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CHRIS PRESTON
Vice-Chair
VASHAUNDRA EDWARDS
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CHERYL STERLING
Director
JEFFREY L. BONEY
Director



ANTHONY G. MAROULIS
Director/Secretary
FLOYD EMERY
Director
ODIS JONES
General Manager
MARIA JACKSON
Assistant Secretary

MISSOURI CITY DEVELOPMENT AUTHORITY MEETING AGENDA

Notice is hereby given of a meeting of the Board of Directors of the Missouri City Development Authority to be held on **Tuesday, September 8, 2020, at 6:55 p.m.** at: **City Hall, Council Chamber, 2nd Floor**, 1522 Texas Parkway, Missouri City, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The Board of Directors reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

NOTICE REGARDING PUBLIC PARTICIPATION

Due to the COVID 19 Disaster and the Center for Disease Control's recommendation regarding social distancing measures, the public will not be allowed to be physically present at this meeting.

The meeting will be available to members of the public and allow for two-way communications for those desiring to participate. Any person interested in speaking on any item on the agenda must notify the City by one of the following methods **before 4:00 p.m. on the day of the meeting**:

1. Email or call the City Secretary at CSO@missouricitytx.gov or 281-403-8686; or,
2. Submit a "Public Comment Form" to the City Secretary from the following webpage: <https://bit.ly/39pw73Q>.

The request must include the speaker's name, address, email address, phone number and the agenda item number.

To livestream the meeting, the public may access the following link: <https://www.missouricitytx.gov/780/MCTV>.

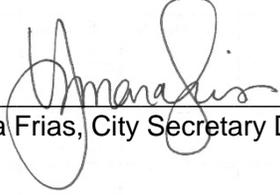
To access the meeting agenda packet in PDF format, the public may access the following link: <https://www.missouricitytx.gov/575/Missouri-City-Development-Authority>.

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1. ROLL CALL
 2. Consider authorizing an agreement between Reinvestment Zone Number Two, City of Missouri City, Texas, A-S 151 NWC Fort Bend Pkwy-Hwy 6, L.P., and the Authority for the development of a movie theater project.
 3. Public comments.
 4. **CLOSED EXECUTIVE SESSION**
The Board of Directors may go into Executive Session regarding any item posted on the Agenda as authorized by Chapter 551 of the Texas Government Code.
 5. ADJOURN

In compliance with the Americans with Disabilities Act, the City of Missouri City will provide for reasonable accommodations for persons attending Missouri City Development Authority meetings. To better serve you, requests should be received 24 hours prior to the meetings. Please contact Maria Jackson, City Secretary, at 281.403.8500.

CERTIFICATION

I certify that a copy of the September 8, 2020 agenda of items to be considered by the Missouri City Development Authority was posted in a place convenient to the public in compliance with Chapter 551 of the Texas Government Code on September 4, 2020, at 4:00 p.m.



Yomara Frias, City Secretary Department



MISSOURI CITY DEVELOPMENT AUTHORITY AGENDA ITEM COVER MEMO

September 8, 2020

To: Board of Directors of Missouri City Development Authority
Agenda Items: 2 Authorizing an agreement between Reinvestment Zone Number Two, City of Missouri City, Texas, A-S 151 NWC Fort Bend Pkwy-Hwy 6, L.P., and the Authority for the development of a movie theater project.
Submitted by: Joseph Esch, Economic Development

SYNOPSIS

Consideration and action on resolution allowing the city manager to execute a development agreement for a TIRZ 2 Project.

STRATEGIC PLAN 2019 GOALS ADDRESSED

- Create a great place to live
- Maintain a financially sound City
- Grow business investments in Missouri City
- Have quality development through buildout

BACKGROUND

The City has been working with the NewQuest Properties on the development Fort Bend Town Center II at the intersection of Fort Bend Toll Road and Highway 6 for nearly two years. The city, the TIRZ and developer have entered into a number of related incentive agreements in furtherance of this project. The base premise of all of the incentives for the project is that the developer is limited in their reimbursement to a total amount of project costs being reimbursed from the new value created by the project. One of the elements of the project is a development agreement for the project. The agreement with the Developer provides for the following:

- Approximately a 20 year term for reimbursement;
- Reimbursement of either sales taxes or the tax increment for the total project for public
- infrastructure costs up to \$4,000,000.00; and

The development agreement has already been accepted by the developer and approved by TIRZ #2 board. The city's approval is the final approval necessary for this agreement.

BUDGET/FISCAL ANALYSIS

During FY 2020 (as of September 1, 2020), TIRZ 2 received \$2,775,721 in tax increment revenue. This includes \$769,201 from Fort Bend County and \$2,006,521 from the City of Missouri City.

On an annual basis, upon receipt of the certified values, the assessed valuation above the base value for the project will be reviewed to determine eligibility for payment in compliance with contract terms.

Purchasing Review: N/A

Financial/Budget Review: Allena Portis, Director of Financial Services

SUPPORTING MATERIALS

1. Development agreement

STAFF'S RECOMMENDATION

Staff recommends approval of the agreement.

Director Approval: Joseph Esch, Economic Development

**Assistant City Manager/
City Manager Approval:** Glen A. Martel, ACM

**DEVELOPMENT AGREEMENT
FOR THE
FORT BEND PARKWAY-HWY 6 RETAIL CENTER
DEVELOPMENT PROJECT**

This Development Agreement (the “Agreement”) is made this the ____ day of _____, 2020 (the “Effective Date”) by and among **Reinvestment Zone Number Two, City of Missouri City**, a tax increment reinvestment zone created by the City of Missouri City, Texas, pursuant to Chapter 311, Texas Tax Code (the “Zone”), the **Missouri City Development Authority**, a Texas non-profit local government corporation formed by and on behalf of the City of Missouri City, Texas (the “Authority”), and **A-S 151 NWC Fort Bend Pkwy-Hwy 6, L.P.**, a Texas limited partnership (the “Developer”).

RECITALS

Whereas, pursuant to Chapter 311 of the Texas Tax Code, the City Council of the City of Missouri City, by ordinance, created the Zone in the City of Missouri City; and

Whereas, the Board of Directors of the Zone (the “Zone Board”) adopted a Project and Financing Plan (as defined below in Section 1.01) which provides that the Zone will undertake to make certain acquisitions and improvements in the Zone, and such Project and Financing Plan, as amended was approved by the City Council of the City of Missouri City by Ordinance No. O-20-_____, on _____, 2020; and

Whereas, the Texas Tax Code provides that the Zone may enter into agreements as the Zone Board considers necessary or convenient to implement the Project and Financing Plan and achieve its purposes; and

Whereas, the City of Missouri City and the Zone have contracted with the Authority, a nonprofit Texas local government corporation pursuant to the

provisions of Chapter 431, Subchapter D, Texas Transportation Code, to carry out the purposes of the Zone, including administration, supervision, construction, financing

and other duties, and committed the revenues of the Zone to the Authority for such purposes, all as more particularly set forth in the Agreement between the City of Missouri City, the Zone and the Authority, effective February 6, 2006 (the “Tri-Party Agreement”); and

Whereas, Developer is the owner of an approximate 42-acre tract and an approximate 1-acre tract located in Missouri City, Texas, and in the Zone (the “Property”), as more particularly described in Exhibit A; and

Whereas, to encourage economic development on or near the Property, Developer intends to design and construct a theater of not less than 45,000 square feet on the Property (the “Theater”) (the Theater and the remaining development on the Property will constitute the “Project”); and

Whereas, the City and the Developer have entered into an economic development agreement dated August 20, 2019, which contains terms affecting reimbursement to Developer for the Project (the “EDA”), attached hereto as Exhibit B for reference purposes only; and

Whereas, the Developer is the owner of certain property within the Zone, and wishes to finance and construct certain Zone projects as provided in the Project and Financing Plan, as amended; and

Whereas, the Authority and the Zone have determined that each can best carry out their functions pursuant to the Tri-Party Agreement and the Project and Financing Plan by contracting with the Developer to provide for the efficient and effective implementation of certain aspects of the Project and Financing Plan, and the Authority and the Developer desire to enter into this Agreement to enable the development and financing of certain projects in connection with the Developer’s development of property within the Zone and the reimbursement of the Developer as provided herein; now, therefore,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Zone, the Authority and the Developer contract and agree as follows:

ARTICLE 1 GENERAL TERMS

1.01 Definitions. *Agreement, Authority, Developer, EDA, Zone, Tri-Party Agreement* and *Zone Board* have the meanings set forth in the preamble hereof, and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words “shall” and “will” are mandatory and the word “may” is permissive.

Act shall mean the Increment Financing Act, Chapter 311, Texas Tax Code, as the same may be amended.

Agreed Upon Procedures shall mean the report prepared and submitted by a certified public accountant certifying the amount due to the Developer pursuant to this Agreement.

Authority Bonds shall mean any bond, note or other obligation issued or incurred in one or more series pursuant to Article 5 hereof, secured by Tax Increment or funds deposited in the TIRZ Revenue Fund, including refunding bonds.

City Sales Tax Revenue shall mean 50% of the actual sales and use tax revenue received by the City derived from the City’s one percent (1%) of sales and use taxes assessed on sales attributable to the Project.

County shall mean Fort Bend County, Texas.

Developer Advances shall mean funds advanced by Developer pursuant to Section 5.01.

Net Tax Increment shall mean the annual collections of the Tax Increment attributable to the Project, less any amount from a tenant occupying another lease space within the City of Missouri City that relocates to the Project until the previously occupied lease space is filled and any amounts reasonably required or anticipated to be required for the administration and operation of the Zone (subject to Section 5.02 (G)), including a reasonable operating reserve. If a previously occupied lease space becomes vacant at any time during the duration of the Agreement, the increment from the tenant occupying the lease space within the Project shall not be included in the Net Tax Increment and Developer may not be reimbursed until the previously occupied space is filled.

Parties or Party shall mean the Authority, the Zone and the Developer as parties to this Agreement.

Project shall mean the design and construction of the Theater, and the proposed development of over approximately 250,000 square feet on the Property.

Project Costs shall mean “project costs” as such term is defined in the Act and as described in the Project and Financing Plan.

Project and Financing Plan shall mean the Second Amended and Restated Project Plan and Reinvestment Zone Financing Plan for Reinvestment Zone Number Two, City of Missouri City, and any subsequent amendments thereto as approved by City Council.

Tax Increment shall mean funds deposited in the TIRZ Revenue Fund by the City pursuant to the Tri-Party Agreement, composed of funds received pursuant to that certain Interlocal Agreement or similar agreement between the City, the County and the Zone.

TIRZ Revenue Fund shall mean the special fund established by the Authority and funded with Tax Increment payments made by the City pursuant to the Tri-Party Agreement

(which payments are attributable to incremental ad valorem real property taxes paid on properties in the Zone).

Taxing Unit shall mean individually and collectively the City and the County.

Zone Board shall mean the Board of Directors of the Zone.

1.02 Singular and plural; gender. Words used herein in the singular shall also include the plural of such words, where the context so permits, and vice versa. The definitions of words in the singular shall also apply to the plural of such words where the context so permits and vice versa. Any gender reference shall include the opposite gender and the neutral.

ARTICLE 2 REPRESENTATIONS

2.01 Representations of Authority. The Authority hereby represents as follows:

(A) It is duly authorized, created and existing in good standing under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) It has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation and (iii) do not constitute a default under, or result in, the creation of any lien, charge, encumbrance or security interest upon any assets of the Authority under any agreement or instrument to which the Authority is a party or by which the Authority or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the Authority do not require the consent or approval of any person which has not been obtained.

2.02 Representations of the Developer. The Developer hereby represents as follows:

(A) The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

(B) The Developer has the power, authority and legal right to enter into and perform its obligations as set forth in this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer or any provision of any of Developer's agreements or governing documents and (iii) do not constitute a default under, or result in, the creation of any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the Developer and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the Developer do not require the consent or approval of any person which has not been obtained.

2.03. Representations of the Zone. The Zone hereby represents as follows:

(A) The Zone is duly authorized, created and existing under the laws of the State of Texas and is duly qualified and authorized to carry out the governmental functions and operations as contemplated by this Agreement.

(B) The Zone has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation and (iii) do not constitute a default under, or result in, the creation of any lien, charge, encumbrance or security interest upon any assets of the Zone under any agreement or instrument to which the Zone is a party or by which the Zone or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the Zone and constitutes a legal, valid and binding obligation of the Zone, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the Zone do not require the consent or approval of any person which has not been obtained.

ARTICLE 3 THE PROJECT

3.01 The Project. Except as set forth in Article 4, the Developer may construct the Project in phases, including any public improvement in the Zone that are Project Costs and contained in the Project and Financing Plan. The Project will enhance the proposed implementation of development within the Zone and is authorized in the Project and Financing Plan, as amended.

3.02 Project description. The Project, as generally described in the Project and Financing Plan, as amended, and as more fully and particularly described in Exhibit C, consists of the development of a 250,000 square foot tract of land located at the northwest corner of State Highway 6 and the Fort Bend Parkway Toll Road and including the construction of the Theater, depicted in Exhibit D.

3.03 Additional Projects. This Agreement does not apply to any projects not specifically defined herein unless this Agreement is amended to provide for the design and construction of such additional projects.

ARTICLE 4 DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.01 Construction manager. The Developer agrees to construct the Project and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the Project. The Developer will obtain all necessary permits and approvals from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the Project, provide regular reports of such construction to the Authority and the Zone, provide additional reports upon request, and cause the construction to be performed in accordance with the Project and Financing Plan.

4.02 Design of the Project. The Project shall be designed in accordance with City standards applicable to similar projects within the City.

4.03 Construction contracts. The Developer shall promulgate a form contract and bid documents that are acceptable to the Developer, the Authority, and the Zone for

use in connection with the Project. The Developer shall prepare the Project construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications and the agreed-upon forms. The Developer shall advertise, receive, open, award and manage all contracts for the Project in compliance with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the City.

4.04 Construction and Implementation of the Project. The Developer shall be responsible for the inspection and supervision of the construction and implementation of the Project.

(A) The Developer shall commence construction of the Theater within eighteen (18) months after the Effective Date of this Agreement and shall complete the construction of the Project by June 1, 2035. Except as provided by Section 6.01(c) regarding the Developer's opportunity to cure a default of this Agreement, if the Developer fails to commence construction within eighteen (18) months after the Effective Date, this Agreement shall be terminated without further action and shall be of no further force and effect, wherein the parties shall have no liabilities or obligations to the other parties. For the purposes of this subsection, the phrase "commence construction" shall mean (1) receipt of a permit necessary to begin the Project and (2) the documented incurrence of costs for the Project associated with roadway, utility, and other infrastructure facilities designed to serve the Project.

(B) Upon completion of a contract for the construction of the Project, the Developer shall provide the Authority with a final summary of all costs associated with such contract and show that all amounts owing to contractors and subcontractors have been paid in full, evidenced by customary affidavits executed by such contractors. Following completion of a construction contract, the Developer will call for inspection of the applicable Project by the City and upon

approval thereof as being in compliance with City standards and other applicable standards relating thereto.

(C) In consideration of the Zone agreeing to reimburse the Developer in accordance with the terms of this Agreement, the Developer shall Substantially Complete the Theater. For the purposes of this Agreement, “Substantially Complete” means receive a certificate for occupancy. Though the remaining development in the Project (excluding the Theater) will occur based upon market demands, Developer will use reasonable efforts to develop a high-quality new entertainment, commercial, and retail development on the Property.

4.05 Abandonment of Theater. Except as provided by Section 6.01(c) regarding the Developer’s opportunity to cure a default of this Agreement, if, after the Effective Date, the City Manager reasonably determines that the Developer has abandoned the Theater portion of the Project, this Agreement shall terminate. The City Manager may reasonably determine that the Theater portion of the Project is abandoned for the purposes of this Agreement after the Effective Date of this Agreement if, after commencement of construction, no measurable work toward completion is documented to the City Manager by the Developer for 120 days or longer.

