

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”), effective as of the ____ day of January, 2024 (“the Effective Date”), is made and entered into by and between the City of Tomball, Texas, a home-rule municipality, (“City”), and FLS Development LLC, , a Texas limited liability company, with offices located at 17119 Lakeway Park Drive, Tomball, Texas, 77375 (“Developer”).

WHEREAS, the Developer owns approximately 50.105 acres of real property depicted on Exhibit A attached hereto (the “Property”) located partially within the extraterritorial jurisdiction of the City and partially within the corporate limits of the City as a single-family residential development with a small commercial component(the “Property”); and

WHEREAS, the City and Developer desire for the Property to be developed in a high quality manner that creates a benefit for all residents in the City; and

WHEREAS, the Developer has requested that the City (i) create a public improvement district encompassing the residential component of the Property, and (ii) enter into a development agreement relative to the Property (together, the Developer Request”).

WHEREAS, the Developer hereby agrees to pay for the professional services provided to the City by the consultants listed on Exhibit “B” relating to Developer’s Request, and by additional consultants approved in writing by the Developer (collectively, the “Consultants”).

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 City and the Developer (collectively “Parties” and each individually a “Party”) agree as follows:

1. Recitals. The representations, covenants, and recitations set forth in the foregoing are material to this Agreement and are incorporated into and made a part of this Agreement.

2. Exhibits. The Exhibits referenced in this Agreement, and listed below, are incorporated herein for all purposes, specifically:

Exhibit A – Property
Exhibit B – City Consultants
Exhibit C – Scope of Services

3. Payment for Professional Services.

a. The Developer agrees to, and shall, pay all invoices from the City for Professional Services described in Exhibit C relating to the City’s consideration of the Developer’s Request and its impact on the City, including, but not limited to, its impact on the City’s financial structure, land development, subdivision and zoning plans, infrastructure needs and demands, ordinance creation and revision, all on and off-site matters necessitated by the proposed development and drafting of all necessary agreements (the “Scope of Services”).

b. The Consultants will invoice City approximately every thirty (30) days with a detailed billing statement of all Professional Services rendered in accordance with this Agreement, including invoices for Professional Services rendered prior to the Effective Date.

c. Within five (5) business days after the execution of this Agreement, the Developer shall deliver to the City \$50,000.00 to be used for the sole purpose of paying for Professional Services. The payment shall be placed in a segregated account of the City. Upon request, City shall provide to the Developer a statement identifying all disbursements from the account. If the City determines that the Professional Services fees to perform the services described herein will exceed the amount delivered by Developer pursuant to this Subsection 3.c., the City shall notify Developer, and Developer, within ten (10) days, shall replenish the segregated account with an amount sufficient to cover the next sixty (60) days of projected expenses as determined by the City.

4. Effect of Agreement. This Agreement shall not: (a) confer upon the Developer any vested rights or development rights with respect to the Property, and more specifically, this Agreement does not constitute a permit under Chapter 245 of the Texas Local Government Code, as amended; (b) bind or obligate the City to approve any documents or agreements related to the development of the Property including, but not limited to, any zoning rights; or (c) be considered an impact fee.

6. Termination. Either Party may terminate this Agreement for any reason or for no reason by providing at least five (5) 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 Consultants for all Professional Services incurred through the date of termination; however, any excess funds remaining after such payments have been made shall be promptly refunded to the 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.

7. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the provision of Professional Services in connection with the negotiation and drafting of documents necessary to develop the Property in a manner that benefits the City and the Developer. This Agreement shall confer no vested rights or development rights concerning the Property or to the Developer unless specifically enumerated herein or otherwise mandated by law. Further, this Agreement provides no assurances, promises, or covenants by the City to approve any development in or on the Property or to provide funds or issue obligations to pay any costs relating to the development of the Property.

8. Amendment. This Agreement may only be amended by written instrument signed by the Developer and the City.

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

10. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered 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 Tomball, Texas
401 Market Street
Tomball, TX 77375

With a copy to: Attn: City Attorney
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, TX 77019

To the Developer: FLS Development, LLC
Attn: Kyle Friedman
17119 Lakeway Park Drive
Tomball, TX 77375

With a copy to: Coats Rose, P.C.
Timothy Green
9 Greenway Plaza, Suite 1000
Houston, Texas 77046

11. 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.

12. 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 only Harris County, Texas.

13. 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 the City Manager may deem appropriate.

14. Iran, Sudan and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, 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 company 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 than controls, is controlled by, or is under common control with the Developer and exists to make a profit.

15. Petroleum. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section. As used in the foregoing verification, "boycott energy companies" shall mean, without an ordinary business purpose, 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 with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section 16.26 shall survive termination of the Agreement until the statute of limitations has run.

16. Firearms. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the Issuer to comply with such Section. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade

association: (a) means, with respect to the firearm entity or firearm trade association, to: (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (b) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. As used in the foregoing verification, (a) 'firearm entity' means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) 'firearm trade association' means a person, corporation, unincorporated association, federation, business league, or business organization that: (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual); (ii) has two or more firearm entities as members; and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit. Notwithstanding anything contained herein, the representations and covenants contained in this Section 16.27 shall survive termination of the Agreement until the statute of limitations has run.

17. Anti-Boycott. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, 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. 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. Notwithstanding anything contained herein, the representations and covenants contained in this Section 16.23 shall survive termination of the Agreement until the statute of limitations has run.

18. Form 1295. The Developer will provide a completed and notarized Form 1295 generated by the Texas Ethics Commission's electronic filing application in accordance with the

provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the Texas Ethics Commission (a "Form 1295"), in connection with entry into this Agreement. Upon receipt of the Developer's Form 1295, the City agrees to acknowledge the Developer's Form 1295 through its electronic filing application. The Developer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, the City is not responsible for the information contained in the Developer's Form 1295 and the City has not verified such information.

19. 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.

20. 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.

21. Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with all applicable City ordinances. The Developer hereby certifies, represents, and warrants that the individual executing this Agreement on behalf of the Developer is duly authorized and has full authority to execute this Agreement and bind the Developer to the same; that Developer is duly authorized to transact business in the State of Texas; and, that Developer is in good standing.

[Execution Pages to Follow]

**CITY OF TOMBALL, TEXAS
(CITY)**

By: _____
City Manager

ATTEST:

By: _____
City Secretary

STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of January, 2023, by _____, City Manager of the City of Tomball.

Notary Public, State of Texas

FLS DEVELOPMENT, LLC

By: _____

Name: Shawn Speer

Title: Manager

Date: _____

By: _____

Name: Shonna Speer

Title: Manager

Date: _____

STATE OF TEXAS

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§
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COUNTY OF HARRIS

This instrument was acknowledged before me on January 10, 2024, by Shawn Speer, Manager of FLS Development, LLC, a Texas Limited Liability Company, on behalf of said company.



Christina Marie Wright
Notary Public, State of Texas

STATE OF TEXAS

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§
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COUNTY OF HARRIS

This instrument was acknowledged before me on January 10, 2024, by Shonna Speer, Manager of FLS Development, LLC, a Texas Limited Liability Company, on behalf of said company.



Christina Marie Wright
Notary Public, State of Texas

EXHIBIT A

PROPERTY

OVERALL ACREAGE

49.301 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, Harris County, Texas, being that certain called 31.994 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-170674, that certain called 17.307 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-171232, a portion of that certain Reserve "A" and Lot 1 of Brandt Holdings, a subdivision as shown on map or plat recorded under Film Code Number 679589 of the Map Records of Harris County, Texas, a portion of those certain Lots 489, 490, 495, 496, 497 and 498 of Tomball Townsite, a subdivision as shown on map or plat recorded under Volume 2, Page 65 of the Map Records of Harris County, Texas and those certain Lots 491, 492, 493 and 494 of said Tomball Townsite, said 49.301 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found in the Southerly line of that certain Restricted Reserve "J" of The Estates at Willow Creek, a subdivision as shown on map or plat recorded under Film Code Number 540246 of the Map Records of Harris County, Texas, for the Northeasterly corner of that certain called 2.3291 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2016-558665 and the Northerly Northwest corner of said 17.307 acre tract;

