



**NOTICE OF A REGULAR MEETING OF THE BOARD OF DIRECTORS
TAX INCREMENT REINVESTMENT ZONE NO. 1,
CITY OF BRENHAM, TEXAS
THURSDAY, JULY 7, 2022, AT 10:30 A.M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN ST.
BRENHAM, TEXAS**

1. CALL TO ORDER

2. PUBLIC COMMENTS

An opportunity for citizens to address the Tax Increment Reinvestment Zone No. 1 Board of Directors regarding matters which are scheduled on this agenda for consideration by the Tax Increment Reinvestment Zone No. 1 Board, but not scheduled as a public hearing.

3. DISCUSSION ITEM(S)

- a) Presentation and Discussion on the Tax Increment Financing Zone Number 1 Deposits and Available Fund Balance
- b) Presentation and Discussion on Possible Expansion of the Tax Increment Reinvestment Zone Number 1 Boundary

4. EXECUTIVE SESSION ITEM(S)

- a) Texas Government Code Section 551.072 - Real Property: Deliberation Regarding the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property, Located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas

5. ACTION ITEM(S)

- (a) Consider Approval of the Minutes from the March 17, 2022 TIRZ Board Meeting
- (b) Consider Approval of a Chapter 380 Agreement with Brenham Market Square, LP
- (c) Consider Approval of the Allocation of Tax Increment Reinvestment Zone Number 1 Funds for the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property, Located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas
- (d) Consider Approval of a FY2022-23 Budget Allocation from the Tax Increment Reinvestment Zone Number 1 Fund for the Development of a Small Area Plan for Approximately 600 Acres, Located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas

6. ADJOURNMENT

CERTIFICATION

I do hereby certify that the above notice of the July 7, 2022 meeting of the Tax Increment Reinvestment Zone Number 1 Board of Directors was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, Texas in compliance with Chapter 551, Texas Government Code on Friday, July 1, 2022 at 1:30 P.M.

Jeana Bellinger, TRMC, CMC

City Secretary

Executive Sessions: The Tax Increment Reinvestment Zone Number 1 Board of Directors reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 – Consultation with Attorney, §551.072 – Real Property, §551.073 – Prospective Gifts, §551.074 - Personnel Matters, §551.076 – Security Devices, §551.086 - Utility Competitive Matters, and §551.087 – Economic Development Negotiations.

Disability Access Statement: This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.

I certify that this notice and agenda of items to be considered by the Tax Increment Reinvestment Zone Number 1 Board of Directors was removed by me from the City Hall bulletin board on _____ at _____.

Signature



MEMORANDUM

To: TIRZ Board

From: Carolyn Miller, City Manager

Subject: TIRZ Deposits and Available Fund Balance

Date: July 29, 2022

Established in December 2018, the Tax Increment Financing Zone #1 has a base property value of \$336 million. As property within the TIRZ has developed, property values have increased to \$423 million (2021 Assessed). As a recap, tax revenue on 50% of the incremental value is deposited in the TIRZ Fund each year. A summary of the deposits made to date along with an estimate of the tax year 2022 deposit is shown in the table below.

Tax Year	Incremental Value	Deposit Amount
2019	\$ 17,458,928	\$ 44,869
2020	\$ 45,061,280	115,807
2021	\$ 87,157,361	223,994
Total Amount Deposited to Date		\$ 384,671
*2022 (estimate) - available after 10/1/22		\$ 281,896
<i>*Not including property currently under protest</i>		
Total Amount Available for Eligible Projects		\$ 666,567

After reviewing this information, should you have any questions prior to the July 7th meeting, do not hesitate to contact me directly at 979-337-7590.



