



TIRZ BOARD 1 & 2 REGULAR MEETING

CITY OF BAY CITY

Thursday, January 13, 2022 at 4:30 PM
BOARD ROOM | 1112 7th Street

Bay City is committed to developing and enhancing the long-term prosperity, sustainability, and health of the community.

AGENDA

CALL TO ORDER & CERTIFICATION OF QUORUM

APPROVAL OF AGENDA

PUBLIC COMMENTS

APPROVAL OF MINUTES SUMMARY

- 1.** Accept minute summary from the December 21, 2021 TIRZ #1 & #2 Board Meeting.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL:

- 2.** Review and take any necessary action on an amendment under the terms of the approved development agreement for Phase II between Reinvestment Zone Number One (TIRZ #1), City of Bay City, and Sal Holdings, LLC.
- 3.** Discuss, consider, and/or recommend approval of expanding the TIRZ #1 territory. DC Dunham, Sal Holdings
- 4.** Discuss, consider, and/or ratify a Professional Service Agreement with David Pettit, DPED.

ITEMS / COMMENTS FROM BOARD MEMBERS

ADJOURNMENT

CERTIFICATION OF NOTICE

This is to certify that the above notice of a Special Called Meeting was posted on the front window of the City Hall of the City of Bay City, Texas on **Monday, January 10, 2020 before 4:30 p.m.** Any questions concerning the above items, please contact Mayor Robert K. Nelson at (979) 245-2137.

AGENDA NOTICES:Action by Council Authorized:

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

Attendance by Other Elected or Appointed Officials:

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

Executive Sessions Authorized:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion. The facility is wheelchair accessible and accessible parking spaces available. Request for accommodations or interpretive services must be made 48 hours prior to the meeting. Please contact the City Secretary's Office at 979-245-5311 or email, citysecretary@cityofbaycity.org for further information.

Jeanna Thompson

City Secretary



CALL TO ORDER & CERTIFICATION OF QUORUM

The Board Meeting for TIRZ #1 & #2 was called to order by Vice-Chair DC Dunham.

Quorum present:

PRESENT

DC Dunham
 William Cornman
 Samantha Denbow
 Craig Hlavinka
 Kent Pollard
 Bryan Prochnow
 Jim Folse

ABSENT

Julie Estlinbaum
 Edward "Bubba" Cook

APPROVAL OF AGENDA

Motion made by William Cornman to approve the agenda, Seconded by Jim Folse. Voting Yea: DC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

PUBLIC COMMENTS

Stuart Lynn, SAL Holdings, stated that he has met with the City Manager and Mayor regarding their 380 agreement and Valor Park. They will be making it part of TIRZ #1 and that area does not have to be contingent. They will be bringing to the board soon.

APPROVAL OF MINUTES SUMMARY OF TIRZ #1

1. Accept minute summary from the November 9, 2021 TIRZ #1 Board Meeting.

Motion made by William Cornman to approve the minutes summary of November 9, 2021 TIRZ #1 Board Meeting, Seconded by Kent Pollard. Voting Yea: JDC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

APPROVAL OF MINUTES SUMMARY OF TIRZ #2



2. Accept minute summary from the November 9, 2021 TIRZ #2 Board Meeting.

Motion made by Kent Pollard to approve the minutes summary of November 9, 2021 TIRZ #2 Board Meeting, Seconded by William Cornman. Voting Yea: JDC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL - TIRZ #1:

3. Discuss and consider the hiring of a landscape architect and approval for reimbursement in lieu of line items in the current Development Agreement. DC Dunham, SAL Holdings

DC Dunham, SAL Holdings, stated that after several meetings with the Committee, they concluded that it would be best to have an engineering/architecture firm do the landscape designs. She requested that \$20,000 be re-allocated from greenscape items of the development agreement to use towards the architect. The amended development agreement will need to be presented to the City Council.

Motion made by William Cornman to approve the reallocation of funds, not to exceed \$20,000, to use towards landscape architecture in the Development agreement, Seconded by Kent Pollard. Voting Yea: DC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

REGULAR ITEMS FOR DISCUSSION, CONSIDERATION AND/OR APPROVAL - TIRZ #2:

4. Consider and/or recommend approval of TIRZ #2 Final Amended Project and Financing Plan (PFP). David Pettit

David Pettit, DPED, presented and summarized the amended PFP.

