



BAY CITY

MINUTES • NOVEMBER 2, 2017

Council Chambers

Workshop

5:30 PM

**1901 5TH STREET
BAY CITY, TX 77414**

I. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Becca Sitz	Councilwoman	Present	
Jason Childers	Councilman	Excused	
Mark A. Bricker	Mayor	Present	
Chrystal Folse	Councilwoman	Present	
William Cornman	Mayor Pro-Tem	Present	
Julie Estlinbaum	Councilwoman	Present	

II. APPROVAL OF AGENDA

E/F

III. FUTURE ACTION ITEMS

1. Presentation

~ DISCUSS THE DEVELOPMENT AGREEMENT WITH MARGUERITE MEADOW, LLC, FOR THE DEVELOPMENT OF PUBLIC IMPROVEMENTS WITHIN REINVESTMENT ZONE NUMBER THREE (3), CITY OF BAY CITY, TEXAS.

BCCDC Executive Director, DC Dunham

Finance Director, Scotty Jones reviewed the Development Agreement - Marguerite Meadow Subdivision.

Bay City Community Development Corporation Executive Director, DC Dunham assisted with the presentation.

Both addressed questions asked by Councilman Childers that he submitted in writing.

2. Presentation

~ DISCUSS APPROVING ADDENDA TO THE PRELIMINARY PROJECT AND FINANCE PLANS FOR THE REINVESTMENT ZONES OF THE CITY OF BAY CITY TO INCORPORATE THE ORDER OR PRIORITY OF PAYMENTS FROM THE TAX INCREMENT FUNDS.

BCCDC Executive Director, DC Dunham

Finance Director, Scotty Jones presented the addendum to the preliminary project and finance plan for discussion.

3. Presentation

~ DISCUSS AUTHORIZING THE BOARD OF DIRECTORS OF THE REINVESTMENT ZONES OF THE CITY OF BAY CITY BOARD TO EXERCISE THE CITY'S POWERS WITH RESPECT TO THE

ADMINISTRATION, MANAGEMENT, AND OPERATION OF THE ZONES AND THE IMPLEMENTATION OF THE PROJECT PLANS FOR THE ZONES.

BCCDC Executive Director, DC Dunham

Finance Director, Scotty Jones lead the discussion regarding the powers of the TIRZ 3 Board. DC Dunham assisted.

TIRZ 1 & 2 are recommended to be left as they are written.

Attorney Shannon Kackley joined the meeting at 6:17PM by telephone.

Signature questions were addressed.

Council members questioned why these documents needed to be changed.

Councilman Cornman wants a similar addendum for TIRZ #1 & 2. Redo documents.

4. Presentation

~ DISCUSS AUTHORIZING THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION (BCCDC) TO ENTER INTO A PERFORMANCE AGREEMENT PROVIDING FOR AN ECONOMIC INCENTIVE FROM THE BCCDC TO MCCOY CORPORATION IN CONSIDERATION OF THE COMPANY PERFORMING THE OBLIGATIONS IMPOSED UPON AS SPECIFIED IN A PERFORMANCE AGREEMENT.

BCCDC Executive Director DC Dunham

DC Dunham reviewed the McCoy performance agreement with Council members.

5. Presentation

~ DISCUSS COUNCIL MEMBER COMPENSATION.

Councilman Bill Cornman

Councilman Cornman reviewed research he had done on the subject of council compensation.

6. Presentation

~ DISCUSS PARKS AND RECREATION MASTER PARKS PLAN.

Parks & Recreation Director, Shawn Blackburn

Parks Director, Shawn Blackburn reviewed the Parks Plan.

Councilman Cornman - Asked how many people use a park? Usage?

Councilwoman Sitz - Suggested evaluating what we have. Return holdings to private holdings so we can take care of what we have left.

IV. ITEMS/COMMENTS FROM MAYOR AND COUNCIL MEMBERS

None

V. ADJOURNMENT

AGENDA NOTICES:

Action by Council Authorized:

The City Council may vote and/or act upon any item within this Agenda. The Council reserves the right

to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code Section 551.071, to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The City Attorney may appear in person, or appear in executive session by conference call in accordance with applicable state law.

Attendance By Other Elected or Appointed Officials:

It is anticipated that members of other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be Agenda City Council August 8, 2013 in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission or committee subject to the Texas Open Meetings Act.

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

This is to certify that the above notice of a Workshop was posted on the front window of the City Hall of the City of Bay City, Texas on Friday, October 27, 2017 before 5:30 p.m. Any questions concerning the above items, please contact Mayor Mark A. Bricker at (979) 245-2137.

David Holubec
City Secretary



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 11/02/17 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2892

DISCUSSION ITEM (ID # 2892)

**~ DISCUSS THE DEVELOPMENT AGREEMENT WITH
MARGUERITE MEADOW, LLC, FOR THE DEVELOPMENT OF
PUBLIC IMPROVEMENTS WITHIN REINVESTMENT ZONE
NUMBER THREE (3), CITY OF BAY CITY, TEXAS.**

COMMENTS - Current Meeting:

Finance Director, Scotty Jones reviewed the Development Agreement - Marguerite Meadow Subdivision.

Bay City Community Development Corporation Executive Director, DC Dunham assisted with the presentation.

Both addressed questions asked by Councilman Childers that he submitted in writing.

**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF BAY CITY AND MARGUERITE MEADOW, LLC**

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF BAY CITY (the "City"), a Texas home rule municipality and MARGUERITE MEADOW, LLC ("Developer"), a Texas limited liability company. The City and Developer may be referred to singularly as "Party" and collectively as the "Parties."

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

WHEREAS, Developer petitioned the City for the creation of the Reinvestment Zone Number Three, City of Bay City, Texas (the "Zone") in order to be reimbursed for Project Costs incurred in the development of the Project: and

WHEREAS, as an inducement to Developer, the City created the Zone on February 23, 2017 under Ordinance Number 1593 pursuant to the TIF Act; and

WHEREAS, the City approved and adopted a Preliminary Project Plan and Financing Plan (collectively "TIRZ Plan") for the Zone on February 23, 2017, which was amended on October 12, 2017; and

WHEREAS, the TIF Act authorizes the expenditures of funds derived within a reinvestment zone for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality consistent with a project and financing plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined by the TIF Act; and

WHEREAS, Developer is the owner of approximately 20 acres of real property (the "Property") located on the eastern portion of Marguerite Street in the City which it proposes to develop a deed restricted single-family subdivision; and Developer has requested reimbursement for its cost of constructing certain public improvements pursuant to the TIRZ Plan; and

WHEREAS, the City has determined the Project will utilize under-developed and unused property, provide for additional residential opportunities within the City, and produce additional tax revenues for the various taxing units authorized to levy taxes on real property within the Zone; and

WHEREAS, the Zone is intended and needed to provide the financing and management tools to facilitate the development of the Project; therefore, it is understood that absent such tools, the Project would not occur solely through private investment in the foreseeable future, and would not consist of deed restricted single-family subdivision contemplated by the Parties; and

WHEREAS, Developer will construct certain public improvements described on **Exhibit C**, to implement the TIRZ Plan, and the City will reimburse Developer all or a portion of Developer's cost for the public works and public improvements in accordance with this Agreement; and

WHEREAS, pursuant to the TIRZ Plan, certain tax revenues based upon the incremental increase over the base year (“TIF Revenue”) will flow into a fund to be administered by the City, known as the TIRZ Fund; also, the City may receive other gifts, grants or other revenue to be accounted for separately from the TIRZ Fund, but used only for duly approved authorized purposes of the Zone;

WHEREAS, the City, after due and careful consideration, has concluded that the development of the Property as provided herein will further the growth of the City, improve the environment of the City, increase the assessed valuation within the City, foster increased economic activity with the City, upgrade public infrastructure serving the Property, and otherwise be in the best interest of the City by furthering the health, safety, and welfare of its residents and taxpayers, and that entering into this Agreement is necessary and convenient to implement the TIRZ Plan and achieve their purposes.