MEMORANDUM

To: TIRZ Board

From: Carolyn Miller, City Manager

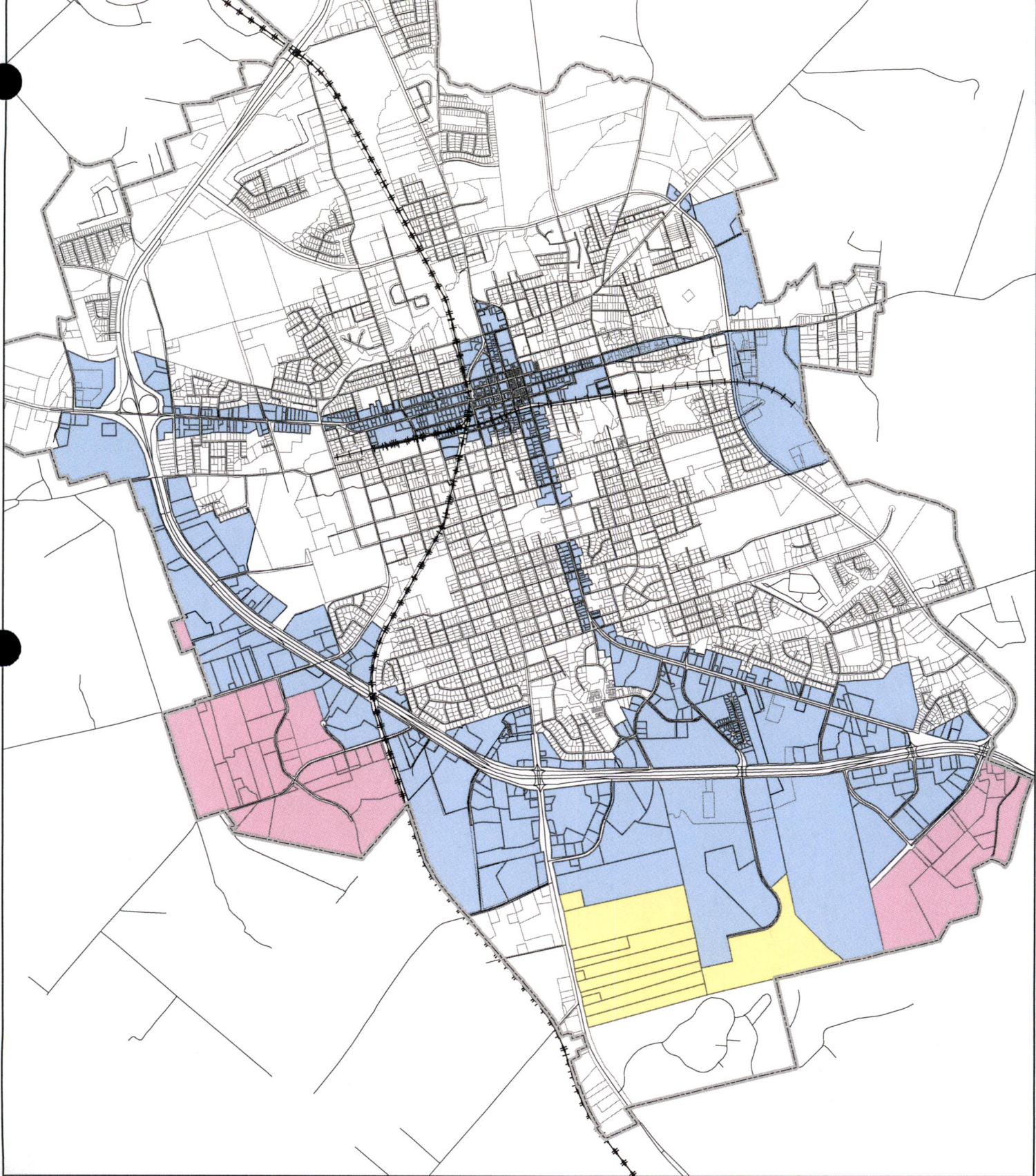
Subject: Expansion of TIRZ Boundaries

Date: June 28, 2022

The City Council established the Tax Increment Reinvestment Zone (TIRZ) Number One in 2018 via Ordinance No. O-18-019 to help fund public improvements within the TIRZ. The 2018 ordinance designated 2,201-acres within the city limits as the TIRZ. Upon closer review of the TIRZ boundaries, it was discovered that an additional 199-acres on the east side of Brenham could have also been included in the TIRZ area. Therefore, the TIRZ boundary was amended in December 2019, via the adoption of Ordinance No. O-19-048, to include the additional 199-acres.

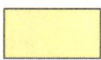
At the March 17, 2022 TIRZ Board meeting, the Board approved expanding the TIRZ again to pick-up the acreage in the Brenham Business Center and Southwest Industrial Park. As the process of the second expansion has begun, staff would like the Board to also consider adding a 600-acre area off Highway 36 South in which a Small Area Plan is being considered (see Agenda Item 4-c). The map attached to this memo shows the current TIRZ area (blue) and the areas now being considered for possible expansion (pink and yellow).

After reviewing this information, should you have any questions prior to the July 7th meeting, do not hesitate to contact me directly at 979-337-7590.



TIRZ Map

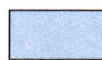
1 inch = 2,915 feet



Small Area Plan



TIRZ Addition



TIRZ Parcels



Tax Increment Reinvestment Zone Number One

A regular meeting of the Tax Increment Reinvestment Zone Number One Board of Directors was held on March 17, 2022 beginning at 10:30 a.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

Milton Y. Tate, Jr.
Shannan Canales
Leah Cook
Clint Kolby
Adonna Saunders
Albert Wright
Gary Crocker
Tom Whitehead

Members absent:

Atwood Kenjura

Others present:

City Manager James Fisher, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Assistant City Manager – Chief Financial Officer Carolyn Miller, Economic Development Director Susan Cates, Comptroller Stacy Hardy, Erica Warren.

Citizens present:

None.

Media Present:

None.

- 1. Call Meeting to Order**
- 2. Public Comments**

There were no comments heard from the public.

3. DISCUSSION ITEMS

a) Presentation and Discussion on the Tax Increment Reinvestment Zone Number One and the Board of Directors

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller updated the Board on the following economic development tools being utilized by the City:

- **Chapter 312 – Property Tax Abatement (Tax Phase-In)**
 - Create or retain primary jobs, adds new real and/or personal property value to tax rolls, time period of 10 years, percentage of property tax is abated each year. At the end of FY2021, the City had eight (8) agreements in place
- **Chapter 380 – Economic Development Programs and Grants**
 - For purpose of promoting economic development and stimulating business and commercial activity. Baker Katz 380 Agreement approved January 2019.
- **Chapter 311 – Tax Increment Reinvestment Zone (TIRZ)**
 - Promotes development or redevelopment in an area that would not occur in the foreseeable future solely through private investment. TIRZ No. 1 established in 2018; base value for property over \$336 billion. As property within the TIRZ develops, property values increase and 50% of the incremental value is deposited into TIRZ fund.

Miller advised the Board that since the TIRZ is a relatively new economic development tool, staff will be presenting a policy for the reimbursement of qualified infrastructure costs from TIRZ and the approval of an MOU from a private developer related to reimbursement of qualified infrastructure costs.

