



BAY CITY

MINUTES • SEPTEMBER 14, 2017

Council Chambers

Regular Meeting

7:00 PM

1901 5TH STREET
BAY CITY, TX 77414

I. CALL TO ORDER

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

II. INVOCATION & PLEDGE OF ALLEGIANCE - COUNCILMAN, BILL CORNMAN

Texas State Flag Pledge:

"Honor The Texas Flag; I Pledge Allegiance To Thee, Texas, One State Under God, One And Indivisible."

The invocation and pledges were presented by Councilman Bill Cornman.

III. CERTIFICATION OF QUORUM

Mayor Mark A. Bricker certified a quorum.

IV. APPROVAL OF AGENDA

The agenda was approved unanimously by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Julie Estlinbaum.

V. PUBLIC COMMENTS

State Law prohibits any deliberation of or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff places the item on an agenda for a subsequent meeting.

The following citizens addressed Council:

Former Mayor Richard Knapik - Awarded the City of Bay City the Community Service Award from C.A.S.T.

Jean Deadrick - Shared a few issues she is having in her neighborhood:

- A. Water leak that happens every summer.
- B. Grass not replaced at water leak area.
- C. Ditch needs cleaning in front of her house.
- D. Debris in her neighborhood.
- E. Area neighbor's home has an overgrown lawn that needs to be addressed.

Stanley Rosenthal: Discussed hurricane debris outside his home not being collected.

VI. CONSENT AGENDA ITEMS FOR CONSIDERATION AND/OR APPROVAL

None

VII. PUBLIC HEARINGS

1. Public Hearing

~ CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE CITY OF BAY CITY PROPOSED OPERATING BUDGET FOR FISCAL YEAR 2017-2018.

Finance Director, Scotty Jones

None

Closed @7:23PM

2. Public Hearing

~ CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE PROPOSED PROPERTY (AD VALOREM) TAX RATE FOR FISCAL YEAR 2017 – 2018.

Finance Director, Scotty Jones

None

Closed @7:24PM

3. Public Hearing

~ CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE CITY OF BAY CITY PROPOSED CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR 2017-2018.

Finance Director, Scotty Jones

None

Closed @7:25PM

VIII. REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL

1. Bid

DISCUSS, CONSIDER, AND/OR APPROVE AWARDING THE CONSTRUCTION BIDS FOR THE PHASE III-B STREET RECONSTRUCTION PROJECT TO REXCO CONSTRUCTION SERVICES, INC. IN THE AMOUNTS OF \$3,016,928.96 (CONCRETE-NICHOLS) AND \$42,001.50 (ESPLANADE-AVE G); AND AUTHORIZE THE MAYOR TO EXECUTE A CONTRACT APPROVED TO FORM BY THE CITY ATTORNEY BETWEEN THE CITY OF BAY CITY AND REXCO CONSTRUCTION SERVICES, INC.

Barry Calhoun, Director of Public Works

Public Works Director, Barry Calhoun presented this agenda item:

Street Rehab Phase III-B - Project initiated in 2016. 3 bids came in for this project.

Councilman Childers feels there are parts of this project that are considered a "wish" list in his opinion.

Items #9,10, 11,12,13 items are wish list in his opinion. He feels a workshop setting is needed to address the scope of the project. Councilwoman Folse agrees with workshop scope work.

Councilman Cornman feels change of scope have occurred over time in his opinion. \$2.7 million sitting in the bank. Changing scope is what affects a project negatively. Councilman Cornman wanted the project to be approved tonight so it could get going.

It was decided that this agenda item would be discussed at the Council Workshop on September 21, 2017, 3:30PM.

2. Grant

DISCUSS, CONSIDER, AND/OR APPROVE ADMINISTRATOR FOR THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, 2017 TEXAS CAPITAL FUND DOWNTOWN REVITALIZATION / MAIN STREET PROGRAMS.

BCCDC Executive Director, DC Dunham

BCCDC Executive Director, DC Dunham presented this agenda item:

Texas Capital Fund - Administrative portion. 2 bids were received. Dunham recommends awarding the bid to Grantworks. The grant pays for administrative fees.

The recommendation was unanimously approved by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Julie Estlinbaum.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Sitz, Childers, Folse, Cornman, Estlinbaum

Enacted and approved this 14th day of September, 2017, at Bay City

3. Agreement

DISCUSS, CONSIDER, AND/OR APPROVE THE DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER TWO (2), CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT CORPORATION.

BCCDC Executive Director, DC Dunham

4. Agreement

DISCUSS, CONSIDER, AND/OR APPROVE THE DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER ONE (1), CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT CORPORATION.

BCCDC Executive Director, DC Dunham

TIRZ #1 & #2 - Agreements between the TIRZ boards and the City of Bay City and the Bay City Community Development Corporation were reviewed and approved by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Becca Sitz.

Councilwoman Folse recused herself from this vote.

5. Presentation

~ DISCUSS AND CONSIDER POSSIBLY ACTION TO ADDRESS THE BUILD-UP OF BRUSH IN THE CITY DUE TO THE RECENT HURRICANE EVENT.

Councilman, Bill Cornman

DebrisTech is a company the County and City are working with to oversee the collection of storm debris. WCA will be responsible for smaller loads of debris and heavier loads of debris will be removed by the City.

It was agreed to produce a Memorandum to match County's agreement with DebrisTech.

The item was unanimously approved by motion. Councilman Bill Cornman made the motion and Councilman Jason Childers seconded the motion.

IX. ITEMS / COMMENTS & MAYOR AND COUNCIL MEMBERS

Councilwoman Julie Estlinbaum: Public Comment Disclaimer.

Councilwoman Chrystal Folse - Saturday last distribution day for hurricane items - 9-4.

Councilman Bill Cornman: Recognized Councilwoman Folse and Mike Ferdinand for hurricane relief assistance.

It was decided that the Council needs to have a debriefing of events during the storm with the City and the EOC.

X. 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 Regular Called Council Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on Friday, September 8, 2017 before 7:00 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: 09/14/17 07:00 PM
Department: City Secretary
Category: Public Hearing
Prepared By: Lillie Norris
Initiator: David Holubec
Sponsors:
DOC ID: 2804

AGENDA ITEM (ID # 2804)

**~ CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC
COMMENT ON THE CITY OF BAY CITY PROPOSED
OPERATING BUDGET FOR FISCAL YEAR 2017-2018.**

COMMENTS - Current Meeting:

None

Closed @7:23PM



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 09/14/17 07:00 PM
Department: City Secretary
Category: Public Hearing
Prepared By: Lillie Norris
Initiator: David Holubec
Sponsors:
DOC ID: 2803

AGENDA ITEM (ID # 2803)

**~ CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC
COMMENT ON THE PROPOSED PROPERTY (AD VALOREM)
TAX RATE FOR FISCAL YEAR 2017 – 2018.**

During the public hearing, Mayor or Council need to inform the public that the tax rate will be considered by Council on 9/21 at 7:00 pm at City Hall.

After the hearing, the City shall give written notice of the 9/21 meeting in the form required by Sec. 26.06(d) of the Tax Code.

COMMENTS - Current Meeting:

None

Closed @7:24PM

2017 Governing Body Summary #1B*

Comparison of This Year's Tax Levy with Last Year's Tax Levy

(Includes Frozen Levy)

City of Bay City

Date: 08/10/2017 08:08 AM

Last Year's Tax Levy**: \$4,633,511
 Last Year's Frozen Homestead Amount: \$
 This Year's Frozen Homestead Amount: \$

DESCRIPTION OF TAX RATE	TAX RATE PER \$100	THIS YEAR'S TAX LEVY***	TAX LEVY INCREASE****
Last Year's Tax Rate	\$0.60209	\$4,880,897	\$247,383
Effective Tax Rate	\$0.57798	\$4,685,447	\$51,933
Notice & Hearing Limit*****	\$0.57798	\$4,685,447	\$51,933
Rollback Tax Rate	\$0.66075	\$5,356,429	\$722,915
Proposed Tax Rate *	\$0.65500	\$5,309,816	\$676,302

*These figures are provided as estimates of possible outcomes resulting from varying the tax rate. Please be aware that these are only estimates and should not be used alone in making budgetary decisions.

**Last year's tax levy is calculated using Texas Property Tax Code's definition of "last year's levy".

***This year's tax levies are calculated using line 19 of the Effective Tax Rate Worksheet and this year's frozen tax levy on homesteads of the elderly or disabled.

****Tax levy increase is the difference between this year's tax levy and last year's tax levy.

*****The Notice and Hearing Limit is the highest tax rate that may be adopted without notices and a public hearing. It is the lower of the rollback tax rate or the effective tax rate.

Attachment: Tax Rate Form (2803 : Public Hearing - Tax Rate)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 09/14/17 07:00 PM
Department: City Secretary
Category: Public Hearing
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2806

DISCUSSION ITEM (ID # 2806)

**~ CONDUCT A PUBLIC HEARING TO RECEIVE PUBLIC
COMMENT ON THE CITY OF BAY CITY PROPOSED CAPITAL
IMPROVEMENT PLAN FOR FISCAL YEAR 2017-2018.**

COMMENTS - Current Meeting:

None

Closed @7:25PM



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

AGENDA ITEM (ID # 2802)

Meeting: 09/14/17 07:00 PM
Department: Public Works
Category: Bid
Prepared By: Barry Calhoun
Initiator: Barry Calhoun
Sponsors:
DOC ID: 2802

**DISCUSS, CONSIDER, AND/OR APPROVE AWARDING THE
CONSTRUCTION BIDS FOR THE PHASE III-B STREET
RECONSTRUCTION PROJECT TO REXCO CONSTRUCTION
SERVICES, INC. IN THE AMOUNTS OF \$3,016,928.96
(CONCRETE-NICHOLS) AND \$42,001.50 (ESPLANADE-AVE
G); AND AUTHORIZE THE MAYOR TO EXECUTE A
CONTRACT APPROVED TO FORM BY THE CITY ATTORNEY
BETWEEN THE CITY OF BAY CITY AND REXCO
CONSTRUCTION SERVICES, INC.**

The Phase III Street Rehab Project consist of two phases. Phase III-A is a seal coat project that addresses roads that need spot repairs and a new surface but not necessarily a full depth reconstruction at this time. Phase III-B is a full depth reconstruction or redesign on streets that need a more aggressive approach on repairs. Below is the list of roads included in Phase III-B and a breakdown of the estimated budget for each phase.

Funding Source: 2016 Certificate of Obligations
Phase III-A Actual Cost: \$719,316.82

Phase III-B Engineer Estimate: \$3,256,638.00 (Converting Nichols to concrete paving)
Phase III-B Engineer Estimate: \$2,886,128.00
Engineering Services: \$388,160.00
Lowest Bid Amount-Option 1 (Concrete-Nichols): \$3,016,928.96
Lowest Bid Amount-Option 2 (Asphalt-Nichols): \$2,802,093.88
Lowest Bid Amount-Option 3 (Esplanade-Ave G): \$42,001.50
Target Construction Start Date: November 1, 2017, however, contractor can't start until January 1, 2018

Listed below are the streets included in this project:

1. Belegarde Dr
2. Gontier Dr/Thierr Dr
3. Holly Ln
4. Nichols Ave
5. Sims Ave
6. Hamman Rd
7. Ave G
8. Ave H
9. 6th St
10. 8th St
11. 4th St Intersection
12. 6th St Intersection
13. 5th St/Ave G

COMMENTS - Current Meeting:

Public Works Director, Barry Calhoun presented this agenda item:

Street Rehab Phase III-B - Project initiated in 2016. 3 bids came in for this project.

Councilman Childers feels there are parts of this project that are considered a "wish" list in his opinion.

Items #9,10, 11,12,13 items are wish list in his opinion. He feels a workshop setting is needed to address the scope of the project. Councilwoman Folse agrees with workshop scope work.

Councilman Cornman feels change of scope have occurred over time in his opinion. \$2.7 million sitting in the bank. Changing scope is what affects a project negatively. Councilman Cornman wanted the project to be approved tonight so it could get going.