NOW THEREFORE, in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section: Definitions

Agreement means this Agreement and all attachments hereto.

City means the City of Bay City, Texas. In the event the City delegates the administration of the Zone to the Zone Board, City includes the Zone.

Letter of Acceptance means a certificate of the City certifying the completion of a discrete portion of the Public Improvements constructed by or under the supervision of Developer in accordance with this Agreement.

Maximum Reimbursement Amount means \$2,710,000.00. The Developer and the City may revise the Maximum Reimbursement Amount based on changed circumstances concerning the development of the Project.

Phase means any part of the Public Improvements for which, from time to time, Developer elects to submit Plans to the City for approval.

Plans mean the plans, specifications, schedules and related construction contracts for the Public Improvements approved pursuant to the applicable standards and directives of the City and any other applicable governmental entity.

Project means the real estate development for the Property in accordance with the terms of the Project Plan and this Agreement described in **Exhibit B**.

Project Engineer means the licensed engineering firm designated by Developer as Developer’s engineer from time to time.

Project Costs mean and include all costs defined as “project costs” in Section 311.002 of the

TIF Act as now or hereafter provided, incurred in connection with the design, construction, or development of the Public Improvements identified in **Exhibit C**.

Property means approximately 20 acres of real property shown on Exhibit A, and any adjacent right-of-way and publicly owned property that Developer acquires or obtains permission to develop.

Public Improvements mean the various improvements to be funded by Developer in support of the Project identified in **Exhibit C**.

Reimbursement means the actual Project Costs of the Public Improvements.

Substantial Completion means the time at which the construction of a Public Improvement (or specified part thereof) has progressed to the point where such Public Improvement (or specified part thereof) is sufficiently complete to be utilized for the purpose for which it is intended, as determined by the City.

TIF Act means the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended.

TIF Revenue means the amount of tax revenue derived from or attributable to the Property and the Project collected as determined pursuant to Section 311.012 of the TIF Act, the Ordinance creating the Zone, and the participation agreements with the other taxing entities and deposited in the TIRZ Fund in accordance with the TIRZ Plan.

TIRZ means the Tax Increment Reinvestment Zone Number 3, City of Bay City created by the City over the Property.

TIRZ Fund means the tax increment fund created by the City pursuant to the TIF Act and the ordinance adopted by the City creating the Zone.

TIRZ Plan means the Reinvestment Zone Project Plan and Financing Plan.

2. Section: Recitals

All of the recitals above are hereby found to be true and are hereby incorporated into this Agreement as if fully set forth herein in their entirety.

3. Section: Project & Financing

Developer shall, at its sole cost and expense, design, construct, and install, within the time frame provided by this Agreement, the Public Improvements. All Public Improvements undertaken by Developer shall be designed, constructed, and installed in a good and workman like manner in accordance with all applicable laws, statutes, ordinances, rules and regulations of the City and any other governmental authority having jurisdiction over the Project. All Public Improvements shall be constructed and installed within existing or future rights-of-way, easements, parks, or City property.

Developer shall submit plans and specification for each Phase of the Public Improvements to the City for review and approval prior to the commencement of construction of any Public Improvement. Such plans and specifications shall be prepared by the Project Engineer and shall be in conformance with City design standards. The City's approval of the plans and specifications shall not be unreasonably withheld, conditioned, or delayed.

Developer shall present a final subdivision plat of the Property for approval by the City in accordance with the City's Code of Ordinances and state law.

Developer shall construct the Public Improvements in such Phases and in such sequences as Developer determines.

Developer shall submit plans for the initial Phase of Public Improvements to the City for approval within twelve (12) months of the Effective Date.

Developer understands and agrees that the cost of the Project, to the extent that the improvements associated with the Project are not public improvements ("Private Improvements") shall be funded by and through Developer's own capital or other financing means arranged and obtained by Developer. Further. The Reimbursements to be made to Developer pursuant to this Agreement are not intended to reimburse Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

4. Section: Insurance

Developer shall obtain and maintain, or cause its contractors and subcontractors to obtain and maintain, in full force an effect during the time that any Public Improvement is being constructed and installed by Developer under this Agreement insurance coverage in the following amounts:

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for:	1,000,000 per occurrence, 2,000,000 general aggregate	City to be listed as additional insured and provide 30 days notice of cancellation or material change in coverage
Premises/Operations	Or	
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation

Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
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The policies of insurance shall name the City as additional insureds. All policies of insurance must provide waiver of subrogation in favor of the City. All liability policies must be issued by a company with a Certificate of Authority from the Texas Department of Insurance to conduct business in the State of Texas. The issuing company must have a rating of at least B+ and a financial size of Class VI or better according to the current year's *Best's Key Rating Guide, Property-Casualty United States*.

All insurance policies shall have on their face, or by endorsement, that the insurance company waives any subrogation against the City and it shall give not less than (fifteen) 15 days written notice to the City before the policy is cancelled, materially changed, or non-renewed. Within the (fifteen) 15 day period, Developer shall provide other sufficient policies in lieu of those about to be cancelled, materially changed, or not renewed so as to maintain in effect the required coverage. If Developer fails to comply with these insurance requirements, the City, at its sole discretion, may refuse to release Reimbursements to Developer pursuant to this Agreement until Developer complies with this provision. Developer acknowledges and agrees such a refusal does not constitute a default of this Agreement.

5. No Competitive Bidding

Developer's construction of the Public Improvements does not require competitive bidding pursuant to state law.

6. TIF Participation: Reimbursement of TIF Revenue to Developer

The City shall promptly deposit or cause to be deposited into the TIRZ Fund the TIF Revenues collected with respect to the Property by the City and other taxing entities that participate in the Zone and are received by the City under agreements between the City and such other entities, and to disburse such TIF Revenues so deposited to pay Project Costs for any Phase in an amount equal to the actual Project Costs for each such Phase. The City shall pay Reimbursements to Developer for Public Improvements for any Phase as to which Substantial Completion has occurred on an annual basis on June 1 of each year to the extent of the sums available in the TIRZ Fund for this Zone until the Public Improvements under this Agreement have been paid in full or until the expiration of this Agreement. The City may not make any additional payments once the total payments under this Agreement equal the Maximum Reimbursement Amount. The Maximum Reimbursement Amount has been established based on the anticipated scope of the Public Improvements based on Developer's current estimate of the cost of the Public Improvements. The cost estimates are estimates only and the actual costs may vary; however, the amount of the Maximum Reimbursement Amount shall not change.