4. ACTION ITEMS

a) Consider Approval of the Minutes from the December 5, 2019 TIRZ Board Meeting

A motion was made by Shannan Canales and seconded by Gary Crocker to approve the minutes from the December 5, 2019 TIRZ Board meeting as presented.

Chairman Tate called for a vote. The motion passed with the Board voting as follows:

Chairman Milton Y. Tate, Jr.	Yes
Vice Chairman Clint Kolby	Yes
Secretary Adonna Saunders	Yes
Shannan Canales	Yes
Leah Cook	Yes
Atwood Kenjura	Absent
Albert Wright	Yes
Gary Crocker	Yes
Tom Whitehead	Yes

b) Consider the Adoption of a “Policy for the Reimbursement of Qualified Infrastructure Costs for Private Development of Public Infrastructure within Tax Increment Reinvestment Zone Number One, City of Brenham, Texas”

Economic Development Director Susan Cates presented this item. Cates explained that the City Council established the Tax Increment Reinvestment Zone Number One (TIRZ) on December 20, 2018 to help fund public improvements within the boundaries of the TIRZ.

Cates stated that since private development of public infrastructure benefitting the TIRZ may facilitate development, the City wants to establish some guidelines for reimbursement to private developers from the TIRZ. Cates explained that some of the guidelines being recommended include:

- Reimbursement would only apply to projects located within and/or benefitting the TIRZ.
- The TIRZ Board must review a proposed project and approve it as eligible for reimbursement, prior to the commencement of any work on the project.
- A licensed Professional Engineer must submit an “Opinion of Probable Cost” for the project.
- Only projects built to City standards are eligible for reimbursement.
- Qualified infrastructure costs will be calculated and reimbursed as follows:

WCAD Appraised Value of Property After Development	Infrastructure Reimbursement as an Actual Percent of WCAD Appraised Value of Property	Maximum Infrastructure Reimbursement Cap
\$25,000,000 - \$50,000,000	4%	\$2,000,000
\$50,000,001 - \$100,000,000	6%	\$6,000,000
>\$100,000,000	8%	\$10,000,000

A motion was made by Clint Kolby and seconded by Adonna Saunders to adopt the “Policy for the Reimbursement of Qualified Infrastructure Costs for Private Development of Public Infrastructure within Tax Increment Reinvestment Zone Number One, City of Brenham, Texas” as presented.

Chairman Tate called for a vote. The motion passed with the Board voting as follows:

Chairman Milton Y. Tate, Jr.	Yes
Vice Chairman Clint Kolby	Yes
Secretary Adonna Saunders	Yes
Shannan Canales	Yes
Leah Cook	Yes
Atwood Kenjura	Absent
Albert Wright	Yes
Gary Crocker	Yes
Tom Whitehead	Yes

c) Consider a Memorandum of Understanding Between the City of Brenham and Brenham Market Square, LP Related to the Funding of Qualified Costs for Public Infrastructure Improvements at the Brenham Market Square Development, Located at 2410 S. Market Street, Brenham, Texas, from the Tax Increment Reinvestment Zone No. 1 Fund

Economic Development Director Susan Cates presented this item. Cates stated that Section 15 of the Final Project and Finance Plan of the TIRZ establishes Economic Development Programs as a valid use of funds in the Zone to incentivize the development of public improvements.

Cates explained that Brenham Market Square is a proposed 51-acre mixed use development that will include multifamily residential, commercial, retail, hospitality, and restaurant properties which will positively impact the ad valorem tax revenue, hotel occupancy tax revenue, and sales tax revenue for the City. Cates stated that the Memorandum of Understanding (MOU) is intended to establish the basis for a Chapter 380 Agreement between the City and Market Square for reimbursement of qualified infrastructure costs to the Developer. Cates states that any reimbursements would be as outlined in the TIRZ Policy. Cates advised the Board that the approval of this MOU will allow the Developer to proceed with infrastructure construction while a formal Chapter 380 Agreement is prepared.

A motion was made by Shannan Canales and seconded by Adonna Saunders to approve a Memorandum of Understanding between the City of Brenham and Brenham Market Square, LP related to the funding of qualified costs for public infrastructure improvements at the Brenham Market Square Development, located at 2410 S. Market Street, Brenham, Texas, from the Tax Increment Reinvestment Zone No. 1 Fund.

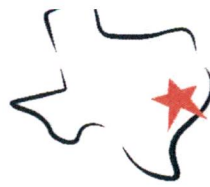
Chairman Tate called for a vote. The motion passed with the Board voting as follows:

Chairman Milton Y. Tate, Jr.	Yes
Vice Chairman Clint Kolby	Yes
Secretary Adonna Saunders	Yes
Shannan Canales	Yes
Leah Cook	Yes
Atwood Kenjura	Absent
Albert Wright	Yes
Gary Crocker	Yes
Tom Whitehead	Yes

The meeting was adjourned.

Milton Y. Tate, Jr.
Chairman

Adonna Saunders
Secretary



MEMORANDUM

To: TIRZ Number 1 Board of Directors
From: Susan S. Cates
Subject: Economic Development Agreement with Market Square
Date: June 30, 2022

At the TIRZ Board meeting on March 17, 2022 the Board approved a Memorandum of Understanding (MOU) between the City of Brenham and Brenham Market Square, LP for reimbursement of qualified public infrastructure costs in accordance with the Policy for the Reimbursement of Qualified Infrastructure Costs for Private Development of Public Infrastructure withing Tax Increment Reinvestment Zone Number One, City of Brenham (Policy). The intent of the MOU was to provide an instrument indicating the City's intent to enter into a Chapter 380 agreement with Brenham Market Square and outlining specific terms. The necessity of the MOU was timing to allow Brenham Market Square to meet certain business goals regarding sale of property to certain prospective buyers and to secure financing for the infrastructure while the Chapter 380 was being drafted by the City.

