

**AGREEMENT REGARDING GAS SERVICE TO PHASE I BUILDINGS 1, 2, & 6 AT
13804 AND 13808 BOUDREAUX ROAD AND 19200 HAMISH ROAD IN TOMBALL,
TEXAS**

This Agreement Regarding Gas Service to Phase I Buildings 1, 2, & 6 at 13804 and 13808 Boudreaux Road and 19200 Hamish Road in Tomball, Texas (“Agreement”) is entered into by and between the City of Tomball, Texas (“City”) and LIT INTERCHANGE 249 PHASE I, LLC, a Delaware limited liability company (“Owner”) (collectively, “Parties”).

RECITALS

WHEREAS, the City owns and operates the gas system within the city limits of Tomball, Texas.

WHEREAS, Owner is developing a Phase I Buildings 1, 2, & 6 at 13804 and 13808 Boudreaux Road and 19200 Hamish Road in Tomball, Texas (collectively, the real property and improvements thereon are “Phase I”), which requires gas service.

WHEREAS, City has the gas supply capacity to serve Phase I.

WHEREAS, City is in the process of constructing the necessary infrastructure to provide gas service to Phase I.

WHEREAS, following City’s completion of the necessary services lines and gas supply gate, the Parties agree that City will provide gas service to Phase I.

WHEREAS, the Parties agree that Owner may develop additional commercial buildings at Interchange 249 in the future that require gas service, but this Agreement only applies to gas service for Phase I.

WHEREAS, the Parties understand that any current estimate of City’s costs to build the necessary gas service lines to accommodate Phase I is subject to change based on factors including, but not limited to, material costs, labor costs, and engineering assessments.

WHEREAS, City desires to assist Owner with obtaining reimbursements for Owner’s contribution in aid of construction of the proposed gas service line from the City of Tomball Tax Increment Reinvestment Zone Number Three (the “TIRZ”), including obtaining and maintaining Owner’s eligibility for such reimbursements from the TIRZ, amending the TIRZ Preliminary Project Plan and Reinvestment Zone Financing Plan (the “TIRZ Finance Plan and Project Plan”), and ultimately finalizing and obtaining the necessary approvals for the TIRZ Finance Plan and Project Plan to include the gas service line.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, City and Owner agree as follows:

AGREEMENT

I. Commencement of City Gas Services to Phase I

City expects to complete construction of the service lines and gas gate necessary for providing gas service to Phase I by April 2024 (“Expected Service Date”).

Owner will use gas service from CenterPoint (“CPE”) until the Expected Service Date, or until such other time as City’s service lines and gas supply gate are complete and City can begin providing gas service to Phase I.

Owner must terminate service with CPE and begin obtaining gas service from City for Phase I no later than 30 days from the date City’s construction of the necessary service lines is complete, which shall be based upon Owner receiving written notice from City that the service lines and gas supply gate are complete and ready to provide gas service to Phase I.

II. Contribution in Aid of Construction

Owner must provide a contribution in aid of construction (“CIAC”) for the City’s construction of the city gas service lines. Prior to commencing construction of the gas service lines, City and Owner must agree to the location and routing of the gas service lines, the anticipated schedule for construction of the gas service lines, and a detailed estimated cost of construction for gas service lines (collectively, the “Service Line Plans”). City’s and Owner’s approval of the Service Line Plans shall not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, Owner may withhold approval if the proposed routing and location of the gas service line would adversely affect Owner’s or Owner’s affiliate’s development of Buildings 1, 2, & 6 at 13804 and 13808 Boudreaux Road and 19200 Hamish Road, Tomball, Texas 77377, and the adjacent real property.

Throughout the construction process, City will periodically notify Owner of the costs of constructing the necessary service lines to provide gas service to Phase I.

III. Remedies in Event of Default

In addition to all rights and remedies prescribed by the laws of the State of Texas, in the event of a breach of this Agreement by either party, the other party shall be entitled, but not limited to, specific performance or a writ of mandamus to compel any necessary action by the breaching party. In the event that a party seeks monetary damages or equitable relief, including but not limited to specific performance, the breaching party shall be required to pay for the non-breaching party’s attorneys’ fees and court costs.

IV. Effective Date and Expiration

This Agreement becomes effective as of the date of the last signature by either party. This Agreement shall automatically expire upon on the earlier of the following to occur: (a) first (1st) day the City provides gas service to Phase I, or (b) 2 years after effective date of this Agreement.

V. Severability

If any provision contained in this Agreement is held to be invalid, unconstitutional, or unenforceable, the remaining provisions of the Agreement shall be deemed severable and shall remain in full force and effect.

VI. Recitals

Each of the recitals contained herein, by this reference, shall be incorporated into, and deemed a part of, this Agreement.

VII. Modification of Agreement; Execution

This Agreement cannot be modified or amended without the written consent of the Parties attached to and made part of this Agreement. This Agreement may be executed in separate counterparts which together shall constitute one and the same instrument. This Agreement may also be executed with multiple signature pages, which may be attached to and from one (1) or more counterparts hereof. Email signatures shall be deemed the equivalent of original signatures.

[signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement with an effective date as set forth by Section IV of this Agreement.

CITY OF TOMBALL

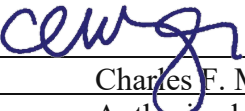
By: _____
Name: David Esquivel
Title: City Manager
Date: _____, 2023

City of Tomball’s Notice Address:

LIT INTERCHANGE 249 PHASE I, LLC,
a Delaware limited liability company

By: Interchange 249 Business Park, LP,
a Texas limited partnership
its Managing Member

By: Interchange 249 Business Park GP, LLC,
a Texas limited liability company
its General Partner

SF By: 
Name: Charles F. Meyer, Jr.
Title: Authorized Signatory
Date: August 1, 2023

LIT INTERCHANGE 249 PHASE I, LLC’s Notice Address:
c/o Lovett Industrial
401 Franklin St., Suite 2555
Houston, Texas 77002
Attn: Carmen Pearson