

RESOLUTION NO. 08-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING A FIRST AMENDMENT TO TIRZ NO. 12 REIMBURSEMENT AGREEMENT AND PERFORMANCE AGREEMENT WITH MSAP 216, LLC, AND 42 BP, LP (COLLECTIVELY THE “DEVELOPER”), AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NO. 12, CITY OF MESQUITE, TEXAS (IH-20 BUSINESS PARK) (THE “TIRZ”), AND THE CITY OF MESQUITE, TEXAS, REGARDING THE DEVELOPER’S CONSTRUCTION OF AN APPROXIMATELY 217-ACRE CLASS A INDUSTRIAL DEVELOPMENT IN THE TIRZ LOCATED AT 229, 231, AND 1600 LAWSON ROAD, MESQUITE, TEXAS, AND THE GRANTING TO THE DEVELOPER OF CERTAIN TIRZ REIMBURSEMENTS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE FIRST AMENDMENT, AND ADMINISTER THE FIRST AMENDMENT ON BEHALF OF THE CITY.

WHEREAS, on July 2, 2018, by City Ordinance No. 4579 (“**Ordinance No. 4579**”), the City of Mesquite, Texas (the “**City**”) created Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park), a tax increment reinvestment zone created pursuant to Chapter 311 of the Texas Tax Code (the “**Act**”) consisting of approximately 248.1466 acres of land which included the following six tracts of land: (1) 4300 Lawson Road; (2) 3400 McKenzie Road; (3) 4800 Lasater Road; (4) 4900 Lasater Road; (5) 2700 McKenzie Road; and (6) 925 McKenzie Road and located within the corporate limits of the City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in Exhibits “A” and “B” to Ordinance No. 4579 (the “**TIRZ**”) and established a Board of Directors for the TIRZ (the “**TIRZ Board**”); and

WHEREAS, on July 6, 2021, by City Ordinance No. 4876 (“**Ordinance No. 4876**”), the TIRZ boundaries were enlarged and the geographic area was increased to include approximately 13 acres of City rights-of-way adjacent to the Original TIRZ Boundaries and approximately 828 acres of noncontiguous land generally located south of Scyene Road, west of Lawson Road, north of Berry Road, and east of Ashley Furniture Industries Distribution Center and being located within the corporate limits and extraterritorial jurisdiction of the City as more particularly described and depicted in Exhibits “B” and “B-1” to Ordinance No. 4876 ; and

WHEREAS, the City created the TIRZ to promote development or redevelopment in the TIRZ, in accordance with the Act; and

WHEREAS, on July 6, 2021, the TIRZ Board approved a project plan and reinvestment zone financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

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WHEREAS, on July 6, 2021, by City Ordinance No. 4877, the City Council approved a project plan and reinvestment zone financing plan for the TIRZ (such project plan and reinvestment zone financing plan, as thereafter amended, being hereinafter referred to as the “**TIRZ Project and Financing Plan**”); and

WHEREAS, on March 21, 2022, the TIRZ Board approved an amended project plan and reinvestment zone financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on March 21, 2022, by City Ordinance No. 4944, the City Council approved an amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, on May 15, 2023, the TIRZ Board approved a second amended project plan and reinvestment zoning financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on May 15, 2023, by City Ordinance No. 5023, the City Council approved a second amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, on October 16, 2023, the TIRZ Board approved a TIRZ No. 12 Reimbursement Agreement and Performance Agreement (the “**Agreement**”) between the City, TIRZ Board, and MSAP 216, LLC, a Texas limited liability company, and 42 BP, LP, a Texas limited partnership (collectively, the “**Developer**”); and

WHEREAS, on October 16, 2023, by City Resolution No. 56-2023, the City Council approved the Agreement; and

WHEREAS, on February 19, 2024, the TIRZ Board approved an amendment to the Agreement (“**First Amendment**”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, and recommended approval of such First Amendment to the City Council; and

WHEREAS, the City Council has been presented with the proposed First Amendment Agreement, which proposes to increase the amount of reimbursements the Developer may obtain from the TIRZ for completion of public projects within the TIRZ; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the First Amendment is in the best interest of the City and TIRZ, and will benefit the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts, findings, and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

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SECTION 2. The City Council finds that the First Amendment is in the best interest of the City and TIRZ, will benefit the City, TIRZ, and its citizens, and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City and TIRZ.

