

A – Interlocal Agreements with Bell County and Central Texas College District.

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF BELL         §

## **INTERLOCAL AGREEMENT**

### **1. PARTIES**

#### **A. Address**

This INTERLOCAL AGREEMENT (“Agreement”) is made by and between the CITY OF KILLEEN, TEXAS (“City”), a municipal corporation and home-rule city of State of Texas, principally situated in BELL COUNTY, acting by and through its governing body, the City Council; the COUNTY OF BELL, acting by and through the BELL COUNTY COMMISSIONER’S COURT, located at 101 E. Central Avenue, Belton Texas 76513. This Agreement is made pursuant to Chapter 791 of the Texas Government Code and Section 311.013 of the Texas Tax Code.

The initial addresses of the parties, which one party may change giving written notice of its changed address to the other parties, are as follows:

<u><b>CITY</b></u>	<u><b>BELL COUNTY</b></u>
City Manager	County Judge
City of Killeen	Bell County
City Hall	Bell County Court House
101 North College Street	101 E. Central Avenue
Killeen, Texas 76541	Belton, Texas 76513

## B. Index

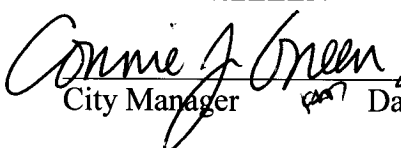
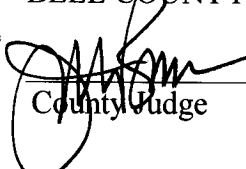
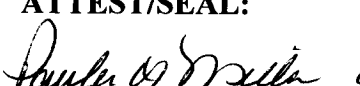

The City and BELL COUNTY hereby agree to the terms and conditions of the Agreement. This Agreement consists of the following sections:

<u>Section</u>	<u>Description</u>	<u>Page</u>
I.	Parties	1
II.	Definitions	4
III.	Background	5
IV.	Obligations of BELL COUNTY	5
V.	Obligations of City and Zone	7
VI.	Terms and Termination	7
VII.	Miscellaneous	8
Exhibit "A"	City of Killeen Ordinance No.08-089	
Exhibit "B"	Preliminary Reinvestment Zone Project Plan and Financing Plan	

## C. Parts Incorporated

All of the above described sections and documents are hereby incorporated into this Agreement by this reference for all purposes.

IN WITNESS HEREOF, the City, and BELL COUNTY have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF KILLEEN	BELL COUNTY
 City Manager	 County Judge
2-17-2009 Date	10/20/2008 Date
ATTEST/SEAL:	
 City Clerk	 County Clerk
02/17/09 Date	2/19/09 Date

**COUNTERSIGNED**

Barbara L. Smith 2-17-09  
City Finance Director Date

**APPROVED**

Kathryn D. Smith 2-17-09  
City Attorney Date

(The remainder of this page is intentionally left blank.)

## II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

*“Agreement”* means this agreement between the City, BELL COUNTY and the Zone.

*“Agreement Term”* is defined in Section VI.

*“Captured Appraised Value”* means the captured appraised value of the Zone as defined by Chapter 311, Texas Tax Code.

*“City”* is defined in Section I of this Agreement and includes its successors and assigns.

*“Countersignature Date”* means that date shown as the date countersigned by the City Controller on the signature page of this Agreement.

*“BELL COUNTY”* is defined in Section IV of this Agreement and includes its successors and assigns.

*“BELL COUNTY Tax Increment Participation”* as defined in Section IV of this Agreement.

*“Project Plan”* means the project plan and the reinvestment zone financing plan for the Zone adopted by the Board of Directors of the Zone and approved by the City Council of the City.

*“Tax Increment Fund”* means the tax increment fund created by the City in the City Treasury for the Zone.

*“TIRZ Board”* means the Tax Increment Reinvestment Zone Board of Directors or the Zone Board.

*“Zone”* means Reinvestment Zone number two, City of Killeen, Texas created by the City by Ordinance No. 08-089.