Motion made by William Cornman to approve and recommend the TIRZ #2 Final Amended Project Financing Plan, Seconded by Kent Pollard. Voting Yea: DC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

5. Consider and/or recommend approval of TIRZ #2 Reimbursement Agreement with Bold Fox.

David Pettit, DPED, presented Reimbursement Agreement with Bold Fox and summarized priorities of payments and when Bold Fox get reimbursed. Alex Kamkar, Bold Fox, also summarized the agreement and financial backing he has already received.



Minutes

TIRZ Board 1 & 2 Regular Meeting

December 21, 2021

Julie Estlinbaum, Board Chair, arrived during discussions

Motion made by William Cornman to approve and recommend the TIRZ #2 Reimbursement Agreement with Bold Fox. Seconded by Jim Folse. Voting Yea: Julie Estlinbaum, DC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

ITEMS / COMMENTS FROM BOARD MEMBERS

TIRZ #1 Board will meet again on Thursday, January 13th at 4:30 pm.

ADJOURNMENT

Motion made by Craig Hlavinka to adjourn both the TIRZ #1 and the TIRZ #2 meeting, Seconded by Kent Pollard. Voting Yea: Julie Estlinbaum, DC Dunham, William Cornman, Samantha Denbow, Craig Hlavinka, Kent Pollard, Bryan Prochnow. Motion carried.

PASSED AND APPROVED, this ____ day of _____, 2022.

JULIE ESTLINBAUM.; BOARD CHAIRMAN

TIRZ BOARD #2

JEANNA THOMPSON

CITY SECRETARY

DISCUSS, CONSIDER, AND/OR APPROVE AN AMENDMENT UNDER THE TERMS OF THE APPROVED DEVELOPMENT AGREEMENT FOR PHASE II.



EXECUTIVE SUMMARY

BACKGROUND:

On July 17, 2019, the TIRZ Board recommended approval of a Developer Agreement between City of Bay City and SAL Holding, LLC for the development of Cottonwood Park. Exhibit C provides an estimate of Phase I and Phase II. City Council approved agreement on September 12, 2019. Phase II has an estimated cost of \$100,000 when complete. Reimbursements are limited to the amount approved by this agreement.

On December 21, 2021, the TIRZ Board recommended a new project type (landscaping) that was not part of the original estimated project costs.

FINANCIAL IMPLICATIONS: Max Reimbursement remaining is 65,855.94 for Phase II

RECOMMENDATION: TIRZ Board recommends amending Exhibit C of the Project Plan

ATTACHMENTS: Developer Agreement; Exhibit C of Development Agreement (Amended)

Exhibit C - Phase II - Amended

Phase II estimated costs of public green space and park area:

TIRZ Project Plan	Project Description by Developer	
<i>Street & Intersection Improvements</i>	Sidewalks / Entryways	\$ 20,167.68
<i>Storm Water Facilities and Improvements</i>	Drainage / Culvert work	\$ 13,976.38
<i>Open Space, Park and Recreation Facilities & Improvements</i>	Green space Landscape Architect*	\$ 20,000.00
<i>Open Space, Park and Recreation Facilities & Improvements</i>	Sculptures*	\$ 40,000.00
<i>Open Space, Park and Recreation Facilities & Improvements</i>	Miscellaneous / Contingency*	\$ 5,855.94
Total estimated phase II costs*		\$ 100,000.00

**DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN
REINVESTMENT ZONE NUMBER ONE,
CITY OF BAY CITY, AND SAL Holdings, LLC**

This DEVELOPMENT FINANCING AGREEMENT ("Agreement") is entered into by and between the REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, TEXAS (the "Zone"), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the "TIRZ Act") to oversee the administration of Tax Increment Reinvestment Zone Number One, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act, and SAL Holdings, LLC ("Developer"), a Texas limited liability company.

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

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

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

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

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

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

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

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

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

1. Section: Site

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

2. Section: Project & Financing

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

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

The Developer agrees to deliver to the Zone written notice of the date on which construction of the Project commences. This notice will be delivered within 30 days after the date of commencement. The Developer agrees to complete the construction of the Project within the schedule described on Exhibit "E" attached hereto. The date of completion is the date on which the Project is substantially completed (satisfying City, County and other applicable laws) and all public improvements have been accepted by the applicable governmental entity, and, if required (as, for example, in the case of a roadway) the land has been dedicated for public use or title otherwise transferred to the applicable governmental entity (in accordance with their requirements). Upon completion, the Developer will deliver a written notice to the Zone, signed by Developer and the City of Bay City, stating that the Project has been completed in accordance with these requirements.

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

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

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

- (a) Public Improvements: To the Developer to reimburse Developer for the actual expenses related to public improvements (described on Exhibit "C") that are part of the Project (described on Exhibit "B"), to the extent that the expenses are allowable under Chapter 311 of the Texas Tax Code Section 311.002. This

reimbursement will not exceed the projected Project Costs listed on attached Exhibit "C." These allowable costs are called "Project Costs."

(b) Any remaining TIF Funds, after Developer has been fully reimbursed (the "Available Funds"), will be available for commitment to future projects.

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

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

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

4. Section: Reimbursement Limited to TIF Fund

Developer understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement ("Reimbursement") shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will pay Developer such portion of the Reimbursement that may be available at the time. The balance of any due but unpaid Reimbursement shall be carried forward without interest and paid by the Zone in the first year in which there is sufficient revenue in the TIF to pay such balance. Developer agrees that it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or City for all or any portion of the Reimbursement. Upon termination of the Zone on December 31, 2046, or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

5. Section: Term

The Effective Date of this Agreement is the last date approved by all of the Parties. The

term of this Agreement shall begin upon the Effective Date and end upon the earlier of:

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

6. Section: Exhibits

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

7. Section: Force Majeure

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

8. Section: Indemnity

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

DEFENSE AVAILABLE TO THE ZONE, BOARD, OR CITY UNDER TEXAS OR FEDERAL LAW. THIS INDEMNITY WILL SURVIVE THE TERMINATION OF MS AGREEMENT.

9. Section: Events of Default & Remedies

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

If a default shall occur and continue, after thirty (30) days' notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. Neither party, however, shall pursue remedies against the other as long as (i) the defaulting party has commenced to cure such default within the 30 days following notice, and the defaulting party proceeds in good faith and with due diligence to remedy and correct the default.

10. Section: Venue and Governing Law

This Agreement is performable in Matagorda County, Texas and venue of any action arising out of this Agreement shall be exclusively in the State Courts of Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the Parties submit to the jurisdiction of state district courts in Matagorda County, Texas.

11. Section: Notices

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

If intended for Zone, to: Board Chairman Tax Increment Reinvestment Zone No. 1 to:

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

With a copy to:
Scotty Jones, City Treasurer City of Bay City
1901 5th St.
Bay City, Texas 77414

With a copy to:
 Anne Marie Odefey, City Attorney
 Roberts, Odefey, Witte & Wall, LLP
 P.O. Box 9
 2206 Hwy 35 N
 Port Lavaca, Texas 77979

If intended for Developer, to:

Stuart A. Lynn, Member
 SAL Holdings, LLC
 1221 Avenue F
 Bay City, TX 77414

12. Section: No Third Party Rights

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

13. Section: Severability

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

14. Section: Counterparts & Signatures

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

15. Section: Captions

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

16. Section: Successors and Assigns

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

17. Section: Limited Rights and Non-waiver

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

18. Section: Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, and Developer, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. This Agreement shall not be amended unless executed in writing by both Parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

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

(signatures follow on next page)

Exhibit "E"

Project Completion Schedule

Phase I

Start February 2017

Complete June 2017

Phase II

Subject to reimbursement of Phase I

To begin on or before September 20, 2019 and to be completed no later than 18 months thereafter.

Exhibit "F"

Insurance Requirements

Insurance standards are on file with the City and are acceptable.

Exhibit "D"

List of Prior Agreements

1. DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, AND THE CITY OF BAY CITY dated August 22, 2017.
2. DEVELOPMENT FINANCING AGREEMENT BY AND BETWEEN REINVESTMENT ZONE NUMBER ONE, CITY OF BAY CITY, AND BAY CITY COMMUNITY DEVELOPMENT CORPORATION dated _August 22, 2017.

Exhibit "C"

List/Description of Reimbursable Public Improvements

Cottonwood Park Development

Phase I Estimated costs	\$ 100,000.00
Camille Street Improvements	
Actual costs:	
1) Survey	\$ 1,742.94
2) Engineering	\$ 7,500.00
3) Asphalt removal	\$ 6,070.00
4) 520' of 6" water lines	\$ 37,639.00
320' of 6" sewer lines	
5) 300' of electrical lines	\$ 10,300.00
6) 6,000 sqft (300' X 20') concrete street	\$ 28,576.78
7) Site grading & tree removal	\$ 5,282.50
Total actual costs	\$ 97,111.22

Phase II Estimated costs	\$ 100,000.00
Public Green Space and Park Area	
Pedestrian Bridge over Cottonwood Creek	\$ 25,000.00
Playground / Water Play Feature	\$ 40,000.00
Creekside Path	\$ 10,000.00
Sidewalks	\$ 25,000.00
	\$ 100,000.00

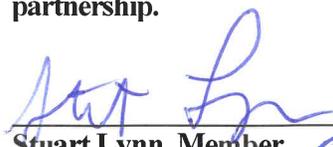
As provided in Section 2 of this Agreement and applicable law (including Texas Tax Code §311) reimbursements are limited to public improvements and will not exceed the amounts stated in this budget.