SECTION 3. The terms and conditions of the First Amendment, having been reviewed by the City Council and found to be acceptable and in the best interest of the City, its citizens and the TIRZ, are hereby approved.

SECTION 4. The City Manager is hereby authorized to: (i) finalize and execute the First Amendment; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the First Amendment.

SECTION 5. The City Manager is further hereby authorized to administer the First Amendment on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the First Amendment; (ii) approve amendments to the First Amendment provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the First Amendment in excess of \$100,000; (iii) approve or deny any matter in the First Amendment that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the First Amendment that requires the consent of the City pursuant to the terms of the First Amendment shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the First Amendment; (v) exercise any rights and remedies available to the City under the First Amendment; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of February 2024.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...
Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Sonja Land
C2518095973F46A...
Sonja Land
City Secretary

DocuSigned by:
David Paschall
666E18891208434...
David L. Paschall
City Attorney

EXHIBIT A

FIRST AMENDMENT TO

**TIRZ NO. 12 REIMBURSEMENT AGREEMENT AND PERFORMANCE
AGREEMENT**

BETWEEN

THE CITY OF MESQUITE,

THE BOARD OF DIRECTORS OF TIRZ NO. 12 (IH-20 BUSINESS PARK),

AND MSAP 216, LLC, A TEXAS LIMITED LIABILITY COMPANY,

AND 42 BP, LP, A TEXAS LIMITED PARTNERSHIP

APPROVED BY CITY COUNCIL
DATE 2.19.2024
AGENDA ITEM NO. 22

**FIRST AMENDMENT TO TIRZ #12 REIMBURSEMENT AGREEMENT
AND PERFORMANCE AGREEMENT
MSAP 216, LLC AND 42 BP, LP (AIRPORT EAST)**

This First Amendment to TIRZ #12 Reimbursement Agreement and Performance Agreement (“Amendment”) is made by and among the City of Mesquite, Texas (the “City”), Board of Directors of Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park) (the “Board”), and MSAP 216, LLC, a Texas limited liability company, and 42 BP, LP, a Texas limited partnership (each owning a 50% undivided interest and collectively the “Developer”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, the City, the Board, and the Developer entered into the TIRZ #12 Reimbursement Agreement and Performance Agreement, effective as of October 23, 2023 (the “Agreement”) and the Parties hereby desire to amend the Agreement as set forth in this Amendment; and

WHEREAS, on February 19, 2024, the City adopted Ordinance No. 5095, amending the Zone Plan to include a new road to connect Scyene Road to Lawson Road through the Developer Property as a Zone project; and

WHEREAS, the Parties acknowledge and agree that, except to the extent amended by this Amendment herein, all provisions and terms contained in the Agreement shall remain in full force and effect; and

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Amendment, and for good and valuable consideration the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

AGREEMENT

1. Defined Terms. All capitalized terms used in this Amendment, to the extent not otherwise expressly defined herein, shall have the meanings assigned to them in the Agreement.

2. Amendment to Article I, Definitions. The Parties agree that the definition of “Infrastructure Improvements” in Article I, Definitions, of the Agreement shall be amended and replaced in its entirety to read as follows and that a definition for “New Road” shall be added to Article I, Definitions as follows:

“Infrastructure Improvements” means the infrastructure improvements necessary for the development of the Facility and/or the Facility Expansion both on and off the Developer Property, including but not limited to roadways and traffic signals, Scyene Road to Lawson Road through the Developer Property, offsite waterline to extend water to Developer Property, offsite sanitary sewer line to extend sanitary sewer to Developer Property, offsite storm channel, water lines, sewer lines, drainage and

electric, etc. in accordance with the City Regulations, as generally described in **Exhibit “D”**, with final sizes, location and design as approved by the City Engineer as set forth in the City Regulations.

“New Road” shall mean the roadway connection from Scyene Road to Lawson Rd. through the Developer Property in the general location shown on **Exhibit “B-1”**, with final design and construction to be in accordance with the City Regulations.

3. Amendment to Section 3.2 TIRZ Reimbursement. The Parties agree that Section 3.2, TIRZ Reimbursement, paragraph (a), Reimbursement for Costs of Infrastructure Improvements, is hereby amended as follows and that paragraph (e) is hereby added as follows:

Paragraph (a) amendment:

In approximately the 6th line of the paragraph, the phrase “Eight Million dollars (\$8,000,000)” is removed and replaced with the phrase “Fourteen Million dollars (\$14,000,000)”.

New Paragraph (e):

(e) Condition Precedent to Payment of TIRZ Reimbursement. Notwithstanding any other provision to this Section 3.2, no TIRZ Reimbursement for the costs, as reflected in **Exhibit D**, of the New Road shall be paid, in whole or in part, until after Developer: (i) has dedicated to the City all right-of-way on the Developer Property needed for the New Road, (ii) construction of the entire New Road has been completed by Developer, and (iii) the entire New Road has been accepted by the City. No portion of the New Road shall be dedicated to the City until the entire New Road is completed and accepted. Developer shall provide such document(s) necessary to effectuate the conveyance of the New Road to the City, which may be by deed, plat or replat. Time is of the essence for the City to accept and file a plat, replat or deed received from Developer for the New Road.

4. Amendment to Section 4.1(c) Conditions to TIRZ Reimbursement Payments. The Parties agree that Section 4.1, Conditions to TIRZ Reimbursement Payments, paragraph (c), Expenditure, is hereby amended as follows:

At the end of the paragraph, the phrase “\$8,000,000” is removed and replaced with the phrase “\$14,000,000”.

7. Addition of Exhibit B-1. The Agreement shall be amended to add **Exhibit B-1**, New Road Concept Plan, to reflect the conceptual location of the New Road, with final design and construction to be in accordance with the City Regulations.

8. Amendment to Section 6.28, Exhibits. The Parties agree that Section 6.28, Exhibits, is hereby amended to add the following in sequential order:

Exhibit “B-1” New Road Concept Plan

9. Amendment to Exhibit D. The Estimated Costs of the Infrastructure Improvements & Other TIRZ Items attached as Exhibit D to the Agreement shall be amended and replaced in its entirety with the Estimated Costs of the Infrastructure Improvements & Other TIRZ Items attached hereto as **Exhibit D** and incorporated herein by reference.

10. Miscellaneous.

(a) This Amendment amends the Agreement in no other manner except as expressly set forth herein, including the exhibits attached hereto. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Agreement shall continue in full force and effect. In the event of a conflict between this Amendment, including the exhibits attached hereto, and the Agreement, the terms of this Amendment, including the exhibits attached hereto, shall control.

(b) This Amendment together with the Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this Amendment and the Agreement. This Amendment and the Agreement shall not be modified or amended except in writing signed by the Parties.

(c) If any provision of this Amendment is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Amendment; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Amendment shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

(d) This Amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

(e) The recitals to this Amendment are incorporated into the body of this Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

(f) This Amendment may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

8. Legislative Discretion. The Parties agree that by execution of this Amendment, the City and the Board do not waive or surrender any of their governmental powers, immunities or rights and, notwithstanding any provision of this Amendment, this Amendment does not control, waive, limit or supplant the legislative authority or discretion of the City Council or the Board. Notwithstanding, the City specifically waives immunity from suit for the sole purpose of, and only to the extent necessary to, allow(ing) Developer to seek specific performance of this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of

this 27 day of March, 2024.

[execution pages follow]

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Sonja Land

Name: Sonja Land
Title: City Secretary

By: *Cliff Keheley*
Name: Cliff Keheley
Title: City Manager

APPROVED AS TO LEGAL FORM:

David L. Paschall

Name: David L. Paschall
Title: City Attorney

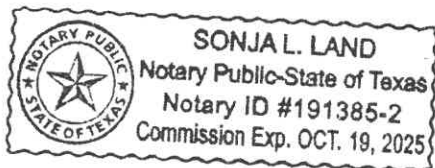
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on March 27, 2024, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home rule municipality, on behalf of said home rule municipality.

