

PROFESSIONAL SERVICES PAYMENT AGREEMENT

This Professional Services Payment Agreement (this "Agreement"), effective as of the day of _____ (the "Effective Date"), is made and entered into by and between the City of Bay City, Texas, ("City") and _____, a Texas limited liability company (the "Developer"). The City and the Developer shall each be referred to as a "Party" or collectively as the "Parties."

WHEREAS, the Developer owns or plans on acquiring property (the "Property") located in the City of Bay City, Texas, and

WHEREAS, the Developer plans to develop Property into a mixed-use development and will require construction and maintenance of certain public improvements and creation of a supplemental services Public Improvement District per Chapter 372 of the Local Government Code; and

WHEREAS, the Parties hereto acknowledge that the City has heretofore incurred certain costs relative to the creation of the PID and will continue to incur costs relative to (i) the creation of the PID, (ii) the adoption of a service and assessment plan relative to the Property, (the "SAP") and (iii) the City's levy of assessments levied on a portion of the land within the PID ("PID Supplemental Services"), including, but not limited to: professional services, legal publications, notices, reproduction of materials, public hearing expenses, recording of documents, engineering fees, attorney fees, financial advisory fees, City staff time dedicated to PID matters, and other special consultant fees (collectively, "City Expenses").

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Payment for Professional Services. Within ten (10) days of receipt of request by the City, Developer shall deposit with the City [\$15,000.00] (the "Deposit") for payment of the City Expenses relative payment of Planning Services. Further:

- (a) City agrees to hold the Deposit in a separate interest-bearing account maintained by the City which may only be used to pay the City Expenses.
- (b) City agrees that all City Expenses relating to Planning Services that are to be paid from the Deposit shall be evidenced by invoices that describe the work performed by person, date, billing rate and amount of time to perform such task. Within ten (10) business days after receipt of each invoice for City Expenses (and before such invoice is paid), the City shall forward such invoice to the Developer. If the Developer reasonably requests additional information in clarification or support of such invoice, the City/consultant shall provide the same, if available. The Developer shall have ten (10) business days after receipt during which to review each invoice and to make

objections. If the Developer objects to any portion of an invoice, the City, the Developer and those providing the services shall attempt to resolve the dispute within a reasonable period of time; however, if not withstanding their collective good-faith efforts the dispute cannot be timely resolved, the City may pay such invoice, including any disputed amounts, within thirty (30) days from the date of the invoice using the funds from the Deposit.

- (c) Developer agrees that in the event the Deposit falls below \$10,000.00, upon request from the City, Developer shall advance to the City an additional amount of not less than \$10,000.00.
- (d) In the event the Deposit is exhausted, upon notice, Developer shall pay the balance owed in full within fifteen (15) business days in addition to the remittance of the additional funds as provided above.
- (e) In the instance that deposits of additional funds are not timely made, the City shall have no obligation to incur any additional City Expenses until such deposit is made.
- (f) The City will pay City Expenses out of the Deposit and keep accounting of all charges for City Expenses incurred. Upon the termination of this Agreement, any unused portion of the Deposit shall be returned to Developer (including all interest earned on the Deposit).

2. No Obligation to Adopt an SAP. Developer acknowledges that the City has no obligation to adopt an SAP with respect thereto, and nothing contained within this Agreement shall create any such obligation. The Developer's obligation to pay the City Expenses shall exist and continue independent of whether the SAP is approved. This Agreement shall confer no vested rights or development rights on the Property or to the Developer. Further, this Agreement shall provide no assurances, promises, or covenants to approve any development in the Property.

3. Termination. Either Party may terminate this Agreement for any reason or for no reason by providing at least thirty (30) days' written notice of termination. Termination of this Agreement shall be the sole and exclusive remedy of the City and the Developer, as the case may be, for any claim by either Party of any breach of this Agreement by the other Party. The City shall be entitled to pay the City Expenses incurred through the date of termination; however, any excess funds remaining after such payments have been made shall be promptly refunded to Developer. Notwithstanding any other provision of this Agreement to the contrary, the obligation to repay such excess funds to the Developer in the event of a termination shall survive any termination of this Agreement, and the Developer does not release or discharge its right to such excess funds.

4. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein.

5. Amendment. This Agreement may only be amended by written instrument approved by the Parties.

6. Successors and Assigns. Neither City nor Developer may assign or transfer their interest in the Agreement without prior written consent of the other Party.

7. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by electronic transmission received by the other Party by depositing same in the United States Mail, Certified, with Return Receipt Requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing:

City:
City Manager
City of Bay City
1901 Fifth Street
Bay City, TX 77414
Attention: Shawna Burkhart, City of Bay City
Email: sburkhart@cityofbaycity.org

Developer:

Email:

8. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either Party.

9. Applicable Law. This Agreement is made, and shall be construed in accordance with the laws of the State of Texas, and venue shall lie in Matagorda County, Texas.

10. Severability. In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

12. Execution. The City Manager is hereby authorized to execute and deliver this Agreement in substantially the form presented to the City Council with such changes as he may deem appropriate.

13. Iran, Sudan and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent companies, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/flo-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent companies wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

14. Anti-Israel Boycott. The Developer hereby verifies that it and its parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

CITY OF BAY CITY, TEXAS

By: _____
Shawna Burkhart, City Manager

Date: _____

DEVELOPER:

_____ a [Texas Limited
Liability Company]

By: Managing Shareholder

By:

Name: