



LGC/TIRZ Agenda Item Report

APRIL 2, 2013

Contact – Danny Batts, Board Secretary 512-312-0084
dbatts@ci.buda.tx.us

SUBJECT: **Presentation on the structure and operations of the Corporation.**

1. **Background/History**

In 2004 the City of Buda took steps to aid the development of the Cabela's project, primarily by contributing to a program of improvements to public infrastructure associated with the project. These contributions were facilitated through a complex network of arrangements, including a special purpose district, a local government corporation, numerous interlocal agreements, and special tax revenue dedications. The main purpose of these arrangements was to facilitate the issuance of \$36,000,000 in debt, the proceeds of which were used to reimburse Cabela's, Inc. for a portion of their expenditures on the public infrastructure serving the project. \$31,750,000 of this debt was issued in the form of tax free contract revenue bonds which accrue interest at a rate of 4.75%. \$4,250,000 of the debt took the form of a taxable contract debt owed directly to Cabela's, which accrues interest at 7.0%. As structured, the revenue from the tax payments made to the LGC is split evenly between the \$31.75M bond debt and the \$4.25M contract debt. After the \$4.2M contract debt has been extinguished all proceeds for the tax agreements will be dedicated to paying down the remaining bond debt. As of 2013, all of the public infrastructure has been constructed and the bonds have been issued. At this point the sole purpose of the arrangements still in place is to ensure that funds are collected to make payments on the bonds and the contract debt already issued. The following is a concise description of each component of the funding mechanism and its role in the ongoing operations of the Cabela's development.

2. **FINDINGS/CURRENT ACTIVITY**

Overview of Economic Development Arrangements with Cabela's, Inc.

The City of Buda and Hays County choose to fund the public improvements serving the project by dedicating a portion of the Sales Tax, Property Tax, and Hotel Occupancy Tax collections of each entity to support the issuance of the bonds. Each revenue stream is discussed below:

Sales Tax

Utilizing Chapters 380 and 381 of the Local Government Code, the City, the City of Buda Economic Development Corporation (4B Corp.), and Hays County each contribute a portion of their sales tax collections within the development to the repayment of the bonds. The contributions are as follows:

City of Buda – Contributes 56% of all sales tax collections within the development to the bond repayment fund.

City of Buda 4B Corp. – Contributes 85% of all sales tax collections within the development to the bond repayment fund.

Hays County – Contributes 33% of all sales tax collections within the development to the bond repayment fund.

Property Tax

Both the City and the County have dedicated a portion of their property tax collections within the development to the repayment of the bonds. This was accomplished through the creation of a Tax Increment Reinvestment Zone, or TIRZ. A TIRZ is a special district which allows the City to contribute new property taxes generated by the development to the project, while retaining all tax revenue associated with the original value of the undeveloped property. The City and County contributions are as follows:

City of Buda- 100% of all property tax collections within the project that are attributable to the increased value created by the development of the Cabela's site.

Hays County - 100% of all property tax collections within the project that are attributable to the increased value created by the development of the Cabela's site.

Hotel Occupancy Tax

In addition to the Sales & Property Tax contributions outlined above, a provision of the City's 380 Agreements with Cabela's requires the City to contribute 40% of all Hotel Occupancy Tax collections from Hotels/Motels within the development into the bond repayment fund.

Administration of Tax Revenues

All of the above described tax proceeds are remitted to the Dupree Local Government Corporation (LGC), which in turn pays all notes on the bonds to the bond's servicer. Although the City could have taken on this role itself, the LGC was created in order to allow the developer and the City to take advantage of certain exemptions to the state's public procurement laws which are afforded to local government corporations.

3. FINANCIAL IMPACT

N/A

4. ACTION OPTIONS/RECOMMENDATION

None

LAW OFFICES
M^cCALL, PARKHURST & HORTON L.L.P.