4.06 Employment of undocumented workers. Developer certifies that Developer, or a branch, division, or department of Developer, does not and will not knowingly employ an undocumented worker in relation to the Project. Developer agrees that if, after receiving a public subsidy, Developer, or a branch, division, or department of Developer, is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the amount of the reimbursement paid under section 5.02 with interest, at the rate set forth in the Texas Tax Code for delinquent tax payments not later than the 120th day after the date the Zone or the Authority notifies Developer of the violation. The Zone or the Authority may bring a civil action to recover any amounts owed to the Zone or the Authority under this chapter. The Zone or the Authority, as applicable, shall recover court costs and reasonable attorneys’ fees incurred in an action brought under this section.

ARTICLE 5
PROJECT FINANCING AND FUNDING

5.01 The Developer Advances.

(A) In connection with the construction of the Project, the Developer agrees to provide sufficient funds as such become due for all costs thereof, constituting Project Costs.

(B) No interest shall accrue on any Developer Advances and repayment of Developer Advances shall not include any interest thereon.

5.02 Repayment of Developer Advances.

(A) In consideration of the development and construction of the Project, the Authority shall begin repaying the Developer Advances and shall continue such repayment until fifteen years from the earlier of (1) the date on which the first business in the Project opens, as memorialized by a certificate of occupancy issued by the City of Missouri City, or (2) five years after the Effective Date of this Agreement. Funds shall not be due to the Developer pursuant to this Agreement until the earliest date that funds are available from the Net Tax Increment that are specifically attributable to the Project as set forth and defined in Exhibit C, and subject to the limitations set forth in subsection (B).

(B) The Zone shall reimburse the Developer for Developer Advances from the Net Tax Increment accumulated in the TIRZ Revenue Fund that is specifically attributable to the Project and available in accordance with the priorities described in Section 5.03, below. Subject to the terms of this Agreement, including Section 5.03 providing the priorities for payments within the Zone, the Zone shall use the Net Tax Increment attributable to the Project to reimburse Developer Advances.

(C) At such time as Developer notifies the Authority in writing that 1) the Theater is completed; 2) makes a request for repayment of Developer Advances; and, 3) provides the Authority with (i) copies of all documents and records required by the Zone and Authority to support the amount of Developer Advances, including, but not limited to, the customary affidavits duly executed by contractors and subcontractors of employed or contracted by Developer for the Project; and (ii) a certified accounting of the total amount of Developer Advances paid, the Authority shall hire a certified public accountant to calculate the amount due to the Developer and prepare and submit the Agreed Upon Procedures report to the Authority. The Authority shall pay all costs associated with the Authority's engagement of the certified public accountant for the purpose of preparing the Agreed Upon Procedures report. Such report shall be approved by the Authority at the earliest practicable time, but not later than 180 days after submission of the report to the Authority. Such Agreed Upon Procedures shall be final upon receipt of a final draft by the City and shall serve as the sole basis for reimbursement. The Developer may receive reimbursements pursuant to the reimbursement process provided by this section for the remainder of the Project after the date on which the first business in the Project opens, as memorialized by a certificate of occupancy issued by the City of Missouri City, and such reimbursements shall continue as provided by Section 5.02(a) below.

(D) Repayment of Developer Advances shall be paid by the City and the Zone through a combination of City Sales Tax Revenue, as provided in the EDA, and

Net Tax Increment in a total aggregate amount not to exceed four million dollars (\$4,000,000.00).

(E) Notwithstanding anything contained herein, the total maximum amount of Developer Advances payable to Developer from the City Sales Tax Revenue, as provided in the EDA, and the Net Tax Increment pursuant to this Agreement is four million dollars (\$4,000,000.00). For example, assuming the completion of required auditing, if the Project has produced a total Net Tax Increment of \$4,500,000.00 by year 14 of the Agreement, and the Developer has received \$3,500,000.00 in Developer Advances and \$250,000.00 in City sales tax revenue prior to that point, Developer may receive a payment of \$250,000.00 in Net Tax Increment. Repayment of Developer Advances shall not be paid from funds contained in the Zone Tax Increment Revenue account unless and until the certified accounting described in Section 5.02 (C) has been received and accepted by the Authority.

(F) Developer shall not seek reimbursement of Developer Advances from any source other than from the City and the Zone as provided herein.

(G) Tenant Relocation. Other than Petco, if a tenant currently located in the City closes its operating location to relocate onto the Property, the income received from the new location (property taxes and sales and use taxes) of such tenant will not be considered for purposes of this Agreement until the newly vacant space is filled. If such space becomes vacant at any time during the duration of this Agreement, the income from the new location will not be included in the calculation of available revenue for reimbursing the Developer. However, this Agreement shall not preclude a tenant from operating multiple locations within the City.

5.03 Priorities. Amounts deposited in the TIRZ Revenue Fund shall be applied in the following order of priority (i) amounts pledged or required for the payment of outstanding Authority Bonds, including Authority Bonds in the process of issuance and refunding Authority Bonds; (ii) administrative costs of the Zone or the Authority; (iii) payments to other developers pursuant to agreements between such developers, the Zone, and the

Authority entered into before the effective date of this Agreement; and (iv) payments to the Developer pursuant to Section 5.02, above as funds become available.

5.04 Potential Additional Tract. Should Developer acquire the property comprised of approximately 43 acres that is contiguous and to the west of the Property, as depicted in Exhibit C (the “Potential Additional Tract”), and should Developer expand the Project onto the Potential Additional Tract, the Potential Additional Tract will be incorporated for all purposes of this Agreement, and such additional development will be included in the definition of the Project. Should the Project and Financing Plan require an amendment to facilitate such incorporation, the Zone agrees to consider amending the Project and Financing Plan within six (6) months of receipt.

ARTICLE 6

DEFAULT

6.01 Default.

(A) If the Zone or the Authority does not perform its obligations hereunder in substantial compliance with this Agreement, the Developer may seek specific performance of this Agreement only.

(B) If the Developer fails to commence or complete the Project in accordance with the terms of this Agreement, including the failure to fund Developer Advances, the Zone and/or the Authority may terminate this Agreement and shall be relieved of any obligation to reimburse the Developer.

(C) The Party alleging default shall provide written notice to the other Party of such default, and the defaulting Party shall have sixty (60) days to remedy the default prior to the declaration of any default hereunder.

ARTICLE 7

GENERAL

7.01 Inspections, audits. The Developer shall keep such operating records with respect to the Project and other activities contemplated by this Agreement and all costs associated therewith as may be required by the Authority, the Zone or by State or federal law or regulation. The Developer shall allow the Authority access to, and the Authority shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the Project that the Authority deems necessary to assist the Authority in determining the Developer's compliance with this Agreement.

7.02 Developer operations and employees. All personnel supplied or used by the Developer in performance of this Agreement shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the Zone, the Authority, or the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

7.03 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the Zone or the Authority shall be personally responsible for any liability arising under or growing out of this Agreement.

7.04 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, sent by electronic transmission confirmed by mailing written confirmation at substantially the same time as such electronic transmission or personally delivered to an officer of the receiving party at the following addresses:

Missouri City Development Authority
1522 Texas Parkway
Missouri City, Texas 77489
Attn: President

Reinvestment Zone Number Two, City of Missouri City

1522 Texas Parkway
Missouri City, Texas 77489
Attn: TIRZ Manager

City of Missouri City, Texas

1522 Texas Parkway
Missouri City, Texas 77489
Attn: City Manager

A-S 151 NWCFort Bend Pkwy-Hwy 6, L.P.

c/o NewQuest Properties
8827 W. Sam Houston Parkway N., Suite 200
Houston, Texas 77040-5383
Attn: Steven D. Alvis

Allen Boone Humphries Robinson

3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Stephen M. Robinson
Email: srobinson@abhr.com

Each Party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for or by the Authority, the Zone or the Developer, as the case may be.

