



**NOTICE OF A REGULAR MEETING OF THE BOARD OF DIRECTORS
TAX INCREMENT REINVESTMENT ZONE NUMBER 1
CITY OF BRENHAM, TEXAS
THURSDAY, OCTOBER 13, 2022, AT 11:30 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) Update and Discussion on the Tax Increment Reinvestment Zone Number 1 Boundary

4. ACTION ITEM(S)

- (a) Consider Approval of the Minutes from the July 7, 2022 TIRZ Board Meeting
- (b) Consider a Recommendation to the City of Brenham City Council Related to a Chapter 380 Agreement with Brenham Market Square, LP.

5. ADJOURNMENT

CERTIFICATION

I do hereby certify that the above notice of the October 13, 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 Monday, October 10, 2022 at 9:00 a.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



To: TIRZ Board

From: Carolyn D. Miller
City Manager

Subject: Reconsider TIRZ Boundary Expansion

Date: October 9, 2022

The State Tax Code outlines criteria for local governments related to economic development. One of the tools the City of Brenham is utilizing is the Tax Increment Reinvestment Zone.

Chapter 311 – Tax Increment Reinvestment Zone

- Promote development or redevelopment in an area that would not occur in the foreseeable future solely through private investment
- Establish a Base Value for property located in the TIRZ
- As property within the TIRZ develops, property values increase and 50% of the incremental value is deposited into TIRZ fund

We have discussed expansion of the TIRZ boundary to include business parks (see pink shaded areas) and the undeveloped property off Hwy 36 and Woodbridge (see yellow shaded areas). We would like to ask the TIRZ Board to reconsider expansion of the boundary.

TIRZ Property Value Growth

TIRZ No. 1 established in 2018; base value for property over \$336 million

- Tax Year 2019 value for property over \$353 million
 - FY20 incremental growth in value over \$17 million
- Tax Year 2021 value for property over \$423 million
 - FY22 incremental growth in value over \$87 million
- Tax Year 2022 value for property over \$560 million
 - FY23 incremental growth in value over \$224 million

The increase in incremental value over the base year property values has been phenomenal, and development has been strong. Which is what the TIRZ is designed for.

Impact on General Government Revenue

The TIRZ valuation growth has had negatively impacted general government revenues. As property within the TIRZ develops and property values increase, 50% of the incremental value is deposited into TIRZ fund. With the adoption of the FY2022-23 tax rate and budget, we will be depositing \$576,499 of tax receipts into the TIRZ Fund (see attached).

Since the TIRZ was established, we have deposited over \$900,000 in revenue which is not available for general government services and operations.

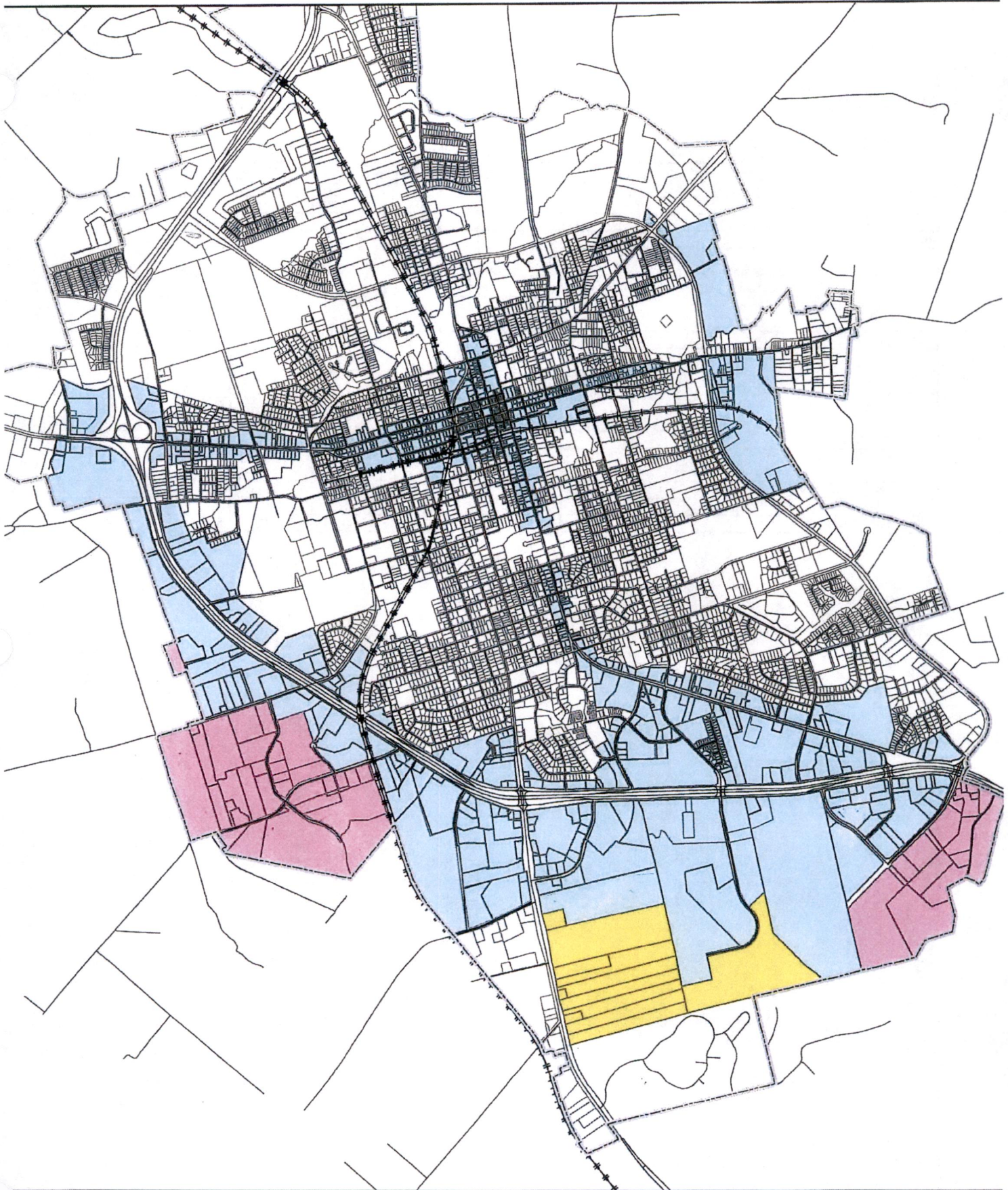
Upcoming Legislative Session

I have attached an article from the Houston Chronicle related to TIRZ in Texas. The State of Texas has over 400 TIRZ and the City of Houston has over 26. Senator Paul Bettencourt has tweeted that in the upcoming legislative session he will be proposing TIRZ reform to include a sunset process and limit city-wide share of property values to 10%, not the current 25% (for populations over 100,000). New zones would be able to last only 10 years rather than indefinitely.

When the City of Brenham established TIRZ No. 1, the Zone met the following criteria:

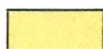
- Not more than 30% residential
- Percentage of total appraised value of taxable real property in the Zone compared to city-wide did not exceed 50%

Our current percentage stands at 27% (2022 certified values city-wide over \$2 billion and TIRZ values of \$560 million).