717 NORTH HARWOOD
NINTH FLOOR
DALLAS, TEXAS 75201-6587
TELEPHONE: 214 754-9200
FACSIMILE: 214 754-9250

600 CONGRESS AVENUE
1250 ONE AMERICAN CENTER
AUSTIN, TEXAS 78701-3248
TELEPHONE: 512 478-3805
FACSIMILE: 512 472-0871

700 N. ST. MARY'S STREET
1525 ONE RIVERWALK PLACE
SAN ANTONIO, TEXAS 78205-3503
TELEPHONE: 210 225-2800
FACSIMILE: 210 225-2984

MEMORANDUM

TO: Dupre Local Government Corporation (the "LGC")
City of Buda, Texas (the "City")

FROM: McCall, Parkhurst & Horton L.L.P.

DATE: REVISED - October 21, 2004

RE: Ongoing responsibilities of the LGC and the City with respect to the financing of the Cabela's project

INTRODUCTION

As Bond Counsel for the LGC with respect to its issuance of Contract Revenue Bonds, Series 2004 (the "Bonds") to finance a portion of the Cabela's project within the City, we have prepared this memorandum to detail some of the primary responsibilities of the LGC and the City under the financing documents related to the Bonds and the project and with respect to the ongoing administration of the tax increment financing zone (the "Zone") that covers the approximately 126 acres of land being developed by Cabela's.¹

Pursuant to a Development Agreement² (the "Development Agreement") between the LGC, the City, Hays County (the "County"), the City of Buda 4B Corporation (the "BEDC") and Cabela's, the LGC issued the Bonds in a total principal amount of \$31,750,000 at a tax-exempt interest rate of 4.75%, to be delivered in installments while the Cabela's project is being constructed. As

¹ In addition to this memorandum, we have also prepared and delivered a complete transcript of all documents related to Bonds to all parties involved in the transaction, including both the LGC and the City.

² The Development Agreement can be found under tab 30 of the transcript of proceedings for the Bonds.

required by the Development Agreement, the City has created the Zone³, and each of the City, the County and the BEDC has entered into a grant agreement⁴ (collectively, the "Grant Agreements") with the LGC to provide certain funds required by the Development Agreement.

As further described in more detail in this memorandum, the Bonds are payable from (1) the property tax increment revenues from the City and the County generated within the Zone (2) certain sales tax revenues of the City generated within the Zone, (3) certain hotel occupancy tax revenues generated within the Zone, (4) certain sales tax revenues of the BEDC generated within the Zone, and (5) certain sales tax revenues of the County generated within the Zone.

In addition to the Bonds, under the Development Agreement Cabela's is to receive payments in the total amount of \$4,250,000 at a taxable interest rate of 7.00% from (1) certain sales tax revenues of the City generated within the Zone and (2) certain sales tax revenues of the BEDC generated within the Zone.

Set forth below is a bullet point list of the primary responsibilities of the LGC and the City under the financing documents related to the Bonds and the project and with respect to the ongoing administration of the Zone.

CREATION AND PURPOSES OF FUNDS

- The City must create a "Tax Increment Fund" as a separate fund in the City treasury's into which all tax increment payments are deposited. For taxes levied in the years 2004 through 2023, the City and County must each pay into the Tax Increment Fund 100% of their respective tax increments on the captured appraised value in the Zone within 15 days after such taxes are actually collected.
- The LGC must create a "Grant Fund" to be held at the LGC's depository bank. Moneys in the Grant Fund may only be invested in authorized investments under the Public Funds Investment Act (Chapter 2256 of the Texas Government Code).
- The City must create a "Sales Tax Fund" in the City's treasury and deposit into such fund sales tax grant payments in an amount equal to 56% of the City's 1% of sales tax revenues collected within the Zone. On the first business day of each month, the City must pay all moneys in its Sales Tax Fund (minus any expenses of the City incurred in the collection of such sales tax receipts) by direct deposit into the Grant Fund held by the LGC.

³ The proceedings related to the creation of the Zone can be found under tabs 2 through 12 of the transcript of proceedings for the Bonds.

⁴ The Grant Agreements for the City, the BEDC and the County can be found under tabs 17, 18 and 19, respectively, of the transcript of proceedings for the Bonds.