Sonja L. Land
NOTARY PUBLIC, State of Texas

My Commission Expires: 10/19/2025

Notary Seal



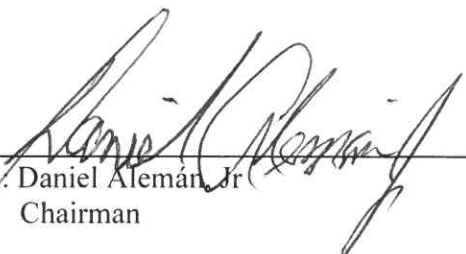
BOARD:

Board of Directors of Reinvestment Zone
Number Twelve, City of Mesquite, Texas

ATTEST:

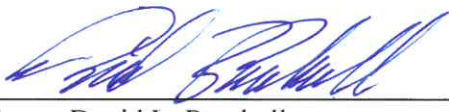


Name: Sonja Land
Title: City Secretary

By: 

Name: Daniel Alemán, Jr.
Title: Chairman

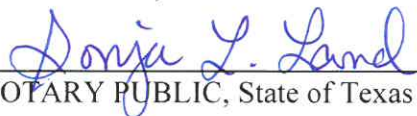
APPROVED AS TO LEGAL FORM:



Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

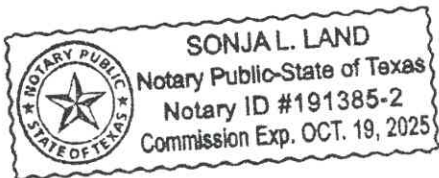
This instrument was acknowledged before me on March 27, 2024, by Daniel Alemán, Jr, Reinvestment Zone Number 12, City of Mesquite Board Chairman, on behalf of said Board.



NOTARY PUBLIC, State of Texas

My Commission Expires: 10/19/2025

Notary Seal



DEVELOPER:

42 BP, LP , a Texas limited partnership
By: 42 A, LLC, a Texas limited liability
company, General Partner of 42 BP, LP

By: [Signature]
Name: Scott Rohrman
Title: Manager of 42 A, LLC

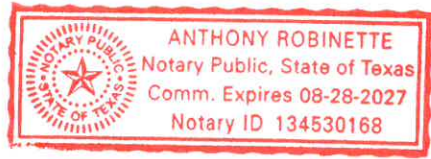
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on MARCH 7, 2024, by Scott Rohrman, as the Manager of 42 A, LLC, the General Partner of 42 BP, LP, on behalf of said limited partnership.

[Signature]
NOTARY PUBLIC, State of Texas

My Commission Expires: 08/28/2027

Notary Seal



By: MSAP 216, LLC
A Texas limited liability company

By: SLJ Equities, LLC, a Texas limited liability company, Manager of MSAP 216, LLC

By: [Signature]
Name: Louis H. Lebowitz
Title: President of SLJ Equities, LLC

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on MARCH 7, 2024, by Louis H. Lebowitz, as the President of SLJ Equities, LLC, the Manager of MSAP 216, LLC, on behalf of said limited liability company.