Other terms used herein shall have the meanings specified herein or ascribed to them in Chapter 311, Texas Tax Code.

### **III. BACKGROUND**

By Ordinance No. 08-089, the City created the Zone for the purpose of development and redevelopment. The City will contribute one hundred percent (100%) of the City tax increments produced in the Zone to the Tax Increment Fund. BELL COUNTY desires to participate in the Zone in consideration for the agreements set forth below.

### **IV. OBLIGATIONS OF BELL COUNTY**

#### **A. Tax Increment Participation BELL COUNTY**

For and in consideration of the agreements of the parties set forth herein, and subject to the remaining subsections of this section, BELL COUNTY agrees to participate in the Zone by contributing one hundred percent (100%) of its M & O and debt service tax rate on the annually calculated tax increment produced in the Zone attributable to BELL COUNTY to the Tax Increment Fund during the term of this Agreement, and exclusive of the road district tax rate in its entirety.

#### **B. Tax Increment Limitation**

Subject to the limitations set out in this Agreement, BELL COUNTY agrees to pay the BELL COUNTY Tax Increment participation to the Tax Increment Fund during the term of this Agreement. BELL COUNTY shall not be required to pay tax increment into the Tax Increment Fund after twenty (20) years from the date the Zone has been created unless:

1. Bonds have been issued from the Zone under section 311.015 of the Texas Tax Code to finance a portion of the project;
2. The City has acquired property in the Zone pursuant to the Project Plan; or
3. Construction of a project or projects pursuant to the Project Plan has begun in the Zone.

BELL COUNTY'S Tax Increment Participation shall be based on and limited to taxes actually collected on the Captured Appraised Value of the Zone. BELL COUNTY shall not be obligated to pay the BELL COUNTY Tax Increment Participation from other BELL COUNTY taxes and revenues. The obligation to pay the BELL COUNTY Tax Increment Participation shall accrue as taxes collected by BELL COUNTY on the Captured Appraised Value, and payment shall be due no later than the 90<sup>th</sup> day after the delinquency date, and in no instance later than May 1<sup>st</sup> of each calendar year. The City agrees that any interest or penalties collected by BELL COUNTY with respect to taxes included in the BELL COUNTY Tax Increment Participation shall be retained by BELL COUNTY.

**C. Use of BELL COUNTY Tax Increment Participation Funds**

Money may be disbursed from the Tax Increment Fund only after adoption of the Project Plan by the TIRZ Board and approval by the CITY OF KILLEEN pursuant to Sections 311.001 and 311.014 of the Texas Tax Code.

**D. Expansion of Zone**

The obligation of BELL COUNTY to participate in the Zone is limited to the area described in Ordinance No. 08-089; BELL COUNTY participation shall not extend to the tax increment on any additional property added to the Zone by the City unless BELL COUNTY approves the participation.

**E. Board of Directors**

Notwithstanding anything to the contrary the CITY OF KILLEEN Ordinance No. 08-089 which created the Zone, BELL COUNTY shall have unequivocal right to appoint to and maintain two (2) member(s) on the Zone Board of Directors. Failure of BELL COUNTY to appoint a person to the Board of Directors of the Zone shall not be deemed a waiver of BELL COUNTY'S right to amend an appointment by a later date.



## **V. OBLIGATIONS OF CITY AND ZONE**

### **A. Project Plan**

Approval by both the TIRZ Board and the City Council shall be required prior to the adoption and amendment of the Project Plan. The TIRZ Board at any time may adopt an amendment to the Project Plan consistent with the requirements and limitations of Chapter 311 of the Texas Tax Code. The amendment takes effect on approval by the City Council. That approval must be by ordinance. If an amendment reduces or increases the geographic area of the zone, increases the amount of bonded indebtedness to be incurred, increases or decreases the percentage of a tax increment to be contributed by a taxing unit, increases the total estimated project costs, or designates additional property in the zone to be acquired by the City, the approval must be by ordinance adopted after a public hearing at which an interested person may speak for or against the proposed amendment. Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the City. Additionally, the City must provide a reasonable opportunity for the owner of property to protest any amendments to the Project Plan. Project costs may be revised upward/downward within the total budget, thereby not increasing or decreasing the total budget, without amending the Project Plan