TIRZ Map

1 inch = 2,915 feet



Small Area Plan



TIRZ Addition



TIRZ Parcels



	ACTUAL 2020-2021	ADOPTED 2021-2022	AMENDED 2021-2022	PROJECTED 2021-2022	PROPOSED 2022-2023	% CHANGE FROM PY
BEGINNING FUND BALANCE	\$ 45,278	\$ 161,761	\$ 161,761	\$ 162,186	\$ 386,243	138.8%
REVENUES						
4-102.00 TAX RECEIPTS-TIRZ NO. 1	\$ 116,483	\$ 225,302	\$ 225,302	\$ 223,057	\$ 576,499	155.9%
4-513.00 INTEREST INCOME	\$ 424	\$ -	\$ -	\$ 1,000	\$ 1,500	0.0%
TOTAL REVENUES	\$ 116,908	\$ 225,302	\$ 225,302	\$ 224,057	\$ 577,999	156.5%
EXPENDITURES						
SERVICES						
5-100-402.00 AUDITS/CONSULTANTS FEES	\$ -	\$ -	\$ -	\$ -	\$ 70,000	0.0%
TOTAL SERVICES	\$ -	\$ -	\$ -	\$ -	\$ 70,000	0.0%
TOTAL EXPENDITURES	\$ -	\$ -	\$ -	\$ -	\$ 70,000	0.0%
CHANGE IN NET POSITION	\$ 116,908	\$ 225,302	\$ 225,302	\$ 224,057	\$ 507,999	125.5%
ENDING FUND BALANCE	\$ 162,186	\$ 387,063	\$ 387,063	\$ 386,243	\$ 894,242	131.0%

Carolyn Miller

From: Carolyn Miller
Sent: Sunday, October 9, 2022 2:15 PM
To: Carolyn Miller
Subject: FW: TIRZs keep growing in Texas, despite efforts to stop them.

TIRZs keep growing in Texas, despite efforts to stop them.

The 1981 law that first allowed the zones, for instance, originally included a sunset provision, like those in Texas' other tax incentive laws.

A pedestrian walks down Post Oak Boulevard, a shaded thoroughfare in Houston's Uptown TIRZ.

Jon Shapley/Staff photographer

Mike Morris, John Tedesco
[Houston Chronicle](#)
October 04, 2022 at 07:34AM

Even the earliest attempts to narrow the use of these zones have been undercut over time, making it easier to trap tax dollars for decades in areas that have a tax increment reinvestment zone, or TIRZ, while other neighborhoods struggle.

The 1981 law that first allowed the zones, for instance, originally included a sunset provision, like those in Texas' other tax incentive laws. The provision said that the TIRZ law would expire in 1991 unless lawmakers renewed it. The clause later vanished, removing a layer of legislative oversight.

Early TIRZ bills also sought to limit the share of a city's total property value that could be tied up in zones that had outstanding debt to 5 percent. By the time the program became law in 1981, however, 15 percent of a city's tax base could be tied up in TIRZs. And when Houston was approaching that limit in 2011, lawmakers raised the ceiling to 25 percent. The city is now nearing that, too.

Steve Wolens, a Dallas attorney who, as a state representative, sponsored the 1981 bill that created TIRZs in Texas, said he has watched the law's restrictions loosen "to my chagrin."

"I wanted it to be very narrow," he said. "We didn't want it abused; we didn't want taxes to be given away lightly."

Recent reform efforts also have stalled.

Houston Republican state Sen. Paul Bettencourt — once joined by Democrat Sylvia Garcia, now a congresswoman and then a state senator — has repeatedly filed bills to rein in TIRZs.

Bettencourt has proposed limiting the share of citywide property value in TIRZs to 10 percent, not the current level of 25 percent. New zones would be able to last only 10 years rather than indefinitely.

Existing zones, under Bettencourt's plan, wouldn't be able to extend their lifetimes and couldn't update their project plans if the median value of property inside the zone exceeded the citywide median value. The measures all failed to become law, but **Bettencourt vowed to try again in the legislative session that begins in January.**

“There’s no way the voters would have approved this expansive, aggressive, unelected government if it was on the ballot in 1981,” Bettencourt said. “If you could have taken a snapshot 40 years (in the future) and said, ‘Here’s what you’re approving,’ they wouldn’t have done it.”

A missed opportunity

Houston city leaders also could set clearer guidelines for the state’s largest TIRZ system. They’ve failed to do so.