The terms of the Chapter 380 Agreement presented for your consideration are the same as stipulated in the MOU and in accordance with the Policy with one exception. Due to the economic constraints of post-pandemic supply chain issues that have impacted the Market Square Development, the developers have requested a revision of the date stipulated in the MOU Section III.5. to make Year One 2024 instead of 2023. The revision of the date may benefit the City with funding of TIRZ projects to allow an additional year of funds to flow into the TIRZ before disbursements commence for this Chapter 380 Agreement.

Staff recommends approval of the Chapter 380 Agreement with the revised year of the reimbursement to begin in 2024.

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRENHAM
AND MARKET SQUARE SERIES, LLC

This Chapter 380 Economic Development Agreement (the “Agreement”) is entered into to be effective as of July 1, 2022 (the “Effective Date”) by and between the City of Brenham, a Texas home-rule municipal corporation located in Washington County, State of Texas (the “City”), by and through its Mayor, and Brenham Market Square, LP, a Texas limited partnership (“Market Square”), collectively sometimes referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, Chapter 380 of the Texas Local Government Code permits cities to make loans or grants of public funds for the purpose of promoting economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City of Brenham established Tax Increment Reinvestment Zone Number One, City of Brenham, Texas (“TIRZ”) pursuant to Chapter 311 of the Texas Tax Code on December 20, 2018; and

WHEREAS, the purpose of the TIRZ is to utilize Tax Increment Financing to fund public improvements within the TIRZ that significantly enhance the value of all taxable real property in the TIRZ and as a general benefit to the City; and

WHEREAS, the City of Brenham adopted the Tax Increment Reinvestment Zone Number One, City of Brenham, Texas Final Project and Finance Plan (“Final Project and Finance Plan”) pursuant to Chapter 311 of the Texas Tax Code on December 19, 2019; and

WHEREAS, Section 15 of the Final Project and Finance Plan establishes Economic Development Programs as a valid use of funds in the TIRZ to incentivize the development of public improvements necessary to the growth of commercial enterprises in undeveloped or underdeveloped areas within the TIRZ; and

WHEREAS, the City adopted by Resolution R-22-015 the “Policy for the Reimbursement of Qualified Infrastructure Costs for Private Development of Public Infrastructure within Tax Increment Reinvestment Zone Number One, City of Brenham, Texas” (“Policy”) on March 17, 2022; and

WHEREAS, the Policy authorizes the City to enter into Chapter 380 agreements with Developers to provide for reimbursement of eligible infrastructure costs using TIRZ funds; and

WHEREAS, Market Square is a proposed 51-acre mixed use development (“Project”) that will include multi-family residential, commercial, retail, hospitality, and restaurant properties which will positively impact the ad valorem tax revenue, hotel occupancy tax revenue, and sales tax revenue of the City of Brenham; and

WHEREAS, the Market Square development will provide additional residential options for Brenham citizens. Further, it is anticipated that this commercial development will mitigate retail leakage to adjacent communities and attract visitors to our community for shopping, dining, and hotel stays; and

WHEREAS, Market Square anticipates the total property value of the fully developed Project to be in excess of \$133,850,000; and

WHEREAS, it is necessary to build infrastructure to support the development of the Market Square Project. The infrastructure will include water, wastewater, roads, and drainage. The estimated cost of the infrastructure is \$7,500,914; and

WHEREAS, the City has determined that construction of the Project will positively impact the local economy through expansion of the City's ad valorem tax base, sales tax revenue, and creation of jobs in the community; and

WHEREAS, the City Council of the City of Brenham supports the continued growth and expansion of economic development in the City by entering into this Agreement to promote and expand desirable commercial growth within the City;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1.

AUTHORIZATION AND PROGRAM ESTABLISHMENT

1.01 The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program"), utilizing TIRZ funds as authorized by the Policy, to fund Public Improvements within the boundaries of the TIRZ in order to enhance the value of all taxable real property in the TIRZ as a general benefit to the City, which will also encourage economic development within the City and promote new businesses, and the City Council finds and determines that this Agreement will effectuate the purposes of the Program and Policy, and that Market Square's performance of its obligations herein will also promote local economic development and stimulate business and commercial activity in the City.

ARTICLE 2. **DEFINITIONS**

2.01 The terms "Agreement," "Effective Date," "City," "Market Square," "Policy," "Project," "Parties," and "Program" shall have the meanings provided herein.

ARTICLE 3.
TERM

- 3.01 The term (“Term”) of this Agreement shall commence on the Effective Date herein above and, unless otherwise terminated earlier in accordance with this Agreement, shall terminate: 1) immediately upon the reimbursement payment for year twenty (20) has been made by the City to Market Square; 2) upon Market Square’s receipt of total reimbursement payments equal to the amount of the Qualified Infrastructure Costs; or 3) upon Market Square’s receipt of total reimbursement payments equal to the amount of the Maximum Infrastructure Reimbursement Cap; whichever occurs first.