## **VI. TERM AND TERMINATION**

### **A. Agreement Term**

This Agreement shall become effective as of Feb. 17, 2009 and shall remain in effect until December 31, 2028. The first payment of increment taxes by BELL COUNTY under this Agreement shall be for those taxes levied by BELL COUNTY in the year 2009 and the last payment by BELL COUNTY under this Agreement is for those taxes levied by BELL COUNTY in the year 2028.

### **B. Disposition of Taxes**

Upon termination of the Zone, the City shall pay to BELL COUNTY all the monies remaining in the Tax Increment Fund that are attributable to the BELL COUNTY Tax Increment Participation.

## **VII. MISCELLANEOUS**

### **A. Severability**

In the event any term, covenant or condition herein contained shall be held to the invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either BELL COUNTY or the City, in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

In the event any term, covenant, or condition shall be held invalid and affects in any manner the limitations of BELL COUNTY contributions or participation, then this Agreement shall be void as to BELL COUNTY, and BELL COUNTY shall have no liability for any incremental or other payments as may otherwise be provided for in this Agreement.

### **B. Entire Agreement**

This Agreement merges the prior negotiations and understanding of the parties hereto and embodies the entire agreement of the parties. There are no other agreements, assurances, conditions, covenants, (express or implied) or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

### **C. Written Agreement**

Unless otherwise provided herein, this Agreement may be amended only by written instrument duly approved and executed on behalf of each party.

#### **D. Notices**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3<sup>rd</sup>) day following the deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified main, return receipt requested) addressed to the respective other party at the address prescribed in Section I of this Agreement or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

#### **E. Non- Waiver**

Failure of any party hereto to insist on the strict performance of any of the agreements herein 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.

#### **F. Assignment**

No party shall assign this Agreement at law or otherwise without the prior written consent of the other parties. No party shall delegate any portion of its performance under this Agreement without the prior written consent of the other parties.

#### **G. Successors**

This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the City or of any trustee, officer, agent or employee of BELL COUNTY.

#### **H. No Waiver Immunity**

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

THE STATE OF TEXAS

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CENTRAL TEXAS COLLEGE DISTRICT

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## **INTERLOCAL AGREEMENT**

### **1. PARTIES**

#### **A. Address**

This INTERLOCAL AGREEMENT ("Agreement") is made by and between the CITY OF KILLEEN, TEXAS ("City"), a municipal corporation and home-rule city of State of Texas, principally situated in BELL COUNTY, acting by and through its governing body, the City Council; the CENTRAL TEXAS COLLEGE, acting by and through the CENTRAL TEXAS COLLEGE DISTRICT BOARD OF TRUSTEES, located at 6200 West Central Texas Expressway, Killeen, Texas 76549. This Agreement is made pursuant to Chapter 791 of the Texas Government Code and Section 311.013 of the Texas Tax Code.

The initial addresses of the parties, which one party may change giving written notice of its changed address to the other parties, are as follows:

<u><b>CITY</b></u>	<u><b>CENTRAL TEXAS COLLEGE</b></u>
City Manager	Chair
City of Killeen	Board of Trustees
City Hall	Central Texas College District
101 North College Street	6200 West Central Texas Expwy.
Killeen, Texas 76541	Killeen, Texas 76549

## B. Index

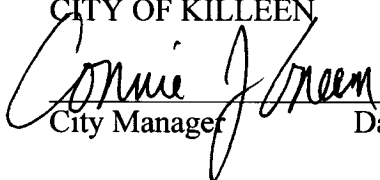
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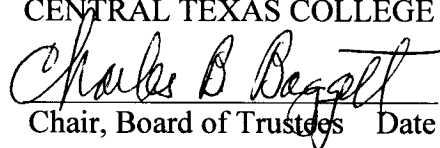
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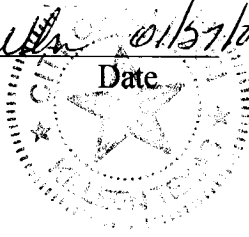
IN WITNESS HEREOF, the City, and CENTRAL TEXAS COLLEGE have made and executed this Agreement in multiple copies, each of which is an original.