- The BEDC must also create a "Sales Tax Fund" in the BEDC's treasury and deposit into such fund sales tax grant payments in an amount equal to 85% of the BEDC's 1/2% of sales tax revenues collected within the Zone. On the first business day of each month, the BEDC must pay all moneys in its Sales Tax Fund (minus any expenses of the BEDC incurred in the collection of such sales tax receipts) by direct deposit into the Grant Fund held by the LGC.
- The County must also create a "Sales Tax Fund" in the County's treasury and deposit into such fund sales tax grant payments in an amount equal to 33% of the County's 1/2% of sales tax revenues collected within the Zone. On the first business day of each month, the County must pay all moneys in its Sales Tax Fund (minus any expenses of the County incurred in the collection of such sales tax receipts) by direct deposit into the Grant Fund held by the LGC. The total amount of all sales tax grant payments from the County is limited by a present value cap of \$4.5 million.
- The City must create a "Hotel Occupancy Tax Fund" in the City treasury and deposit into such fund hotel occupancy tax grant payments in an amount equal to 40% of the City's 7% of hotel occupancy tax revenues collected within the Zone. However, the total amount of the City's hotel occupancy tax grant payments can not exceed the total costs of the museum exhibit area of the project. On the first business day of each month, the City must pay all moneys in the Hotel Occupancy Tax Fund (minus any expenses of the City incurred in the collection of such hotel occupancy tax receipts) by direct deposit into the Grant Fund held by the LGC.
- Trustee for the Bonds, currently Wells Fargo Bank, N.A. (the "Trustee"), will hold the "Pledged Revenue Fund" in trust for the payment of debt service on the Bonds pursuant to the Trust Indenture between the LGC and the Trustee.⁵ Moneys deposited to the Pledged Revenue Fund can only be used for (1) the payment of debt service on the Bonds and (2) the payment of up to \$10,000 of annual administrative expenses of the Zone and the LGC and (3) the payment of the Trustee's fees. Moneys in the Pledged Revenue Fund may only be invested in authorized investments under the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) and must be secured in the same manner as City funds are required to be secured at the City's depository bank.
- The City and the LGC must maintain complete books and records showing deposits to and disbursements from all such respective funds. Such records should be kept in accordance with Generally Accepted Accounting Principles as applied to Texas municipalities and maintained for four (4) years after the Bonds have been paid off. Under the Purchase Agreement with Cabela's, the LGC must also agreed to provide annual financial statements and any other information reasonably requested by Cabela's.⁶

⁵ The Trust Indenture can be found under tab 14 of the transcript of proceedings for the Bonds.

⁶ The Purchase Agreement can be found under tab 16 of the transcript of proceedings for the Bonds.

**PAYMENT OF MONEYS TO THE PLEDGED REVENUE FUND
AND PAYMENT OF BONDS**

- On the first business day of each month, the City must pay all moneys in the Tax Increment Fund by direct deposit into the Pledged Revenue Fund held by the Trustee.
- Once the City's hotel occupancy tax grant payments are deposited to the Grant Fund, the LGC must account for the receipt of such funds and must then cause such funds to be deposited to the Pledged Revenue Fund held by the Trustee.
- Once the County's sales tax grant payments are deposited to the Grant Fund, the LGC must account for the receipt of such funds and must then cause such funds to be deposited to the Pledged Revenue Fund held by the Trustee.
- The LGC uses money in the Grant Fund attributable to sales tax grant payments received from the City and the BEDC and the interest thereon to (1) make payments to the Pledged Revenue Fund for the Bonds in the amounts and at the time necessary to provide for the payment of principal and interest on the Bonds as set forth in the Amortization Schedule attached to the City and the BEDC's Grant Agreement and (2) pay down the taxable obligations owed to Cabela's under the Development Agreement. In order to protect the tax-exempt status of interest on the Bonds, the LGC can not make a payment to pay down the taxable obligations owed to Cabela's under the Development Agreement in an amount that is greater the amount being applied to the Pledged Revenue Fund to pay down the Bonds.
- Principal and interest payments on the Bonds are due on each June 1 and December 1, commencing June 1, 2005, but such payments are only made by the Trustee from and to the extent that there is money on deposit with Trustee to make such payments. Interest on the Bonds that has accrued is paid first and to the extent that there is any money left over after the payment of all interest due (both current and any past due interest), that amount is used to reduce the principal amount of outstanding bonds in \$5,000 increments. In order for the Trustee to make the required payments of principal and interest on each June 1 and December 1, it is recommended that the LGC make the transfer of funds from the Grant Fund to the Pledged Revenue Fund contemplated by the previous paragraph several business days in advance of such payment dates.
- On January 15th of each odd numbered year beginning in 2007, if (1) all payments of principal and interest on the Bonds are then current under the Amortization Schedule and (2) there is a surplus in the Grant Fund of moneys attributable to sales tax grant payments received from the City (and the interest thereon), then such surplus is applied as follows: (i) 75% is either paid to the Pledged Revenue Fund to further pay off bonds or used to pay down the taxable obligations under the Development Agreement and (ii) 25% can be used by the City for any lawful purpose of the City (including further repayment of Bonds if the City desires). Surpluses related to sales tax grant payments from the BEDC on such dates

are treated in the same way, except that the BEDC can use its remaining 25% for any lawful purpose of the BEDC.

STEPS INVOLVED IN INSTALLMENT DELIVERIES OF THE BONDS

The Bonds have been authorized and approved by the LGC and the Attorney General in the full amount of \$31,750,000, but they are to be delivered to the bond purchaser, Cabela's, in monthly installments as construction occurs. The following is a list of steps that are involved in the installment delivery of the Bonds.

- Cabela's prepares invoices and wiring instructions for qualifying project costs to be reimbursed.
- Under the Bond documents, only costs associated with the public infrastructure and the public museum facilities can be reimbursed from Bond proceeds.
- The Consulting Engineer signs off on the project costs for which they have performed work on by executing requisition certificate.
- Cabela's signs off on qualifying project costs by executing a requisition certificate (the form of which is attached to the Trust Indenture as Exhibit A) and submits the requisition certificate and accompanying invoices and wiring instructions to the LGC.
- The LGC also reviews the costs submitted for reimbursement to determine if they are qualifying project costs under the Development Agreement and Bond documents.
- The LGC signs off on qualifying project costs by executing the requisition certificate and submitting it to the Trustee along with accompanying invoices and wiring instructions.
- Upon receipt of funds in the amount of the qualifying project costs from bond purchaser (rounded up to the nearest \$5,000 increment), the Trustee delivers a corresponding amount of Bonds to bond purchaser and wires out funds in accordance with the wiring instructions submitted (any excess amounts as a result of rounding up to the nearest \$5,000 increment will remain with the Trustee in the Project Fund to be applied to the next month's distribution).

ONGOING TAX CODE REQUIREMENTS FOR THE ZONE

- On or before the 90th day after the end of the City's fiscal year, the City must submit a report on the status of the Zone to the chief executive officer of each taxing unit that levies property taxes in the Zone. The report must also be sent to the Attorney General and the Comptroller and must include the following:
 - (1) the amount and source of revenue in the Tax Increment Fund;
 - (2) the amount and purpose of expenditures from the Tax Increment Fund;
 - (3) the amount of principal and interest due on outstanding bonded indebtedness;
 - (4) the tax increment base and current captured appraised value retained by the Zone; and
 - (5) the captured appraised value shared by the City and other taxing units, the total amount of tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the City.⁷

- Before April 1, 2005, the City must deliver a report to the Comptroller which contains the following:
 - (1) a general description of the Zone, including: the size of the Zone; the types of property located in the Zone; the duration of the Zone; and criteria used by the City for establishing for the Zone⁸;
 - (2) a copy of the Project Plan and Reinvestment Zone Financing Plan adopted by the City⁹; and
 - (3) any other information requested by the Comptroller.¹⁰

- If the City amends or modifies the Project Plan and Reinvestment Zone Financing Plan, the City must deliver a copy of such amendment or modification to the Comptroller prior to April 1 of the year after such amendment or modification.¹¹

⁷ See Section 311.016 of the Texas Tax Code.

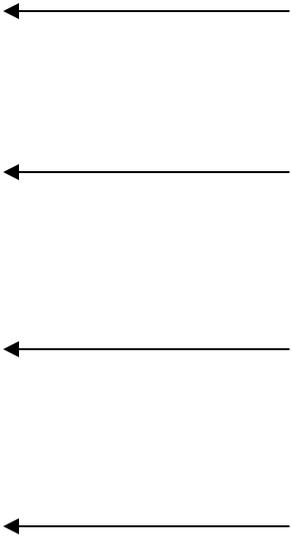
⁸ Such criteria is set forth in Section 1(c) of the City's Ordinance No. 04-07-06-3 creating the Zone, which can be found under tab 7 of the transcript of proceedings for the Bonds.

⁹ The Project Plan and Reinvestment Zone Financing Plan is an exhibit to the City's Ordinance No. 04-08-03-1 approving such plan, which can be found under tab 12 of the transcript of proceedings for the Bonds.

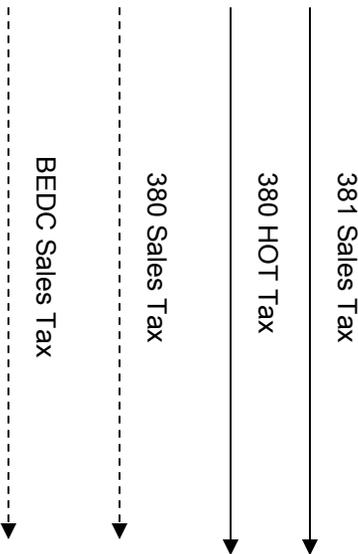
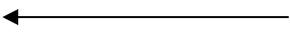
¹⁰ See Section 311.019 of the Texas Tax Code.

¹¹ See Section 311.019 of the Texas Tax Code.

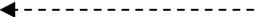
BEDC 380 380 381
Sales Tax Sales Tax HOT Tax Sales Tax



