

AGREEMENT REGARDING GAS SERVICE TO GRAND PARKWAY TOWN CENTER AT southwest corner of Grand Parkway and State Highway 249 IN TOMBALL, TEXAS

This Agreement Regarding Gas Service to GRAND PARKWAY TOWN CENTER at the southwest corner of Grand Parkway (SH 99) and State Highway 249 in Tomball, Texas (“Agreement”) is entered into by and between the City of Tomball, Texas (“City”) and A-K 133 HWY 249 - Grand Parkway, L.P (“Owner”) (collectively, “Parties”).

RECITALS

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

WHEREAS, Owner is developing GRAND PARKWAY TOWN CENTER, Commercial Development, at the southwest corner of Grand Parkway (SH 99) and State Highway 249 in Tomball, Texas (“GRAND PARKWAY TOWN CENTER”), which requires gas service.

WHEREAS, City has the gas supply capacity to serve GRAND PARKWAY TOWN CENTER.

WHEREAS, City is in the process of constructing the necessary infrastructure to provide gas service to GRAND PARKWAY TOWN CENTER.

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

WHEREAS, the Parties agree that Owner may develop additional commercial buildings at the above mentioned property and on adjacent land in the future that require gas service, but this Agreement only applies to gas service for GRAND PARKWAY TOWN CENTER.

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

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 GRAND PARKWAY TOWN CENTER

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

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 supply gate and appurtenances that amounts to 33.33% of the total project cost. 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 city gas supply gate and appurtenances 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 the **southwest corner of Grand Parkway (SH 99) and State Highway 249**, 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 GRAND PARKWAY TOWN CENTER.

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, 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 the earlier of the following to occur: (a) first (1st) day the City provides gas service to GRAND PARKWAY TOWN CENTER, 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 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

This Agreement cannot be modified or amended without the written consent of the Parties attached to and made part of this Agreement.

[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

A-K 133 HWY 249 – Grand Parkway, LP

By: _____
Name: _____
Title: _____