7.05 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Zone, the Authority and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

7.06 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.07 Successors and assigns. All covenants and agreements contained in this Agreement by or on behalf of a Party shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein only with the prior written consent, which shall not be unreasonably withheld, conditioned, or delayed of the other Parties and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect. This section shall not be construed to prevent the Developer from selling all or a portion of the property within the Zone in the normal course of business; provided that any such purchaser or assignee must specifically assume all of the obligations of the Developer hereunder. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder.

7.08 Exhibits; titles of article, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the Agreement between the Parties hereto. Any reference herein to a section of subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.09 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, except conflict of laws provisions, as such laws are now in effect. Venue for any action or suit related to this Agreement shall be in Fort Bend County, Texas.

7.10 Entire Agreement. This written Agreement represents the final agreement among the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the earlier of 1) the date that the Developer Advances have been repaid as provided by this Agreement; 2) January 1st of the year following the expiration of the Zone; or 3) as otherwise terminated as provided for in this Agreement.

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the Parties, the Parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

7.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original but such counterparts together shall constitute but one and the same instrument.

7.15 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

7.16 Effect of the Tri-Party Agreement. The obligations of the Parties hereunder are specifically conditioned upon the approval, execution and effectiveness of the Tri-Party Agreement.

7.17 Force Majeure. If any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, are suspended during the continuance of the force majeure. The term "force majeure," means: (i) strikes and picketing (except to the extent involving a labor issue at the site caused by the party seeking force majeure); (ii) sabotage; (iii) acts of God; (iv) fire or other unavoidable casualties; (v) excessive rain or snow, ice, sleet, frost, cold (or hot) temperatures, windstorm or tornado, earthquake or flood delays due to inclement weather which exceed the number of delay days in the schedule for such excessive rain or snow, ice, sleet, frost, cold (or hot) temperatures, windstorm and/or tornado, earthquake or flood, resulting in the reduction or loss of productivity on critical path activities; (vi) explosion; and (vii) war, invasion, civil commotion, embargo, terrorist attacks, riots or public insurrection, condemnation.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed in multiple originals, effective the date first set forth above.

REINVESTMENT ZONE NUMBER TWO, CITY OF MISSOURI CITY

Frank Hester, Chairperson

Attest:

Secretary

MISSOURI CITY DEVELOPMENT AUTHORITY

Yolanda Ford, President

Attest:

Anthony Maroulis, Secretary

A-S 151 NWC Fort Bend Pkwy-Hwy 6, L.P.,
a Texas limited partnership

By: A-S 151, L.C.,
A Texas limited liability company,
Its general partner

By: _____
Steven D. Alvis
Manager

Date: _____

APPROVED AS TO FORM:

By: _____

EXHIBIT A

THE PROPERTY

EXHIBIT A

Tract One

All of that 41.9188 acre tract in Special Warranty Deed as recorded under Fort Bend County Clerk File No. 2019-027459 of Fort Bend County Deed Records, more particularly described as all of Parkway Plaza Shopping Center, a subdivision in Fort Bend County according to the map or plat thereof, recorded under Plat No. 20060251 of the Plat Records of Fort Bend County, Texas.

Tract Two

All of that 1.0126 acre tract in Special Warranty Deed as recorded under Fort Bend County Clerk File No. 2019-036560 of Fort Bend County Deed Records.

EXHIBIT B
ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MISSOURI CITY, TEXAS
AND
A-S 151 NWC FORT BEND PKWY-HWY 6, L.P.

**ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MISSOURI CITY, TEXAS
AND
A-S 151 NWC FORT BEND PKWY-HWY 6, L.P**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") by and between the City of Missouri City, Texas, a Texas home-rule municipal corporation (the "City") and A-S 151 NWC Fort Bend Pkwy-Hwy 6, L.P., a Texas limited partnership, or its successor or assign ("Developer"), (collectively referred to as the "Parties") is entered into on this 20th day of August, 2019 (the "Effective Date").

RECITALS

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City adopted Ordinance No. O-15-01 establishing a program to promote economic development as more fully described therein (the "Economic Development Program"); and

WHEREAS, the Developer is the owner or will be the owner of an approximately 43 acre tract in the City, as shown on Exhibit "A" (the "Property"); and

WHEREAS, Developer intends to develop the Property into approximately 250,000 square feet of development on the Property; and

WHEREAS, the Property is currently located in Missouri City Public Improvement District No. 2 ("PID #2") and the City of Missouri City Tax Increment Reinvestment Zone No. 2 ("TIRZ #2"); and

WHEREAS, to encourage economic development on and near the Property, Developer intends to advance the cost of and manage the design and construction of a first-class theater of not less than 45,000 square feet on the Property (the "Improvements," hereinafter defined)(the Improvements and the remaining development on the Property will constitute the "Project"); and

WHEREAS, the Project will consist of new entertainment, commercial, and retail development, including a nationally known theater anchor which will bring highly desirable retail and restaurant tenants to the City and Fort Bend County (the "County"); and

WHEREAS, the Project, when complete, will benefit the City and the County through an increase in the tax base, both property taxes and sales taxes, and encouraging in economic development in the City and the County; and

WHEREAS, the City Council of the City has determined that the Developer's application for economic development incentive funds is consistent with the Economic Development Program and that the Project would not likely go forward in the manner best anticipated to promote economic development within the City without the aid of funds from the City under the Economic Development Program; and

WHEREAS, the City has agreed to provide incentives and financial assistance to the Developer to encourage and promote the development of the Project; and

WHEREAS, the Developer has agreed, in exchange and as consideration for the benefits described herein to satisfy and comply with certain terms and conditions; and

WHEREAS, the Parties agree that the provisions of this Agreement substantially advance a legitimate interest of the City, and are entered into for the purpose of enhancing and stimulating business and commercial activity in the City, and promoting economic development in the City; and

WHEREAS, the City and the Developers wish to set out the terms and conditions, as applicable to both parties, under the Economic Development Program, as more fully set out herein; now, therefore,

For and in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

ARTICLE 1 DEFINITIONS

The terms defined in the preamble hereto shall have the meanings provided for them therein. The following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For the purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

"City Sales Tax Revenue" means 50% of the actual annual sales and use tax revenue received by the City derived from the City's 1.0 % of sales and use taxes assessed on sales attributable to the Project.

"Commencement Date" means the date upon which the first Certificate of Occupancy is issued on the Property.

"Effective Date" means the date upon which this Agreement is adopted and

approved by the City.

"Improvements" means the design and construction of the first-class theater of not less than 45,000 square feet, as specifically described and depicted on **Exhibit B**, attached hereto and made a part hereof for all purposes.

"Payment" means the payment by the City and TIRZ #2 to Developer, in accordance with this Agreement, as further described in Article 4.

"Project" shall mean the Improvements and the proposed development over the approximately 250,000 square feet on the Property;

"Property" means that property more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes.

"Substantially Completed" or "Substantially Complete" means the date after which the Improvements are substantially complete with the exception of minor punch list items, as evidenced by a certificate of substantial completion from Developer's general contractor.

ARTICLE 2 REPRESENTATIONS

2.1 Representations of the Developer. The Developer hereby represents that:

(a) It is duly authorized, created and existing in good standing under the laws of the State of Texas and is duly qualified and authorized to transact business as described in this Agreement in the State of Texas and to carry out its obligations described in this Agreement.

(b) It has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) has been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the Developer and, constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by the Developer does not require the consent or approval of any person which has not been

obtained.

2.2 Representations of the City. The City hereby represents that:

(a) The City is duly authorized, created and existing under the laws of the State of Texas and is duly qualified and authorized to carry out the governmental functions and operations as contemplated by this Agreement and to carry out its obligations described in this Agreement.

(b) The City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) has been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

2.3 No partnership or agency created. Each party agrees and represents that the City and the Developer are not agents, partners or venturers of the other with respect to the Improvements, and that nothing in this Agreement shall be construed to create any such relationship.