The City Council in 1990 passed nonbinding rules suggesting that zones be created only in areas with poor infrastructure where property values had fallen by at least 20 percent over the prior decade — then waived that policy with each zone it created since 1995.

Houston could adopt an updated policy in the form of a binding ordinance. Or the new mayor voters will elect in the fall of 2023 — Mayor Sylvester Turner is term-limited and cannot run again — could take a new approach.

Yet the outcome is far from certain.

Mayor Bill White took office at the start of 2004, just a few years after most of the city’s TIRZs at the time had been created. White wasn’t sure he liked what he was inheriting.

In his first year in office, White met with the volunteer board members who oversee each zone. Then, in his second year, White secured a change to state law that let the city charge the TIRZs higher fees.

Bill White, former mayor of Houston, was skeptical of tax increment financing and told his colleagues he couldn’t explain why “some portions of the city are covered by a TIRZ and other similarly situated portions of the city are not.”

In an October 2005 letter to City Council members, White said he had spent “dozens of hours” understanding the purposes and projects of each zone but still had “difficulty explaining in some principled fashion why some portions of the city are covered by a TIRZ and other similarly situated portions of the city are not.”

Most of Houston’s zones, White said, had either failed; succeeded thanks to market forces outside their control; or fulfilled their purpose and should be disbanded. Ultimately, White and his top aides settled on terminating at least nine zones.

Yet that didn’t happen. White said he couldn’t muster enough support from his council colleagues.

“Many if not most of the council members felt particularly protective of the TIRZs within their districts,” White said in an interview.

Turner, too, took office in 2016 as a TIRZ skeptic. Seven years into his term, he and White remain the only Houston mayors not to have created a zone since the program’s inception.

The transition team Turner assembled upon his election recommended that he use TIRZ funds to shore up the city budget — and he did so, wringing \$22.6 million in fees out of the zones last year, up from \$5.4 million the year he took office.

Yet Turner also has expanded 16 zones and extended the lives of 10. This, too, was among his advisers’ recommendations. They believed dissolving a TIRZ — aiming to return its cash to City Hall to be spent anywhere in Houston — would be fruitless because of the city’s revenue cap, which limits how much property tax collections can grow every year.

This cap doesn't apply to TIRZ revenue. So Turner's transition team advised him to "shift the funding responsibility" for projects from the city to TIRZs and free up dollars in the city budget.

The idea that there was no point in ending TIRZs because of the revenue cap was widespread at City Hall. But the Chronicle's investigation found a forgotten provision in the city charter enacted during the White administration. It states that the city can treat the dissolution of a TIRZ like an annexation and recapture its tax dollars — unhindered by the restrictions of the revenue cap.

Former Mayor Annise Parker — who oversaw most of Houston's TIRZ expansions and life extensions — said she's not sure if she would have acted any differently. The larger zones "are still doing significant projects," she said, and returning the smaller zones' revenues to the city budget wouldn't greatly change the city's fiscal outlook.

Turner didn't respond to written questions on the topic. Andy Icken, who has served as TIRZ czar under Parker and Turner, said his decisions would not have changed.

"We have acted consistently in the best interest of the city with the information we had at the time," Icken said. "Our actions would have remained the same."

Political realities aside, scrapping the entire TIRZ system overnight would be unworkable. Many zones are managing large infrastructure projects, and 10 of them reported carrying a combined \$520 million in outstanding debt, according to state data. State law says if a zone is terminated before its obligations are paid off, the city must set aside enough money to pay those debts.

But as White and his aides had noted, some Houston TIRZs had accomplished their mission. Instead of winding down, many zones gained new projects and grew exponentially.

Unconstitutional?

Ultimately, of course, voters hold the power. Some everyday residents have even tried to go after TIRZs on their own.

In 2017, an Uptown business owner and a resident who both opposed a new rapid transit line near the Galleria filed a lawsuit alleging that the state's most prosperous TIRZ that helped fund the project likely violated the Texas Constitution when City Council created it in 1999.

