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**CONFIDENTIAL & ATTORNEY CLIENT PRIVILEGED**

**MEMORANDUM**

September 23, 2021

Aimee Alcorn-Reed  
Assistant City Attorney  
City of Corpus Christi  
1201 Leopard Street  
Corpus Christi, Texas 78401

**VIA EMAIL**

RE: Opinion Regarding Whether the City of Corpus Christi may Extend the Term of Tax Increment Reinvestment Zone Number Two

Ms. Alcorn-Reed,

Brown & Ortiz, P.C. (the “Firm”) was recently engaged by the City of Corpus Christi (the “City”) to determine whether the City may extend the term of an existing tax increment reinvestment zone (herein referred to in the singular as “TIRZ” and in the plural as “TIRZs”). Specifically, the Firm was asked to determine whether an extension to the current term of Tax Increment Reinvestment Zone Number Two (“TIRZ No. 2”) is permitted by Chapter 311 of the Texas Tax Code (the “Tax Increment Financing Act”). This memorandum will set forth the Firm’s opinion that the City may extend the current term of TIRZ No. 2 because such extension is permitted by the Tax Increment Financing Act.

**Applicable Law Regarding TIRZs**

The Tax Increment Financing Act governs tax increment financing and dictates the requirements for designating a TIRZ. In essence, tax increment financing is a method of public financing that municipalities and/or counties may use to pay for projects within a TIRZ<sup>1</sup>. Tax increment financing relies on the additional ad valorem and/or sales tax revenues, or “tax increment”, generated from property within the TIRZ. The tax increment is generated by participating taxing entities and is deposited in the tax increment fund for the TIRZ. In turn, monies within the tax increment fund may be used to pay for expenditures made or incurred, or estimated to be made or incurred, which benefit the TIRZ. Tax increment financing is commonly used to pay for public improvements that will draw private investment to an area which substantially arrests or impairs the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic social liability that is a risk to the public health, safety, morals

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<sup>1</sup> As the question for this memorandum is limited to a possible term extension of a municipally-created TIRZ, the remainder of this memorandum will focus on a municipally-created TIRZ.

or welfare of the municipality creating the TIRZ<sup>2</sup>. Costs which benefit the TIRZ are referred to as “project costs” and include, but are not limited to, capital costs, financing costs, and professional services costs<sup>3</sup>.

The process to create a TIRZ begins with municipal preparation of a preliminary investment zone financing plan and publication of public hearing notice in a newspaper of general circulation within the municipality. Subsequent to drafting the preliminary finance plan and publication of notice, the municipality is required to hold a public hearing on the creation of the TIRZ and approve and adopt an ordinance which includes: the overall benefit(s) of the TIRZ to the municipality; designates the boundaries of the proposed TIRZ; states the term of the proposed TIRZ; and establishes a board of directors to manage the TIRZ<sup>4</sup>. After the municipality creates and designates the boundaries and establishes a board of directors for the TIRZ; the TIRZ board of directors prepare a project plan and reinvestment zone financing plan; such project plan and finance plans being as consistent as possible with the preliminary plan prepared by the municipality, and both subject to final approval by the municipality. Once the project plan and financing plan for the TIRZ receive municipal approval, the TIRZ begins in earnest with oversight and management by the TIRZ board of directors<sup>5</sup>. Although the TIRZ is managed by a board of directors, TIRZ administration is the shared responsibility of the board of directors and the creating municipality.

As discussed above, in the ordinance establishing a TIRZ, a municipality is required to state the term of the TIRZ and provide a date which the TIRZ is expected to terminate; however, a municipality has the authority to extend the term of a TIRZ beyond the stated termination date<sup>6</sup>. Although the ordinance creating the TIRZ states an expected termination date, and such date may be extended by municipal ordinance, all TIRZs are afforded a uniform termination event. Specifically, the Tax Increment Financing Act provides a TIRZ will terminate on the earlier of the date provided in the ordinance creating the TIRZ, or the date which all project costs, tax increment bonds, and interest on those bonds, and other TIRZ obligations have been paid in full<sup>7</sup>. It is also worth noting that the Tax Increment Financing Act permits a TIRZ board of directors the ability to amend a TIRZ project plan to increase total estimated project costs and/or bonded indebtedness of a TIRZ; such amendment being subject to approval by municipal ordinance<sup>8</sup>.

### **Analysis Regarding Term Extension of TIRZ No. 2**

*In contrast to initial designation of a TIRZ, the Tax Increment Financing Act does not require an area meet criteria stated in section 311.005 for extension of an existing TIRZ.* Instead, the Tax Increment Financing Act stipulates that the governing body of the municipality may extend the term of a TIRZ (simply) after providing notice and holding a hearing in the manner provided for the designation of the zone. The procedure for creation (designation) of a TIRZ is specifically addressed by section 311.003 of the Tax Increment Financing Act. Section 311.003(c) states that before adoption of an ordinance providing for a reinvestment zone, the municipality must hold a public hearing on the creation of the zone and its benefits to the municipality. Further, section 311.003(c) requires that notice of the public hearing be published in a newspaper of general circulation a minimum of seven (7) days before the date of the hearing.