ARTICLE 3 THE IMPROVEMENTS

3.1 Description of the Improvements. The Improvements are described in **Exhibit B** attached hereto.

3.2 Commencement of Improvements. If the Developer has not commenced construction of the Improvements within sixty (60) months of the date of this Agreement (subject to extension for force majeure pursuant to Section 6.15), either party may terminate this Agreement upon written notice to the other party, after which this Agreement shall be of no further force and effect, and neither party shall have any liabilities or obligations whatsoever to the other party.

3.3 Completion of the Improvements. The Developer hereby agrees to commence the design, permitting, and construction of the Improvements and proceed

to completion thereof in accordance with this Agreement and the City's Infrastructure Code and Design Manual. Without limitation, the Developer agrees to cause its general contractor to comply with all applicable codes, permits and regulations of any governmental authority having jurisdiction over the Improvements, including the City. Developer further agrees to follow and comply with all standard City processes for a capital improvement project or a major construction improvement project, as outlined in a pre-development meeting to be held with the City. After the approval of this Agreement, the Developer shall advertise, receive, open, award and manage all contracts for the Improvements in compliance with all laws and regulations regarding the bidding and construction of public improvements applicable to similar infrastructure constructed by the City, including, without limitation, any applicable requirement relating to payment bonds, performance bonds and maintenance bonds.

ARTICLE 4 ADDITIONAL COMMITMENTS AND DEVELOPER PAYMENT

4.1 Additional Developer Commitments.

(a) In consideration of the City agreeing to grant the Developer the Payment in accordance with the terms of this Agreement, the Developer shall Substantially Complete the Improvements; and

(b) Though the remaining development on the Project (excluding the Improvements) will occur based upon market demands, Developer will use reasonable efforts to develop a high quality new entertainment, commercial, and retail development on the Property.

(c) Failure to meet the requirements or a portion of the requirements of Section 4.1(a) will invalidate this Agreement.

(d) The Developer shall not seek reimbursement or payment for any costs attributable to the Project other than from the City and TIRZ 2 and in the manner specified in Section 4.3 (a) and (b) hereof; and from the Missouri City Municipal Management District #2 ("MMD #2") in the manner as provided in Section 4.7 hereof.

4.2 City Commitments.

(a) At such time as Developer notifies the City that the Improvements have been Substantially Completed and that the terms of this Agreement have been complied with, the City shall hire a certified public accountant, the reasonable costs of which shall be borne by the Developer, to calculate the amount due to the Developer and shall prepare and submit a report to the City certifying the amount due the Developer for the Payment. Such report shall be approved by the City at the earliest practicable time, but not later than ninety (90) days after submission by the Developer of the records required therefor.

(b) Provided that Developer complies with the terms of this Agreement, within ninety (90) days after the City receives a written request for payment from the Developer and the City is in receipt of funds allocated to fund the Project, the City agrees to pay Developer the Payment, as limited by Sections 4.3 and 4.4 below.

4.3 Payment. The Developer shall be paid by the City and TIRZ #2 through a combination of City Sales Tax Revenue and TIRZ #2 revenues in an aggregate amount not to exceed \$4,000,000, as provided below:

- (a) City Sales Tax Revenue. The City will make payments to the Developer calculated to be an amount equal to fifty percent (50%) of the City receipts of City Sales Tax Collected at the Project. Such payment shall be paid in quarterly installments beginning in the first quarter of the City's fiscal year after the first issuance of a Certificate of Occupancy by the City for the first tenant that opens in the Project (the "Commencement Date"). The City Sales Taxes Collected at the Project is defined in Article 1 hereof.
- (b) TIRZ #2 Funds. All property tax increment accruing or generated from the Project shall be defined as the Tax Increment. The City shall use reasonable efforts to contribute the entirety of the Tax Increment to the Project collected above the base value in TIRZ #2 to fund the Payment, and both the City and the County will participate in such contributions. The City shall create an account solely dedicated to the Tax Increment (the "Tax Increment Fund"). The City shall deposit all Tax Increment into the Tax Increment Fund. The Developer will use all commercially reasonable efforts to provide the City on an annual basis (by February 1 of each year) with a list of tax accounts that comprise the Project. The Developer is entitled to payment herein from TIRZ # 2 only from the Tax Increment collected in Tax Increment Fund. The City will make such payments on a semi-annual basis (each March 1 and September 1) until the Payment is paid in full.

4.4 Tenant Relocation. Other than Petco, if a tenant currently located in the City closes its operating location to relocate into the Property, the income received from the new location (property taxes and sales and use taxes) of such tenant will not be considered for purposes of this Agreement until the newly vacant space is filled. If such space becomes vacant at any time during the duration of the agreement, the income from the new location will not be included in the calculation of available revenue for paying the Developer. However, nothing would preclude the tenant from having two locations within the City.

4.5 Payment Limitation. The Payment shall not exceed \$4,000,000, and shall

be paid by a combination of City Sales Tax Revenue and Tax Increment attributable to the Project for the earlier of fifteen (15) years from the Commencement Date, or the termination of TIRZ 2. The City shall not be obligated to pay the Payment from City ad valorem taxes or other City revenues (not including payments from TIRZ #2) or until the sales and use taxes collected at the Project are actually collected by the State and paid to City.

4.6 Amended Project Plan and Plan of Finance. The City agrees to prepare and approve an amended Project Plan and Plan of Finance for TIRZ #2(the “Amended Project Plan and Plan of Finance”). The City agrees to use commercially reasonable efforts to mutually agree to an Amended Project Plan and Plan of Finance that is consistent with the terms of this Amendment, and the Parties agree that their approval of an Amended Project Plan and Plan of Finance shall not be unreasonably delayed or withheld.

4.7 Property Annexation. The Developer will petition to annex the Property into Missouri City Municipal Management District #2 (“MMD #2”), in return for payment of approximately \$2,500,000 from MMD #2 related to the Project, and Developer will enter into a separate payment agreement with MMD #2. The City agrees to consider such annexation request.

4.8 TIRZ #2 Term Extension. The City agrees to use reasonable efforts to seek a twenty (20) year extension of TIRZ #2’s term (which is set to expire in 2029), and will request County assistance to secure such extension. The City also agrees to use reasonable efforts to secure an extension of the County’s participation in TIRZ #2 for an additional twenty (20) years.

4.9 PID #2 Assessment. The City agrees to use reasonable efforts to enter into an agreement with PID #2 to ensure there is no assessment by PID #2 on the initial cap of the Property.

4.10 Potential Additional Tract. Should Developer acquire the property comprised of approximately 43 acres that is contiguous and to the west of the Property, as described in **Exhibit C** (the “Potential Additional Tract”), and should Developer expand the Project onto the Potential Additional Tract, the Potential Additional Tract will be included in the definition of Property for purposes of this Agreement, and such additional development will be included in the definition of the Project and will be subject to the all payments, obligations, terms, and conditions of this Agreement.

ARTICLE 5 DEFAULT

5.1 If the Developer does not perform its obligations hereunder in substantial compliance with this Agreement, and fails to cure such performance within the time frame set forth in Section 5.6, then in addition to the other rights given the City under this Agreement, the City may require the Developer to repay the Payment.

5.2 If the City fails to timely pay the Payment in accordance with this Agreement, the Developer's sole remedy is to seek damages for such failure to pay in the amount equal to the amount due pursuant to this Agreement. The Developer shall have no other recourse against the City.

5.3 Pursuant to Chapter 2264, Texas Government Code, Developer is prohibited from knowingly employing undocumented workers as that term is defined in Section 2264.001, Texas Government Code. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the conviction shall be considered a default of this Agreement from which no cure provisions shall apply. In such event, City shall provide written notice to Developer of the default and this Agreement shall terminate on the 30th day after the date of the notice of default from City to Developer. In the event of termination under this paragraph, Developer shall be responsible for repaying to City the amount of all of the Payment paid under this Agreement plus interest and penalties on the paid amount at the rate provided for in the Texas Tax Code for delinquent taxes from the date of termination until repaid in full. Such repayment is due not later than the 120th day after the date the City notifies the Developer of the violation.