"It is a matter of general knowledge, and could not have been lost on council and the mayor at the time, that Galleria/Post Oak was among the very wealthiest, if not the wealthiest, part of Houston," the lawsuit stated. The plaintiffs hired an expert, University of Houston professor Steve Craig, who concluded that Uptown wasn't economically distressed under "any good-faith definition of economic activity."

But judges are unlikely to overrule an elected City Council when it declares that an area meets the criteria under state law to create a TIRZ, according to the Texas Municipal League. The plaintiffs dropped the case after Uptown filed its own lawsuit complaining that the litigation was stopping it from issuing bonds.

The plaintiffs' lawyer, Joe Larsen, said his clients couldn't match Uptown's deep pockets.

"I became absolutely convinced that this thing was unconstitutional," Larsen said of Uptown's TIRZ. "I think on the merits, we were absolutely right. But it wound up being too tall a project for us to see to fulfillment."

Stephen Wood, Uptown's lawyer, said the goal of tax increment financing is to cure many types of neighborhood ailments, not just blight. The poor street network that plagued Uptown for years is exactly the type of problem TIRZs are designed to tackle under state law, he said.

"Back in the '40s and '50s when it was a suburban area, there was no traffic and the street layout was just not adequate," Wood said.

Houston voters will choose a new mayor and council next year. But longtime Houston TIRZ administrator David Hawes, whose firm currently manages six zones, said the prospect of a fundamental shake-up is unlikely.

"Practically every mayor comes in saying, 'I don't like TIRZs; TIRZs are bad. You got to get rid of them,'" Hawes said. "They get two, three years into their term and they go, 'Wait a second — I can use it for this, I can use it for that.'"

These projects, supporters say, benefit the entire city. Significant renovations in Houston's most prominent nature refuge, Memorial Park, were funded in part by the expansion of the Uptown TIRZ.

But many Houston neighborhoods are still waiting for basic infrastructure improvements from the city. And the money for those projects can be hard to find.

As Parker put it: "The reason we create TIRZs is because there's not some infrastructure fairy that comes and puts money under your pillow."

2131 N Collins Ste 433-721
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Tax Increment Reinvestment Zone Number One

A regular meeting of the Tax Increment Reinvestment Zone Number One Board of Directors was held on July 7, 2022 beginning at 10:30 a.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

Shannan Canales
Clint Kolby
Albert Wright
Gary Crocker
Tom Whitehead

Members absent:

Milton Y. Tate, Jr.
Leah Cook
Atwood Kenjura
Adonna Saunders

Others present:

City Manager Carolyn Miller, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Economic Development Director Susan Cates, Director of Public Works Dane Rau, Director of Development Services Stephanie Doland, Finance Director Stacy Hardy, Tourism and Marketing Director Jennifer Eckermann, and Shawn Bolenbarr.

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 1 Deposits and Available Fund Balance

Director of Finance Stacy Hardy presented this item. Hardy explained that in December 2018 the Tax Increment Financing Zone Number 1 had a base property value of \$336 million. As property within the TIRZ has developed, property values have increased to \$423 million (2021 Assessed) and that tax revenue on 50% of the incremental value is deposited in the TIRZ Fund each year. Hardy advised the Board that the deposits made to date, along with an estimate of the 2022 tax year deposit is as follows:

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		<u>\$ 384,671</u>
*2022 (estimate) - available after 10/1/22		<u>\$ 281,896</u>
<i>*Not including property currently under protest</i>		
Total Amount Available for Eligible Projects		<u>\$ 666,567</u>

b) Presentation and Discussion on Possible Expansion of the Tax Increment Reinvestment Zone Number 1 Boundary

City Manager Carolyn Miller presented this item. Miller explained that when the TIRZ was created in 2018 it included 2,201-acres and was expanded in 2019 to include an additional 199 acres.