CITY OF KILLEEN  
  
City Manager      Date 1-20-09

CENTRAL TEXAS COLLEGE  
  
Chair, Board of Trustees      Date

**ATTEST/SEAL:**

Paul A. Miller 01/27/09  
City Clerk Date



J. Jones 1/17/09  
College Secretary Date

**COUNTERSIGNED**

Barbara L. Sells 1/27/09  
City Finance Director Date

**APPROVED**

Kathryn D. 1-26-09  
City Attorney Date

(The remainder of this page is intentionally left blank.)

## II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

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*“CENTRAL TEXAS COLLEGE”* is defined in Section IV of this Agreement and includes its successors and assigns.

*“CENTRAL TEXAS COLLEGE Tax Increment Participation”* as defined in Section IV of this Agreement.

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### **III. BACKGROUND**

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### **IV. OBLIGATIONS OF CENTRAL TEXAS COLLEGE**

#### **A. Tax Increment Participation CENTRAL TEXAS COLLEGE**

For and in consideration of the agreements of the parties set forth herein, and subject to the remaining subsections of this section, CENTRAL TEXAS COLLEGE agrees to participate in the Zone by contributing one hundred percent (100%) of its M & O and debt service tax rate on the annually calculated tax increment produced in the Zone attributable to CENTRAL TEXAS COLLEGE to the Tax Increment Fund during the term of this Agreement.

#### **B. Tax Increment Limitation**

Subject to the limitations set out in this Agreement, CENTRAL TEXAS COLLEGE agrees to pay the CENTRAL TEXAS COLLEGE Tax Increment participation to the Tax Increment Fund during the term of this Agreement. CENTRAL TEXAS COLLEGE shall not be required to pay tax increment into the Tax Increment Fund after twenty (20) years from the date the Zone has been created unless:

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2. The City has acquired property in the Zone pursuant to the Project Plan; or
3. Construction of a project or projects pursuant to the Project Plan has begun in the Zone.



CENTRAL TEXAS COLLEGE'S Tax Increment Participation shall be based on and limited to taxes actually collected on the Captured Appraised Value of the Zone. CENTRAL TEXAS COLLEGE shall not be obligated to pay the CENTRAL TEXAS COLLEGE Tax Increment Participation from other CENTRAL TEXAS COLLEGE taxes and revenues. The obligation to pay the CENTRAL TEXAS COLLEGE Tax Increment Participation shall accrue as taxes collected by CENTRAL TEXAS COLLEGE on the Captured Appraised Value, and payment shall be due no later than the 90<sup>th</sup> day after the delinquency date, and in no instance later than May 1<sup>st</sup> of each calendar year. The City agrees that any interest or penalties collected by CENTRAL TEXAS COLLEGE with respect to taxes included in the CENTRAL TEXAS COLLEGE Tax Increment Participation shall be retained by CENTRAL TEXAS COLLEGE.

**C. Use of CENTRAL TEXAS COLLEGE Tax Increment Participation Funds**

Money may be disbursed from the Tax Increment Fund only after adoption of the Project Plan by the TIRZ Board and approval by the CITY OF KILLEEN pursuant to Sections 311.001 and 311.014 of the Texas Tax Code.

**D. Expansion of Zone**

The obligation of CENTRAL TEXAS COLLEGE to participate in the Zone is limited to the area described in Ordinance No. 08-089; CENTRAL TEXAS COLLEGE participation shall not extend to the tax increment on any additional property added to the Zone by the City unless CENTRAL TEXAS COLLEGE approves the participation.