Whenever Developer has completed a Phase of the Public Improvements, Developer shall give written notice to the City, which notice shall be accompanied by (1) the Project Engineer's certification that such Phase of the Public Improvements has been substantially completed in

accordance with the plans and specifications and (2) Developer's certification of the Project Costs incurred by Developer in completing the Phase. Developer's certification shall include substantiation of Project Costs in such reasonable detail as the City may reasonably request.

The City shall have the right to inspect the Property during construction.

The City reserves the right, when payments come into the TIRZ Fund, to prepay all or any portion of the Maximum Reimbursement Amount under this Agreement at any given time. If the City obtains any additional funds allowed by law, the City may fully reimburse Developer the existing unpaid balance under this Agreement.

7. Section: No automatic acceptance of Public Improvements

No Reimbursement paid to Developer shall be deemed an acceptance by the City of any Public Improvement.

8. Reimbursement Limited to TIF Fund

Developer understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the City by this Agreement ("Reimbursement") shall be made solely from then-currently available revenues in the TIRZ Fund and subject to the TIRZ Plan and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIRZ Fund to timely pay Developer any part of the Reimbursement, the City shall pay Developer such portion of the Reimbursement that may be available at the time. The balance of any due but unpaid Reimbursement shall be carried forward without interest and paid by the City in the first year in which there is sufficient revenue in the TIRZ Fund to pay such balance. Developer agrees that it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or the City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2037, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the TIF Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIRZ Fund or due to Developer's failure to meet any condition or obligation under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs, and any obligation of the City to pay Developer any remaining balance of the Reimbursement shall automatically expire.

Following the completion of a Phase, Developer shall convey the Public Improvements to the City comprising such Phase to the City free and clear of all liens. A conveyance to the City shall be evidenced by a Plat filed for the Project, and by any other instrument which the City may reasonably request, and shall include an assignment of all contractor's warranties and all performance and payment bonds. Prior to the acceptance of such conveyance to the City, Developer shall provide the City with releases from the contractors, subcontractors, and suppliers of materials who have provided labor and materials for the Public Improvements.

This Agreement shall also operate as a Performance Agreement under Section 98-40.1 of the City's Code of Ordinances. Developer hereby guarantees the construction of the Public Improvements. Notwithstanding any other provisions herein, Developer may record an approved plat prior to the completion of the construction of the Public Improvements if Developer provides

a guarantee of performance in accordance with Section 98-40.1(1) of the City's Code of Ordinances.

The City shall provide Developer with a Letter of Acceptance upon the City's approval and acceptance of Public Improvements. Until the City accepts a Public Improvement, Developer shall maintain and operate the Public Improvement. The City's issuance of a Letter of Acceptance shall not be unreasonable withheld, delayed, or conditioned.

9. Section: Payment and Performance Bonds

Developer shall, in connection with the construction of the Public Improvements, provide performance and payment bond to ensure completion of the Public Improvements in accordance with the City's Code of Ordinances and Chapter 2253 of the Texas Government Code, as amended, or cause its contractors to provide performance and payment bonds in compliance with the City's Code of Ordinances and Chapter 2253 of the Texas Government Code, as amended.

10. Public Improvements to be Owned by the City

It is the intent and agreement of Developer and the City that the Public Improvements will become property of the City. All land transferred to the City, other than land dedicated to the City on a plat or other dedication, shall be conveyed to the City by a warrant deed. All costs of title insurance and costs associated with closing on the conveyance, if any, shall be borne by Developer. Developer shall furnish to the City a preliminary title report for land with respect to the Public Improvements, including any related rights-of-way, to be acquired and accepted by the City from Developer, for review and approval at least (thirty) 30 calendar days prior to the transfer of title of a Public Improvement to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the land or right-of-way covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the Public Improvements until Developer has cured such objections to title to the satisfaction of the City. The failure of Developer to provide a title report acceptable to the City on any Public Improvement shall constitute an event of default under this Agreement. Upon failure of Developer to cure such default within thirty (30) days of receipt of notice from the City, Developer shall refund to the City all Reimbursements received for the cost of such Public Improvement.

11. License to Construct Public Improvement on City Land and Right-of-way

If any Public Improvement is located on City land or right-of-way, the City hereby grants Developer a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance by the City) of the Public Improvement. The provisions for inspection and acceptance of such Public Improvement otherwise herein shall apply.

12. Right of Offset

The City may, at its option, offset any amounts due and payable to Developer under this Agreement against any debt (including taxes) lawfully due to the City, or any other taxing unit participating in the Zone, from Developer regardless of whether the amount due arises pursuant to

the terms of this Agreement or otherwise and regardless of whether the debt in question has been reduced to judgment by a court.

13. Prohibition of Liens

Notwithstanding any delay or failures by the City to make any Reimbursements pursuant to the terms of this Agreement, Developer shall be responsible for assuring no liens or encumbrances are placed on any property upon which any Public Improvements are constructed. Nothing in this Agreement shall be deemed to prohibit Developer or the City from contesting in good faith the validity or amount of any mechanic's or materialman's lien or judgment nor limit the remedies available to Developer or the City with respect so long as such delay in performance shall not subject the Public Improvements to foreclosure, forfeiture, or sale.

14. Term and Termination

The Effective Date of this Agreement is the last date approved by all of the Parties. The Effective Date is _____. The term of this Agreement shall begin upon the Effective Date and end upon the earlier of, unless terminated sooner in accordance with the terms of this Agreement:

- (a) the complete performance of all obligations and conditions precedent by the Parties to this Agreement; or
- (b) the expiration of the term of the Zone; provided, however, that the obligation of the City to apply TIF Revenues toward any unpaid part of the Public Improvements shall survive as to any TIF Revenues accrued but not actually collected until subsequent to the expiration of the term of the Zone.

This Agreement may be terminated by the mutual written consent of the City and Developer, in which event the City may either execute contracts for or perform any remaining work related to the Public Improvements not accepted by the City and use all or any portion of the remaining Reimbursements to pay for the Public Improvements, and Developer shall have no claim or right to any further Reimbursements, except as provided by written consent.

The City may terminate this Agreement upon the occurrence of any of the following events:

- 1) Developer is in default or otherwise breaches its obligations and fails to cure such default in accordance with Section 18 (Events of Default & Remedies); or
- 2) Developer is delinquent in the payment of any tax or assessment related to the Property.

Upon termination, at the option of the City, Developer shall (i) convey to the City title to any and all properties upon which Public Improvements were constructed, in whole or in part, or upon which Public Improvements were intended to be constructed.

