

**AGREEMENT TO PARTICIPATE IN
TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF PORT LAVACA, TEXAS**

This **AGREEMENT TO PARTICIPATE IN TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF PORT LAVACA, TEXAS** (“**Agreement**”) is entered into by and between the **CITY OF PORT LAVACA, TEXAS** (the “**City**”) and **CALHOUN PORT AUTHORITY** (the “**Port**”).

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

- A. On November 10, 2025, the City Council of the City of Port Lavaca, Texas (the “**Council**”), pursuant to Chapter 311 of the Texas Tax Code, approved Ordinance S-6-25 designating a noncontiguous geographic area that is in the corporate limits of the municipality and the extraterritorial jurisdiction (the “**ETJ**”) as a Reinvestment Zone Number One, City of Port Lavaca, Texas (the “**Zone**”).
- B. Pursuant to and as required by the Act, the City prepared a Preliminary Reinvestment Zone Project Plan and Financing Plan for Tax Increment Reinvestment Zone Number One, City of Port Lavaca, Texas attached as Exhibit C to Ordinance S-6-25 (hereinafter referred to as the “**Preliminary Project and Finance Plan**”) for a proposed tax increment reinvestment zone containing the real property within the Zone. (Ordinance S-6-25 is attached hereto as **Exhibit “A”**).
- C. 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 developments in the Zone will follow. This overall development will result in increased tax revenues and other public benefits for both the City and the Port.
- C. Pursuant to Section 311.013(f) of the Texas Tax Code, the Port 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 Port 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 Port 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 taxable value of all real property taxable by the Port and located in the Zone for that year less the Tax Increment Base.

Preliminary Project and Finance Plan means the project plan for the development and/or redevelopment of the Zone, which will be presented to the TIRZ Board for recommendation of approval, and subsequently presented to the City Council of the City for consideration of approval by ordinance.

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

Tax Increment Base means the total appraised value as of January 1, 2025 of all real property taxable by the Port 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 7 of the Ordinance S-6-25, 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 Port, and (ii) all accrued interest earned on the cash balance of the fund.

TIRZ 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.

TIRZ Ordinance means Ordinance S-6-25 adopted on November 10, 2025, attached hereto as **Exhibit "A"**.

Zone means the certain real properties and boundaries as described in Ordinance S-6-25.

3. DEPOSIT OF TAX INCREMENT.

The Port hereby agrees to deposit each year during the term of the Zone, beginning with the 2026 tax year, fifty percent (50%) of the Port's Tax Increment into the Tax Increment Fund until December 31, 2055 (with the final year's tax increment to be collected by September 1, 2056). The calculation to determine the dollar amount of the Port's Tax Increment to be deposited shall be made in accordance with 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 Port's participation over the life of the Zone is capped at **\$33,488.00** (the “**Maximum Port Contribution**”). Deposits will continue at the percentage rates set forth herein until the Maximum Port Contribution is reached, at which point the Port's obligation to the Tax Increment Fund is complete.

The Port is not obligated to pay the Port's Tax Increment from any source other than taxes collected on the Captured Appraised Value. Furthermore, the Port has no duty or obligation to pay the Port's Tax Increment from any other Port taxes or revenues, or until the Port's Tax Increment in the Zone is actually collected. Any portion of the taxes representing the Port's Tax Increment that are paid to the Port 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 Port'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 Ordinance S-6-25.

Ordinance S-6-25 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 Ordinance S-6-25 is amended and materially changes the Port participation, the Port may suspend payment into the Tax Increment Fund as described in Section 3 until the amendment is approved by the governing body of the Port as an amendment to this Agreement.

4.2. Project Costs.

The Tax Increment deposited into the Tax Increment Fund by the Port shall be used to pay project costs for purposes as set forth and identified in the Project and Financing Plan. All Tax Increment Fund allocations, including but not limited to any management and administrative costs, must be approved by the TIRZ Board in accordance with the Project and Financing Plan. If the Project and Financing Plan as approved by Ordinance S-6-25 dated November 10, 2025 is amended to substantially change the scope and nature of the projects included in the Project and Financing Plan or to include additional projects and associated costs that will increase the total public improvement costs of the Project and Financing Plan, the Port may suspend payment into the Tax Increment Fund as described in Section 3 until the amendment is approved by the governing body of the Port 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 Ordinance S-6-25. If the Zone is expanded, the Port 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 Port as an amendment to this Agreement. Additionally, the Tax Increment deposited into the Tax Increment

Fund by the Port 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 Port as an amendment to this Agreement.

4.4 TIRZ Board Membership.

During the term of the Zone, the TIRZ Board shall include one (1) Port representative and the remaining members of the board shall be designated by the City Council or the other taxing entities participating in the Tax Increment Fund. The governing body of the Port shall provide the name and address of its designated representative to the City Council of the City for appointment to the TIRZ Board. The City Council of the City shall appoint the designated representative to the TIRZ Board. If the designated representative is not appointed to the TIRZ Board or the TIRZ Board does not consist of the representative stated above, the Port shall suspend payment into the Tax Increment 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 Port obligations have been met, which currently is the earlier of (i) the date on which the tax increment for tax year 2055 has been paid (December 31, 2055 (with the final year's tax increment to be collected by September 1, 2056), (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 Port Contribution is reached.

Nothing in this agreement limits the authority of the Board of the Calhoun Port Authority to extend the term of the Agreement. Upon termination of the Agreement, the obligation of the Port 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. TAX INCREMENT 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 Port 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.

7. RESPONSIBILITY FOR ACTS.

The City and the Port 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 Port, 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 Port Lavaca, Texas
Attn: City Manager
202 N Virginia
Port Lavaca, Texas 77978

Port:

Calhoun Port Authority
Attn: Executive Director
P.O. Box 397
Point Comfort, Texas 77978

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 district courts located in Calhoun County. 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 Port 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 Port 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:

CALHOUN PORT AUTHORITY

By: _____
Jay Cuellar, Board Chairman

Date: _____

ATTEST:

By: _____
Louis De la Garza, Board Secretary.

THE STATE OF TEXAS §
 §
PORT OF CALHOUN §

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Jay Cuellar** 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 **CALHOUN PORT AUTHORITY**, and as the **Board Chairman** 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 _____, 2025.

Notary Public in and for
The State of Texas

The City of Port Lavaca 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 PORT LAVACA, TEXAS

By: _____
Jack Whitlow, Mayor

Date: _____

ATTEST:

By: _____
Mandy Grant, City Secretary

THE STATE OF TEXAS §
 §
PORT OF CALHOUN §

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Jack Whitlow** 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 PORT LAVACA**, a municipal corporation of Calhoun County, Texas, and as the **MAYOR** 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 _____, 2025.

Notary Public in and for
The State of Texas

EXHIBIT "A"