## PROFESSIONAL SERVICES FEES AGREEMENT Pine Forest Unit 6

This Professional Services Fees Agreement (this "Agreement") is entered into by, between, among and for the benefit of the City of Bastrop, Texas, a home rule city (the "City"), and Capstick Development Group, Ltd., a Texas limited partnership (the "Developer").

- **WHEREAS**, the Developer desires that the City enter into negotiations related to a new development of an area located within the City's jurisdiction (the "Project"); and
- WHEREAS, the Developer desires that the City enter into negotiations related to the consideration of a purchase and sale agreement (the "Purchase and Sale Agreement") for the conveyance from the City to the Developer of the property known as Pine Forest Unit 6 Phase II, which is comprised of the Bid in Trust Lots more particularly depicted in <u>EXHIBIT "A"</u> attached hereto (the "Property"); and
- **WHEREAS**, the Developer desires that the City enter into negotiations for the provision of the public improvements necessary to provide water, wastewater, drainage and development amenities for the Property; and
- **WHEREAS**, the City and the Developer desire to negotiate a development agreement to provide for terms and conditions related to the Project (the "Development Agreement"); and
- WHEREAS, in negotiating the Purchase and Sale Agreement or the Development Agreement, the City and the Developer may also negotiate other agreements, such as agreements related to the annexation of the Property, public improvement plans, or water and wastewater services (collectively, the "Related Agreements"); and
- WHEREAS, the City and the Developer recognize and agree that the City will incur fees and associated expenses and costs for professional services for work to negotiate, develop, draft, and consider various concepts and documents in connection with its consideration of the Purchase and Sale Agreement, Development Agreement, and Related Agreements, including but not limited to the following: appraisal, legal publications, notices, public hearing expenses, planners, engineers, attorneys, assessment administrator fees and special consultant fees (collectively, the "Professional Services"); and
- WHEREAS, the City and the Developer recognize and agree that the fees anticipated to be incurred by the City for Professional Services directly related to the Project cannot be recouped by the City through standard administrative or permit fees; and

WHEREAS, the City's engagement of professionals to perform the Professional Services and its participation in the undertakings described above are voluntary and of value to the Developer and the Developer desires to reimburse the City's fees and expenses related to the Professional Services.

# NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the City and the Developer agree as follows:

1. **Recitals.** The representations, covenants and recitations set forth in the foregoing recitals and in this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this paragraph.

#### 2. Developer Payment.

- (a) Delivery. Developer shall deliver, or shall have delivered, to the City the sum of twenty thousand dollars (\$20,000.00) upon the effective date of this Agreement, for the Professional Services and the related Purchase and Sale Agreement, Development Agreement, and Related Agreements expenses incurred by the City.
- (b) **Invoices.** Fees for all Professional Services to be covered by the Developer Payment shall be evidenced by monthly invoices that describe the work performed by date and time entries, copies of which invoices shall be provided to Developer at least ten (10) days before the invoices are paid.
- (c) Segregation of Funds. The Developer Payment shall be deposited in a segregated account and not be commingled with any other City funds.
- (d) Replenishment of Funds. If the cost of Professional Services exceeds the Developer Payment, the City shall notify the Developer in writing and the Developer may elect to: (1) make one or more additional payment(s) of five thousand dollars (\$5,000.00) each within thirty (30) days of such written request and such additional payment will be deposited by the City and utilized in the same manner described above, or (2) negotiate in good faith to amend this Agreement to provide for a reasonable amount of additional payment by Developer.
- (e) Non-contingent. The payment(s) made by the Developer under this Agreement are not contingent upon any outcome of the negotiations between the City and the Developer.
- (f) Non-inclusivity. The Developer Payment is in addition to, not instead of, standard, generally applicable administrative or permit fees required by ordinance for City consideration and approval of development approvals. Nothing herein relieves the Developer from the obligation to remit payment of applicable administrative and permit fees for authorizations sought from the City.

### 3. Termination.

- (a) Means. This Agreement may be terminated by either party with or without cause upon delivering to the other party written notice of termination thirty (30) days prior to the date of termination. Unless earlier terminated by Developer or the City, this Agreement shall automatically terminate when the City executed has an approved Development Agreement for the Project.
- (b) **Stop Work.** Upon termination of this Agreement for any reason, the City shall take all reasonable steps necessary to terminate the accrual of costs to the Developer.
- (c) **Refund.** Upon termination of this Agreement for any reason, any balance of the Developer Payment and any balance of any additional payment(s) made by Developer under this Agreement that exceed the City's fees, costs and expenses incurred as of termination shall be returned to Developer within thirty (30) days of termination.
- **4. Relationship.** Nothing in this Agreement creates a relationship between the Developer and the City's Professional Services providers. Furthermore, this Agreement does not grant the Developer access to any privileged or confidential data provided to the City by the City's Professional Services providers.
- **5.** Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding Professional Services. This Agreement may not be amended, changed, or modified except by a written amendment signed by both Parties.
- 6. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the parties hereto, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- 7. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed given upon delivery by a nationally recognized private service (e.g., FedEx or UPS) to the following respective addresses of the parties:

To the City: City of Bastrop Bastrop City Hall 1311 Chestnut Street Bastrop, TX 78602

With a copy to:	Bojorquez Law Firm, PC Attn: Alan Bojorquez 11675 Jollyville Rd., Ste 300 Austin, TX 78759 Alan@TexasMunicipalLawyers.com
To the Developer:	Capstick Development Group, Ltd. c/o Capstick Development Group, LLC Attn: Geoff Connor 1404 Wilson Street Bastrop, TX 78602 geoff@geoffconnor.com
With a copy to:	Jackson Walker L.L.P. <i>Attn:</i> Brandon Janes; Brett Reamer 100 Congress Avenue, Ste. 1100 Austin, TX 78701 bjanes@jw.com; breamer@jw.com

[Signature page follows.]

**EXECUTED** in multiple counterparts, each of which shall constitute an original, to be effective upon the date of execution by both parties.

#### CITY:

#### **CITY OF BASTROP,**

a Texas home rule city

by: \_\_\_\_\_

name: Sylvia Carrillo title: City Manager

date:\_\_\_\_\_

#### **ATTEST:**

By: \_\_\_\_\_ Ann Franklin, City Secretary

#### **DEVELOPER:**

CAPSTICK DEVELOPMENT GROUP, LTD., a Texas limited partnership

by: \_\_\_\_\_

name: Geoffrey S. Connor title: Manager

date:\_\_\_\_\_

#### **ATTEST:**

by: \_\_\_\_\_

## EXHIBIT "A" PROPERTY