Upon termination, the City either may execute contracts for or perform any remaining work related to the Public Improvements not accepted by the City and request and be paid Reimbursements in accordance with the terms of this Agreement. Developer shall be entitled to payment of Reimbursements for any work it has completed up to the date of termination, except

as provided by written consent. Developer shall have no claim or right to any further Reimbursements for Public Improvements.

15. Section: Force Majeure

It is expressly understood and agreed by the Parties that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Parties, their affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

16. Section: Indemnity

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE ZONE, THE BOARD, THE CITY, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, ASSIGNS AND SUCCESSORS, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES, INTEREST, AND ATTORNEY FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS) OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE ZONE, BOARD OR CITY OR THEIR RESPECTIVE OFFICIALS, OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND ZONE, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. HOWEVER, NOTHING IN THIS SECTION WAIVES ANY IMMUNITY OR OTHER DEFENSE AVAILABLE TO THE ZONE, BOARD, OR CITY UNDER TEXAS OR FEDERAL LAW. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Nothing in this section may be construed as waiving governmental immunity available under state law. This provision is solely for the benefit of Developer and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

17. Section: Determination of Rough Proportionality

Developer agrees that the construction of the Public Improvements is roughly proportional to the need created by the development of the Property, and Developer hereby waives any claim that it may have. Developer further agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said construction and dedication are related both in nature and extent of impact of the development of the Property. Developer waives and releases all claims against the City related to rough proportionality and individual determination requirements mandated by Chapter 212 of the Local Government Code, as well as other requirements of a nexus between development conditions and the projected impact of the development of the Property.

18. Events of Default & Remedies

A default exists if any Party fails to perform or observe any material covenant contained in this Agreement, including exhibits, which is not otherwise excused under the terms of this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event that would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.

If a default occurs and continues after thirty (30) days' notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. No Party, however, shall pursue remedies against any Party as long as (i) the defaulting party has commenced to cure such default within the 30 days following notice, and (ii) the defaulting party proceeds in good faith and with due diligence to remedy and correct the default.

19. Section: Access to Books

The City shall, upon reasonable prior written notice to Developer and during normal business hours, have the right to inspect and audit Developer's records, books, and all other relevant records related to the construction of the Public Improvements.

The City shall maintain complete books and records showing all deposits to and disbursements from the TIRZ Fund, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities and in accordance with the TIF Act. Such books and records shall be available for examination by the duly authorized officers and agents of the Developer during normal business hours upon reasonable written notice prior to the date of examination. The City shall maintain such books and records throughout the term of this Agreement and for four years thereafter, subject to the requirements of the TIF Act.

20. No Joint Venture

Nothing contained in this Agreement is intended by the Parties to create a partnership or

joint venture among the Parties with respect to this Agreement, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of another Party for any purpose whatsoever. No Party assumes any of the liability of any other Party for any acts or obligations.

21. Authority to Contract

Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of a Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement represent that they have authorization to sign on behalf of their respective entity.

22. Venue and Governing Law

This Agreement is performable in Matagorda County, Texas and venue of any action arising out of this Agreement shall be exclusively in a state district court in Matagorda County, Texas.

23. Section: Notices

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of any Party to designate a different address by notice given in the manner just described.

If intended for the City, to:

Mayor
City of Bay City
1901 5th Street
Bay City, Texas 77414

With a copy to:
DENTON NAVARRO ROCHA BERNAL & ZECH, PC
2500 W. William Cannon, Ste. 609
Austin, Texas 78745
Attention: City Attorney

If intended for Developer, to:

Marguerite Meadow, LLC
142 CR 222
Bay City, Texas 77414

24. Section: No Third Party Rights

This Agreement is solely for the benefit of the Parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

25. Section: No Undocumented Works

Developer certifies that to its knowledge it does not and will not knowingly employ any undocumented worker in connection with the construction of the Public Improvements. If after receiving any Reimbursements set forth in this Agreement Developer is convicted under 8 U.S.C. Section 1324a(f) for employing an undocumented worker in connection with the construction of the Public Improvements, Developer shall repay the total amount of the Reimbursement it received plus interest at a rate of the prime rate published in the Wall Street Journal plus two percent (2%) per annum, not later than the 120th day after Developer is convicted of this offense. For the purposes of this section, the Parties deem the date of conviction as the date the City notifies Developer of the violation 8 U.S.C. Section 1324a(f).

26. Severability

In case any one or more of the provisions of this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect by a court or agency of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other remaining provisions hereof, and this Agreement shall remain in full force and effect and be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

27. Section: Counterparts & Signatures

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. This Agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

28. Section: Captions

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

29. Section: Successors and Assigns

The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. Provided, however, Developer shall not assign this Agreement without prior written approval, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, written approval of the City shall not be required for an assignment to an Affiliate of Developer, collateral assignments of the reimbursements to other developers or lenders. "Affiliate of Developer" as used herein, includes any parent, sister, partner, joint venturer, or subsidiary entity of Developer; any entity in which Developer is a major shareholder, owns an equity interest, or is a joint venturer or partner (whether general or limited), or to Developer's financial institution.

30. Section: Limited Rights and Non-waiver

This Agreement is intended only to establish the rights and obligations as among the Parties hereto and it creates no right, expectation, benefit or obligation for or toward any other person or entity. Nothing stated or omitted from this Agreement shall be construed as a waiver of any defense, affirmative defense, or immunity available to the City and their respective officials, directors, members, employees, agents, assigns, successors.

31. Section: Construction

The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

32. Entire 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 Developer, their assigns and successors in interest, 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. This Agreement shall not be amended unless executed in writing by the Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

33. Section: Exhibits

The Parties agree that each and every exhibit that is mentioned in and attached to this Agreement is a material part of this Agreement and each such exhibit is by this reference, incorporated into this agreement for all purposes as thought set forth verbatim here.

34. Agreement Conditioned on Plat Approval

The Parties acknowledge and agree that this Agreement is conditioned on the City's approval of Developer's plat for the Project. In the event the City does not approve a plat for the Project, this Agreement is null and void and has not effect whatsoever.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed in multiple counterparts, each of equal dignity and effect, on behalf of the City and Developer effective as of the Effective Date.

(signatures follow on next page)

PASSED AND APPROVED this _____ day of _____ 2017.