It was decided that this agenda item would be discussed at the Council Workshop on September 21, 2017, 3:30PM.



702 Irvine
Yoakum, Texas 77995
Telephone: (361) 427-4011
E-Mail: bdreitner@civilcorp.us

September 6, 2017

Mr. Barry Calhoun
Director of Public Works
City of Bay City
1901 5th St.
Bay City, Texas 77414

Re: 2016 Capital Improvements Project, 2017 Rehabilitation on Various Streets

Dear Barry:

We reviewed the bids received for the 2016 Capital Improvements Project, 2017 Rehabilitation on Various Streets on August 24, 2017, and offer the following comments:

1. Three bids were received as follows:

Primary Bid w/ Concrete Pavement Option on Nichols Ave

\$3,016,922.74 (\$3,016,928.96 corrected) from Rexco Construction Services, Inc, with 425 calendar days to complete the work.

\$3,060,571.40 (\$3,060,793.40 corrected) from James Construction Group, Inc, with 365 calendar days to complete the work.

\$3,450,789.50 (\$3,450,789.70 corrected) from Lester Contracting, Inc, with 365 calendar days to complete the work.

Primary Bid w/ Flexible Pavement Option on Nichols Ave

\$2,802,087.66 (\$2,802,093.88 corrected) from Rexco Construction Services, Inc, with 395 calendar days to complete the work.

\$2,964,551.50 (\$2,964,551.70 corrected) from Lester Contracting, Inc, with 365 calendar days to complete the work.

\$3,030,068.75 (\$3,030,290.75 corrected) from James Construction Group, Inc, with 365 calendar days to complete the work.

Owner's Option #3 Work on Ave G

\$37,787.60 from James Construction Group, Inc, with 60 calendar days to complete the work.

\$42,001.50 from Rexco Construction Services, Inc, with 365 calendar days to complete the work.

\$60,719.50 from Lester Contracting, Inc, with 60 calendar days to complete the work.

2. All bids were checked for accuracy. All bids had minor accounting errors but did not change the order of the ranking of the bids. The numbers shown above in parenthesis are the corrected bids. The contactor with the low bid was contacted by email and was okay with the change in their submitted total bid.

3. \$3,256,638.00 was the Engineer's estimate, with 300 days to complete the work for the primary bid w/ the concrete pavement option on Nichols Ave. \$2,886,128.00 was the Engineer's estimate,

Attachment: Recom_letter_to_award (2802 : Award Bid - Street Rehab Phase III-B Reconstruction Project)

with 300 days to complete the work for the primary bid w/ the flexible pavement option on Nichols Ave.

4. Considering the less than expected difference in the concrete pavement option and the flexible pavement option on Nichols, and the longer life expectancy of concrete pavement, it is my recommendation to reconstruct Nichols Ave with concrete pavement.

5. The low bidder, Rexco Construction Services, Inc. was \$239,709.04 or 7.4% under the Engineer's estimate for the concrete pavement option on Nichols Ave.

6. Rexco Construction Services, Inc. from Port Lavaca, Texas has done work for the City of Bay City in the past and has done a lot of work in the area.

7. I recommend awarding this project using the concrete pavement option on Nichols Ave to Rexco Construction Services, Inc. from Port Lavaca, Texas in the amount of \$3,016,928.96 with 425 days to complete the work. If funding permits, the work on Ave G could be added to the contract amount at \$42,001.50. Please let me know if you have any questions or need me to provide any other information.

Sincerely,



Blaise H. Dreitner, PE
CivilCorp, LLC - Project Manager

Attachment

City of Bay City Construction Bids

Project: 2016 Capital Improvements Project 2017 Rehabilitation on Various Streets

Date: August 24, 2017, 3:00 pm

Location: Bay City City Hall, 1901 5th St, Bay City, Texas

<u>Contractor</u>	Primary Bid + Owner's <u>Option #1</u>	Primary Bid + Owner's <u>Option #2</u>	Owner's <u>Option #3</u>	Bid <u>Security</u>
1. <u>Rexco Construction</u>	\$ <u>3,016,922.74</u> Calendar Days <u>425</u>	\$ <u>2,802,087.66</u> Calendar Days <u>395</u>	\$ <u>42,001.50</u> Calendar Days <u>365</u>	✓
2. <u>Lester Contracting</u>	\$ <u>3,450,789.50</u> Calendar Days <u>365</u>	\$ <u>2,964,551.50</u> Calendar Days <u>365</u>	\$ <u>160,719.50</u> Calendar Days <u>60</u>	✓
3. <u>James Construction</u>	\$ <u>3,060,571.40</u> Calendar Days <u>365</u>	\$ <u>3,030,068.75</u> Calendar Days <u>365</u>	\$ <u>37,787.60</u> Calendar Days <u>60</u>	✓
4. _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	_____
5. _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	_____
6. _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	_____
7. _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	\$ _____ Calendar Days _____	_____

BID COMPARISONS

For

City of Bay City 2016 Capital Improvements Project 2017 Rehabilitation on Various Streets

Numbers highlighted in yellow were corrected from the submitted bid due to math errors.

1 of 3

				Engineer's Estimate		Rexco Construction Services, Inc		James Construction group, LLC		Lester Contracting, Inc.	
ITEM	DESCRIPTION	UNIT	EST QUANTITY	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)
	PRIMARY BID SHEET 1 OF 2										
1	104 Remove Conc Pavement	SY	1,501.00	\$28.00	\$42,028.00	\$12.38	\$18,582.38	\$75.00	\$112,575.00	\$15.00	\$22,515.00
2	104 Remove Conc Sidewalk & Driveway	SY	2,249.00	\$25.00	\$56,225.00	\$12.07	\$27,145.43	\$50.00	\$112,450.00	\$19.00	\$42,731.00
3	104 Remove Conc Curb & Curb & Gutter	LF	5,273.00	\$10.00	\$52,730.00	\$5.28	\$27,841.44	\$5.00	\$26,365.00	\$8.00	\$42,184.00
4	104 Remove & Salvage Brick Pavers	SY	135.00	\$20.00	\$2,700.00	\$22.85	\$3,084.75	\$15.00	\$2,025.00	\$25.00	\$3,375.00
5	110 Excavation (Roadway)	CY	4,231.00	\$15.00	\$63,465.00	\$45.44	\$192,256.64	\$20.00	\$84,620.00	\$22.00	\$93,082.00
6	132 Embankment (Compl in Place)	CY	354.00	\$25.00	\$8,850.00	\$18.56	\$6,570.24	\$150.00	\$53,100.00	\$21.00	\$7,434.00
7	160 Furnish and Place Topsoil	CY	20.00	\$35.00	\$700.00	\$51.50	\$1,030.00	\$75.00	\$1,500.00	\$85.00	\$1,700.00
8	162 Block Sodding	SY	1,751.00	\$5.00	\$8,755.00	\$3.75	\$6,566.25	\$10.00	\$17,510.00	\$6.00	\$10,506.00
9	164 Seeding Perm	SY	2,700.00	\$0.30	\$810.00	\$0.41	\$1,107.00	\$1.00	\$2,700.00	\$0.50	\$1,350.00
10	247 Flex Base (TY A) (GR 1-2) (Final Position)	CY	2,569.00	\$90.00	\$231,210.00	\$140.00	\$359,660.00	\$150.00	\$385,350.00	\$100.00	\$256,900.00
11	316 Asph (RC 250)	GAL	1,650.00	\$6.00	\$9,900.00	\$7.50	\$12,375.00	\$5.00	\$8,250.00	\$25.00	\$41,250.00
12	316 Asph (AC -15P or AC-10-2TR or CRS-2P)	GAL	2,804.00	\$6.00	\$16,824.00	\$6.21	\$17,412.84	\$5.00	\$14,020.00	\$19.00	\$53,276.00
13	316 Aggr (TY B, GR 5)	CY	59.00	\$225.00	\$13,275.00	\$582.88	\$34,389.92	\$550.00	\$32,450.00	\$295.00	\$17,405.00
14	316 Aggr (TY PB, GR 4)	CY	69.00	\$225.00	\$15,525.00	\$521.52	\$35,984.88	\$550.00	\$37,950.00	\$325.00	\$22,425.00
15	340 D-GR HMA (SQ) TY D PG 64-22	TON	2,603.00	\$175.00	\$455,525.00	\$130.89	\$340,706.67	\$100.00	\$260,300.00	\$215.00	\$559,645.00
16	340 D-GR HMA (SQ) TY D PG 64-22 Level-up	TON	35.00	\$250.00	\$8,750.00	\$200.00	\$7,000.00	\$300.00	\$10,500.00	\$250.00	\$8,750.00
17	360 Concrete Pavement (Cont Reinf-CRCP)(7")	SY	299.00	\$135.00	\$40,365.00	\$110.00	\$32,890.00	\$160.00	\$47,840.00	\$125.00	\$37,375.00
18	360 Concrete Pavement (Cont Reinf-CRCP)(9")	SY	880.00	\$125.00	\$110,000.00	\$122.10	\$107,448.00	\$100.00	\$88,000.00	\$160.00	\$140,800.00
19	361 Concrete Pavement Repair (7")	SY	65.00	\$200.00	\$13,000.00	\$310.00	\$20,150.00	\$313.00	\$20,345.00	\$140.00	\$9,100.00
21	400 Cem Stabil Bkfl	CY	61.00	\$100.00	\$6,100.00	\$162.80	\$9,930.80	\$62.00	\$3,782.00	\$125.00	\$7,625.00
22	400 Cut & Restore Conc Driveway	SY	36.00	\$200.00	\$7,200.00	\$158.40	\$5,702.40	\$188.00	\$6,768.00	\$115.00	\$4,140.00
23	400 Cut & Restore Asph Paving	SY	10.00	\$100.00	\$1,000.00	\$250.00	\$2,500.00	\$371.00	\$3,710.00	\$165.00	\$1,650.00
24	432 Riprap (12") Stone Common Dry	CY	2.00	\$500.00	\$1,000.00	\$533.50	\$1,067.00	\$600.00	\$1,200.00	\$1,670.00	\$3,340.00
25	460 CMP Galv Stil (30")	LF	7.00	\$100.00	\$700.00	\$101.64	\$711.48	\$260.00	\$1,820.00	\$260.00	\$1,820.00
26	464 RC Pipe (CI II)(15")	LF	46.00	\$60.00	\$2,760.00	\$50.60	\$2,327.60	\$130.00	\$5,980.00	\$62.00	\$2,852.00
27	464 RC Pipe (CI II)(18")	LF	68.00	\$100.00	\$6,800.00	\$57.20	\$3,889.60	\$110.00	\$7,480.00	\$70.00	\$4,760.00
28	464 RC Pipe (CI II)(24")	LF	465.00	\$100.00	\$46,500.00	\$70.40	\$32,736.00	\$96.00	\$44,640.00	\$86.00	\$39,990.00
29	465 2'x3'-4'x3' Junc Box w/24" Ring & Cover, Compl in Place	EA	5.00	\$3,500.00	\$17,500.00	\$3,932.50	\$19,662.50	\$2,900.00	\$14,500.00	\$2,620.00	\$13,100.00
30	465 3'x5' Curb Inlet for Type I 4" C&G W/ 24" Ring & Cover, Compl in Place	EA	3.00	\$4,500.00	\$13,500.00	\$4,125.00	\$12,375.00	\$3,600.00	\$10,800.00	\$3,200.00	\$9,600.00
31	465 3'x3' Slotted Inlet w/ 24" Ring & Cover	EA	1.00	\$3,000.00	\$3,000.00	\$3,547.50	\$3,547.50	\$2,600.00	\$2,600.00	\$2,105.00	\$2,105.00
32	465 26"x26" Grate Inlet, Compl in Place	EA	3.00	\$2,800.00	\$8,400.00	\$3,063.50	\$9,190.50	\$2,500.00	\$7,500.00	\$2,200.00	\$6,600.00
33	465 30"x30" Grate Inlet, Compl in Place	EA	2.00	\$3,200.00	\$6,400.00	\$3,267.00	\$6,534.00	\$2,400.00	\$4,800.00	\$2,200.00	\$4,400.00
34	467 SET (TY II)(24")(RCP)(6:1)(P)	EA	2.00	\$1,800.00	\$3,600.00	\$1,226.50	\$2,453.00	\$2,500.00	\$5,000.00	\$3,000.00	\$6,000.00
35	467 SET (TY II)(30")(CMP)(3:1)(C)	EA	1.00	\$1,800.00	\$1,800.00	\$1,705.00	\$1,705.00	\$3,500.00	\$3,500.00	\$1,525.00	\$1,525.00
36	479 Adjusting Manholes & Inlets	EA	4.00	\$1,500.00	\$6,000.00	\$1,925.00	\$7,700.00	\$900.00	\$3,600.00	\$1,100.00	\$4,400.00
37	479 Adjusting Water Meter/Water Valve	EA	2.00	\$400.00	\$800.00	\$1,100.00	\$2,200.00	\$700.00	\$1,400.00	\$330.00	\$660.00
	SHEET 1 OF 2 - PRIMARY BID TOTAL				\$1,283,697.00		\$1,376,433.82		\$1,446,930.00		\$1,486,370.00

Attachment: BayCity2017RehabBidComparisons (2802 : Award Bid - Street Rehab Phase III-B

Numbers highlighted in yellow were corrected from the submitted bid due to math errors.