ARTICLE 4.
COVENANTS OF MARKET SQUARE AND THE CITY

- 4.01 Based on the Market Square’s application for Economic Development Incentives and the Opinion of Probable Cost for public infrastructure, it is estimated that \$7,259,539.00 is the amount of Qualified Infrastructure Costs to be incurred in development of the Project.
- 4.02 The estimated appraised value of the Project’s real property, including Washington County Appraisal District tracts R20290, R67212, R24715, R67801, R20315, and R20322 as fully developed, will be greater than \$100,000,000. Therefore, 8% of the appraised value of the Project property value can be reimbursed for Qualified Infrastructure Costs. The maximum Qualified Infrastructure Reimbursement for this Project is \$10,000,000.
- 4.03 Only Tax Increment revenues generated by the properties listed in Section 4.02 herein above may be used to fund the reimbursement payments to Market Square for this Project.
- 4.04 Notwithstanding Section 3.3 of the Policy, due to current time constraints, Market Square may proceed with the construction of public infrastructure associated with the Project, and such commencement of construction will not cause such public infrastructure to be deemed ineligible for reimbursement as Qualified Infrastructure Costs pursuant to the Policy. The reimbursement payments will be paid as revenues are received annually into the TIRZ fund. At no time will reimbursement payments to Market Square exceed the funds generated by the Project.
- 4.05 Reimbursement payments for Qualified Infrastructure Costs shall commence in 2024 – Year One. In years one through ten (1-10) 100% of the increment generated by the Project shall be used to reimburse Qualified Infrastructure Costs for which proof of payment has been received and approved by the TIRZ Board. In years eleven through twenty (11-20) 75% of the increment generated by the Project shall be used to reimburse Qualified Infrastructure Costs for which proof of payment has been received and approved by the TIRZ Board.
- 4.06 Should the appraised value of the developed Project not meet the projections, the maximum value of the reimbursement payments will be adjusted accordingly based on the appraised value of the developed Project.

- 4.07 Except as expressly stated otherwise in this Agreement, Market Square and the City shall comply with any and all provisions of the Policy.
- 4.08 Market Square shall timely pay and remain current on all property taxes imposed on the Project or any portion thereof, subject to appeal rights in accordance with applicable law, and subject to a right to cure any delinquency. Market Square shall have the right to protest, contest, or litigate: (a) any assessment of the value of the Project by the Washington County Appraisal District which appraises real or personal property on all or any part of the Project; and, (b) any tax imposed on the Project by any taxing authority with jurisdiction that includes the Project.
- 4.09 Market Square shall provide to the City access to the Project, and any and all information and records, upon reasonable notice to Market Square, related to the Project or the associated improvements necessary to confirm Market Square's compliance with the terms of this Agreement.
- 4.10 Subject to Market Square complying with all of its duties and obligations in this Agreement, the City agrees to make reimbursement payments to Market Square in compliance with this Agreement and the Policy.
- 4.11 It is the responsibility of Market Square to submit proof of payment for all Qualified Infrastructure Costs that are eligible for reimbursement within one (1) year of payment to the contractor or supplier. Receipts submitted to the TIRZ Board after one (1) year will no longer be considered allowable costs for reimbursement.

ARTICLE 5.
AUTHORITY; COMPLIANCE WITH LAW

- 5.01 Market Square hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Market Square and this Agreement constitutes the legal, valid, and binding obligation of Market Square, and is enforceable in accordance with its terms and provisions.
- 5.02 Notwithstanding any other provision of this Agreement, Market Square shall comply with all federal, state, and local laws and regulations.
- 5.03 Market Square certifies that Market Square does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If Market Square is convicted of a violation under 8 U.S.C. § 1324a(f), that is proven to have occurred during the term of this Agreement, Market Square shall repay the full amount of the reimbursement payments made to Market Square pursuant to this Agreement plus interest, at the rate of the prime rate plus two percent (2%) per annum, not later than the 120th day after the date the City notifies Market Square of the violation.

ARTICLE 6.
BREACH AND REMEDY; TERMINATION; ADDITIONAL REMEDIES

- 6.01 Except as otherwise provided in this Article 6, should either party fail to comply with any of the material terms or conditions of this Agreement, and any such failure (hereinafter, a “breach”) specified, remains uncured for ninety (90) days following the breaching party’s receipt of written notice (the “Breach Notice”) from the non-breaching party, delivered in accordance with Section 11.09 herein below, of the event and nature of such breach; provided, however, that if such breach is not reasonably susceptible of cure within such ninety (90) day period and the breaching party has commenced and is continuing to diligently pursue the cure of such breach, then after first advising the non-breaching party of such cure efforts, the breaching party shall automatically receive an additional ninety (90) day period within which to cure such breach. The non-breaching party may authorize additional time to cure any such breach but is not obligated to grant such additional time. Notwithstanding anything expressed or implied herein to the contrary, no breach shall exist if the failure of either party to fully perform its obligations hereunder is the result of a force majeure event as defined in Article 7 herein below. Further time for cure of a breach by the breaching party shall be extended by the reasonable time the breaching party is delayed by a force majeure event.
- 6.02 Upon the occurrence and during the continuation of any uncured breach, the City shall have the right to suspend the reimbursement payments specified in Article 4 herein above, pursuant to a notice (the “Suspension Notice”) delivered in accordance with Section 11.09 herein below, and thereafter to receive from Market Square, as liquidated damages, a sum equal to the amount of all reimbursement payments paid to Market Square. The calculation of liquidated damages shall not include any penalties or late charges. Such liquidated damages shall be due and payable to the City within thirty (30) days of the receipt by Market Square of the Suspension Notice. If the City delivers a Suspension Notice pursuant to this Section 6.02, then Market Square shall thereafter have no right to receive the reimbursement payments specified in Article 4 herein above unless and until Market Square has cured the breach or breaches specified in the Breach Notice.