CITY OF BAY CITY, TEXAS

Mark A. Bricker, Mayor

Date: _____

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM:

M. Shannon Kackley, Asst. City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, PC

MARGUERITE MEADOW, LLC

James Bruce Grover, Manager
Date: _____

Exhibits:

- A – the Property
- B – the Project
- C – List/Description of Reimbursable Public Improvements
- D – Project Completion Schedule

Exhibit A

The Property

Attachment: Marguerite Meadow, LLC (2892 : TIRZ #3 Development Agreement - Marguerite Meadow, LLC)

Exhibit B

The Project

Attachment: Marguerite Meadow, LLC (2892 : TIRZ #3 Development Agreement - Marguerite Meadow, LLC)

Exhibit C

List/Description of Reimbursable Public Improvements

Exhibit D

Project Completion Schedule

Exhibit A

The Property



Attachment: Marguerite Meadow Exhibits (2892 : TIRZ #3 Development Agreement - Marguerite Meadow, LLC)

Exhibit B

The Project

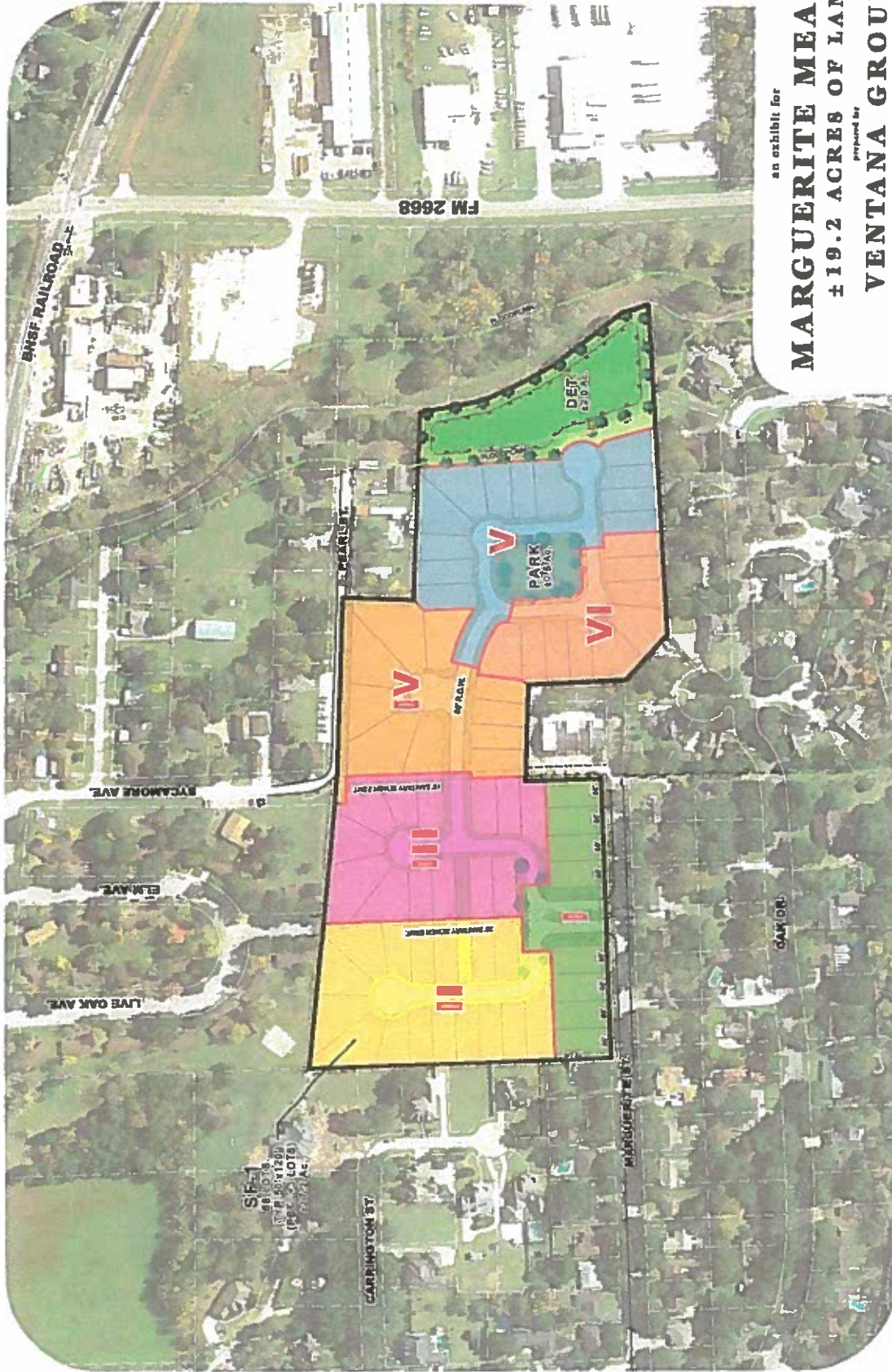
Exhibit C

List/Description of Reimbursable Public Improvements

Table A-6

Bay City TIRZ #3 Reimbursable Expenses	
These are estimates only and subject to change from design and market conditions.	
Legal	\$1,500
Planning	\$33,650
Platting Fees	\$3,400
Final Plat	\$6,800
Site Work	\$73,600
Entry Monumentation	\$25,000
Landscaping	\$55,000
Parks and Trails	\$140,000
Fencing	\$73,750
Street Lights	\$22,250
Water Lines and leads	\$231,045
Sanitary Sewer Lines	\$145,500
Storm Sewer	\$298,000
Detention	\$175,000
Street Excavation & Paving	\$591,000
Underground Electrical	\$45,000
Lot Staking	\$18,800
Construction Management	\$37,809
Engineering	\$283,567
Contingency	\$283,567
Accounting	\$24,000
Insurance	\$36,777
Total	\$2,605,015

Exhibit D
Project Completion Schedule



an exhibit for
MARGUERITE MEADOW
± 19.2 ACRES OF LAND
prepared for
VENTANA GROUP



- Land Planning Consultant -
22801 Clay Road, Suite 100
Houston, TX 77058
Tel: 281-479-0340

1900 Loop West, Suite 200
Austin, TX 78721
Tel: 281-479-0340



PHASING SUMMARY			
PHASE 1 - 08 LOTS	PHASE 4 - 10 LOTS		
PHASE 2 - 18 LOTS	PHASE 5 - 12 LOTS		
PHASE 3 - 13 LOTS	PHASE 6 - 08 LOTS		
TOTAL		88 LOTS	

This document is a preliminary site plan for the development of the Marguerite Meadow project. It is not intended to be used for construction or other purposes without the approval of the appropriate authorities. The information contained herein is for informational purposes only and should not be relied upon for any specific project or purpose.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 11/02/17 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2891

DISCUSSION ITEM (ID # 2891)

**~ DISCUSS APPROVING ADDENDA TO THE PRELIMINARY
PROJECT AND FINANCE PLANS FOR THE REINVESTMENT
ZONES OF THE CITY OF BAY CITY TO INCORPORATE THE
ORDER OR PRIORITY OF PAYMENTS FROM THE TAX
INCREMENT FUNDS.**

COMMENTS - Current Meeting:

Finance Director, Scotty Jones presented the addendum to the preliminary project and finance plan for discussion.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS APPROVING AN ADDENDUM TO THE PRELIMINARY PROJECT AND FINANCE PLAN FOR REINVESTMENT ZONE NUMBER THREE, CITY OF BAY CITY, TEXAS TO INCORPORATE THE ORDER OR PRIORITY OF PAYMENTS FROM THE TAX INCREMENT FUND

WHEREAS, City Council designated Reinvestment Zone Number Three, City of Bay City, Texas, (hereinafter referred to as “TIRZ No. 3”) in Ordinance No. 1593; and

WHEREAS, In designating TIRZ No. 3., City Council adopted a Preliminary Project and Finance Plan to achieve the purpose of the zone; and

WHEREAS, the Preliminary Project and Finance Plan needs to contain an order or priority of payments addendum to guide the administrator of the Tax Increment Fund how to reimburse administrative expenses, start-up expenses, and public improvement reimbursements; and

WHEREAS, City Council finds that the Addendum attached hereto as **Exhibit A** contains an order or priority of payments to guide the administrator of the Tax Increment Fund how to reimburse administrative expenses, start-up expenses, and public improvement reimbursements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS THAT:

SECTION I. The findings and recitations above are true and correct and are incorporated herein for all purposes.

