

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE DESIGN  
AND CONSTRUCTION OF WATER AND WASTEWATER LINE  
IMPROVEMENTS**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF WATER AND WASTEWATER LINE IMPROVEMENTS (this “**First Amendment**”) is dated effective \_\_\_\_\_, 2021 (the “**Effective Date**”) and is entered into by and between the **CITY OF MANOR, TEXAS**, a Texas home-rule municipal corporation (the “**City**”) and **FM 973 BUILDING HOPE, LLC**, a Texas limited liability company (“**Developer**”). The City and Developer are collectively referred to herein as the “Parties”.

**RECITALS**

**A.** The City and IDEA Public Schools, a Texas non-profit corporation (the “**Original Developer**”) previously entered into that certain Development Agreement for the Design and Construction of Water and Wastewater Line Improvements dated effective April 15, 2020 (the “**Agreement**”) for that certain Project (as defined therein) located in the City of Manor, Travis County, Texas, as more particularly described in the Agreement.

**B.** Developer now owns all the Property (as defined in the Agreement) as successor-in-interest to the Original Developer.

**C.** The Original Developer assigned all of its rights under the Agreement pertaining to the Property by that certain Assignment and Assumption of Development Agreement, dated effective June 16, 2021 (the “**Assignment Agreement**”).

**D.** The City and Developer desire to modify and amend the Agreement as set forth in this First Amendment.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The above recitals are incorporated herein and made a part of this First Amendment to the same extent as if set forth herein in full.

2. Capitalized Terms. Any capitalized term that is used in this First Amendment and is not otherwise defined herein shall have the meaning that is ascribed to it in the Agreement.

3. Termination. Section 1.03 is hereby amended to include the following sentence:

"Notwithstanding any other provision in this Agreement, the Parties mutually agree that each has complied with the deadlines imposed by this Agreement as of the Effective Date of the First Amendment to Development Agreement ("Amendment Date")."

4. Manville Transfer Agreement. Section 3.01(a) is hereby deleted in its entirety and replaced with the following:

"(a) The City has submitted to Manville Water Supply Corporation ("Manville") a Water Service Transfer Agreement between the City and Manville (the "**Transfer Agreement**") for the Property to transfer water service for the Property from Manville's CCN to the City's CCN. The City shall continue to diligently pursue the execution of the Transfer Agreement by Manville. The Developer shall be responsible for any and all costs associated with obtaining the execution of the Transfer Agreement and in accordance with that certain City of Manor, Texas Deposit Agreement for the Proposed Water Service Transfer For the IDEA Public Schools Project dated April 15, 2020."

5. Design Phase. Sections 4.05(b), (c), and (f) are hereby deleted in their entirety and replaced with the following:

"(b) The Utility Project Engineer has prepared an estimate of costs of designing the Utility Project (excluding the Oversized Component), estimating the costs set forth in Section 3.05(a) (the "**Opinion of Design Cost**"). The Developer has deposited the amount of funds set forth in the Opinion of Design Cost in an escrow account of the City (the "**Design Deposit**"). Any design cost related to the Oversized Components shall be the financial responsibility of the City."

"(c) The City shall cause the Utility Project Engineer to prepare the construction plans for the Utility Project, and shall submit the plans to the Developer's engineer for review and comment. The Developer's engineer will provide revisions and comment, if any, within a week of receiving the plans. The Parties agree that once the plans are approved by Developer's engineer, the plans will be submitted to the Texas Commission on Environmental Quality ("TCEQ") and to diligently pursue this work."

"(f) The City has identified easements outside of the Developer's property required to be conveyed to the City for the Utility Project. The Developer shall convey to the City at no cost to the City the easements reasonably required for the Utility Project free and clear of all liens and encumbrances. If Developer is unable to obtain an easement necessary for the Utility Project, Developer shall notify the City within thirty (30) days that the easement was not obtained and the City will determine whether to use condemnation proceedings to obtain the easement needed. If the City uses condemnation proceedings to obtain

the easement needed for the Utility Project, Developer shall be responsible for all costs associated with the easement acquisition."

6. Bidding. Section 4.06 is hereby amended to add the following sentence to the end of the section:

"Notwithstanding any other provision in this Agreement, the Developer shall have the right, at its sole and absolute discretion, to begin and complete construction of the Utility Project per City designs and specifications if the City fails to bid the Utility Project by September 27, 2021."