Exhibit "B"

The Project consists of developing Cottonwood Park a residential and mixed-use development in substantial conformity to the standards of form-based Codes along with a family friendly green space, plaza development, creek enhancements, and core infrastructure improvements.

Camille Drive was installed along with 320 linear feet of 6" PVC sanitary sewer line and 520 linear feet of 6" PVC water line.

Recommended for approval by Reinvestment Zone Number One, City of Bay City, Texas at its meeting on the 17th day of July, 2019.

<p>SAL Holdings, LLC, a Texas limited partnership.</p>  <p>Stuart Lynn, Member <i>7/17/19</i></p>	<p>REINVESTMENT ZONE NUMBER ONE CITY OF BAY CITY, TEXAS</p>  <p>William Bell, Chairman <i>7/17/19</i></p>
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PASSED AND APPROVED this 12th day of September, 2019.

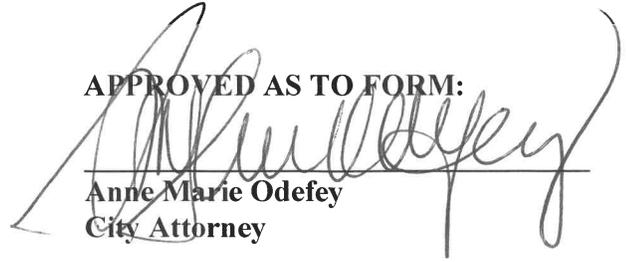
City of Bay City, Texas


Robert K. Nelson, Mayor

ATTEST:


David Holubec, City Secretary

APPROVED AS TO FORM:


Anne Marie Odefey
City Attorney

Exhibits:

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



LYNNDEVELOPMENT

1221 Avenue F, Bay City TX 77414

979-245-8900 – www.Lynn-Development.com

January 5, 2022

Shawna Burkhart, City Manager
City of Bay City
City Manager's Office
1901 5th Street
Bay City, Texas 77465

Dear Ms. Burkhart,

SAL Holdings, LLC is requesting the expansion of the TIRZ #1 boundary to include approximately 58 acres in Exhibit A. We would like to be put on the agenda for the next TIRZ #1 Meeting on January 13, 2022.

Please let me know if you need anything else.

Thank you,

D. C. Dunham
Lynn Group
O 361-972-0123
O 979.245.8900
C 979.479.0165
dc.dunham@lynngroup.com



January 4, 2022

Shawna Burkhart
City Manager
City of Bay City
1901 Fifth Street
Bay City, TX 77414

RE: Professional Services Proposal

Dear Ms. Burkhart,

David Pettit Economic Development, LLC ("DPED") is pleased to provide this proposal for economic development professional services relating to an amendment to the existing Tax Increment Reinvestment Zone Number One (TIRZ #1) in the City of Bay City, Texas ("City").

The Project

It is our understanding that the City of Bay City, Texas is interested in amending the existing TIRZ #1 for the purpose of facilitating development.

The Assignment

Our work under this proposal would be to provide professional economic development services. DPED's primary role will be to provide professional economic development services relating to amending the TIRZ.

The Team

We propose working in a team organized as follows:

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

Statutory Requirements

Chapter 311 of the Texas Tax Code outlines the various procedures for creating a TIRZ, amending a TIRZ and the authorized use of funds from the TIRZ. An amended TIRZ ordinance is approved by the governing body of the municipality and establishes four key elements, including:

- boundary;
- term;
- TIRZ Board; and
- amended preliminary project and financing plan.

An amended final project plan and financing plan is later approved by the TIRZ Board and then by the governing body of the municipality by separate ordinance.

Per Section 311.007 of the Tax Code the governing body of the municipality that designated a reinvestment zone by ordinance may extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. Additionally, Section 311.011 states the board of directors of the zone at any time may adopt an amendment to the project plan consistent with the requirements and limitations of the chapter and the amendment takes effect on approval by the governing body of the municipality that created the zone.

Scope of Services

This proposed scope of services is focused on accomplishing three main goals:

- Amendment to the TIRZ #1 Creation Ordinance
- Amendment to the TIRZ #1 Project and Financing Plan Ordinance
- Amendments to TIRZ #1 Participation Agreements
-

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

Task 1

Taxable Value Analysis

DPED will update the Taxable Value Analysis to reflect revised development plans, taking into account current market conditions and demand trends. DPED will develop projections for future land uses, values, and timing of the proposed future developments. A multi-year historic taxable value review of similar developments will be conducted to establish baseline conservative assumptions for the development in the proposed zone. This task will be the basis for developing a spreadsheet model of TIRZ increments, given a reasonable range of development assumptions and taxable values. Key products of this task would include a spreadsheet model on a parcel-by-parcel basis with projections based upon the historical taxable value review of the development potential of the proposed TIRZ.

Task 2

Develop TIRZ Cash Flow Model

Based on the anticipated land uses and projections, DPED would develop a cash flow model. This model will allow the City, consultants and others to underwrite the developments and test various scenarios for the financing plan. Key products of this task would include excel spreadsheets of TIRZ Cash Flow Model with macros established for growth and development assumptions.

Task 3

Prepare Amended TIRZ Project and Financing Plan Amendment

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

Task 4

TIRZ Documentation Support

DPED will provide assistance with drafting necessary documents for amending TIRZ #2, including: 1) public hearing notices; 2) resolutions; 3) ordinances; and 4) participation agreements, if necessary. This can be a time-consuming process for City staff, however DPED's extensive experience in drafting these documents should help streamline the preparation of materials necessary for City Council consideration.

Task 5

Facilitate Review and Consideration of the Proposed Amendment

DPED would facilitate meetings and presentations to the local governmental bodies and their respective boards and commissions. This will include supporting meetings, work sessions, briefings, commission meetings, and hearings. Key products of this task would include attendance and support of City staff at all required meetings in the review and approval process.

Task 6

TIRZ Documentation Support

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

Fee for Services

Our fee for services relating to the scope of services would be a lump sum fee of \$23,500.

Fees would be charged on a monthly basis, subject to on-going progress on the work effort. Reimbursable expenses would be charged to include out-of-pocket expenses incurred in the interest of the project at actual costs.

Changes of Scope and Additional Services

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

Additional Services and Rates for Hourly Services

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

<u>Classification</u>	<u>Hourly Billing Rate</u>
David Pettit	\$325.00
Project Manager	\$250.00
Project Specialist	\$120.00
Planning Intern	\$100.00
Administrative	\$80.00

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

Term of Agreement

It is anticipated that the services covered in the proposal will be completed within twelve (12) months of the date services begin. This Agreement will terminate upon the earlier of completion of services or twelve (12) months from the date of this Agreement. Additionally, Client may terminate this Agreement for any reason upon thirty (30) days written notice to DPED and DPED will cease any and all work upon receipt of such notice, unless otherwise directed in the notice. In the event of a termination as described above, Client shall be responsible for the payment of the fees and expenses incurred by DPED pursuant to this agreement through the date of such termination.

Reimbursables

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

Invoices and Payments

Payment for services rendered is due within thirty (30) days of Client's next monthly billing cycle following receipt of invoice. In the event any invoices remain unpaid 45 days after the invoice date, we suspend work until we have been paid in full all amounts due for services and expenses. Amounts unpaid for more than 30 days after

the due date may accrue interest at 10% per annum. In the event we are forced to commence a collection proceeding, you agree to pay reasonable attorney's fees and court costs, in addition to our fees billed under this proposal.

Suspension and Termination

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

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

Certifications

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

Authorization to Proceed

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

Insurance

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

(a) Worker's compensation insurance at the statutory limits and employer's liability insurance, with minimum limits of \$1,000,000.00/\$1,000,000.00/\$1,000,000.00; and

(b) Comprehensive general liability insurance, with minimum limits of \$2,000,000.00 each occurrence and \$4,000,000.00 in aggregate; and

(c) Comprehensive automobile liability insurance, with minimum limits of \$1,000,000.00 combined single limit each occurrence; and

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

Notices

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

If to Client:

City of Bay City
1901 Fifth Street
Bay City, TX 77414

Attention: Scotty Crow Jones C.P.M., Finance Director
Email: sjones@cityofbaycity.org

If to DPED:

David Pettit Economic Development, LLC.
306 West Seventh Street, Suite 602
Ft. Worth, TX 76102
Attention: David Pettit
Email: dpettit@dpedllc.com

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

SUMMARY

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

Thank you for considering David Pettit Economic Development, LLC.

Sincerely,



David Pettit
Managing Member

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

AGREED TO AND ACCEPTED BY:

City of Bay City, Texas

By: _____
Robert K. Nelson, Mayor

Date: _____