Thence, N 87° 49'3 5" E, along the Southerly line of said Restricted Reserve "I" of The Estates at Willow Creek, the Southerly line of that certain called 11.98 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number U517222 and the Southerly line of that certain Restricted Reserve "A" of Willow Creek Pet Ranch of Tomball, a subdivision as shown on map or plat recorded under Film Code Number 683259 of the Map Records of Harris County, Texas, a distance of 2,003.38 feet to the Northeasterly corner of said 31.994 acre tract;

Thence, S 03°07'21" E, along the Westerly line of that certain called 0.5045 of one acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V343704, a distance of 232.39 feet to a 1/2 inch iron rod found in the Northwesterly line of that certain Block 2 of Country Club Greens Section Two Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas, for the Southwesterly corner of said 0.5045 acre tract;

Thence, S 42°56'22" W, along the Northwesterly line of said Block 2 of Country Club Greens Section Two Replat, the Northwesterly line of that certain Block I of said Country Club Greens Section Two Replat, the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat-Phase Two, a subdivision as shown on map or plat recorded under Film Code Number 540231 of the Map Records of Harris County, Texas and the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat, a subdivision as shown on map or plat recorded under Film Code Number 519225 of the Map Records of Harris County, Texas, a distance of 1,846.30 feet to a 5/8 inch iron rod found for the Southeasterly corner of that certain called 5.3977 acres of land described deed recorded in the Official Public Records of Real

Property of Harris County, Texas, under County Clerk's File Number P792577 and the most Southerly corner of said 31.994 acre tract;

Thence, N 13°37'50" W, along the Easterly line of said 5.3977 acre tract and the Easterly line of that certain called 5.5000 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P964270, a distance of 558.86 feet to a 5/8 inch iron rod found for the Northeasterly corner of said 5.5000 acre tract and the Southeasterly corner of said 17.307 acre tract;

Thence, S 56 ° 48'54" W, along the Northerly line of said 5.5000 acre tract and the Northerly line of that certain called 1.000 acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number X5 I 7792, a distance of 423.87 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of that certain Lot 1, Block I of Huffsmith Kohrville Food Court, a subdivision as shown on map or plat recorded under Film Code Number 701507 of the Map Records of Harris County, Texas;

Thence, N 11 °23' 19" W, along the Easterly line of said Lot 1, Block I of Huffsmith Kohrville Food Court, a distance of 290.49 feet to a 5/8 inch iron rod with cap found for the Northeasterly corner of said Lot 1, Block 1 of Huffsmith Kohrville Food Court and an interior corner of said 17.307 acre tract;

Thence, S 76° 00'34" W, along the Northerly line of said Lot I, Block 1 of Huffsmith Kohrville Food Court, a distance of 412.84 feet to a 5/8 inch iron rod with cap found in the Easterly right-of-way line of Huffsmith Kohrville Road (variable width right-of-way);

Thence, along the Easterly right-of-way line of said Hufsmith Kohrville Road, the following courses and distances:

N 20°20'37" W, a distance of 284.48 feet to a 5/8 inch iron rod found for the Southwesterly corner of that certain called 0.3634 of one acre of land dedicated for the widening of Hufsmith Kohrville Road by said map or plat of Brandt Holdings;

N 87° 26'22" E, a distance of 24.68 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of said Reserve "A" of Brandt Holdings and the Southeasterly corner of said dedication;

N 20' 18'43" W, a distance of 437.48 feet to a 5/8 inch iron rod with cap found for a point of curvature to the right;

In a Northwesterly direction, with said curve to the right, having a central angle of 01'25' 11 " , a radius of 1950.00 feet, an arc length of 48.32 feet, a chord bearing of N 19'36'08" W and a chord distance of 48.32 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of said 2.3291 acre tract;