2 of 3

BID COMPARISON CON'T.
 City of Bay City 2017 Rehab

BID COMPARISON CON'T. City of Bay City 2017 Rehab				Engineer's Estimate		Rexco Construction Services, Inc		James Construction group, LLC		Lester Contracting, Inc.	
ITEM	DESCRIPTION	UNIT	EST QUANTITY	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)
	PRIMARY BID SHEET 2 OF 2										
38	481 Pipe (PVC)(SCH 40)(6 in)	LF	5.00	\$45.00	\$225.00	\$99.00	\$495.00	\$75.00	\$375.00	\$30.00	\$150.00
39	481 Pipe (PVC)(SCH 40)(12 in)	LF	26.00	\$80.00	\$2,080.00	\$277.20	\$7,207.20	\$60.00	\$1,560.00	\$25.00	\$650.00
40	2619 HDPE Storm Sewer Pipe (12") (Incl Bends)	LF	42.00	\$75.00	\$3,150.00	\$37.40	\$1,570.80	\$75.00	\$3,150.00	\$40.00	\$1,680.00
41	496 Remove Stm Sew (12"-24" Pipe) w/ Inlets	LF	487.00	\$25.00	\$12,175.00	\$20.90	\$10,178.30	\$15.00	\$7,305.00	\$40.00	\$19,480.00
42	496 Remove Structure (Inlet, Junc Box or SET)	EA	3.00	\$500.00	\$1,500.00	\$1,237.50	\$3,712.50	\$600.00	\$1,800.00	\$535.00	\$1,605.00
43	500 Mobilization	LS	1.00	\$294,000.00	\$294,000.00	\$93,672.81	\$93,672.81	\$360,000.00	\$360,000.00	\$105,000.00	\$105,000.00
44	502 Barricades, Signs and Traffic Handling	MO	10.00	\$5,000.00	\$50,000.00	\$4,872.35	\$48,723.50	\$5,000.00	\$50,000.00	\$8,160.00	\$81,600.00
45	506 Temp Sediment Control Fence (Install)	LF	115.00	\$6.00	\$690.00	\$4.63	\$532.45	\$2.00	\$230.00	\$6.00	\$690.00
46	506 Temp Sediment Control Fence (Remove)	LF	115.00	\$3.00	\$345.00	\$2.00	\$230.00	\$2.00	\$230.00	\$3.75	\$431.25
47	506 Sandbags for Erosion Control (6")	LF	87.00	\$10.00	\$870.00	\$7.10	\$617.70	\$40.00	\$3,480.00	\$27.00	\$2,349.00
48	528 Constr Brick Pavers Incl Bedding Sand, Compl in Place	SY	129.00	\$100.00	\$12,900.00	\$35.50	\$4,579.50	\$45.00	\$5,805.00	\$52.00	\$6,708.00
49	529 Conc Curb (Mono) (TY I)(4")	LF	183.00	\$30.00	\$5,490.00	\$26.68	\$4,882.44	\$15.00	\$2,745.00	\$15.00	\$2,745.00
50	529 Conc Curb & Gutter (Ty I)(4")	LF	5,740.00	\$40.00	\$229,600.00	\$26.62	\$152,798.80	\$17.00	\$97,580.00	\$28.50	\$163,590.00
51	529 Conc Curb (Mono) (TY II)(6")	LF	493.00	\$30.00	\$14,790.00	\$17.55	\$8,652.15	\$13.00	\$6,409.00	\$10.00	\$4,930.00
52	529 Conc Curb & Gutter (Ty II)(6")	LF	92.00	\$40.00	\$3,680.00	\$42.85	\$3,942.20	\$19.00	\$1,748.00	\$11.50	\$1,058.00
53	530 Driveway (Conc)(5") & 531 Conc Sidewalk (5")	SY	3,047.00	\$80.00	\$243,760.00	\$84.26	\$256,740.22	\$78.00	\$237,666.00	\$88.00	\$268,136.00
54	531 Concrete Sidewalk (Step)	SY	34.00	\$100.00	\$3,400.00	\$123.20	\$4,188.80	\$78.00	\$2,652.00	\$125.00	\$4,250.00
55	531 ADA Ramps	SY	382.00	\$250.00	\$95,500.00	\$243.93	\$93,181.26	\$335.00	\$127,970.00	\$120.00	\$45,840.00
56	531 Constr Reinf Conc (4"min/usual)(Under Brick Pavers Incl Border Curb) Compl in Place	SY	143.00	\$100.00	\$14,300.00	\$92.73	\$13,260.39	\$92.00	\$13,156.00	\$78.00	\$11,154.00
57	531 Concrete Sidewalk Drain (18" Width)	LF	95.00	\$300.00	\$28,500.00	\$94.60	\$8,987.00	\$139.00	\$13,205.00	\$215.00	\$20,425.00
58	536 Concrete Median & Directional Island (6")	SY	5.00	\$100.00	\$500.00	\$385.00	\$1,925.00	\$446.00	\$2,230.00	\$630.00	\$3,150.00
59	560 Mailbox Install-S (WC-Post) TY 3	EA	52.00	\$300.00	\$15,600.00	\$75.00	\$3,900.00	\$200.00	\$10,400.00	\$225.00	\$11,700.00
60	644 Install Sm Rd Sn Sup & Assembly	EA	5.00	\$600.00	\$3,000.00	\$945.00	\$4,725.00	\$725.00	\$3,625.00	\$815.00	\$4,075.00
61	644 Remove & Relocate Sm Sign Assembly, Compl in Place	EA	9.00	\$600.00	\$5,400.00	\$393.75	\$3,543.75	\$491.00	\$4,419.00	\$560.00	\$5,040.00
62	662 Wk Zn Pav Mrk Sht Term (Tab) Ty Y-2	EA	576.00	\$1.00	\$576.00	\$2.84	\$1,635.84	\$1.00	\$576.00	\$7.50	\$4,320.00
63	666 Refl Pav Mrk Ty I (W) 4" (Slid) (100 Mil)	LF	15,430.00	\$0.50	\$7,715.00	\$0.33	\$5,091.90	\$1.20	\$18,516.00	\$1.50	\$23,145.00
64	666 Refl Pav Mrk Ty I (Y) (4") (Slid) (100 Mil)	LF	14,512.00	\$0.50	\$7,256.00	\$0.33	\$4,788.96	\$0.50	\$7,256.00	\$0.60	\$8,707.20
65	666 Refl Pav Mrk Ty I (R) (4") (Slid) (100 Mil)	LF	216.00	\$1.00	\$216.00	\$0.33	\$71.28	\$2.90	\$626.40	\$3.25	\$702.00
66	666 Refl Pav Mrk Ty I (W) (12") (Slid) (100 Mil)	LF	427.00	\$2.00	\$854.00	\$21.00	\$8,967.00	\$3.35	\$1,430.45	\$3.75	\$1,601.25
67	666 Refl Pav Mrk Ty I (W) (24") (Slid) (100 Mil)	LF	186.00	\$8.00	\$1,488.00	\$29.40	\$5,468.40	\$6.70	\$1,246.20	\$7.50	\$1,395.00
68	677 Eliminate Exist Pav Mrk & Mrks (4")	LF	90.00	\$2.00	\$180.00	\$3.68	\$331.20	\$1.00	\$90.00	\$1.50	\$135.00
69	677 Eliminate Exist Pav Mrk & Mrks (Symbol)	EA	2.00	\$100.00	\$200.00	\$78.75	\$157.50	\$70.00	\$140.00	\$80.00	\$160.00
71	Instal Safe Exchange Zone (12" Stripe & Words)	EA	1.00	\$800.00	\$800.00	\$420.00	\$420.00	\$949.00	\$949.00	\$1,100.00	\$1,100.00
72	6' Concrete Curb Stop, Pinned to Conc Pvmt	EA	2.00	\$200.00	\$400.00	\$420.00	\$840.00	\$111.00	\$222.00	\$250.00	\$500.00
	SHEET 2 OF 2 - PRIMARY BID TOTAL				\$1,061,140.00		\$760,018.85		\$988,792.05		\$808,201.70
	PRIMARY BID TOTAL (Sheet 1 of 2 + Sheet 2 of 2)				\$2,344,837.00		\$2,136,452.67		\$2,435,722.05		\$2,294,571.70

Numbers highlighted in yellow were corrected from the submitted bid due to math errors.

3 of 3

BID COMPARISON CON'T.
City of Bay City 2017 Rehab

Engineer's Estimate

Rexco Construction Services, Inc

James Construction group, LLC

Lester Contracting, Inc.

OWNER'S OPTION NO. 1 - NICHOLS AVE CONCRETE PAVEMENT

ITEM	DESCRIPTION	UNIT	EST QUANTITY	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)
OWNER'S OPTION NO. 1 BID											
5	110 Excavation (Roadway)	CY	1735	\$15.00	\$26,025.00	\$45.44	\$78,838.40	\$19.00	\$32,965.00	\$22.00	\$38,170.00
6	132 Embankment (Compl in Place)	CY	452	\$25.00	\$11,300.00	\$18.56	\$8,389.12	\$44.00	\$19,888.00	\$21.00	\$9,492.00
12	316 Asph (AC -15P or AC-10-2TR or CRS-2P)	GAL	331	\$6.00	\$1,986.00	\$6.21	\$2,055.51	\$4.35	\$1,439.85	\$19.00	\$6,289.00
14	316 Aggr (TY PB, GR 4)	CY	8	\$225.00	\$1,800.00	\$521.52	\$4,172.16	\$935.00	\$7,480.00	\$325.00	\$2,600.00
15	340 D-GR HMA (SQ) TY D PG 64-22	TON	34	\$175.00	\$5,950.00	\$130.89	\$4,450.26	\$175.00	\$5,950.00	\$215.00	\$7,310.00
18	360 Concrete Pavement (Cont Reinf-CRCP)(9")	SY	6029	\$125.00	\$753,625.00	\$110.00	\$663,190.00	\$79.00	\$476,291.00	\$160.00	\$964,640.00
53	530 Driveway Conc (5") & 531 Conc Sidewalk (5")	SY	1384	\$80.00	\$110,720.00	\$84.26	\$116,615.84	\$55.00	\$76,120.00	\$88.00	\$121,792.00
70	678 Pav Surf Prep for Mrk (4")	LF	3950	\$0.10	\$395.00	\$0.70	\$2,765.00	\$1.25	\$4,937.50	\$1.50	\$5,925.00
OWNER'S OPTION NO. 1 BID TOTAL					\$911,801.00		\$880,476.29		\$625,071.35		\$1,156,218.00