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<sup>2</sup> Tex. Tax Code Ann. § 311.005(1)-(3) (West 2020). Describing the criteria for designation of a TIRZ. Please note, Texas Tax Code § 311.005(4) describes the process for a property owner initiated TIRZ and is not applicable to City initiated TIRZs.

<sup>3</sup> Tex. Tax Code Ann. § 311.002(1)(A)-(L) (West 2020). Providing the full list of project costs which are reimbursable by Tax Increment Financing.

<sup>4</sup> Tex. Tax Code Ann. § 311.004 (West 2020). Detailing full requirements for a municipal ordinance designating an area as a TIRZ.

<sup>5</sup> Tex. Tax Code Ann. § 311.010 (West 2020). Stating the powers and duties of the board of directors of a TIRZ.

<sup>6</sup> Tex. Tax Code Ann. § 311.007 (West 2020).

<sup>7</sup> Tex. Tax Code Ann. § 311.017 (West 2020). Expressing the term of a TIRZ and providing termination event for TIRZ.

<sup>8</sup> Tex. Tax Code Ann. § 311.011(e) (West 2020). Describing permitted amendments to a TIRZ project plan.

In review of Texas case law and Attorney General opinions, the Firm was able to locate one (1) Attorney General opinion concerning a municipality's ability to extend a TIRZ termination date beyond the date in the ordinance designating the TIRZ. In Opinion GA-0276, issued December 6, 2004, the Texas Attorney General concluded that a municipality may not extend the term of a TIRZ beyond the date provided in the designating ordinance. Importantly, Opinion GA-0276 was drafted and issued *prior to the enactment of section 311.007(c)* by the state legislature in 2011. Therefore, the conclusion stated within Opinion GA-0276 was essentially nullified with the enactment of section 311.007(c) in 2011. The Firm has found no case law or Texas Attorney General opinion which further addresses or interprets a municipality's ability to extend the term of a TIRZ pursuant to section 311.007(c) of the Tax Increment Financing Act. As such, the proposed extension of TIRZ No. 2 is analyzed according to a plain reading of the provisions of the Tax Increment Financing Act.

The Tax Increment Financing Act is clear that a TIRZ will expire on the earlier of the termination date stated in the ordinance designating the TIRZ or the date project costs, tax increment bonds, and interest on those bonds, or other TIRZ obligations are paid in full. On November 14, 2000, by Ordinance 024270, the City designated (created) TIRZ No. 2 and at that time provided that TIRZ No. 2 would terminate on December 31, 2022. On April 16, 2019, TIRZ No. 2's board of directors unanimously approved an amendment to the TIRZ No. 2 project and financing plan to allow funding up to \$4,000,000 for the Park Road 22 Bridge Project and such amendment was then formally approved by the City on April 23, 2019.

Pursuant to the provisions of the Tax Increment Financing Act, Ordinance 024270, and the 2019 amendment to TIRZ No. 2's project and financing plan, at this time it appears that TIRZ No. 2 will expire on the earlier of: (1) December 31, 2022; or (2) the date total project costs for TIRZ No. 2 are paid in full (project costs include the \$4,000,000 for the Park Road 22 Bridge Project approved in 2019). *However, prior to the earlier of these dates, the City may extend the term of all (or a portion) of TIRZ No. 2 by issuing notice, holding a public hearing, and adopting an ordinance which extends the term beyond the December 31, 2022 termination date. Such term extension for TIRZ No. 2 is permissible pursuant to the state statutory authority provided in the provisions of the Tax Increment Financing Act, and the extension is not subject to the criterion of section 311.005 applicable to the initial designation.*

### **Limitations**

The Firm's opinion is limited to the question addressed above as to whether the City may extend the term of TIRZ No. 2 pursuant to the provisions of the Tax Increment Financing Act. This opinion is based on the current provisions of the Tax Increment Financing Act and in accordance with the facts outlined above. In the event there are material changes to any one of these facts, please advise us of same so that we can determine whether such changes alter our opinion.

### **Conclusion**


The Firm views the question posed, regarding whether the City may extend the term of a TIRZ, as one clearly answered by the Tax Increment Financing Act. Although a related question/issue is addressed by Texas Attorney General Opinion GA-0276, GA-0276 was issued prior to the enactment of section 311.007(c), which specifically permits a municipality to extend the term of a previously designated TIRZ. Because there has been no further analysis of the question/issue after enactment of section 311.007(c), the plain language of the Tax Increment Financing Act is determinative of whether a municipality may extend the term of a TIRZ and the procedure required for same. As a result, it is the Firm's opinion that prior to the earlier of December 31, 2022 or the date all project costs, tax increment bonds (and interest on those bonds), and other TIRZ obligations have been paid in full, the City may extend the term of TIRZ No. 2 as long as such extension is completed pursuant to the procedural requirements outlined in the Tax Increment Financing Act.

Please let us know if you have any questions concerning this opinion memorandum, as well as whether your needs require that additional information be added to supplement this memorandum.

Sincerely,

**BROWN & ORTIZ, P.C.**

By:

  
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Daniel Ortiz