**E. Board of Directors**

Notwithstanding anything to the contrary the CITY OF KILLEEN Ordinance No. 08-089 which created the Zone, CENTRAL TEXAS COLLEGE shall have unequivocal right to appoint to and maintain one (1) member on the Zone Board of Directors. Failure of CENTRAL TEXAS COLLEGE to appoint a person to the Board of Directors of the Zone shall not be deemed a waiver of CENTRAL TEXAS COLLEGE'S right to amend an appointment by a later date.

## **V. OBLIGATIONS OF CITY AND ZONE**

### **A. Project Plan**

Approval by both the TIRZ Board and the City Council shall be required prior to the adoption and amendment of the Project Plan. The TIRZ Board at any time may adopt an amendment to the Project Plan consistent with the requirements and limitations of Chapter 311 of the Texas Tax Code. The amendment takes effect on approval by the City Council. That approval must be by ordinance. If an amendment reduces or increases the geographic area of the zone, increases the amount of bonded indebtedness to be incurred, increases or decreases the percentage of a tax increment to be contributed by a taxing unit, increases the total estimated project costs, or designates additional property in the zone to be acquired by the City, the approval must be by ordinance adopted after a public hearing at which an interested person may speak for or against the proposed amendment. Not later than the seventh day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the City. Additionally, the City must provide a reasonable opportunity for the owner of property to protest any amendments to the Project Plan. Project costs may be revised upward/downward within the total budget, thereby not increasing or decreasing the total budget, without amending the Project Plan

## **VI. TERM AND TERMINATION**

### **A. Agreement Term**

This Agreement shall become effective as of 1-27-09 and shall remain in effect until December 31, 2028. The first payment of increment taxes by CENTRAL TEXAS COLLEGE under this Agreement shall be for those taxes levied by CENTRAL TEXAS COLLEGE in the year 2009 and the last payment by CENTRAL TEXAS COLLEGE under this Agreement is for those taxes levied by CENTRAL TEXAS COLLEGE in the year 2028.

### **B. Disposition of Taxes**

Upon termination of the Zone, the City shall pay to CENTRAL TEXAS COLLEGE all the monies remaining in the Tax Increment Fund that are attributable to the CENTRAL TEXAS COLLEGE Tax Increment Participation.

## **VII. MISCELLANEOUS**

### **A. Severability**

In the event any term, covenant or condition herein contained shall be held to the invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either CENTRAL TEXAS COLLEGE or the City, in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

In the event any term, covenant, or condition shall be held invalid and affects in any manner the limitations of CENTRAL TEXAS COLLEGE contributions or participation, then this Agreement shall be void as to CENTRAL TEXAS COLLEGE, and CENTRAL TEXAS COLLEGE shall have no liability for any incremental or other payments as may otherwise be provided for in this Agreement.

### **B. Entire Agreement**

This Agreement merges the prior negotiations and understanding of the parties hereto and embodies the entire agreement of the parties. There are no other agreements, assurances, conditions, covenants, (express or implied) or other terms with respect to the covenants, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

### **C. Written Agreement**

Unless otherwise provided herein, this Agreement may be amended only by written instrument duly approved and executed on behalf of each party.

#### **D. Notices**

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3<sup>rd</sup>) day following the deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified main, return receipt requested) addressed to the respective other party at the address prescribed in Section I of this Agreement or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

#### **E. Non- Waiver**

Failure of any party hereto to insist on the strict performance of any of the agreements herein 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.

#### **F. Assignment**

No party shall assign this Agreement at law or otherwise without the prior written consent of the other parties. No party shall delegate any portion of its performance under this Agreement without the prior written consent of the other parties.

#### **G. Successors**

This Agreement shall bind and benefit the parties and their legal successors. This Agreement does not create any personal liability on the part of any officer or agent of the City or of any trustee, officer, agent or employee of CENTRAL TEXAS COLLEGE.

#### **H. No Waiver Immunity**

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