ARTICLE 7.
FORCE MAJEURE

Performance of the parties’ obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and the parties’ obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, pandemic, unreasonable delay in issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), unreasonable delay in governmental approvals and permits, shortage or unreasonable delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties’ reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Project or this Agreement.

ARTICLE 8.

GIFT TO PUBLIC SERVANT OR TO MARKET SQUARE REPRESENTATIVE

- 8.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 8.02 Right of Repayment. Notwithstanding any other legal remedies, City may obtain repayment for any expenditure or reimbursement payment made to Market Square as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 9.
ASSIGNMENT

- 9.01 Market Square may not assign any part of this Agreement without express written approval by the City Council of the City of Brenham, which approval will not be unreasonably withheld, provided that any approved assignee assumes, in writing, all of Market Square's obligations under this Agreement.

ARTICLE 11.
INDEMNIFICATION

- 10.01 MARKET SQUARE EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND VOLUNTEERS AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF MARKET SQUARE OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT.** Nothing in this paragraph may be construed as waiving any governmental immunity or other defense available to the City under state or federal law except as expressly provided herein. This provision is solely for the benefit of Market Square and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.
- 10.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and

agents of the City) does not assume any responsibility to any third party in connection with Market Square's construction of the Project.

ARTICLE 12.
MISCELLANEOUS MATTERS

- 11.01 Time is of Essence. Time is of the essence in this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 11.02 Applicable Law and Venue. This Agreement is made subject to and in accordance with the City of Brenham Home Rule Charter and ordinances of City, as amended, and all applicable local, state and federal laws and regulations. This Agreement is performable in Washington County, Texas. Exclusive venue for any action arising under or involving this Agreement shall lie in the State District Courts of Washington County or if in federal court, the United States District Court for the Western District of Texas.
- 11.03 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.
- 11.04 Counterparts Deemed Original. 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.
- 11.05 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.
- 11.06 Governmental Powers. By execution of this Agreement, the City does not waive or surrender any governmental immunities, powers or rights, except as provided in Chapter 271, Texas Local Government Code.
- 11.07 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.
- 11.08 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without mutual written agreement of the parties to be attached and made a part of this Agreement.

11.09 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) three business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

Market Square: Brenham Market Square, LP
Attn: Paul Leventis, President
1722 Broadmoor Drive, Suite 212
Bryan, TX 77802

With a copy to: Chris Peterson
Peterson Law Group
416 Tarrow Street
College Station, TX 77840

City: City of Brenham, Texas
Attn: Carolyn D. Miller, CPA, City Manager
200 W. Vulcan St.
Brenham, TX 77833

With a copy to: Cary L. Bovey
Bovey & Cochran, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, Texas 78664
(512) 904-9441
Fax (512) 904-9445
<mailto:cary@boveycochran.com>

11.10 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

11.11 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

11.12 Attorney's Fees. The parties hereto agree that the prevailing party in any dispute, lawsuit or other legal proceeding between the parties arising out of this Agreement shall be entitled to recover its reasonable attorney's fees and costs.

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

CITY OF BRENHAM, TEXAS

By: _____
Name: Milton Y. Tate, Jr.
Title: Mayor

STATE OF TEXAS

COUNTY OF WASHINGTON

This instrument was acknowledged before me on the ____ day of _____, 2022 by Milton Y. Tate, Jr., Mayor of the City of Brenham, a Texas home-rule municipal corporation, on behalf of said municipal corporation.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM

By: _____
Cary L. Bovey, City Attorney

BRENHAM MARKET SQUARE, LP

By: _____, a Texas _____,
its general partner

By: _____
Name:
Title:

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the ____ day of _____, 2022 by _____, the _____ of _____, a Texas _____, general partner of BRENHAM MARKET SQUARE, LP, a Texas limited partnership.

[Notary Seal]

Notary Public, State of _____



MEMORANDUM

To: Tax Increment Reinvestment Zone Board

CC: Carolyn D. Miller, City Manager
Jeana Bellinger, City Secretary – Director of Administrative Services

From: Stephanie Doland, Director of Development Services

Subject: Small Area Plan

Date: June 24, 2022

On September 19, 2019 the City of Brenham Adopted the Comprehensive Plan, *Historic Past Bold Future: Plan 2040* which was written by planning consultant Kendig Keast Collaborative (KKC). Plan 2040 includes a Comprehensive look at the current state of the community and a 20-year outlook of the future direction, needs, and priorities of the community.

One of the main subject areas of the Plan includes Land Use and Development and the creation of a Future Land Use Map (Page 29). The Future Land Use Map is one of the most referenced documents within the Comprehensive Plan as it serves as a guiding document for City Staff, the Planning and Zoning Commission and the Brenham City Council to make informed decisions when considering development and land use applications like a rezoning request or specific use permit. The Map provides a parcel specific recommendation on the most appropriate use designation for each property in Brenham and areas located within the ETJ. Shown on the Future Land Use Map is the standard use classifications such as residential, commercial and industrial. Additional uses such as Corridor Mixed Use and Brenham Family Park Special Area Plan are shown and represent areas in need of further planning studies to determine a more suitable zoning district and unique development criteria (See Exhibit A).