5.4 Pursuant to Section 2270.002, Texas Government Code, the City may not enter into a contract for goods or services unless the contract contains a written verification that the contracting party: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this Agreement, Developer verifies that Developer does not boycott Israel and will not boycott Israel during the term of this Agreement.

5.5 Pursuant to Section 2252.152, Texas Government Code, Developer warrants, represents, and agrees that Developer is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts as a company that engages in business with Sudan, Iran or a foreign terrorist organization.

5.6 The party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 30 days to remedy the default. If such default is not cured within the time period set forth above, either party may terminate this Agreement by providing written notice thereof to the other party.

**ARTICLE 6
GENERAL**

6.1 Audits. Developer shall provide all information and execute all documents, waivers, releases, and consents reasonably required to allow the City to obtain information necessary to calculate the Payment. If necessary, and upon City's written request, Developer shall provide City copies of pertinent portions of Developer's information necessary to audit, confirm, and verify Developer's payments germane to the Payment.

6.2 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement or with respect to the Improvements shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

6.3 Indemnity. It is understood and agreed between the parties that Developer, in performing its obligations hereunder, is acting independently, and City assumes no responsibilities or liabilities in connection therewith to third parties. DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER TO THE EXTENT ARISING OUT OF DEVELOPER'S BREACH OF ITS OBLIGATIONS HEREUNDER. DEVELOPER'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION. DEVELOPER SHALL BE RESPONSIBLE FOR ALL REASONABLE FEES INCURRED BY CITY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED TO PROHIBIT CITY FROM ENGAGING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND DEVELOPER SHALL BE RESPONSIBLE FOR ANY SUCH REASONABLE COSTS AND OR FEES SO INCURRED.

6.4 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic transmission confirmed by mailing written confirmation at substantially the same time as such electronic transmission, or personally delivered to an officer of the receiving party at the following addresses:

The Developer:

A-S 151 NWC Fort Bend Pkwy-Hwy 6, L.P.
8827 W. Sam Houston Pkwy N., Suite 200
Houston, TX 77040

With a copy to:

Allen Boone Humphries Robinson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Stephen M. Robinson
Email: srobinson@abhr.com

The City:

City of Missouri City, Texas
1522 Texas Parkway
Missouri City, Texas 77489
Attention: City Manager
Email: BAtkinson@missouricitytx.gov

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given three (3) days after such communication is mailed, any notice so sent by electronic transmission shall be deemed to be given upon delivery of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for, or actually received by the other party.

6.5 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Developer and the City. No course of dealing on the part of the parties, nor any failure or delay by one or more of the parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

6.6 Invalidity. If any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, except to the extent of a complete failure of consideration.

6.7 Successors and assigns. All covenants and agreements contained by or on behalf of a party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other party, its successors and assigns. The parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect. This Agreement and the provisions of this paragraph do not apply, inure to the benefit of, or have any binding effect on third parties not a party to this Agreement.

6.8 Singular and plural: gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

6.9 Exhibits: titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

6.10 Construction and Venue. This Agreement shall be governed by the laws of the State of Texas, without regard to its conflict of laws provisions, with venue in Fort Bend County, Texas, and Developer hereby consents to such jurisdiction and venue.

6.11 Entire Agreement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITEN ORAL AGREEMENTS BETWEEN THE PARTIES.

6.12 Term. The term of this Agreement shall begin on January 1 of the year following Commencement Date, and shall be effective for fifteen (15) years following the Commencement Date (the "Term"). By way of example, if the first Certificate of Occupancy on the Property is issued in 2019, the Term shall commence on January 1, 2020 and shall expire on the earlier of January 1, 2035, or termination of TIRZ 2. However, should the Commencement Date not occur within five (5) years following the Agreement's Effective Date, the Agreement shall automatically terminate.

6.13 Time of the essence. Time is of the essence with respect to the obligations of the parties to this Agreement.

6.14 Further assurances. Each party hereby agrees that it will take all actions and execute all documents reasonably necessary to fully carry out the purposes and intent of this Agreement.

6.15 Force Majeure. If any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, is suspended during the continuance of the force majeure. The term "force majeure," means: (i) strikes and picketing (except to the extent involving a labor issue at the site caused by the party seeking force majeure); (ii) sabotage; (iii) acts of God; (iv) fire or other unavoidable casualties; (v) adverse weather conditions or weather delays (beyond the working day) resulting from excessive rain or snow, ice, sleet, frost, cold (or hot) temperatures, windstorm and/or tornado, earthquake or flood delays due to inclement weather which exceed the number of delay days in the schedule for such excessive rain or snow, ice, sleet, frost, cold (or hot) temperatures, windstorm and/or tornado, earthquake or flood, resulting in the reduction or loss of productivity on critical path activities; (vi) explosion; (vii) war, invasion, civil commotion, embargo, terrorist attacks, riots or public insurrection, condemnation; (viii) delays caused by any act or failure to act by any governmental authority, including delays in the issuance of permits, licenses, and approvals required for the Improvements (unless the delay in the issuance of the preceding items was due to Developer's contractor not filing for the items in a timely manner); (ix) regional, local, or national labor disputes; national or regional shortages and/or unavailability of materials; and (x) vandalism and malicious mischief.

[EXECUTION PAGE FOLLOWS]

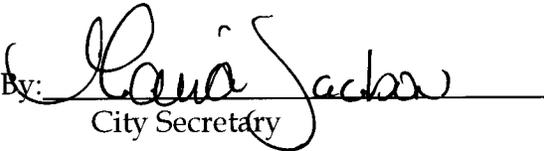
Exhibits

- Exhibit A** – Property Description
- Exhibit B** – Improvements
- Exhibit C** – Potential Additional Tract

CITY OF MISSOURI CITY, TEXAS

By: 
Mayor

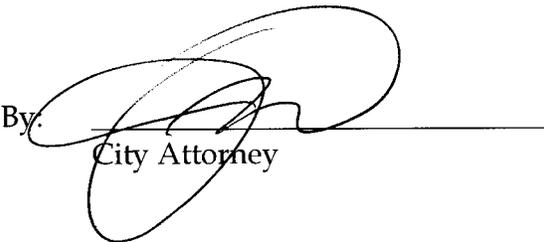
ATTEST:

By: 
City Secretary



(SEAL)

APPROVED AS TO FORM:

By: 
City Attorney

A-S 151 NWC FORT BEND PKWY-HWY 6, L.P.,
a Texas limited partnership

By: A-S 151, L.C., a Texas limited liability
company, General Partner

By: 