OWNER'S OPTION NO. 2 - NICHOLS AVE FLEXIBLE PAVEMENT

ITEM	DESCRIPTION	UNIT	EST QUANTITY	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)
OWNER'S OPTION NO. 2 BID											
5	110 Excavation (Roadway)	CY	2113	\$15.00	\$31,695.00	\$45.44	\$96,014.72	\$21.00	\$44,373.00	\$22.00	\$46,486.00
6	132 Embankment (Compl in Place)	CY	277	\$25.00	\$6,925.00	\$18.56	\$5,141.12	\$92.00	\$25,484.00	\$21.00	\$5,817.00
10	247 Flex Base (TY A) (GR 1-2) (Final Position)	CY	1403	\$90.00	\$126,270.00	\$140.00	\$196,420.00	\$149.00	\$209,047.00	\$100.00	\$140,300.00
11	316 Asph (RC 250)	GAL	967	\$6.00	\$5,802.00	\$7.50	\$7,252.50	\$3.70	\$3,577.90	\$5.00	\$4,835.00
12	316 Asph (AC -15P or AC-10-2TR or CRS-2P)	GAL	1644	\$6.00	\$9,864.00	\$6.21	\$10,209.24	\$2.70	\$4,438.80	\$19.00	\$31,236.00
13	316 Aggr (TY B, GR 5)	CY	35	\$225.00	\$7,875.00	\$582.88	\$20,400.80	\$280.00	\$9,800.00	\$295.00	\$10,325.00
14	316 Aggr (TY PB, GR 4)	CY	40	\$225.00	\$9,000.00	\$521.52	\$20,860.80	\$240.00	\$9,600.00	\$325.00	\$13,000.00
15	340 D-GR HMA (SQ) TY D PG 64-22	TON	459	\$175.00	\$80,325.00	\$130.89	\$60,078.51	\$125.00	\$57,375.00	\$215.00	\$98,685.00
18	360 Concrete Pavement (Cont Reinf-CRCP)(9")	SY	1307	\$125.00	\$163,375.00	\$110.00	\$143,770.00	\$123.00	\$160,761.00	\$160.00	\$209,120.00
53	530 Driveway Conc (5") & 531 Conc Sidewalk (5")	SY	1252	\$80.00	\$100,160.00	\$84.26	\$105,493.52	\$56.00	\$70,112.00	\$88.00	\$110,176.00
OWNER'S OPTION NO. 2 BID TOTAL					\$541,291.00		\$665,641.21		\$594,568.70		\$669,980.00

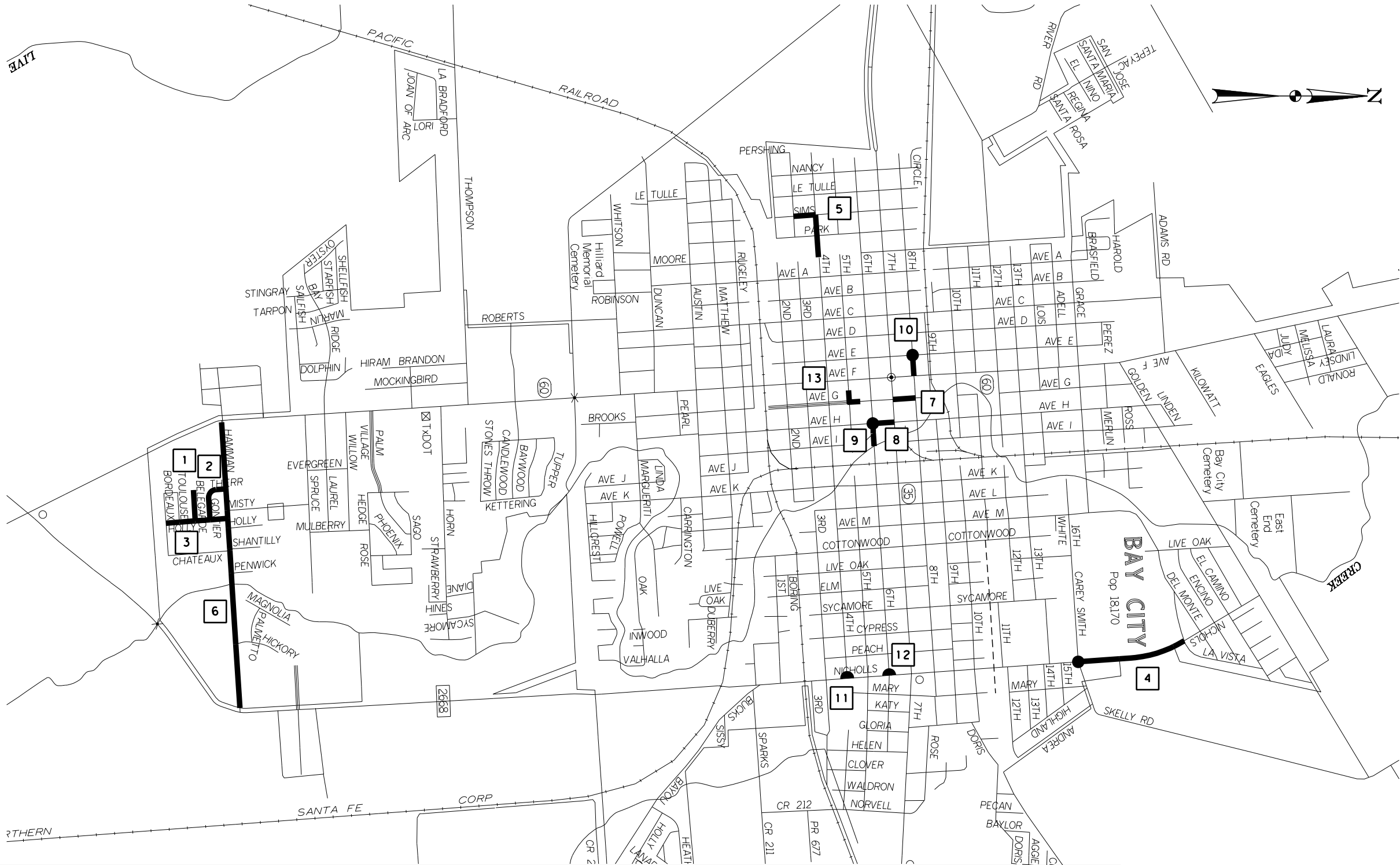
OWNER'S OPTION NO. 3 - AVE G CONC MEDIAN, ACP OVERLAY & STRIPING

ITEM	DESCRIPTION	UNIT	EST QUANTITY	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)	UNIT PRICE	AMOUNT BID (QTY. X UNIT PRICE)
OWNER'S OPTION NO. 2 BID											
1	104 Remove Conc Pavement	SY	6	\$28.00	\$168.00	\$11.50	\$69.00	\$975.00	\$5,850.00	\$30.00	\$180.00
7	160 Furnish and Place Topsoil	CY	4	\$35.00	\$140.00	\$51.50	\$206.00	\$263.00	\$1,052.00	\$85.00	\$340.00
15	340 D-GR HMA (SQ) TY D PG 64-22	TON	204	\$175.00	\$35,700.00	\$130.89	\$26,701.56	\$111.00	\$22,644.00	\$215.00	\$43,860.00
20	361 Sawcut Exist Concrete Pavement (6")	LF	340	\$5.00	\$1,700.00	\$17.60	\$5,984.00	\$6.00	\$2,040.00	\$20.00	\$6,800.00
58	536 Concrete Median & Directional Island (6")	SY	65	\$100.00	\$6,500.00	\$126.50	\$8,222.50	\$78.00	\$5,070.00	\$125.00	\$8,125.00
63	666 Refl Pav Mrk Ty I (W) (4") (Sid) (100 Mil)	LF	924	\$0.50	\$462.00	\$0.31	\$286.44	\$1.20	\$1,108.80	\$1.50	\$1,386.00
67	666 Refl Pav Mrk Ty I (W) (24") (Sid) (100 Mil)	LF	19	\$8.00	\$152.00	\$28.00	\$532.00	\$1.20	\$22.80	\$1.50	\$28.50
OWNER'S OPTION NO. 3 BID TOTAL					\$44,822.00		\$42,001.50		\$37,787.60		\$60,719.50
TOTAL CALENDAR DAYS OWNER'S OPTION NO. 3 BID					60		365		60		60

PRIMARY BID TOTAL					\$2,344,837.00		\$2,136,452.67		\$2,435,722.05		\$2,294,571.70
OWNER'S OPTION NO. 1 BID TOTAL					\$911,801.00		\$880,476.29		\$625,071.35		\$1,156,218.00
PRIMARY BID + OWNER'S OPTION NO. 1 BID TOTAL					\$3,256,638.00		\$3,016,928.96		\$3,060,793.40		\$3,450,789.70
TOTAL CALENDAR DAYS PRIMARY BID + OWNER'S OPTION NO. 1 BID					300		425		365		365

PRIMARY BID TOTAL					\$2,344,837.00		\$2,136,452.67		\$2,435,722.05		\$2,294,571.70
OWNER'S OPTION NO. 2 BID TOTAL					\$541,291.00		\$665,641.21		\$594,568.70		\$669,980.00
PRIMARY BID + OWNER'S OPTION NO. 2 BID TOTAL					\$2,886,128.00		\$2,802,093.88		\$3,030,290.75		\$2,964,551.70
TOTAL CALENDAR DAYS PRIMARY BID + OWNER'S OPTION NO. 2 BID					300		395		365		365

L:\CIVILCORP*LLC\ACTIVE\CITY*OF*BAY CITY\2016 Capital Improvements\1670004*2017 Rehab\Drawings\DWG\Sheets\02*PROJECT*LAYOUT.dgn
7/26/2017 5:00:42 PM



LEGEND

- STREET LOCATION
- PROJECT NUMBER
- INTERSECTION LOCATION

SUMMARY OF PROJECTS		
STREET	LIMITS	TYPE OF WORK
1 BELEGARDE DR	END OF PVMT TO HOLLY LN	FULL REHAB, ACP OVERLAY, REPLACE C&G
2 GONTIER DR/THIERR DR	HAMMAN RD TO HOLLY DR	FULL REHAB, ACP OVERLAY, REPLACE C&G
3 HOLLY LN	HAMMAN RD TO BORDEAUX DR	FULL REHAB, ACP OVERLAY, REPLACE C&G
4 NICHOLS AVE	LA VISTA AVE TO CAREY SMITH BLVD	FULL REHAB, CONC PVMT OR ACP OVERLAY, STRIPING, SIDEWALK
5 SIMS AVE	3RD ST TO 4TH ST, W/ OUTFALL EAST ON 4TH ST	FULL REHAB, ACP OVERLAY, C&G, DRAINAGE
6 HAMMAN RD	E. OF SH 60 TO W. OF FM 2668	ACP OVERLAY, STRIPING
7 AVE G	7TH ST TO 8TH ST	ADD RAISED CONC MEDIAN, ACP OVERLAY, STRIPING
8 AVE H	6TH ST TO 7TH ST	ACP OVERLAY, STRIPING
9 6TH ST	AVE H TO AVE I	PEDESTRIAN ELEMENTS, ACP OVERLAY, STRIPING
10 8TH ST	AVE E TO AVE F	PEDESTRIAN ELEMENTS, ACP OVERLAY, STRIPING
11 4TH ST INTERSECTION	@ NICHOLS AVE, WEST SIDE	PEDESTRIAN ELEMENTS, CONCRETE INTERSECTION
12 6TH ST INTERSECTION	@ NICHOLS AVE, WEST SIDE	PEDESTRIAN ELEMENTS, CONCRETE INTERSECTION
13 5TH ST	@ AVE G (NW CORNER)	PED ELEMENTS, BRICK PAVERS, REPLACE C&G

CIVILCORP, LLC
FIRM REGISTRATION NUMBER: 10283

NAME: Blaise H. Dreitner PE
DATE: 7/26/2017

THE CITY OF
BAY CITY
TEXAS

CivilCorp
ENGINEERS • SURVEYORS
702 IRVINE ST., YOAKUM, TEXAS 77995
TEL: (361) 427-4011 TBPE# 10283

2017 REHABILITATION
ON VARIOUS STREETS

PROJECT LAYOUT

Attachment: 2017 Bay City Rehab - Project Layout (2802 : Award Bid - Street Rehab Phase III-B Reconstruction Project)



City Council
1901 5Th Street
Bay City, TX 77414

ADOPTED

AGENDA ITEM (ID # 2801)

Meeting: 09/14/17 07:00 PM
Department: City Secretary
Category: Grant
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2801

DISCUSS, CONSIDER, AND/OR APPROVE ADMINISTRATOR FOR THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, 2017 TEXAS CAPITAL FUND DOWNTOWN REVITALIZATION / MAIN STREET PROGRAMS.