Thence, N 87° 37'27" E, along the Southerly line of said 2.3291 acre tract, a distance of 441.49 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of said 2.3291 acre tract;

Thence, N 02'23'19" W, along the Easterly line of said 2.3291 acre tract, a distance of 269.92 feet to the POINT OF BEGINNING and containing 49.301 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

TRACT 1

0.8041 of one acre or 35,026 square feet of land situated in the Elizabeth Smith Survey, Abstract Number 70, Harris County, Texas, being a portion of that certain Unrestricted Reserve "A" of Tomball Greens, a subdivision as shown on map or plat recorded under Film Code Number 440128 of the Map Records of Harris County, Texas, said 0.8041 of one acre or 35,026 square feet of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the Southeasterly line of that certain called 0.1262 of one acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V308253, for the Northeasterly corner of that certain Lot 9, Block 2 of Country Club Greens Section Two-Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas;

Thence, N 42'56'22" E, along the Southeasterly line of said 0.1262 acre tract and the Southeasterly line of that certain called 1.879 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2020-279347, a distance of 163.90 feet to a 1/2 inch iron rod found for the Northwesterly corner of that certain Lot 6, Block 2 of Country Club Greens Sec. Two, a subdivision as shown on map or plat recorded under Film Code Number 491143 of the Map Records of Harris County, Texas;

Thence, S 15' 43'52" E, along the Westerly line of said Lot 6, a distance of 270.27 feet to a 1/2 inch iron rod found for the Northwesterly right-of-way line of North Country Club Green Drive (60 foot Permanent access easement), for the Southwesterly corner of said Lot 6;

Thence, S 56'26'08" W, along the Northwesterly right-of-way line of said North Country Club Green Drive, a distance of 147.07 feet to a 1/2 inch iron rod found for the Southeasterly corner of said Lot 9;

Thence, N 15'43'52" W, along the Easterly line of said Lot 9, a distance of 230.09 feet to the POINT OF BEGINNING and containing 0.8041 of one acre or 35,026 square feet of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

EXHIBIT B

CITY CONSULTANTS

Bracewell

Hilltop Securities Inc.

P3Works

Bond Attorneys

Financial Advisor

Assessment Consultant

Engineering Firm

EXHIBIT C

SCOPE OF SERVICES

The City of Tomball Professional Staff and its supporting consultants shall review all aspects of Developer's Request, including the creation and levy of assessments within a Public Improvement District (PID), for the development of the Property (the "Project"):

1. Determine if there is a need for additional public safety personnel, equipment, and/or facilities to serve the Project and provide a budget estimate for public safety.
2. Review the Water Master Plan, determine what system upgrades are required to serve the Project, and provide a budget estimate for water system improvements.
3. Review the Wastewater Master Plan, determine what system upgrades are required to serve the Project, and provide a budget estimate for wastewater system improvements.
4. Determine what system upgrades are required downstream to serve the Project, and provide a budget estimate for storm drainage system improvements.
5. Determine if there is a need for additional solid waste personnel, equipment, and/or facilities to serve the Project and provide a budget estimate for solid waste services.
6. Determine if there is a need for additional personnel, equipment, and/or facilities to provide park and recreational opportunities to the Project and provide a budget estimate.
7. Review any thoroughfare plans and park plans to determine if there is a need for roadway improvements, to include additional traffic signals and street lighting, and trail improvements to serve the Project and provide a budget estimate.
8. Review the City's development procedures to determine the planning, zoning, and subdivision actions required to support the project and provide a budget estimate.
9. Review all financial and legal requirements of the Project applicable to City administration of the Project and provide a budget estimate of the effort required to evaluate and prepare legal and financial documentation necessary to establish and manage the Project for the life of a PID.
10. Provide financial and legal services in connection with the negotiation and drafting of all agreements between the Developer and the City relating to the development of the Property including, without limitation any financing and development agreements.
11. Provide financial and legal services in connection with the creation administration and management of a PID relating to all or part of the Property including, without limitation, the drafting of all resolutions, ordinances, service and assessment plans and bond issuance documents, if any.