Miller stated that in March 2022 the Board agreed to expand the TRIZ to pick-up the acreage in the Brenham Business Center and Southwest Industrial Park; however, staff would like the Board to also consider adding a 600-acre area off Highway 36 South. The Board agreed with staff's recommendation and advised Miller to move forward with the expansion of the TIRZ to also include the 600 acres off of Highway 36 South.

The TIRZ Board convened into Executive Session at 10:36 a.m.

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**

Executive Session adjourned at 10:59 a.m.

5. ACTION ITEM(S)

- a) **Consider Approval of the Minutes from the March 17, 2022 TIRZ Board Meeting**

A motion was made by Albert Wright and seconded by Gary Crocker to approve the minutes from the March 17, 2022 TIRZ Board meeting with the corrections as presented.

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

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

- b) **Consider Approval of a Chapter 380 Agreement with Brenham Market Square, LP.**

Vice Chairman Kolby advised that this item was not ready for discussion so the item would be passed.

- 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**

A motion was made by Albert Wright and seconded by Tom Whitehead to approve the allocation of sufficient funds from the Tax Increment Reinvestment Zone Number 1 funds to cover the purchase of downtown property located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas and any other related costs associated with the purchase of the downtown property and authorize the President to execute any necessary documentation.

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

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

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

Director of Development Services presented this item. Doland explained that 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). The 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.

Doland advised that 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.

Doland advised the Board that during the plan development, KKC, City Staff and community members who participated in the plan formation agreed that the 600-acre around the Brenham Family Park is one of the “primary large developable tracts within Brenham” and the Plan 2040 recommended the creation of a Small Area Plan for this area. Doland explained that KKC has provided a budgetary number of \$70,000 to complete the Small Area Plan for the 600-acre area and that staff is requesting the allocation of FY22-23 TIRZ funds to pay for the Plan.

A motion was made by Shannan Canales and seconded by Gary Crocker to approve a FY2022-23 budget allocation from the Tax Increment Reinvestment Zone Number 1 Fund, in the amount of \$70,000.00, for the development of a Small Area Plan for approximately 600 acres, located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas and authorize the President to execute any necessary documentation.

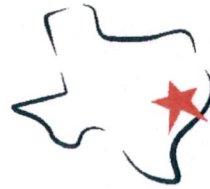
Vice Chairman Kolby called for a vote. The motion passed with the Board voting as follows:

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

The meeting was adjourned.

Clint T. Kolby
Vice Chairman

Adonna Saunders
Secretary



MEMORANDUM

To: TIRZ Number 1 Board of Directors
From: Susan S. Cates
Subject: Economic Development Agreement with Market Square
Date: October 10, 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 _____, 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 finds; 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," "Program," and "Architectural Requirements" 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 (collectively, the “Tracts”) 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 Tracts and development on the Tracts 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 Upon reasonable notice from the City to Market Square, Market Square shall provide to the City reasonable access to the Project Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Central Time, and any and all reasonably necessary information and records related to the Project or the associated improvements if, and only if, such access, information, or records are 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, service provider, or supplier. Costs for which proof of payment is submitted to the TIRZ Board more than one (1) year after the payment is made to the contractor, service provider, or supplier will no longer be considered allowable costs for reimbursement.
- 4.12 Market Square shall design and construct the Project in accordance with the Brenham Market Square – Architectural Enhancement Requirements set forth in Exhibit “A” attached hereto and incorporated herein for all purposes pertinent. Market Square shall be deemed a “Developer” as that term is used in Exhibit “A.” This Section 4.12 shall not apply to the Trinity Brenham Trails, L.P. project constructed on the parcel of property identified as Washington County Appraisal District tract R67801.