COMMENTS - Current Meeting:

BCCDC Executive Director, DC Dunham presented this agenda item:

Texas Capital Fund - Administrative portion. 2 bids were received. Dunham recommends awarding the bid to Grantworks. The grant pays for administrative fees.

The recommendation was unanimously approved by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Julie Estlinbaum.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Sitz, Childers, Folse, Cornman, Estlinbaum



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 09/14/17 07:00 PM
Department: City Secretary
Category: Agreement
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2800

AGENDA ITEM (ID # 2800)

**DISCUSS, CONSIDER, AND/OR APPROVE THE
DEVELOPMENT FINANCING AGREEMENT BY AND
BETWEEN REINVESTMENT ZONE NUMBER TWO (2), CITY
OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT
CORPORATION.**

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER TWO,
CITY OF BAY CITY, AND [[Developer Name]]**

This DEVELOPMENT FINANCING AGREEMENT (“Agreement”) is entered into by and between the REINVESTMENT ZONE NUMBER TWO, CITY OF BAY CITY, TEXAS (the “Zone”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the “TIRZ Act”) to oversee the administration of Tax Increment Reinvestment Zone Number Two, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and [[DEVELOPER NAME]] (“Developer”), [[Developer Type of Org.]].

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

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the “Zone Board” or “Board”) and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number Two, City of Bay City, dated November 19, 2015, (TIRZ Plan), and amended on January 26, 2017; and

WHEREAS, the Developer has or will construct certain improvements described on Exhibit “B”, to implement the TIRZ Plan, and the Zone will reimburse the Developer all or a portion of Developer’s cost for the public works and public improvements in accordance with this Agreement (described in more detail below in Section 3(a) as Project Costs); and

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

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the TIRZ Plan, which powers include the power to enter into agreements for the construction of public improvements including, but not limited to, the Project, to be constructed in accordance with the Project Plans;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for Developer’s cost of constructing certain public improvements pursuant to the TIRZ Plan;

WHEREAS, Developer warrants to the Zone that all of the information contained in the Developer’s Application is true and correct in all material respects; and,

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: Site

Developer owns the real property (the “Property”), which is within the city limits of Bay City and the boundaries of the Zone. The Property is specifically described in as shown in attached Exhibit “A.”

2. Section: Project & Financing

Developer has constructed, or is in the process of constructing, private and public improvements including, but not limited to, the Project described in attached Exhibit “B” (the “Project”).

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 TIF payments 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.

The Developer agrees to deliver to the Zone written notice of the date on which construction of the Project commences. This notice will be delivered within ____ days after the date of commencement. The Developer agrees to complete the construction of the Project within the schedule described on Exhibit “E” attached hereto. The date of completion is the date on which the Project is substantially completed (satisfying City, County and other applicable laws) and all public improvements have been accepted by the applicable governmental entity, and, if required (as, for example, in the case of a roadway) the land has been dedicated for public use or title otherwise transferred to the applicable governmental entity (in accordance with their requirements). Upon completion, the Developer will deliver a written notice to the Zone, signed by Developer and the [[director or assistant director of the City of Bay City Public Works Department ???]], stating that the Project has been completed in accordance with these requirements.

The Developer agrees to maintain liability insurance coverage reasonably required by the Zone, until the Project has been completed. The insurance company, the types of insurance and the amounts of coverage will be commercially reasonable in light of the Project. The Developer will provide proof of coverage prior to commencement of construction, in a form reasonably acceptable to the Zone. Current insurance requirements are attached to this Agreement as Exhibit “F”.

3. Section: TIF Participation: Partial Reimbursement of Tax Increment

The payments and distributions under this Agreement are subject to obligations under all prior agreements listed on Exhibit “D”. Subject to these and all other limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that Tax

Increment generated within the Zone shall be applied as follows:

- (a) Public Improvements: To the Developer to reimburse Developer for the actual expenses related to public improvements (described on Exhibit “C”) that are part of the Project (described on Exhibit “B”), to the extent that the expenses are allowable under Chapter 311 of the Texas Tax Code Section 311.002. This reimbursement will not exceed the projected Project Costs listed on attached Exhibit “C.” These allowable costs are called “Project Costs.”
- (c) Any remaining TIF Funds, after Developer has been fully reimbursed (the “Available Funds”), will be available for commitment to future projects.

Unless explicitly provided differently in an Exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) preexisting debts or obligations of the Zone, and (ii) any pre-existing annual expenditures required to be made pursuant to other Developer Agreements prior in time to this Agreement, listed on Exhibit “D”.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance under this Agreement, and under any other outstanding developer agreements within the Zone.

4. Section: 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 Zone by this Agreement (“Reimbursement”) shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will 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 Zone in the first year in which there is sufficient revenue in the TIF 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 City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer’s failure to meet any precondition under this Agreement for receipt of the

Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

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:

- (a) the complete performance of all obligations and conditions precedent by Parties to this Agreement;
- (b) expiration of thirty years after Effective Date; or
- (c) the expiration of the term of the Zone.

6. 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.

7. 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 party, its 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.

8. 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.

9. Section: Events of Default & Remedies

A default shall exist if either 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 shall occur and continue, 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. Neither party, however, shall pursue remedies against the other 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.

10. Section: 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 Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. 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 either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Board Chairman
Tax Increment Reinvestment Zone No. 2
c/o City of Bay City
1901 5th Street
Bay City, Texas 77414

With a copy to:
Scotty Jones, City Treasurer
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:

[[Developer Name and Address]]

12. 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.

13. Section: Severability

In case any one or more of the provisions of this Agreement shall for any reason be 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.

14. 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 in multiple originals. This agreement may be executed by facsimile signatures which shall be

deemed originals and equally admissible as originals.

15. 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.

16. 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 Zone approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the Zone 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 the Developer's financial institution.

17. Section: Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between 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 Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, 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 both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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, the Zone, and the BCCDC effective as of the Effective Date.

(signatures follow on next page)

[[Developer Name]], [[Developer Type of Org.]]	REINVESTMENT ZONE NUMBER TWO CITY OF BAY CITY, TEXAS
_____ [[signor]], [[Title]]	_____ [Chairman Name], Chairman

PASSED AND APPROVED this _____ day of _____, 20_____

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibits:

- “A” – the Property
- “B” – the Project
- “C” – List/Description of Reimbursable Public Improvements
- “D” – List of Prior Agreements
- “E” – Project Completion Schedule
- “F” – Insurance Requirements

Exhibit “A”

The Property

Exhibit “B”

The Project

Exhibit “C”

List/Description of Reimbursable Public Improvements

Exhibit “D”

List of Prior Agreements

1. DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER TWO, CITY OF BAY CITY, AND THE CITY OF BAY CITY dated _____, 2017.
2. DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER TWO, CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT CORPORATION dated _____, 2017.

Exhibit “E”

Project Completion Schedule

Exhibit “F”

Insurance Requirements

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER TWO,
CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT
CORPORATION**

This DEVELOPMENT FINANCING AGREEMENT (“Agreement”) is entered into by and between the REINVESTMENT ZONE NUMBER TWO, CITY OF BAY CITY, TEXAS (the “Zone”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the “TIRZ Act”) to oversee the administration of Tax Increment Reinvestment Zone Number Two, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and BAY CITY COMMUNITY DEVELOPMENT CORPORATION (“Developer”), a Type B development corporation established pursuant to Chapter 505, subchapter B of the Texas Local Government Code.

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

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the “Zone Board” or “Board”) and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number Two, City of Bay City, dated November 19, 2015, (TIRZ Plan), and amended on January 26, 2017; and

WHEREAS, the Developer has paid certain organizational costs for the creation of the Zone and the TIRZ Plan, and has or will construct certain improvements to implement TIRZ Plan, and the Zone will reimburse the Developer all or a portion of the Project Costs (defined herein) of such public works and improvements in accordance with this Agreement; and

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

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for the construction of public improvements including, but not limited to, a public parking lot, lighting, landscaping, road, sewer, drainage, water improvements, and all infrastructure improvements needed for a Cinema/Family Entertainment Center and related improvements to be constructed in accordance with the Project Plans;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer has paid certain organizational costs for the creation of the Zone and the TIRZ Plan and owns or controls certain property located within the Zone and has requested reimbursement for these organizational expenses and for the cost of constructing certain public improvements pursuant to the Plan; and,

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: Site

Developer owns the real property (the “Property”), which is within the city limits of Bay City and the boundaries of the Zone. The Property is specifically described in as shown in attached Exhibit “A.”

2. Section: Project & Financing

Developer has constructed, or is in the process of constructing, private and public improvements including, but not limited to, a public parking lot, lighting, landscaping, road, sewer, drainage, water improvements, and all infrastructure improvements needed for a Cinema/Family Entertainment Center and related improvements as more particularly described in attached Exhibit “B” (the “Project”)

Developer understands and agrees that the cost of the Private Improvements associated with the Project shall be funded by and through Developer’s own capital or other financing means arranged and obtained by Developer. Further, the TIF payments 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.

3. Section: TIF Participation: Partial Reimbursement of Tax Increment

The payments and distributions under this Agreement are subject to obligations under all prior agreements listed on Exhibit “D”. Subject to these and all other limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that Tax Increment generated within the Zone shall be applied as follows:

- (a) The expenses reflected in the Development Financing Agreement By and Between Reinvestment Zone Number One, City of Bay City, and the City of Bay City dated _____, 2017 (“City Reimbursements”), attached as Exhibit D.
- (b) Organizational Costs: To Developer to reimburse Developer for fifty percent (50%) of the Professional Services Agreement with David Pettit Economic Development, LLC dated April 7th, 2015, that provided the services to create the Zone, in the amount of \$31,249.27.
- (c) Public Improvements: To the Developer to reimburse Developer for the actual expenses related to the Cinema/Family Entertainment allowable under Chapter 311 of the Texas Tax Code Section 311.002 of allowable Project Costs, as shown in attached Exhibit “C”, not to exceed \$3,028,094.29.
- (c) Remaining funds (the “Available Funds”) available for commitment to future projects.

Unless explicitly provided differently in an Exhibit attached hereto, all grants, loans,

reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) City Reimbursements, and (ii) preexisting debts or obligations of the Zone.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance under this Agreement, and under any other outstanding developer agreements within the Zone.

4. Section: 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 Zone by this Agreement (“Reimbursement”) shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will 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 Zone in the first year in which there is sufficient revenue in the TIF 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 City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer’s failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

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:

- (a) the complete performance of all obligations and conditions precedent by Parties to this Agreement;
- (b) expiration of thirty years after Effective Date; or
- (c) the expiration of the term of the Zone.

6. 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.

7. 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 party, its 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.

8. 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.

9. Section: Events of Default & Remedies

A default shall exist if either 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 shall occur and continue, after thirty (30) day's 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. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within the 30 days following notice.

10. Section: 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 Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. 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 either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Board Chairman
Tax Increment Reinvestment Zone No. 2
c/o City of Bay City
1901 5th Street
Bay City, Texas 77414

With a copy to:
Scotty Jones, City Treasurer
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:

D.C. Dunham, Executive Director
 Bay City Community Development Corporation
 1900 5th Street
 Bay City, Texas 77414

With a copy to:
 Jill Cornelius, Attorney
 1744 6th Street
 Bay City, Texas 77414

12. 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.

13. Section: Severability

In case any one or more of the provisions of this Agreement shall for any reason be 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.

14. 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 in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

15. 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.

16. 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 Zone approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the Zone 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 the Developer's financial institution.

17. Section: Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between 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 Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, 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 both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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, the Zone, and the BCCDC effective as of the Effective Date.

(signatures follow on next page)

BAY CITY COMMUNITY DEVELOPMENT
CORPORATION

Julie Estlinbaum, President

ATTEST:

REINVESTMENT ZONE NUMBER TWO
CITY OF BAY CITY, TEXAS

William Bell, Chairman

PASSED AND APPROVED this _____ day of September, 2017

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibits:

- “A” – the Property
- “B” – the Project
- “C” – List/Description of Reimbursable Public Improvements
- “D” – List of Prior Agreements

Exhibit “A”

The Property

Exhibit “B”

The Project

Exhibit “C”

List/Description of Reimbursable Public Improvements

Exhibit “D”

List of Prior Agreements

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER TWO,
CITY OF BAY CITY, AND THE CITY OF BAY CITY**

This DEVELOPMENT FINANCING AGREEMENT (“Agreement”) is entered into by and between the REINVESTMENT ZONE NUMBER TWO, CITY OF BAY CITY, TEXAS (the “Zone”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the “TIRZ Act”) to oversee the administration of Tax Increment Reinvestment Zone Number Two, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and the CITY OF BAY CITY, TEXAS, a municipal corporation and a home rule city in the State of Texas (the “City”).

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

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the “Zone Board” or “Board”) and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number Two, City of Bay City, dated November 19, 2015, (TIRZ Plan), and amended on January 26, 2017; and

WHEREAS, the City has or will perform certain administrative services to implement the TIRZ Plan, and the Zone will reimburse the City all or a portion of the Project Costs (defined herein) of such public works and improvements in accordance with this Agreement; and

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

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for work to be performed in accordance with the Project Plans;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, City has or will perform certain administrative services for the Zone and has requested reimbursement for this work pursuant to the Plan; and,

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: Site [deleted as not applicable]

2. Section: Administrative Work

The City has or will perform certain administrative work for the Zone, including creating and maintain accounts for the Zone, disbursing funds in accordance with approved agreements, maintaining records, and filing required reports (“Administrative Work”).

3. Section: TIF Participation: Partial Reimbursement of Tax Increment

The payments and distributions under this Agreement are not subject to any other development agreements. Subject all limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that Tax Increment generated within the Zone shall be applied as follows:

- (a) Two and a half percent (2.5%) of the Tax Increment to pay City for the Administrative Work. Each year, 2.5% of the Tax Increment for that year will be paid to the City. The total payments over the life of this Agreement will not exceed 2.5% of the total Tax Increment for the Zone.
- (b) Remaining funds (the “Available Funds”) available for all other Zone expenditures identified in separate agreements.

Unless explicitly provided differently in an Exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to City under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to City shall have priority for reimbursement over all other Zone expenditures.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse City from bond proceeds received, the existing unpaid balance under this Agreement, and under any other outstanding City agreements within the Zone.

4. Section: Reimbursement Limited to TIF Fund

City understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement (“Reimbursement”) shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay City any part of the Reimbursement, the Zone will pay City 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 Zone in the first year in which there is sufficient revenue in the TIF to pay

such balance. City 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 City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to City's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay City any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

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:

- (a) the last day of the calendar year in which the City notifies the Zone that it will no longer perform the Administrative Work (or at some other date agreed upon by the parties);
- (b) expiration of thirty years after Effective Date; or
- (c) the expiration of the term of the Zone.

6. 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.

7. 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 party, its 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.

8. Section: [deleted – not applicable]

9. Section: Events of Default & Remedies

A default shall exist if either 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 shall occur and continue, 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. The Zone shall not, however, pursue remedies against the City as long as City proceeds in good faith and with due diligence to remedy and correct the default, provided that City has commenced to cure such default within the 30 days following notice. The Zone's sole remedy in the event of a default by the City is to terminate this Agreement.

10. Section: 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 Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. 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 either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Board Chairman
Tax Increment Reinvestment Zone No. 2
c/o City of Bay City
1901 5th Street
Bay City, Texas 77414

If intended for City, to:

The City of Bay City
1900 5th Street
Bay City, Texas 77414

With a copy to:
 Scotty Jones, City Treasurer
 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

12. 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.

13. Section: Severability

In case any one or more of the provisions of this Agreement shall for any reason be 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.

14. 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 in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

15. 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.

16. Section: Successors and Assigns

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

limited), or to the City's financial institution.

17. Section: Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between 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 Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, and City, 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 both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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, the Zone, and the BCCDC effective as of the Effective Date.

(signatures follow on next page)

CITY OF BAY CITY, TEXAS

Mark A. Bricker, Mayor

ATTEST:

David Holubec, City Secretary

REINVESTMENT ZONE NUMBER TWO
CITY OF BAY CITY, TEXAS

William Bell, Chairman

PASSED AND APPROVED this _____ day of September, 2017

ATTEST:

Mark Bricker, Mayor

David Holubec, City Secretary

APPROVED AS TO FORM:

City Attorney

Attachment: TIRZ 2 Devel Ag with City APPROVED BY TIRZ BD 20170822 (2800 : Development Finance Agreement - TIRZ 2)

TIRZ #2 Project Description

BCCDC agrees to build a Cinema/Family Entertainment Center, and public parking lot, lighting, landscaping, road, sewer, drainage, water improvements, and all infrastructure improvements needed for the Cinema/Family Entertainment Center and related improvements to be constructed in accordance with the Architectural Plans provided by Hodges & Associates and Civil plans provided by G & W Engineers, Inc.

Cinema/Family Entertainment Center – 51,179 sf building with a mezzanine of 2,990sf for a total building area of 54,719sf. This building includes 8 movie theaters, 12 bowling lands, full kitchen, concession area, lounge, bar, patio area, party room and gaming area.

TIRZ allowable expenses			Invoices Rc'd	
TIRZ %	Soft Costs:	Estimate	5/31/2017	TIRZ 2 Amt
100%	Tx Capital Fund	\$10,000.00	9,129.00	9,129.00
50%	TIRZ Formation	\$62,500.00	62,498.54	31,249.27
20%	Soil Borings Testing	\$10,000.00	8,641.00	1,728.20
100%	Survey - Engineering	\$10,000.00	10,620.75	10,620.75
100%	Legal	\$40,000.00	51,574.51	51,574.51
0%	Taxes	\$40,000.00	-	-
20%	Insurance	\$20,000.00	38,096.00	7,619.20
20%	Architecture & Consultants	\$235,000.00	156,862.50	31,372.50
	Preliminary Design	\$20,000.00	42,094.09	-
0%	Kitchen Design	\$6,000.00	5,000.00	-
0%	Low Voltage	\$25,200.00	21,420.00	-
100%	Environmental Testing	\$10,000.00	-	-
100%	Civil Engineering	\$34,800.00	39,337.56	39,337.56
100%	Traffic Study	\$5,000.00	3,400.00	3,400.00
100%	Landscape & Irrigation	\$10,000.00	7,867.50	7,867.50
100%	Mis Fees, permits, etc	\$50,000.00	33,433.84	33,433.84
0%	ADA Plan Review	\$1,500.00	-	-
100%	Closing Costs		72,295.10	72,295.10
20%	Reimbursable Expenses	\$30,000.00	369.10	73.82
50%	Material Testing	\$15,000.00	50,272.70	25,136.35
Total		\$635,000.00	\$612,912.19	\$324,837.60
Hard Costs:		Contract	Projected	TIRZ 2 Amt
100%	Site Work / parking lot	1,689,540	1,840,599.70	1,840,599.70
20%	Gen. Conditions & Overhead	749,510	749,510.00	149,902.00
0%	Building facility	\$8,143,772.00	\$8,216,827.98	-
	Gallant Const Contract	9,833,312	10,057,428	1,990,501.70
20%	Lighting Package	\$300,000.00	310,000.00	62,000.00
100%	Landscaping & Irrigation	\$150,000.00	155,000.00	155,000.00
20%	Development Fee	\$320,000.00	320,000.00	64,000.00
100%	Chandler Sign - Pylon		87,537.85	87,537.85
100%	Bay City Gas line installation		6,881.81	6,881.81
		\$11,238,312	\$11,549,760	\$2,596,339
100%	McCrosky Rd - TCF	80,000.00	80,000.00	80,000.00
20%	Jackson Electric	29,869.15	29,869.15	5,973.83
100%	Interest on parking only	52,192.83	52,192.83	52,192.83
Total Reimbursable expenses				3,059,343.56

Attachment: TIRZ #2 Documents (2800 : Development Finance Agreement - TIRZ 2)



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 09/14/17 07:00 PM
Department: City Secretary
Category: Agreement
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2799

AGENDA ITEM (ID # 2799)

**DISCUSS, CONSIDER, AND/OR APPROVE THE
DEVELOPMENT FINANCING AGREEMENT BY AND
BETWEEN REINVESTMENT ZONE NUMBER ONE (1), CITY
OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT
CORPORATION.**

COMMENTS - Current Meeting:

TIRZ #1 & #2 - Agreements between the TIRZ boards and the City of Bay City and the Bay City Community Development Corporation were reviewed and approved by motion. The motion was made by Councilman Jason Childers and seconded by Councilwoman Becca Sitz.

Councilwoman Folse recused herself from this vote.

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER ONE,
CITY OF BAY CITY, AND [[Developer Name]]**

This DEVELOPMENT FINANCING AGREEMENT (“Agreement”) is entered into by and between the REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, TEXAS (the “Zone”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the “TIRZ Act”) to oversee the administration of Tax Increment Reinvestment Zone Number One, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and [[DEVELOPER NAME]] (“Developer”), [[Developer Type of Org.]].

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

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the “Zone Board” or “Board”) and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number One, City of Bay City, dated November 19, 2015, (TIRZ Plan), and amended on January 26, 2017; and

WHEREAS, the Developer has or will construct certain improvements described on Exhibit “B”, to implement the TIRZ Plan, and the Zone will reimburse the Developer all or a portion of Developer’s cost for the public works and public improvements in accordance with this Agreement (described in more detail below in Section 3(a) as Project Costs); and

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

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the TIRZ Plan, which powers include the power to enter into agreements for the construction of public improvements including, but not limited to, the Project, to be constructed in accordance with the Project Plans;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for Developer’s cost of constructing certain public improvements pursuant to the TIRZ Plan;

WHEREAS, Developer warrants to the Zone that all of the information contained in the Developer’s Application is true and correct in all material respects; and,

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: Site

Developer owns the real property (the “Property”), which is within the city limits of Bay City and the boundaries of the Zone. The Property is specifically described in as shown in attached Exhibit “A.”

2. Section: Project & Financing

Developer has constructed, or is in the process of constructing, private and public improvements including, but not limited to, the Project described in attached Exhibit “B” (the “Project”).

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 TIF payments 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.

The Developer agrees to deliver to the Zone written notice of the date on which construction of the Project commences. This notice will be delivered within ____ days after the date of commencement. The Developer agrees to complete the construction of the Project within the schedule described on Exhibit “E” attached hereto. The date of completion is the date on which the Project is substantially completed (satisfying City, County and other applicable laws) and all public improvements have been accepted by the applicable governmental entity, and, if required (as, for example, in the case of a roadway) the land has been dedicated for public use or title otherwise transferred to the applicable governmental entity (in accordance with their requirements). Upon completion, the Developer will deliver a written notice to the Zone, signed by Developer and the [[director or assistant director of the City of Bay City Public Works Department ???]], stating that the Project has been completed in accordance with these requirements.

The Developer agrees to maintain liability insurance coverage reasonably required by the Zone, until the Project has been completed. The insurance company, the types of insurance and the amounts of coverage will be commercially reasonable in light of the Project. The Developer will provide proof of coverage prior to commencement of construction, in a form reasonably acceptable to the Zone. Current insurance requirements are attached to this Agreement as Exhibit “F”.