7. Property Gates and Parking. Section 9.04 is hereby deleted in its entirety and replaced with the following:

"For safety purposes and to prevent illegal parking in the surrounding areas, the Developer agrees that no outer vehicular access gates shall be installed at the Property, except for the gate shown in the Developer's Site Plan Phase 1 that is provided for knox box access by the Fire Marshall and emergency vehicles. The Parties agree that the gate shown in the Developer's Site Plan Phase 1 shall be removed and replaced by fencing in the Developer's Site Plan Phase 2. If the Developer's plans change such that they desire gated access, approval by City Council is required."

8. Notices. Section 12.01 is hereby amended to update the Developer and copy to the addresses provided below:

" Any notice mailed to the Developer shall be addressed:

FM 973 Building Hope, LLC  
910 17<sup>th</sup> Street NW, Suite 1100  
Washington, DC 20006  
Attn: Jerry Zayets  
jzayets@bhope.org

with copy to:  
Drenner Group, PC  
200 Lee Barton Drive, Suite 100  
Austin, TX 78702  
Attn: Greta Goldsby  
cdorsaneo@drennergroupp.com"

9. Schedule. Exhibit "D" is hereby deleted in its entirety and replaced with a new Exhibit "D" attached to this First Amendment.

10. Force Majeure. Section 11.05(a) is hereby amended to add the following sentence to the end of subsection (a):

“The Parties agree that the term “force majeure” shall also include the delay or disruption of the supply chain of materials necessary to install the water and wastewater lines; or the unavailability of materials necessary to install the water and wastewater lines.”

11. Exhibits. Section 13.01(k) is hereby updated to delete Exhibits “E” and “F”. In addition, Exhibits “E” and “F” attached to the Agreement are deleted in their entirety.

12. Effect of Amendment. Except as specifically amended by this First Amendment, the terms and provisions stated in the Agreement shall continue to govern the rights and obligations of the Parties, and all provisions and covenants of the Agreement, as amended by this First Amendment, shall remain in full force and effect. The terms and provisions of the Agreement, as hereby amended by this First Amendment, are hereby ratified and confirmed, and this First Amendment and the Development Agreement shall be construed as one instrument. In that regard, this First Amendment and the Development Agreement, including all exhibits to such documents, constitute the entire agreement between the parties relative to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the Parties in connection therewith. In the event of any inconsistency, the terms and provisions of this First Amendment shall control over and modify the terms and provisions of the Agreement.

13. Miscellaneous.

a. Captions. The captions preceding the text of each section and paragraph hereof, if any, are included only for convenience of reference and shall be disregarded in the construction and interpretation of this First Amendment.

b. Authority. Each party hereto has the full legal authority to execute and deliver this First Amendment. In addition, the individual who executes this First Amendment on behalf of each party hereto is authorized to act for and on behalf of such party and to bind such party to the terms and provisions hereof.

c. Severability. If any provision of this First Amendment shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable, unless enforcement of this First Amendment as so invalidated would be unreasonable or grossly inequitable under the circumstances or would frustrate the purpose of this First Amendment.

d. Binding Effect. This First Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted (pursuant to the terms of the Agreement) assigns. This First Amendment shall inure to the benefit of and be binding upon each of the Parties, and their respective successors, assigns, transferees, and grantees.

e. Multiple Counterparts. Multiple copies of this First Amendment may be executed by the Parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the date and year first above written.

*[Signature Pages Follow]*

**973 BUILDING HOPE, LLC**, a Texas  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_ 2021, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of said company.

\_\_\_\_\_  
Notary Public, in and for the State of \_\_\_\_\_

**THE CITY OF MANOR,**  
a Texas home-rule municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF TEXAS                   §**  
**§**  
**COUNTY OF TRAVIS           §**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2021, by \_\_\_\_\_, \_\_\_\_\_ of The City of Manor, a Texas  
home-rule municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Veronica Rivera, Assistant City Attorney

## **Exhibit “D” Schedule**

### **All days are calendar days**

#### **Plat and Permit Reviews**

Submittal Dates: Submittals may be made and accepted by the City on any date.

Initial Reviews: City to provide comments within thirty (30) days of initial submittal.

Resubmittal Reviews: City to provide comments within thirty (30) days of resubmittal.

#### **Utility Project\***

1. Begin timeline on the Effective Date of the First Amendment to this Agreement
2. Delivery of Funds/Sureties by Developer: fifteen (15) days after bid opening
3. Water Main Substantial Completion on or Before: eight (8) months after the Effective Date of the First Amendment to this Agreement and final completion on or before (9) months after the Effective Date of the First Amendment to this Agreement
4. Sewer Main Substantial Completion on or Before: eight (8) months after the Effective Date of the First Amendment to this Agreement and final completion on or before (9) months after the Effective Date of the First Amendment to this Agreement

\*Utility Project Schedule is contingent upon all easements being executed and recorded prior to start of construction.