SECTION II. The Addendum attached hereto as **Exhibit A** shall be incorporated to the Preliminary Project and Finance Plan to guide the administrator of the Tax Increment Fund how to reimburse administrative expenses, start-up expenses, and public improvement reimbursements.

SECTION III. The Board of the Zone, when it prepares the Final Project and Finance Plan, shall incorporate an order or priority of payments into the Final Project and Finance Plan substantially similar to those reflected in **Exhibit A** to guide the administrator of the Tax Increment Fund how to reimburse administrative expenses, start-up expenses, and public improvement reimbursements.

SECTION IV. This Resolution shall take effect upon immediately from and after its passage.

Attachment: Resolution to add addendum to Prel. Proj Finance Plan (003) (2891 : TIRZ #3 Addendum)

PASSED and APPROVED by City Council of the City of Bay City, Texas this ____ day of October 2017.

Mark A. Bricker, Mayor
City of Bay City, Texas

ATTEST:

David Holubec, City Secretary

M. Shannon Kackley, Asst. City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, PC

Attachment: Resolution to add addendum to Prel. Proj Finance Plan (003) (2891 : TIRZ #3 Addendum)

EXHIBIT A**ADDENDUM TO PRELIMINARY PROJECT AND FINANCE PLAN****Order or Priority of Payment**

The City and the Board may use Available Tax Increment Funds to pay eligible expenditures in the following order or priority of payment:

1. To fully reimburse eligible startup Administrative Costs incurred by each Participating Taxing Entity;
2. To pay all ongoing Administrative Costs to Participating Taxing Entities for administering the Tax Increment Fund or the TIRZ, except that if there are insufficient funds for the full reimbursement of ongoing Administrative Costs to the Participating Taxing Entity, then the ongoing Administrative Costs of each Participating Taxing Entity shall be reimbursed on a pro rata basis until the costs have been paid; and
3. To reimburse the Developer for Public Improvements as provided in the Development Agreement and in the Project Plan to the extent that funds in the Tax Increment Fund are available for this purpose.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 11/02/17 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2890

DISCUSSION ITEM (ID # 2890)

**~ DISCUSS AUTHORIZING THE BOARD OF DIRECTORS OF
THE REINVESTMENT ZONES OF THE CITY OF BAY CITY
BOARD TO EXERCISE THE CITY'S POWERS WITH
RESPECT TO THE ADMINISTRATION, MANAGEMENT, AND
OPERATION OF THE ZONES AND THE IMPLEMENTATION OF
THE PROJECT PLANS FOR THE ZONES.**

COMMENTS - Current Meeting:

Finance Director, Scotty Jones lead the discussion regarding the powers of the TIRZ 3 Board. DC Dunham assisted.

TIRZ 1 & 2 are recommended to be left as they are written.

Attorney Shannon Kackley joined the meeting at 6:17PM by telephone.

Signature questions were addressed.

Council members questioned why these documents needed to be changed.

Councilman Cornman wants a similar addendum for TIRZ #1 & 2. Redo documents.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AUTHORIZING THE TIRZ 3 BOARD TO EXERCISE THE CITY'S POWERS WITH RESPECT TO THE ADMINISTRATION, MANAGEMENT, AND OPERATION OF THE ZONE AND IMPLEMENTATION OF THE PROJECT PLAN FOR THE ZONE.

WHEREAS, City Council designated Reinvestment Zone Number Three, City of Bay City, Texas, (hereinafter referred to as "TIRZ No. 3") in Ordinance No. 1593; and

WHEREAS, The TIRZ Board makes recommendations to the City Council concerning the administration of the Zone; and

WHEREAS, Section 311.010 of the Texas Tax Code allows the City by resolution to authorize the TIRZ Board to exercise any of the City's powers with respect to the administration, management, or operation of the Zone and the implementation of the Project Plan for the Zone, except the Board may not issue bonds, impose taxes or fees, exercise the power of eminent domain, or give final approval to the project plan; and

WHEREAS, City Council desires to authorize the TIRZ Board to exercise any of the City's powers with respect to the administration, management, or operation of the Zone and the implementation of the Project Plan for the Zone, except the Board may not issue bonds, impose taxes or fees, exercise the power of eminent domain, or give final approval to the Project Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS THAT:

SECTION I. The findings and recitations above are true and correct and are incorporated herein for all purposes.

SECTION II. Pursuant to Section 311.010 of the Texas Tax Code, as amended, City Council authorizes the TIRZ Board to exercise any of the City's powers with respect to the administration, management, or operation of the Zone and the implementation of the Project Plan for the Zone.

SECTION III. The Board of the Zone, however, may not issue bonds, impose taxes or fees, exercise the power of eminent domain, or give final approval of the Project Plan.

SECTION IV. This Resolution shall take effect upon immediately from and after its passage.

PASSED and APPROVED by City Council of the City of Bay City, Texas this ____ day of October 2017.

Mark A. Bricker, Mayor
City of Bay City, Texas

ATTEST:

David Holubec, City Secretary

M. Shannon Kackley, Asst. City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, PC

Attachment: Resolution to delegate authority to TIRZ Board V. 2 (002) (2890 : TIRZ #3 Administration, Management and Operation)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 11/02/17 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2893

DISCUSSION ITEM (ID # 2893)

~ DISCUSS AUTHORIZING THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION (BCCDC) TO ENTER INTO A PERFORMANCE AGREEMENT PROVIDING FOR AN ECONOMIC INCENTIVE FROM THE BCCDC TO MCCOY CORPORATION IN CONSIDERATION OF THE COMPANY PERFORMING THE OBLIGATIONS IMPOSED UPON AS SPECIFIED IN A PERFORMANCE AGREEMENT.

COMMENTS - Current Meeting:

DC Dunham reviewed the McCoy performance agreement with Council members.

**Economic Development Performance Agreement
Between
Bay City Community Development Corporation
And
McCoy Corporation**

Background

The City of Bay City adopted an economic development sales tax and created the Bay City Community Development Corporation (BCCDC) to promote economic development activities as authorized by Chapter 501 and 505 of the Local Government Code. The BCCDC and McCoy Corporation, a Texas Corporation, (Company) wish to enter into this Performance Agreement providing for a economic incentive from the BCCDC to the Company in consideration of the Company performing the obligations imposed upon as specified in this performance agreement.

Performance Agreement

The BCCDC and the Company agree as follows:

1. Definitions. In this Agreement:

Agreement means this Agreement.