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 related to the subject matter of this Agreement.
- 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, the other party may send written notice of such non-compliance (the "Breach Notice") to the non-complying party which notice must be delivered in accordance with Section 11.09 herein below and must identify the event and nature of such non-compliance. If the non-compliance remains uncured for ninety (90) days following the non-complying party's receipt of the Breach Notice, the event of non-compliance shall be deemed to be a breach of this Agreement (a "Breach"); provided, however, that if such non-compliance is not reasonably susceptible of cure within such ninety (90) day period and the non-complying party has commenced and is continuing to diligently pursue the cure of such non-compliance, then after first advising the non-complying party of such cure efforts, the non-complying party shall automatically receive an additional ninety (90) day period within which to cure such non-compliance. The party not accused of non-compliance may authorize additional time for the non-complying party to cure any such non-compliance 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 an event of non-compliance by the non-compliant party shall be automatically extended by the reasonable time the non-complying party is delayed by a force majeure event.
- 6.02 Upon the occurrence and during the continuation of a 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 pursuant to this Agreement. 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 event of non-compliance which resulted in the Breach as 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, epidemic, business and agency closures resulting from emergency acts or orders of any governmental entity, unreasonable delay in issuance of any permit and/or legal authorization, 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 overnight delivery 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) five 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

Nikelle Meade
Husch Blackwell
111 Congress Avenue, Suite 1400
Austin, TX 78701-4093

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
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 _____

Exhibit "A"

Brenham Market Square - Architectural Enhancement Requirements

Developer shall design and construct all structures located within the Brenham Market Square Development in accordance with adopted City of Brenham Codes and Ordinances. Additionally, the Developer shall construct all structures within the subject tract in accordance with the following architectural enhancements which provide greater variations in material, color, and texture to the exterior walls (elevations) of each façade.

Said architectural enhancements are collectively referred to herein as the "Decorative Elements Threshold" and the elevations of *each* Building in the Project must include and satisfy *all* of the following elements:

1. "Primary Building Materials" (only brick, natural stone, fiber cement nichiha panels, glass or glazing) shall cover at least fifty-five percent (55%) of each Building elevation;
2. "Secondary Building Materials" (only concrete masonry unit, concrete panel construction (tilt wall) stucco, cement board siding, EIFS or architectural metal pan) shall cover no more than thirty percent (30%) of each Building elevation; and
3. "Accent Materials" such as door and window frames, lintels, canopies, cornices, architectural metalwork, glass block, copper flashing, EIFS accent features such as cornices, or similar materials may be used on no more than fifteen percent (15%) of each Building elevation.

The Developer shall have the option to elect to forego the Decorative Elements Threshold for each elevation *not* visible from a public right-of-way (existing or planned), provided that the Primary Building Materials percentage shall increase in the following manner on all remaining elevations visible from the public right-of-way. Any facades not visible from the public right-of-way and applicable to the exception shall be painted an inconspicuous natural color (such as a shade of tan, brown or green).

1. "Primary Building Materials" (only brick, natural stone, fiber cement nichiha panels, glass or glazing) shall cover at least sixty-five percent (65%) of each Building elevation;
2. "Secondary Building Materials" (only concrete masonry unit, concrete panel construction (tilt wall) stucco, cement board siding, EIFS or architectural metal pan) shall cover no more than twenty-five percent (25%) of each Building elevation; and
3. "Accent Materials" such as door and window frames, lintels, canopies, cornices, architectural metalwork, glass block, copper flashing, EIFS accent features such as cornices, or similar materials may be used on no more than ten percent (10%) of each Building elevation.

Within thirty (30) days after completion of construction of all buildings within the subject tract, the Developer shall deliver a written certification to the City Manager, with sufficient supporting documentation, that the Decorative Elements Threshold has been satisfied in the construction of the buildings. Within thirty (30) days after the City Manager's receipt of the written certification from the Developer, the City Manager shall provide a written notice approving the certification or stating the specific item(s) within the certification of which the City Manager does not approve based on the as-built construction of the buildings on the subject tract, such approval of the City Manager not to be unreasonably withheld, conditioned or delayed.