[Signature]
NOTARY PUBLIC, State of Texas

My Commission Expires: 12/12/2027

Notary Seal

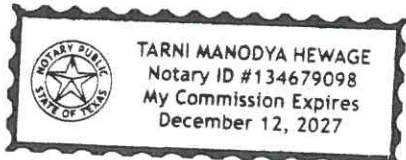


EXHIBIT B-1

NEW ROAD CONCEPT PLAN

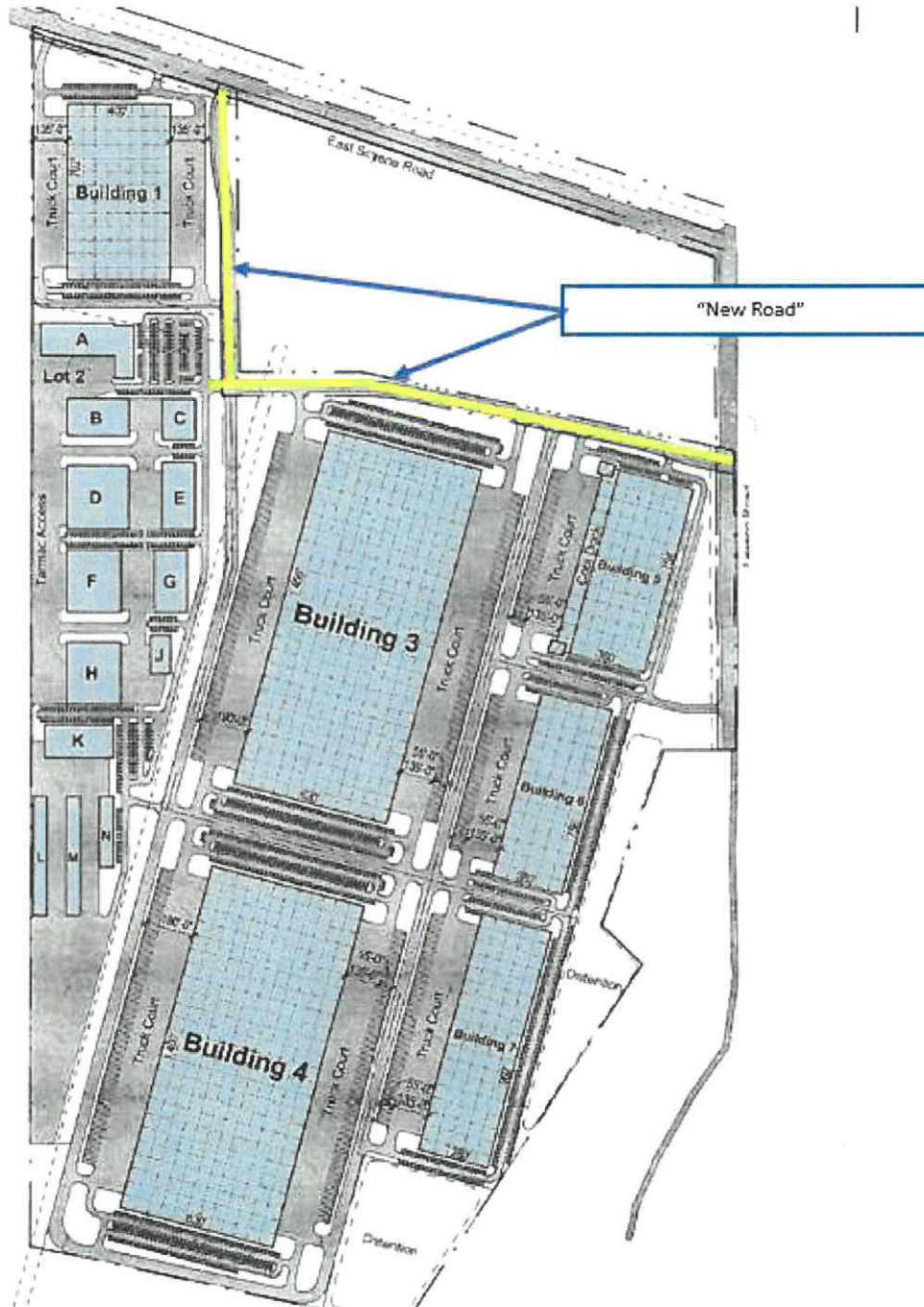


EXHIBIT D

Estimated Costs of the Infrastructure Improvements & Other TIRZ Items*	
Mesquite Airport East	
December 2023 DRAFT	
Category**	Estimated Project Costs
Utilities - Offsite Water: 12" line to connect existing water line to the site.	\$ 350,000
Utilities - Offsite Sanitary Sewer: extension to connect to the site.	\$ 750,000
Offsite Storm Water Channel: offsite storm water channel (exact route and design TBD)	\$ 6,000,000
Public Road (Scyene to Lawson through Airport East site): grading, paving, and associated costs with constructing the road.	\$ 4,750,000
Contingency - to be used in any line item	\$ 2,150,000
Total Estimated Costs including interest, design, inspection fees, supervision, engineering, planning, legal, contingency, etc.	\$ 14,000,000
<p>*Current TIRZ estimates are based on the Concept Plan and TIRZ items identified to date. TIRZ estimates will most definitely change once all TIRZ work is fully designed and engineered, once full construction drawings are completed, and once hard pricing is received.</p> <p>**This list is a list of current contemplated categories of TIRZ items. Additional eligible TIRZ line items are allowed to be added to this list as they are identified as development of the Developer Property progresses. Estimated cost figures may be moved from one line item to another line item.</p>	