Annual Salary means the gross amount of regular or scheduled pay made by the Company to an Employee over any consecutive 12-month period for the work performed by the Employee, including bonuses, but excluding overtime pay and other Employee benefits.

Company means McCoy Corporation, and/or assigns

City means the City of Bay City, Texas.

Employee means a person who is an employee of the Company or any affiliate of the Company.

Premises means the McCoy's Building Supply building, grounds and parking lot located at _____, Bay City, Texas 77414, which is or will be owned by the Company.

BCCDC means the Bay City Community Development Corporation, a non-profit economic development corporation created by the City as authorized by the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Art 5190.6, currently codified as Chapters 501 through 505, Tex. Local Gov't Code.

Year(s) of this Agreement means, unless the context clearly indicates otherwise, three (3) year(s) after the latest date of the two dates signed by the parties below.

2. BCCDC Findings.

By approval of this Agreement, the board of Directors of the BCCDC finds:

- (a) that this is a project that promotes or develops new or expanded business enterprises that create or retain primary jobs as defined by Section 505.155, Tex. Local Gov't Code;
- (b) that this is a project that promotes new or expanded business development as defined by section 505.158, Tex. Local Gov't Code;
- (c) that this Agreement complies with the requirements of Section 501.158, Tex. Local Gov't Code, that any direct incentives provided to a business enterprise requires a written performance agreement that includes:
 - (1) a schedule of additional payroll or jobs to be created or retained;
 - (2) the capital investment to be made; and
 - (3) the terms or repayment upon default.

3. Company Obligations.

- (a) The Company will continuously own, rent, lease, occupy, and or use the Premises for a ten year period beginning on _____, 2017.
- (b) Improvements: By _____, 2018, the Company will spend, or cause the owner of the Premises to spend, at least:
 - (1) \$3,500,000.00 on materials and services in the design and construction of improvements for the Premises, exclusive of land.
- (c) Jobs Created or Retained.
 - (1) The Company will have and maintain at the Premises at least the following number of Employees during the three (3) Year(s) of this Agreement:
 - (A) At minimum, fifteen (15) full time equivalent employee(s) of the Company will be retained for each year of the three (3) Year(s) of this Agreement. It is estimated that the annual payroll for New Permanent Jobs and Contract Jobs will approximate Five Hundred

Thousand Dollars (\$500,000.00).

- (d) **Company Reimbursement for Breach of Agreement.** A material breach of this agreement will occur if the Company fails to maintain a minimum of fifteen (15) full time equivalent employees for each year of the three (3) years of this Agreement. If the BCCDC terminates this Agreement because of the Company's breach of any provision as permitted by this Agreement, the Company will, within 60 days following termination, reimburse the BCCDC One Hundred Percent of the economic incentives given to it under this Agreement.
- (e) The Company will allow the City access to the Premises during regular business hours to inspect the Premises to verify the Company is complying with the Agreement.

4. **BCCDC Economic Incentives**

- (a) The BCCDC will reimburse to the Company fees paid to the City of Bay City for building permit fees up to a maximum of Ten Thousand Dollars (\$10,000.00). Said reimbursement for building permit fees will be paid within thirty (30) days after the building and work on the Premises is completed, the Certificate of Occupancy has been issued by the City for any and all buildings on the Premises, the Company is in compliance with this Performance Agreement, and if the Company provides documentation to the BCCDC a copy of the Certificate of Occupancy issued by the City for the building on the Premises and sufficient documentation showing the total amount of building permit fees paid to the City.
- (b) The BCCDC will reimburse to the Company fees paid to the City of Bay City for water and sewer tap fees up to a maximum of Fifteen Thousand Dollars (\$15,000.00). Said reimbursement for water and sewer tap fees will be paid within thirty (30) days after the building and work on the Premises is completed, the Certificate of Occupancy has been issued for any and all buildings on the Premises, the Company is in compliance with this Performance Agreement, and if the Company provides to the BCCDC a copy of the Certificate of Occupancy issued by the City for the building on the Premises and sufficient documentation showing the total amount of water and sewer tap fees paid to the City.
- (c) BCCDC will convey to Company, by General Warranty Deed, the following real property (the "Property"):

BEING a 0.82 acre tract situated in the I & G N RR Company Survey No. 1, Block No. 4, Abstract No. 271, Matagorda County, Texas, being out of and a part of a called 1.24 acre tract conveyed to Texas Dow Employees Credit Union as described in File No. 092487 of the Official Records of Matagorda

County, Texas, said 0.82 acre tract being more particularly described as follows:

BEGINNING at a found 5/8 inch iron rod along the northwest line of State Highway No. 35 (width varies) for the south corner of a called .1076 acre tract conveyed to Michael Ha and Ann Ha as described in File No. 095513 of the Official Records of Matagorda County, Texas, and the east corner of the herein described tract;

THENCE, along with a curve to the right having an angle of 1°28'30" with a radius of 1382.39' (chord bearing S 56°51'05"W, a chord distance of 35.59 feet) and a distance of 35.59 feet to a found 5/8 inch iron rod for an angle point of said State Highway No. 35 and the herein described tract;

THENCE, North 29°16'17" West, continuing along the northwest line of said State Highway No. 35 a distance of 0.55 feet to a found 5/8 inch iron rod for a point of curvature of said State Highway No. 35 and the herein described tract;

THENCE, along with a curve to the right having an angle of 3°28'29" with a radius of 1591.52' (chord bearing S 61°39'57" W, a chord distance of 96.50 feet) and a distance of 96.52 feet to a set ½ inch iron rod for the east corner of the residue of the said called 1.24 acre tract and the south corner of the herein described tract;

THENCE, North 29°20'53" West, crossing the said called 1.24 acre tract a distance of 267.59 feet to a set ½ inch iron rod along a southeast line of a 57.84 acre tract conveyed to A. Uher out of various tracts being 4.13 acres described in Volume 120, Page 402, Deed Records of Matagorda County, Texas, 28.68662 acres described in Volume 214, Page 28, Deed Records of Matagorda County, Texas, 40.4 acres described in Volume 116, Page 516, Deed Records of Matagorda County, Texas, for the north corner of the residue of the said called 1.24 acre tract and the west corner of the herein described tract;

THENCE, North 60° 26' 35" East, along a southeast line of the said called 57.84 acre tract a distance of 132.00 feet to a found 5/8 inch iron rod for the west corner of the said called .1076 acre tract and the north corner of the herein described tract;

THENCE, South 29°20'53" East, along the southwest line of said called 1.076 acre tract a distance of 267.97 feet to the POINT OF BEGINNING and containing 0.82 acres of land as described.

The general warranty deed conveying the Property shall contain a deed restriction restricting the use of the Property to prohibit any above-ground structures except a pylon sign and a 1,500 square foot area that may be used for display of new merchandise. In addition, the Purchaser agrees that if the Purchaser does not start the construction on the property that it owns described in Exhibit B within one year of the closing of the purchase of the Property by Purchaser, Purchaser shall pay Seller \$89,298 within thirteen months of the closing of the purchase of the Property with this obligation surviving the closing. Additionally, Purchaser agrees to dedicate the streets or roads on the Property to the public.