TIF
Revenue



BEDC
Sales Tax

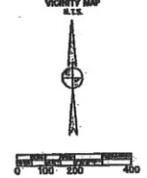
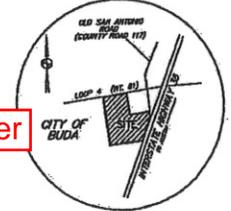
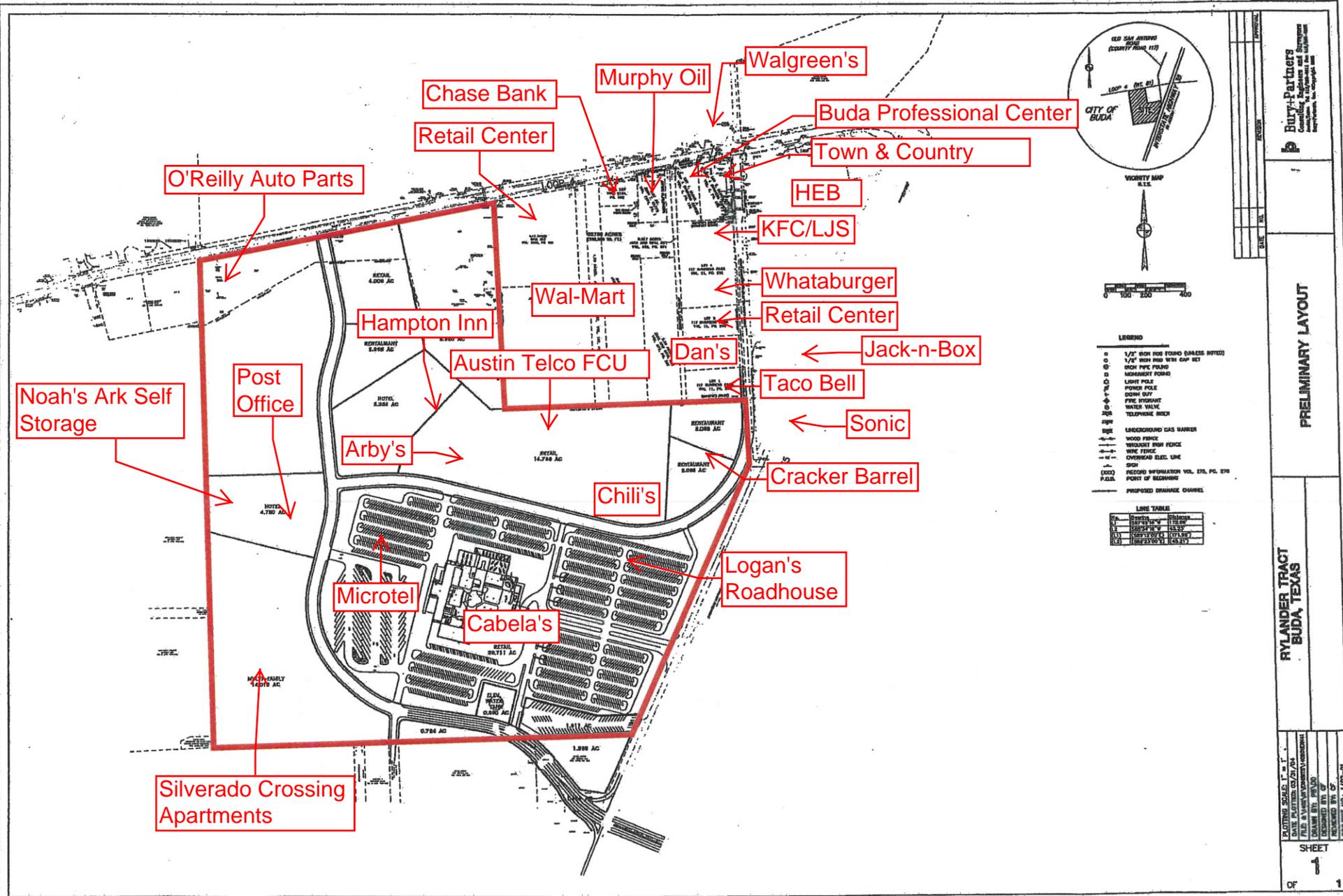


380
Sales Tax



\$4,250,000 Taxable Obligations
(7% Interest)

\$31,750,000 Tax-Exempt Bonds
(4.75% Interest)



- LEGEND**
- 1/2" BORN SIGN FOUND (UNLESS NOTED)
 - 1/2" BORN SIGN WITH COP NET
 - HIGH PIPE FOUND
 - MONUMENT FOUND
 - LIGHT POLE
 - POWER POLE
 - DOWN GUY
 - PIPE STAKEOUT
 - WATER VALVE
 - TELEPHONE BOX
 - BGR UNDERGROUND GAS MARKER
 - WOOD FENCE
 - WOODSTAKE FISH FENCE
 - WIRE FENCE
 - CHAINLINK ELEC. LINE
 - - - - - -
 - SIGN
 - FIELDING INFORMATION VOL. 278, PG. 278
 - P.O.B. POINT OF BEGINNING
 - PROPOSED DRAINAGE CHANNEL

LINE TABLE

LINE NO.	DESCRIPTION	DATE
1	EXISTING	11/10/07
2	PROPOSED	11/10/07
3	PROPOSED	11/10/07
4	PROPOSED	11/10/07

BuryPartners
 Consulting Engineers & Architects
 10000 N. Loop West, Suite 100
 Houston, Texas 77040-1000
 Phone: 281.460.1000
 Fax: 281.460.1001
 www.burypartners.com

PRELIMINARY LAYOUT

**RYLANDER TRACT
 BUDA, TEXAS**

PLATTING SCALE: 1" = 1'-0"
 DATE: 11/10/07
 FILE: 11/10/07
 DRAWN BY: JLD
 CHECKED BY: JLD
 REVISIONS:
 PROJECT NO.: 1100-01

SHEET
 1