Brenham Market Square - Architectural Enhancement Requirements

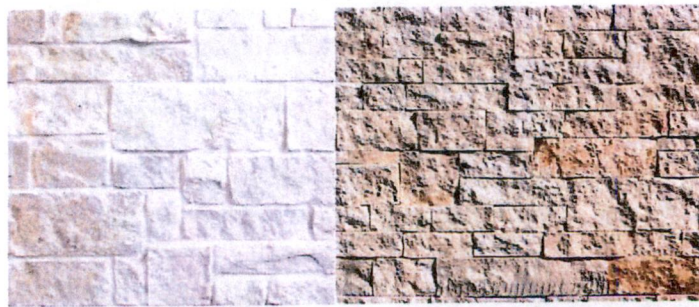
The following words, terms and phrases, when used in this agreement shall have the meanings ascribed to them in this exhibit, except where the context clearly indicates a different meaning.

Words and terms that are not expressly defined in this exhibit have their ordinary dictionary meanings, based on the latest edition of Merriam-Webster's Unabridged Dictionary. When not inconsistent with the context, words used in the present tense include the future; words used in the singular number include the plural; and words used in the plural number include the singular.

BRICK: A masonry building block of clay baked in a kiln until hard.



NATURAL STONE: Masonry construction using stone material may consist of granite, marble, limestone, slate, river rock, and other hard and durable naturally occurring all weather stone. Cut stone and dimensioned stone techniques are acceptable.



Brenham Market Square - Architectural Enhancement Requirements

GLASS WALLS. An exterior wall with a maximum reflectance of twenty (20) percent, which carries no structural loads and consists of a combination of metal, glass, or other surfacing material supported in a metal framework. Glass walls include glass curtain walls.

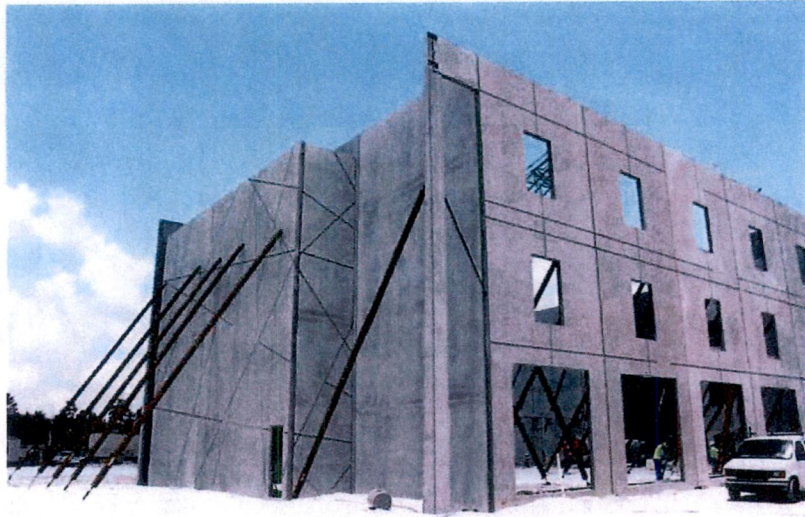


CONCRETE MASONRY UNIT: Concrete masonry units used for masonry construction shall meet the latest standard contained within the building code. Concrete masonry units shall have an indented, hammered, split face finish or other similar architectural finish, and be integrally colored. Lightweight concrete block or cinder block construction is not acceptable as an exterior finish.



Brenham Market Square - Architectural Enhancement Requirements

CONCRETE PANEL CONSTRUCTION (TILT WALL): Concrete finish, pre-cast panel or tilt wall construction shall be painted, fluted, or exposed aggregate. Smooth or untextured concrete finishes are not acceptable unless painted.



STUCCO: An approximately 7/8-inch, cement-based, three-coat system that is applied over an approved, weather-resistive barrier and metal lath by spraying or troweling. The three-coat system is comprised of a scratch coat, brown coat and a finish coat that is color integrated and sealed.



Brenham Market Square - Architectural Enhancement Requirements

CEMENT BOARD SIDING (OR PANELS): Shall be fiber cement composite material made of cement reinforced with cellulose fibers.