- (d) The BCCDC is funding this Agreement exclusively from economic development sales taxes it receives under the provisions of the Development Corporation Act of 1979, as amended (currently codified as Chapters 501 through 505, Tex. Local Gov't Code.) Should any legal impediment arise during the term of this Agreement, including a change in law, that prevents or prohibits the BCCDC from making future incentive payments under this Agreement, either party may terminate this Agreement without further liability to the other.

5. Term.

This Agreement is effective on the latest date of the two dates signed by the parties below.

6. Termination.

- (a) Unless terminated earlier as allowed in this Agreement, this Agreement terminates three (3) years after the latest date of the two dates signed by the parties below.
- (b) This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and BCCDC's director will send the Company written notice that the Company has violated this paragraph and that the Agreement terminates 30 days from the date of the notice.
- (c) Either party may terminate this Agreement during its term as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing. If the party in

default fails to cure the default within 60 days of the date of the notice, the party giving the notice may terminate this Agreement by written notice to the other party, specifying the date of termination.

- (d) No party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties during the time, but only for so long as the event of force majeure reasonable prevents performance.

7. Miscellaneous Provisions.

- (a) Remedies Cumulative. The rights and remedies provided in this Agreement or under other laws are cumulative and the exercise of any particular right or remedy does not preclude the exercise of any other right or remedy.
- (b) Law Governing and Venue. The laws of the State of Texas govern this Agreement and no lawsuit may be prosecuted on this Agreement except in a court of competent jurisdiction located in Matagorda County, Texas.
- (c) Notices. Any notice required to be given by one party to another must be given in writing addressed to the party to be notified at the address set forth below:
 - (1) by delivering the notice in person;
 - (2) by depositing the notice in the U. S. Mail, certified or registered, return receipt requested, postage prepaid;
 - (3) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or
 - (4) by sending the notice by telefax with confirming copy sent by mail. Notice deposited in the U.S. Mail is deemed effective on the date of deposit.

Notice given in any other manner is effective when received by the party to be notified. For the purposes of notice, the addresses of the parties to whom notice is to be given, until changed by given notice to the other as provided herein, is as follows:

BCCDC: President
 Bay City Community Development Corporation c/o Executive Director of
 Economic Development 1900 5th Street
 Bay City, Texas 77414 Tel: (979) 245-8081
 Fax:(979) 323-1642

With a copy to: Mayor of Bay City
 City of Bay City
 1901 5th Street
 Bay City, Texas 77414 Tel: (979) 241-2137

McCoy Corporation
 4565 Lakeshore Drive
 Waco, Texas 76710

Tel: _____
 Fax: _____

- (d) Assignment. The Company may not assign this Agreement to any other person or entity unless the BCCDC consents in writing to the assignment.
- (e) City Authority. The City's Mayor or any employee authorized by the Mayor is authorized to act on behalf of the BCCDC in the administration or enforcement of this Agreement.

SIGNED AND APPROVED:

BAY CITY COMMUNITY DEVELOPMENT CORPORATION

By: _____
 D.C. DUNHAM, BCCDC Executive Director

Date: _____

McCoy Corporation
 a Texas Corporation
 and/or assigns

By: _____
 _____, Its _____

Date: _____

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS AUTHORIZING THE BAY CITY COMMUNITY DEVELOPMENT CORPORATION TO ENTER INTO A PERFORMANCE AGREEMENT WHICH PROVIDES ECONOMIC INCENTIVES TO MCCOY CORPORATION FOR THE CONSTRUCTION OF A BUILDING SUPPLY STORE IN BAY CITY, TEXAS.

WHEREAS, the City of Bay City is a home-rule municipality governed by its City Charter, and has a population of less than 20,000 inhabitants; and

WHEREAS, the Bay City Community Development Corporation (BCCDC) is a Type B development corporation established pursuant to Chapter 505, subchapter B, of the Texas Local Government Code, and the City Council of the City of Bay City, Texas is the BCCDC's authorizing unit; and

WHEREAS, in accordance with Section 505.158(b) of the Texas Local Government Code, the BCCDC may not undertake a Project authorized under Section 505.158 that requires an expenditure of more than \$10,000.00 until the City Council of the City of Bay City, Texas adopts a resolution authorizing the Project after giving the resolution at least two separate readings; and

WHEREAS, the BCCDC has identified land and a regionally recognized building supply retailer for the construction of building supply store, and related facilities for a McCoy's Building Supply Store (Project) located near the intersection of Old Van Vleck Road and S.H. 35, Bay City, Texas; and

WHEREAS, the Project meets the requirements of Chapter 501, subchapter C, Authorized Projects, and Chapter 505, subchapter D, Authorized Projects, of the Texas Local Government Code and does not require a public hearing by the BCCDC under Section 505.159(b) of the Texas Government Code; and

WHEREAS, the cost of the Project is approximately \$25,000.00 plus the value of real property valued at \$89,298; and

WHEREAS, the City Council of the City of Bay City, Texas finds the Project will promote new and expanded business enterprises in and near the City of Bay City, Texas; and

WHEREAS, the action authorized by this Resolution is in furtherance of the public interest, for good government, peace, order, trade and commerce of the City of Bay City, Texas and necessary for properly carrying out the authority granted by law to the City of Bay City, Texas and the BCCDC; and

WHEREAS, the Board of Directors of the BCCDC finds the Project shall promote new or expanded business development; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Authorization. In accordance with Section 505.158 (b) of the Texas Local Government Code, the City Council hereby authorizes the Project as described in the recitals above after all prerequisites have been satisfied.

PASSED AND APPROVED ON FIRST READING AT THE CITY OF BAY CITY, TEXAS THIS 26TH DAY OF OCTOBER 2017 AND ON SECOND READING AT THE CITY OF BAY CITY, TEXAS THIS DAY OF NOVEMBER 2017.

APPROVED AND ADOPTED on this the day of November 2017.

MARK A. BRICKER, MAYOR
CITY OF BAY CITY, TEXAS

ATTEST

DAVID HOLUBEC, CITY SECRETARY
CITY OF BAY CITY, TEXAS

APPROVED AS TO FORM:

M. SHANNON KACKLEY, ASST. CITY ATTORNEY
DENTON NAVARRO ROCHA BERNAL & ZECH, PC



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 11/02/17 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2899

DISCUSSION ITEM (ID # 2899)

~ DISCUSS COUNCIL MEMBER COMPENSATION.

COMMENTS - Current Meeting:

Councilman Cornman reviewed research he had done on the subject of council compensation.



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 11/02/17 05:30 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2894

DISCUSSION ITEM (ID # 2894)

~ DISCUSS PARKS AND RECREATION MASTER PARKS PLAN.

COMMENTS - Current Meeting:

Parks Director, Shawn Blackburn reviewed the Parks Plan.

Councilman Cornman - Asked how many people use a park? Usage?

Councilwoman Sitz - Suggested evaluating what we have. Return holdings to private holdings so we can take care of what we have left.