Included in Plan 2040 and enclosed (Exhibit B), is a description of the area referenced on the Future Land Use Map as the Brenham Family Park Special Area Plan. During the plan development, KKC, City Staff and community members who participated in the plan formation agreed that “the area around the Brenham Family Park is one of the primary large developable tracts within Brenham” though no consensus could be reached on the exact mix of land uses. The plan notes that the largely undeveloped area is suitable for a Planned Development District Zoning and likely a sizeable Master Planned Community with a variety of uses including Single-Family Residential, Multiple-Family Housing, Retail, and Commercial Uses. Plan 2040 recommends the

creation of a Small Area Plan prior to receiving a development proposal to help establish the vision for the area and outline more predictable quality development outcomes.

Generally, the subject area is bounded by the Brenham Business Center to the east, US Highway 290 to the north, the State Supported Living Center to the South and State Highway 36 to the west. The subject properties have a combined area of approximately 600 acres and are zoned a combination of R-1, Single-Family Residential, R-2, Residential Mixed-Use, B-1 Local Business Mixed, and B-2, Commercial Business and Technology. The 600 acres is located immediately adjacent to the Brenham Crossing (Baker Katz) retail development which is currently developed with 125,000 square feet of retail space with an additional 100,000 square feet planned. Since the adoption of Plan 2040, the City has received a \$750,000 grant from Texas Parks and Wildlife Commission for the Development of the 106-acre Brenham Family Park. The first phase of the project includes development of 32 acres of land with a projected development cost of \$1.2 million. These public and private investments will likely spur increased interest in further developing these 600 acres of land located between two primary highways within the south sector of the community. However, many of the properties within the plan area are limited in their development potential due to lack of roadway connections between the two major highways and the need to extend utilities.

In an effort to proactively prepare for the growth projected on the 600 acres and to protect the City's investment in the Brenham Family Park, Plan 2040 includes the recommendation to conduct a Small Area Plan on these 600 acres to identify the following project outcomes:

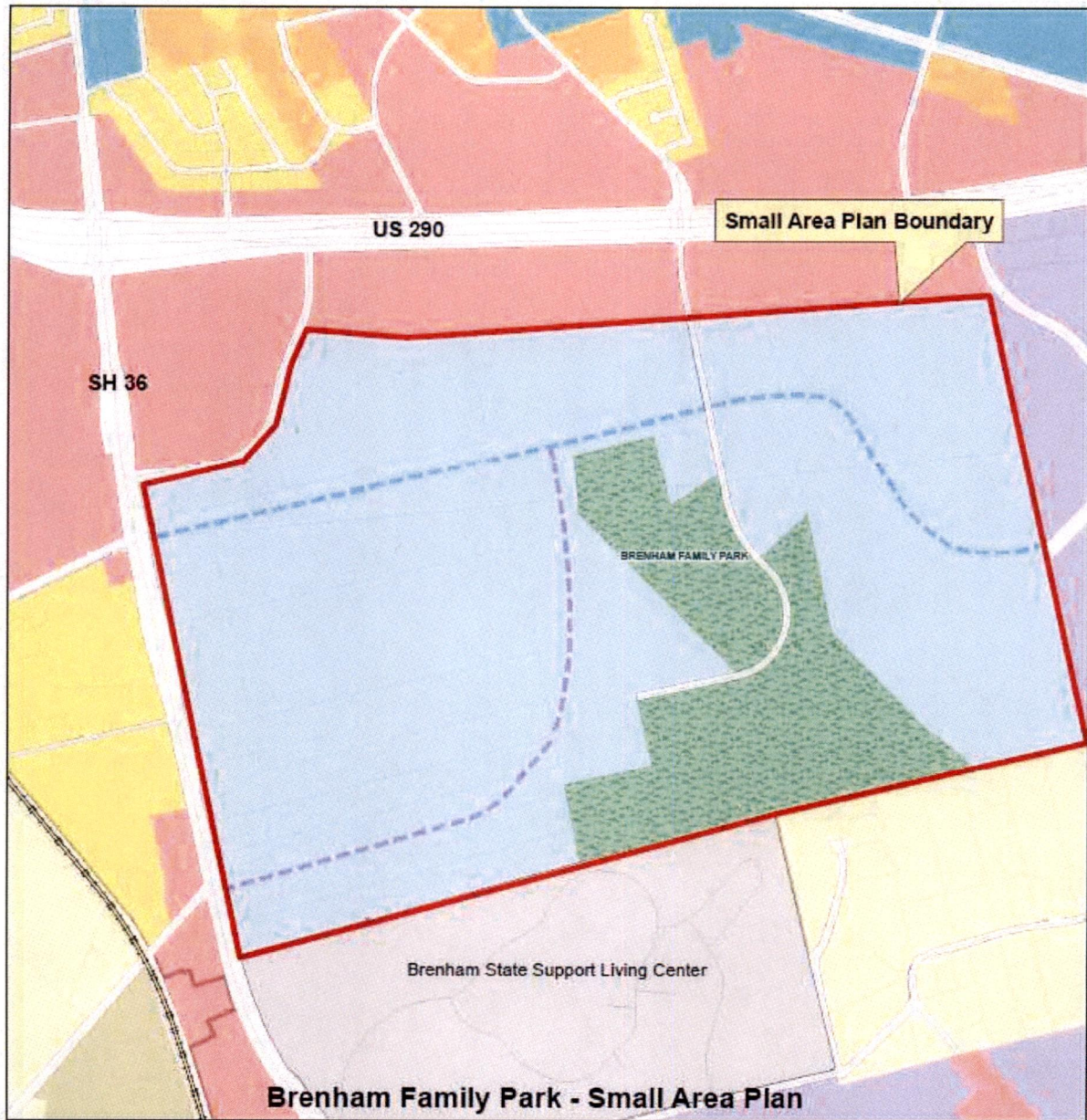
- Establish a unified **Vision** for the development of the current vacant land surrounding the Brenham Family Park. The Comprehensive Plan's Future Land Use Map identifies the area around the Brenham Family Park as Planned Development. Establishing the vision for the area will guide more predictable development outcomes. The Comprehensive Plan's engagement process revealed a current lack of public consensus as to the desired future development outcomes for the area.
- Based on the unified vision, establish a more fine-grain clarification of potential **land use mix and intensities**.
- Identify opportunities to **coordinate public and private improvements** and infrastructure.
- Identify appropriate **road network connections** to future development and the Brenham Family Park and recommend updates to the Thoroughfare Plan.
- Identify **wayfinding, lighting and pedestrian and bicycle infrastructure**, in coordination with the design concepts for the Brenham Family Park.
- Develop **conceptual renderings** of preferred development options.
- Examine any necessary updates to the City's **zoning or development regulations** to implement the unified vision for the area.