Name: Steven D. Alvis

Title: Manager

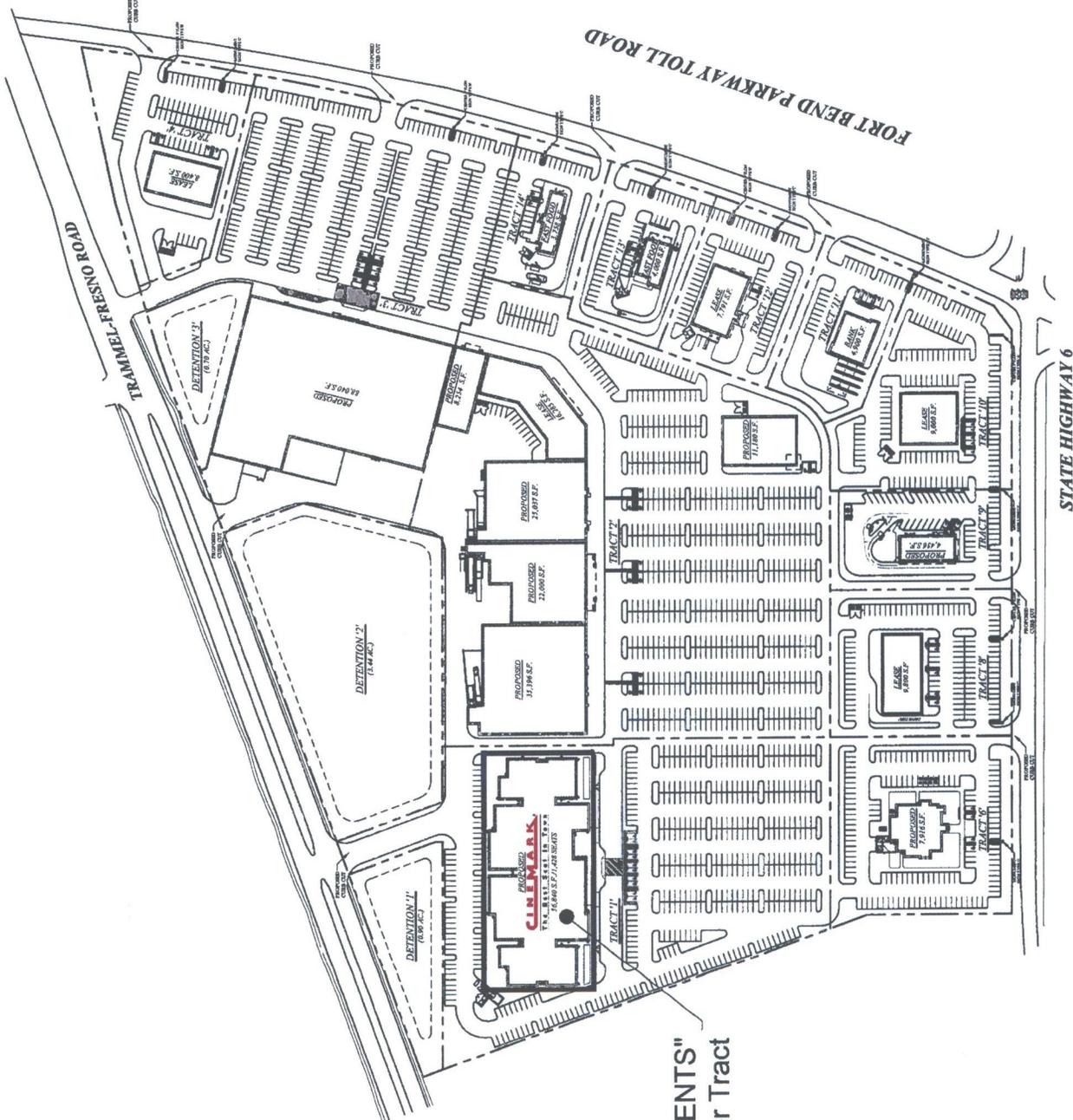
EXHIBIT A

Tract One

All of that 41.9188 acre tract in Special Warranty Deed as recorded under Fort Bend County Clerk File No. 2019-027459 of Fort Bend County Deed Records, more particularly described as all of Parkway Plaza Shopping Center, a subdivision in Fort Bend County according to the map or plat thereof, recorded under Plat No. 20060251 of the Plat Records of Fort Bend County, Texas.

Tract Two

All of that 1.0126 acre tract in Special Warranty Deed as recorded under Fort Bend County Clerk File No. 2019-036560 of Fort Bend County Deed Records.