3. Section: TIF Participation: Partial Reimbursement of Tax Increment

The payments and distributions under this Agreement are subject to obligations under all prior agreements listed on Exhibit “D”. Subject to these and all other limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that Tax Increment generated within the Zone shall be applied as follows:

- (a) Public Improvements: To the Developer to reimburse Developer for the actual expenses related to public improvements (described on Exhibit “C”) that are part of the Project (described on Exhibit “B”), to the extent that the expenses are allowable under Chapter 311 of the Texas Tax Code Section 311.002. This reimbursement will not exceed the projected Project Costs listed on attached Exhibit “C.” These allowable costs are called “Project Costs.”
- (c) Any remaining TIF Funds, after Developer has been fully reimbursed (the “Available Funds”), will be available for commitment to future projects.

Unless explicitly provided differently in an Exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) preexisting debts or obligations of the Zone, and (ii) any pre-existing annual expenditures required to be made pursuant to other Developer Agreements prior in time to this Agreement, listed on Exhibit “D”.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance under this Agreement, and under any other outstanding developer agreements within the Zone.

4. Section: 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 Zone by this Agreement (“Reimbursement”) shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will 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 Zone in the first year in which there is sufficient revenue in the TIF 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 City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer’s failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

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:

- (a) the complete performance of all obligations and conditions precedent by Parties to this Agreement;
- (b) expiration of thirty years after Effective Date; or
- (c) the expiration of the term of the Zone.

6. 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.

7. 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 party, its 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.

8. 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.

9. Section: Events of Default & Remedies

A default shall exist if either 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 shall occur and continue, 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. Neither party, however, shall pursue remedies against the other 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.

10. Section: 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 Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. 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 either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Board Chairman

Tax Increment Reinvestment Zone No. 1
 c/o City of Bay City
 1901 5th Street
 Bay City, Texas 77414

With a copy to:
 Scotty Jones, City Treasurer
 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:

[[Developer Name and Address]]

12. 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.

13. Section: Severability

In case any one or more of the provisions of this Agreement shall for any reason be 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.

14. 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 in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

15. 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.

16. 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 Zone approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the Zone 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 the Developer's financial institution.

17. Section: Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between 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 Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, 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 both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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, the Zone, and the BCCDC effective as of the Effective Date.

(signatures follow on next page)

[[Developer Name]], [[Developer Type of Org.]]	REINVESTMENT ZONE NUMBER ONE CITY OF BAY CITY, TEXAS
_____ [[signor]], [[Title]]	_____ [Chairman Name], Chairman

PASSED AND APPROVED this _____ day of _____, 20_____

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibits:

- “A” – the Property
- “B” – the Project
- “C” – List/Description of Reimbursable Public Improvements
- “D” – List of Prior Agreements
- “E” – Project Completion Schedule
- “F” – Insurance Requirements

Exhibit “A”

The Property

Exhibit “B”

The Project

Exhibit “C”

List/Description of Reimbursable Public Improvements

Exhibit “D”

List of Prior Agreements

1. DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, AND THE CITY OF BAY CITY dated _____, 2017.
2. DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT CORPORATION dated _____, 2017.

Exhibit “E”

Project Completion Schedule

Exhibit “F”

Insurance Requirements

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER ONE,
CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT
CORPORATION**

This DEVELOPMENT FINANCING AGREEMENT (“Agreement”) is entered into by and between the REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, TEXAS (the “Zone”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the “TIRZ Act”) to oversee the administration of Tax Increment Reinvestment Zone Number One, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and BAY CITY COMMUNITY DEVELOPMENT CORPORATION (“Developer”), a Type B development corporation established pursuant to Chapter 505, subchapter B of the Texas Local Government Code.

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

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the “Zone Board” or “Board”) and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number One, City of Bay City, dated November 19, 2015, (TIRZ Plan), and amended on January 26, 2017; and

WHEREAS, the Developer has paid certain organizational costs for the creation of the Zone and the TIRZ Plan, and the Zone will reimburse the Developer all or a portion of the Project Costs (defined herein) of such public works and improvements in accordance with this Agreement; and

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

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for the reimbursement of costs expended in connection with the Zone;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer has paid certain organizational expenses described below and has requested reimbursement for these expenses; and,

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: Site [deleted – not applicable]

2. Section: Project & Financing

Developer has paid certain organizational expenses for the creation of the Zone and the Project Plan described below in Section 3(a) (the “Project”).

These costs have been funded by and through Developer’s own capital or other financing means arranged and obtained by Developer. Further, the TIF payments 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.

3. Section: TIF Participation: Partial Reimbursement of Tax Increment

The payments and distributions under this Agreement are subject to obligations under all prior agreements listed on Exhibit “D”. Subject to these and all other limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that Tax Increment generated within the Zone shall be applied as follows:

- (a) The expenses reflected in the Development Financing Agreement By and Between Reinvestment Zone Number One, City of Bay City, and the City of Bay City dated _____, 2017 (“City Reimbursements”), attached as Exhibit D.
- (b) Organizational Costs: To Developer to reimburse Developer for fifty percent (50%) of the Professional Services Agreement with David Pettit Economic Development, LLC dated April 7th, 2015, that provided the services to create the Zone, in the amount of \$31,249.27.
- (c) Remaining funds (the “Available Funds”) available for commitment to future projects.

Unless explicitly provided differently in an Exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to Developer under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) City Reimbursements, and (ii) preexisting debts or obligations of the Zone.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse Developer from bond proceeds received, the existing unpaid balance

under this Agreement, and under any other outstanding developer agreements within the Zone.

4. Section: 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 Zone by this Agreement (“Reimbursement”) shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will 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 Zone in the first year in which there is sufficient revenue in the TIF 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 City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer’s failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

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:

- (a) the complete performance of all obligations and conditions precedent by Parties to this Agreement;
- (b) expiration of thirty years after Effective Date; or
- (c) the expiration of the term of the Zone.

6. 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.

7. 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 party, its 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.

8. 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.

9. Section: Events of Default & Remedies

A default shall exist if either 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 shall occur and continue, after thirty (30) day's 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. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that

Developer has commenced to cure such default within the 30 days following notice.

10. Section: 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 Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. 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 either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Board Chairman
Tax Increment Reinvestment Zone No. 1
c/o City of Bay City
1901 5th Street
Bay City, Texas 77414

With a copy to:
Scotty Jones, City Treasurer
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:

D.C. Dunham, Executive Director
Bay City Community Development Corporation
1900 5th Street
Bay City, Texas 77414

With a copy to:
 Jill Cornelius, Attorney
 1744 6th Street
 Bay City, Texas 77414

12. 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.

13. Section: Severability

In case any one or more of the provisions of this Agreement shall for any reason be 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.

14. 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 in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

15. 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.

16. 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 Zone approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the Zone 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 the Developer's financial institution.

17. Section: Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between 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 Zone or the City and their respective

officials, directors, members, employees, agents, assigns, successors.

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, 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 both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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, the Zone, and the BCCDC effective as of the Effective Date.

(signatures follow on next page)

BAY CITY COMMUNITY DEVELOPMENT
CORPORATION

Julie Estlinbaum, President

ATTEST:

REINVESTMENT ZONE NUMBER ONE
CITY OF BAY CITY, TEXAS

William Bell, Chairman

PASSED AND APPROVED this _____ day of September, 2017

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibits:

“D” – List of Prior Agreements

Attachment: Tirz 1 Devel Ag with BCCDC APPROVED TIRZ BD 20170822 (2799 : Development Financing Agreement - TIRZ 1)

Exhibit “D”

List of Prior Agreements

DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT
ZONE NUMBER ONE, CITY OF BAY CITY, AND THE CITY OF BAY CITY dated

_____.

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER ONE,
CITY OF BAY CITY, AND THE CITY OF BAY CITY**

This DEVELOPMENT FINANCING AGREEMENT (“Agreement”) is entered into by and between the REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, TEXAS (the “Zone”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the “TIRZ Act”) to oversee the administration of Tax Increment Reinvestment Zone Number One, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and the CITY OF BAY CITY, TEXAS, a municipal corporation and a home rule city in the State of Texas (the “City”).

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

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the “Zone Board” or “Board”) and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number One, City of Bay City, dated November 19, 2015, (TIRZ Plan), and amended on January 26, 2017; and

WHEREAS, the City has or will perform certain administrative services to implement the TIRZ Plan, and the Zone will reimburse the City all or a portion of the Project Costs (defined herein) of such public works and improvements in accordance with this Agreement; and

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

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for work to be performed in accordance with the Project Plans;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, City has or will perform certain administrative services for the Zone and has requested reimbursement for this work pursuant to the Plan; and,

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: Site [deleted as not applicable]

2. Section: Administrative Work

The City has or will perform certain administrative work for the Zone, including creating and maintain accounts for the Zone, disbursing funds in accordance with approved agreements, maintaining records, and filing required reports (“Administrative Work”).

3. Section: TIF Participation: Partial Reimbursement of Tax Increment

The payments and distributions under this Agreement are not subject to any other prior development agreements. Subject all limitations and conditions precedent contained in this Agreement and the attached exhibits, the Parties agree that Tax Increment generated within the Zone shall be applied as follows:

- (a) Two and a half percent (2.5%) of the Tax Increment to pay City for the Administrative Work. Each year, 2.5% of the Tax Increment for that year will be paid to the City. The total payments over the life of this Agreement will not exceed 2.5% of the total Tax Increment for the Zone.
- (b) Remaining funds (the “Available Funds”) for all other Zone expenditures identified in separate agreements.

Unless explicitly provided differently in an Exhibit attached hereto, all grants, loans, reimbursements and any other financial payment to City under this Agreement shall be made in annual installments in June of each year (commencing in the first year following project completion), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to City shall have priority for reimbursement over all other Zone expenditures.

Zone also reserves the right, when payments come into the Tax Increment Fund, to prepay all or any portion of the total amount to be reimbursed under this Agreement at any given time. If City in its sole discretion issues Tax Increment Funds Bonds to pay for previous and future projects, Zone may fully reimburse City from bond proceeds received, the existing unpaid balance under this Agreement, and under any other outstanding City agreements within the Zone.

4. Section: Reimbursement Limited to TIF Fund

City understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement (“Reimbursement”) shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay City any part of the Reimbursement, the Zone will pay City 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 Zone in the first year in which there is sufficient revenue in the TIF to pay

such balance. City 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 City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to City's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay City any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

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:

- (a) the last day of the calendar year in which the City notifies the Zone that it will no longer perform the Administrative Work (or at some other date agreed upon by the parties);
- (b) expiration of thirty years after Effective Date; or
- (c) the expiration of the term of the Zone.

6. 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.

7. 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 party, its 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.

8. Section: [deleted – not applicable]

9. Section: Events of Default & Remedies

A default shall exist if either 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 shall occur and continue, 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. The Zone shall not, however, pursue remedies against the City for as long as City proceeds in good faith and with due diligence to remedy and correct the default, provided that City has commenced to cure such default within the 30 days following notice. The Zone's sole remedy in the event of a default by the City is to terminate this Agreement.

10. Section: 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 Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. 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 either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Board Chairman
Tax Increment Reinvestment Zone No. 1
c/o City of Bay City
1901 5th Street
Bay City, Texas 77414

If intended for City, to:

The City of Bay City
1900 5th Street
Bay City, Texas 77414

With a copy to:
 Scotty Jones, City Treasurer
 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

12. 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.

13. Section: Severability

In case any one or more of the provisions of this Agreement shall for any reason be 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.

14. 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 in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

15. 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.

16. Section: Successors and Assigns

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

limited), or to the City's financial institution.

17. Section: Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between 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 Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, and City, 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 both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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, the Zone, and the BCCDC effective as of the Effective Date.

(signatures follow on next page)

CITY OF BAY CITY, TEXAS

Mark A. Bricker, Mayor

ATTEST:

David Holubec, City Secretary

REINVESTMENT ZONE NUMBER ONE
CITY OF BAY CITY, TEXAS

William Bell, Chairman

PASSED AND APPROVED this _____ day of September, 2017

Mark Bricker, Mayor

ATTEST:

David Holubec, City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibits: [deleted – not applicable]

Attachment: Tirz 1 Devel Ag with City APPROVED BY TIRZ BD 20170822 (2799 : Development Financing Agreement - TIRZ 1)



April 7, 2015

DC Dunham
City of Bay City
1900 Fifth Street
Bay City, Texas 77414

RE: Professional Services Proposal

Dear Ms. Dunham:

David Pettit Economic Development, LLC ("DPED") is pleased to provide this proposal for economic development professional services relating to the potential creation of one and/or possibly two Tax Increment Reinvestment Zone(s) in the City of Bay City, Texas ("TIRZ").

The Project

It is our understanding that the City of Bay City is interested in creating a TIRZ for purposes of facilitating reinvestment in the areas and implementing several concepts and plans recently created.

The Assignment

Our work under this proposal would be to provide economic development. DEPD's primary role will be to provide professional economic development services relating to creating a TIRZ.

The Team

We proposed working in a team organized as follows:

- You will be our point of contact and will provide overall direction to our team. You may also include other members of City staff with which we will meet regularly to review our progress and to get input and direction on our work.
- At this time we do not anticipate the need for any additional consultants to accomplish the work described in this proposal.

Statutory Requirements

Chapter 311 of the Texas Tax Code outlines the various procedures for creating a TIRZ. The designation TIRZ ordinance is approved by the governing body of the municipality and establishes four key elements, including:

- Boundary;
- Term;
- TIRZ Board; and
- Preliminary project and financing plan.

Before adopting an ordinance designating the reinvestment zone, the governing body of the municipality must hold a public hearing on the creation of the zone and publish notice of the hearing not later than the seventh day before the public hearing. A final project and financing plan is subsequently approved by the TIRZ Board and then by the governing body of the municipality.

Scope of Services

Based on our conversations and our experience on previous projects, we propose the following scope of services. Our proposed scope of services is divided into separate tasks, each providing a description of the work to be performed and the key products resulting from the task.

306 West 7th Street, Suite 1025 | Fort Worth, Texas 76102
817 439 9515 | www.dpedllc.com

Attachment: TIRZ #1 Documents (2799 : Development Financing Agreement - TIRZ 1)

Task 1**District Review**

Our first step would be to collect and analyze available information in the proposed TIRZ. This includes available development data; existing planning documents such as the comprehensive plan, land use plan, thoroughfare plan; physical information such as existing zoning and land use, existing and planned infrastructure, and topography; and property data such as ownership and tax values.

Task 2**Data Collection and Analysis**

Based upon parcel data provided by the City, DPED would provide a geographic information system (GIS) database of existing values for land and improvements, ownership data, and current land use information. The database and maps will provide the baseline data for the analysis. Key products of this task would include a TIRZ database and accompanying maps in digital and hard copy formats.

Task 3**Taxable Value Analysis**

A multi-year historic taxable value review of similar developments would be conducted to establish conservative assumptions of future taxable value for each parcel in the proposed zone. We would also develop projections for future land uses, and timing of proposed developments. This task will be the basis for developing a spreadsheet model of potential TIRZ increments, given a reasonable range of development assumptions and taxable values. Key products of this task would include a spreadsheet model on a parcel by parcel basis with projections based upon the historical taxable value review, development projections and reasonable timing expectations.

Task 4**Develop TIRZ Cash Flow Model**

Based on the anticipated land uses and projections, DPED would develop a draft financing cash flow model (and supporting spreadsheets) for a 15, 20, and 30-year time period. This model will allow the City, consultants and others to underwrite the proposed developments and test various scenarios for the eventual financing plan. Key products of this task would include excel spreadsheets of TIRZ Cash Flow Models with macros established for growth and development assumptions.

Task 5**Prepare TIRZ Project and Financing Plan**

DPED would then develop the Finance Plan, Project Plans, and Detailed Description of TIRZ, and other exhibits required for local government review and approval per the state legislative requirements. This work includes the written, graphic, and PowerPoint materials and exhibits, as well as support of the process. Backup materials such as spreadsheets and databases will also be products that support the plans. Key products would include a preliminary TIRZ Project and Financing Plan comprised of a legal description of the zone, proposed TIRZ projects, estimated project costs, term of the zone and a tax increment analysis.

Task 6**TIRZ Documentation Support**

DPED will provide assistance with drafting necessary documents for creating the TIRZ including: 1) public hearing notices; 2) resolutions; 3) ordinances; and 4) participation agreements. This can be a time consuming process for City staff, however DPED's extensive experience in drafting these documents should help streamline the preparation of materials necessary for City Council consideration. This task would also include assistance in creating and appointing the appropriate TIRZ board per the TIRZ creation ordinance.

Task 7**TIRZ Development Opportunities**

During the TIRZ creation process DPED will analysis potential development opportunities within the zone and seek initial owner/investor/developer opinion and interest on the product type and current market conditions. The purpose of this task would be to prepare for implementation of the plan once it has been created and a TIRZ board has been appointed.

Fee for Services

Our fee for services relating to the scope of services would a lump sum fee of:

Option A – Creation of One TIRZ District (2 separate boundaries but 1 creation ordinance and 1 project and financing plan)

- Lump sum fee of \$47,500

Option B – Creation of Two Separate TIRZ Districts (2 separate creation ordinances and 2 project and financing plans)

- Lump sum fee of \$57,500

Fees would be charged on a monthly basis, subject to on-going progress on the work effort. Reimbursable expenses not to exceed \$5,000.00 would be charged to include out-of-pocket expenses incurred in the interest of the project at actual costs.

Changes of Scope and Additional Services

Minor additions to our scope will be treated as Additional Services. Work on Additional Services will not begin until authorized in writing by the Client.

Additional Services and Rates for Hourly Services

Additional Services shall be billed on an hourly not to exceed basis unless a fixed fee or other method of compensation is mutually agreed upon. Our current hourly rates are:

<u>Classification</u>	<u>Hourly Billing Rate</u>
David Pettit	\$275.00
Economic Development Manager	\$200.00
Senior Project Specialist	\$150.00
Project Specialist	\$120.00
Planning Intern	\$100.00
Administrative	\$80.00

These rates apply for the current calendar year and are subject to revision on January 1, when they may be revised to reflect changes in staff salaries over the preceding year.

Reimbursables

We propose to be reimbursed for out-of-pocket expenses incurred in the interest of the project at our actual cost. Reimbursable expenses include: our direct consultants and their expenses (to be reimbursed, all consultants and their bids must be approved in writing, in advance by the client); reproduction; long distance communication; document printing and delivery; document graphics and binding; delivery, postage and handling; travel time; special materials; photography; etc. (Reasonable backup will be available upon request.)

Invoices and Payments

Payment for services rendered is due within thirty (30) days of Client's next monthly billing cycle following receipt of invoice. In the event any invoices remain unpaid 45 days after the invoice date, we suspend work until we have been paid in full all amounts due for services and expenses. Amounts unpaid for more than 30 days after the due date may accrue interest at 10% per annum. In the event we are forced to commence a collection

proceeding, you agree to pay reasonable attorney's fees and court costs, in addition to our fees billed under this proposal.

Suspension and Termination

If the project is suspended or abandoned, DPED will be compensated for all services billed prior to receipt of written notice by the Client. Services that are not billed or completed between billing periods and receipt of written notice will be reimbursed at DPED's standard hourly rates.

If the scope or schedule of the project should change beyond that to be reasonably expected due to the program changes, schedule or other reason, at their option, DPED may re-negotiate the aforementioned fees and scope of work. Any renegotiation of scope or fee will be in writing and subject to the signing of both parties.

Certifications

Guarantees and Warranties: We will not be required to execute any document that would result in our certifying, guaranteeing or warranting the existence of conditions whose existence we cannot ascertain.

Authorization to Proceed

Thank you again for this opportunity to work with you. Your signature below and the return of one copy to us for our file will confirm your approval and authorize us to proceed.

Insurance

DPED will provide proof of professional liability insurance (including errors and omissions) with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and excess/umbrella liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate to client. Additionally, DPED shall carry the following insurance coverages:

- (a) Worker's compensation insurance at the statutory limits and employer's liability insurance, with minimum limits of \$1,000,000.00/\$1,000,000.00/\$1,000,000.00; and
- (b) Comprehensive general liability insurance, with minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 in aggregate; and
- (c) Comprehensive automobile liability insurance, with minimum limits of \$1,000,000.00 combined single limit each occurrence; and

DPED has previously provided, or concurrently with the execution of this agreement is providing, to Client a certificate of insurance issued to Client evidencing the foregoing insurance coverages and evidencing that Client and Client's lender, if any, are additional insured parties with respect to the insurance policies referred to in the foregoing subparagraphs (b) and (c).

Notices

Any notice required or permitted to be given to either party shall be deemed to be received by such party (a) three (3) days after deposit in the United States Registered or Certified Mail, Return Receipt Requested, or (b) one (1) business day after deposit with a nationally recognized overnight delivery service for next day delivery, or (c) upon personal delivery to the party to whom addressed provided that a receipt of such delivery is obtained, or (d) on the next business day after transmission by telecopy provided that a confirmation copy is concurrently deposited in United States Certified or Registered Mail, Return Receipt Requested, in any case addressed to the parties at the following addresses:

If to Client:

DC Dunham
City of Bay City
1900 Fifth Street
Bay City, Texas 77414

Attention: DC Dunham
 Email: dcdunham@cityofbaycity.org

If to DPED:

David Pettit Economic Development, LLC.
 306 West Seventh Street, Suite 1025
 Ft. Worth, TX 76102
 Attention: David Pettit
 Email: dpettit@dpedllc.com

or to the parties at such other addresses or telecopy numbers as they may designate by notice to the other party as herein provided.

SUMMARY

I hope this accurately outlines the professional services you anticipated. If you have any questions or concerns please do not hesitate to contact me at 817.439.9421.

Thank you for considering David Pettit Economic Development, LLC.

Sincerely,



David Pettit
 Managing Member

If this agreement meets with your approval, please sign and return one executed copy to our office as notice to proceed.

AGREED TO AND ACCEPTED BY:

City of Bay City, Texas

By:  Date: 5-1-2015

C:\Users\DAVID\Box Sync\Company Shared Folder\MARKETING\PROPOSALS\BayCity\DPED Proposal_BC_V1.docx

Attachment: TIRZ #1 Documents (2799 : Development Financing Agreement - TIRZ 1)

EXHIBIT A

David Pettit Economic Development, LLC Professional Services Agreement
for the creation of two Tax Increment Reinvestment Zones.

TIRZ Formation for TIRZ #1 and #2

Contract Estimate	\$62,500.00
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Date Paid	Amount
June 19, 2015	\$875.00
August 14, 2015	\$6,744.77
September 11, 2015	\$2,500.00
October 9, 2015	\$12,449.02
November 20, 2015	\$16,239.41
December 18, 2015	\$13,005.00
February 12, 2016	\$960.00
March 11, 2016	\$6,212.84
June 6, 2016	\$3,512.50
Total Paid	\$62,498.54

50% reimbursement	TIRZ #1	\$31,249.27
50% reimbursement	TIRZ #2	\$31,249.27



City Council
1901 5Th Street
Bay City, TX 77414

SCHEDULED

Meeting: 09/14/17 07:00 PM
Department: City Secretary
Category: Presentation
Prepared By: David Holubec
Initiator: David Holubec
Sponsors:
DOC ID: 2810

AGENDA ITEM (ID # 2810)

**~ DISCUSS AND CONSIDER POSSIBLY ACTION TO
ADDRESS THE BUILD-UP OF BRUSH IN THE CITY DUE TO
THE RECENT HURRICANE EVENT.**

COMMENTS - Current Meeting:

DebrisTech is a company the County and City are working with to oversee the collection of storm debris. WCA will be responsible for smaller loads of debris and heavier loads of debris will be removed by the City.

It was agreed to produce a Memorandum to match County's agreement with DebrisTech.

The item was unanimously approved by motion. Councilman Bill Cornman made the motion and Councilman Jason Childers seconded the motion.