Kendig Keast Collaborative has provided a budgetary number of \$70,000 to complete the Small Area Plan. The project would include a significant level of community feedback and will include the involvement of the property owners located within the 600-acre area. **Staff is requesting the allocation of \$70,000 to fund the Small Area Plan from the TIRZ Board.** Funding of this plan will allow the community and City Staff to prepare a plan for the area to achieve a quality development that meets the needs of the community. If approved, Staff will work to prepare a

Professional Services Agreement for the Small Area Plan and present the item for additional consideration by the Brenham City Council during fiscal year 2022-2023.

Should there be any questions, comments, or concerns, please contact me by phone at 979-337-7269 or by email at sdoland@cityofbrenham.org.

Exhibit A:
Excerpt Future Land Use Plan



Brenham Family Park - Small Area Plan

Future Land Use Plan		Layer	
FLU_FINAL			
Rural	Mixed Use Blinn Adjacent	TxDOT Principal Arterial	
Open Space	Mixed Use Downtown Adjacent	TxDOT Minor Arterial	
Park	Corridor Mixed Use	City Arterial	
Estate Residential	Planned Development	Proposed City Arterial (105-ft ROW)	
Single Family Residential	Downtown	City Collector	
Manufactured Homes	Local Public Facilities	Proposed City Collector (80-ft ROW)	
Multi-Family Residential	Commercial	Other TxDOT Major/Minor Collector	
	Industrial		
	City Limits		

Thoroughfare Plan 2022

1 inch = 1,042 feet



Exhibit B:
Historic Past, Bold Future: Plan 2040, Excerpt Page 17

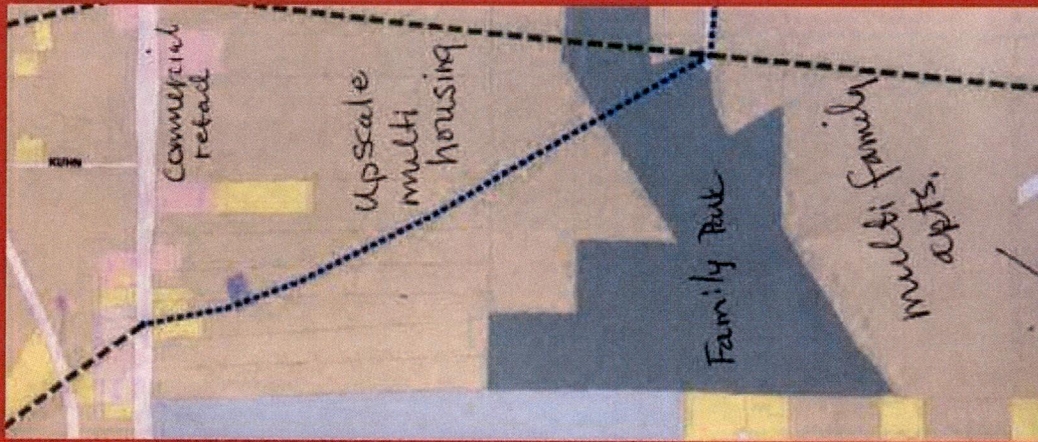


Image: One Town Hall participant's preferred land uses around Future Brenham Family Park area.

Future Brenham Family Park - Special Area Plan

The area around the future Brenham Family Park is one of the primary large developable tracts within Brenham and there is significant public investment that will be made to the Brenham Family Park over the coming years. The Future Land Use Map (see Pg. 29) designates the currently undeveloped area around the Future Brenham Family Park as Planned Development. This designation encourages a master-planned development that will go through a planned development process in coordination with the City.

Development of a Special Area Plan in advance of receiving a development proposal can help establish the vision that is desired for the area which in turn can help guide more predictable development outcomes. During the Plan 2040 planning process, attendees at a Town Hall meeting were asked what type of land uses would be most appropriate for the area. Responses varied widely, from preference of a mixed-use "live, work, play" style development, to low-density large lot estate residential. The lack of current consensus from residents regarding the preferred type of future development suggests that a Special Area Plan will be beneficial. The Special Area Plan may address the following elements:

- ▶ Coordinating public and private improvements and infrastructure
- ▶ Developing a unified vision for the future development of the area
- ▶ Integration of future development with the Brenham Family Park
- ▶ Integration with thoroughfare system, including pedestrian and bicycle infrastructure
- ▶ Conceptual renderings of development options