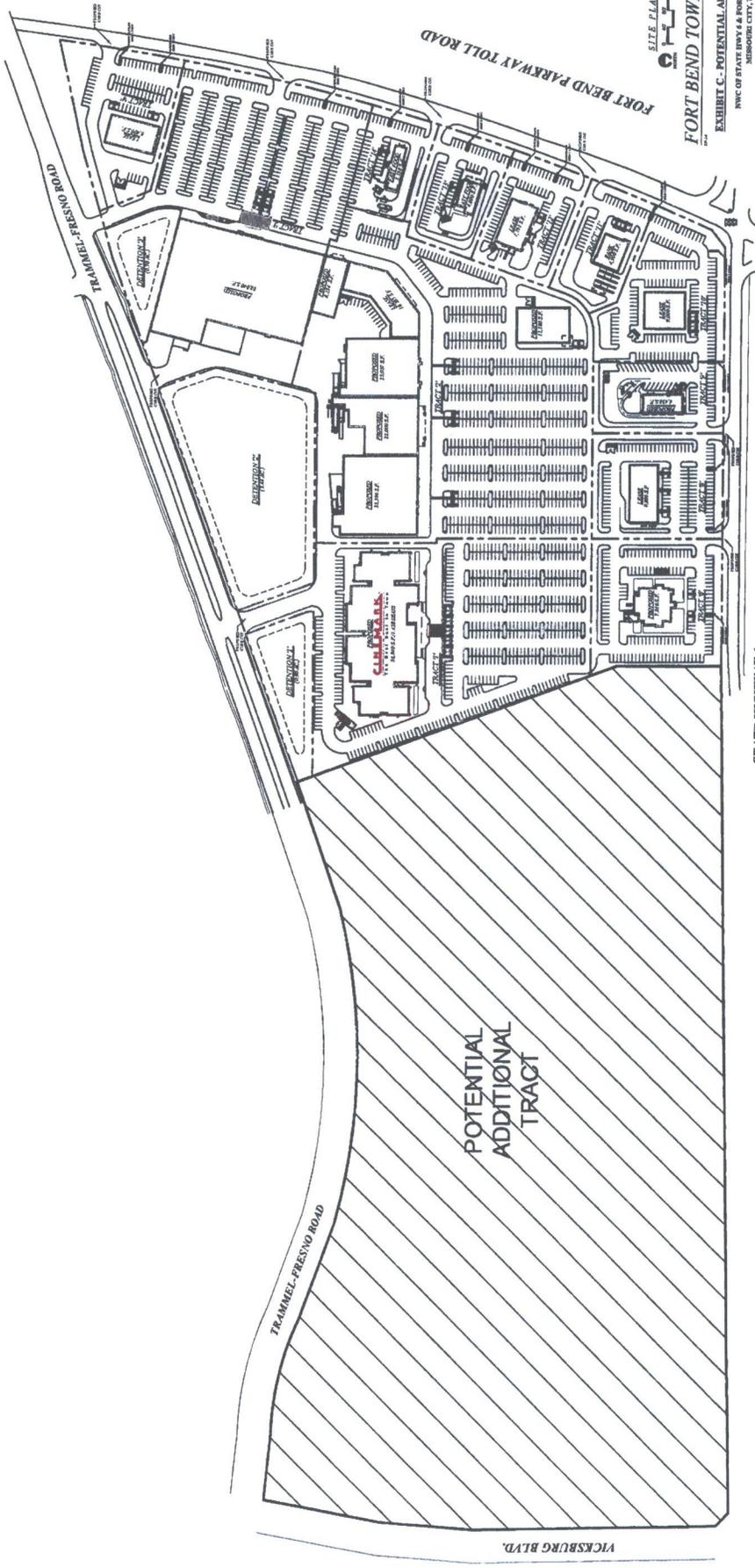


"IMPROVEMENTS"
 Theater Tract



SITE PLAN
FORT BEND TOWN CENTER II

EXHIBIT B - CONCEPTUAL SITE PLAN
 NWC OF STATE HWY 6 & FORT BEND PARKWAY
 MISSOURI CITY, TEXAS



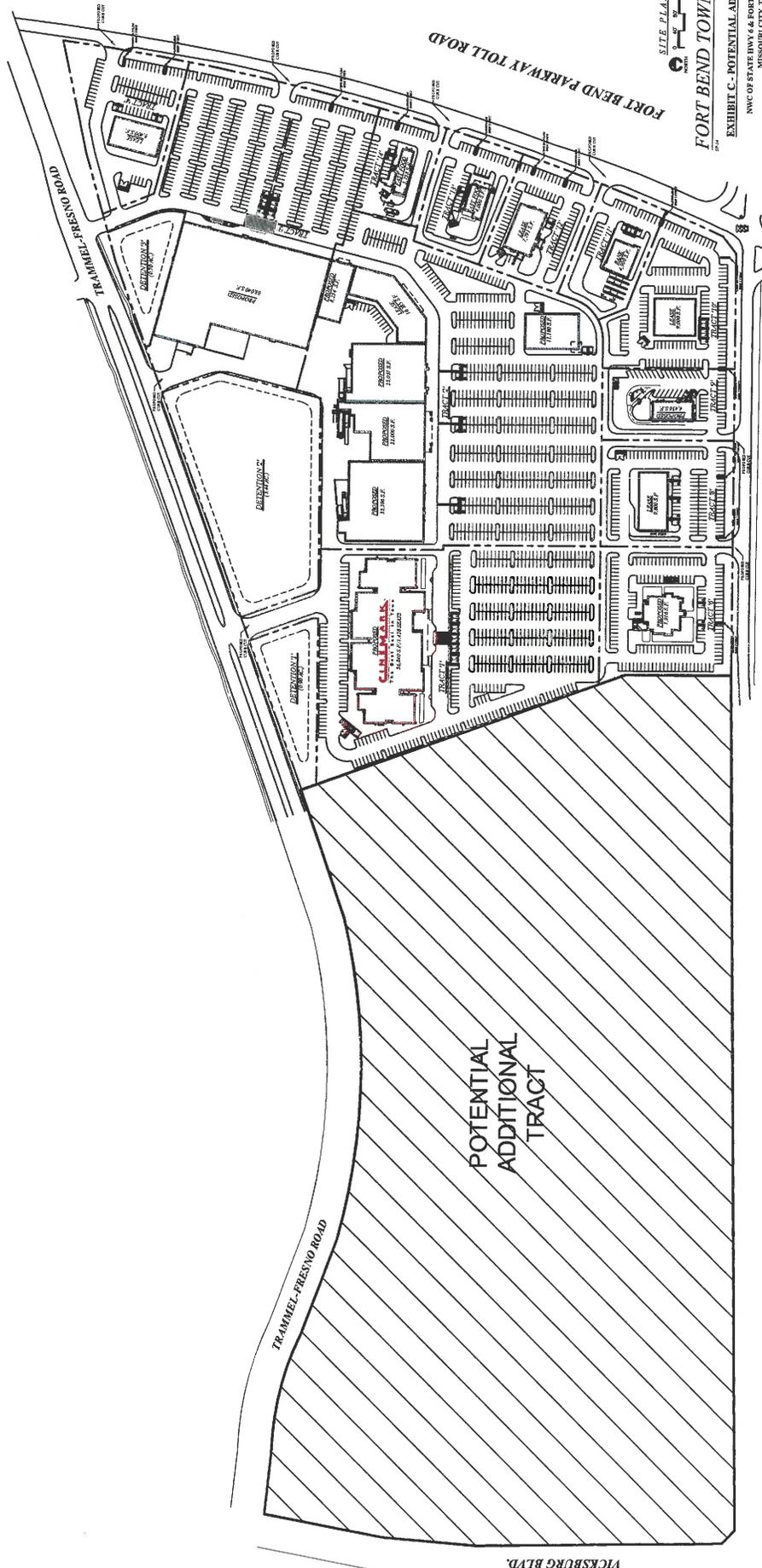
SITE PLAN
FORT BEND TOWN CENTER II
EXHIBIT C - POTENTIAL ADDITIONAL TRACT
 NYC OF STATE HWY 6 & FORT BEND PARKWAY
 MEMORIE CITY, TEXAS

STATE HIGHWAY 6

VICKSBURG BLVD.

EXHIBIT C

**The Fort Bend Parkway – Hwy 6 Theater and Retail Center
Development Project**



SITE PLAN
 1" = 100'
 NORTH

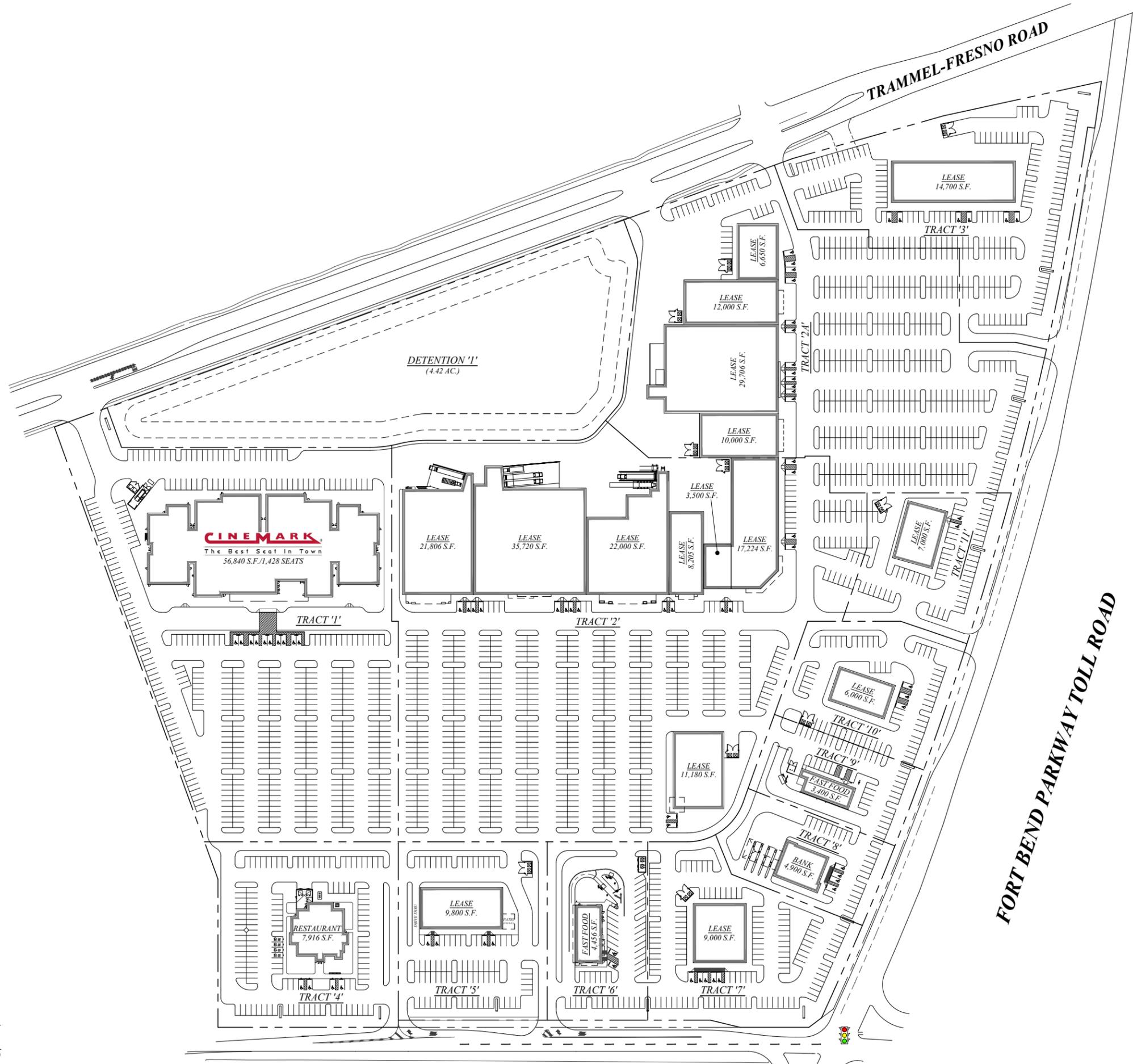
FORT BEND TOWN CENTER II
 EXHIBIT C - POTENTIAL ADDITIONAL TRACT

3000 WEST STATE HIGHWAY 6 & FORT BEND PARKWAY
 MISSOURI CITY, TEXAS 77459

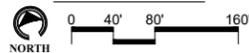


VICKSBURG BLVD.

EXHIBIT D
THE THEATER



SITE PLAN



FORT BEND TOWN CENTER II

SP-67

151

06.09.20

PRELIMINARY STUDY

NWC OF STATE HWY 6 & FORT BEND PARKWAY
MISSOURI CITY, TEXAS

STATE HIGHWAY 6