

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “**Agreement**”), effective as of the **5th day of July, 2022**, (the “**Effective Date**”), is made and entered into by and between the **City of Blue Ridge, Texas**, a Texas general law municipality organized and operating pursuant to its ordinances and the laws of the State of Texas (the “**City**”), and **COMPANY NAME**, a Texas **limited liability company** (the “**Company**” or “**Developer**”), the developer of certain Property described below and located in the City limits and/or the extra territorial jurisdiction (“**ETJ**”) of the City.

WHEREAS, the Developer seeks to develop, and obtain development rights with respect to, a planned development to be developed on approximately [REDACTED] acres of land which is located partially in the City limits and partially in the ETJ of the City of Blue Ridge, (the “**Project**”), which land is described on **Exhibit “A”** attached hereto (the “**Property**”); and

WHEREAS, the City and the Developer acknowledge that the development will require the City to retain independent, third-party consultants to provide professional services relating to the Project including, but not limited to, engineering services, and legal services determined by the City in its sole judgment (collectively, the “**Professional Services**”), which will be needed to (i) assess the City’s current ordinances, and potentially draft new ordinances related to the Project, (ii) assess Project infrastructure needs and demands, including traffic needs and demands, City services needs and demands, and water and wastewater infrastructure needs and demands, and (iii), the negotiation of a development agreement for the Project, and

WHEREAS, the Developer hereby agrees to pay for Professional Services provided by the consultants listed on **Exhibit “B”** and by additional consultants approved in writing by the Developer (collectively, the “**Consultants**”) subject to the terms of this Agreement; and

WHEREAS, the City Council of the City, by and through this Agreement, shall maintain sufficient controls to ensure that the public purpose and best interests of the City are carried out.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration (including the payment of the Developer to the City of \$100.00 cash), 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. That 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. All Exhibits referenced in this Agreement, and listed below, are incorporated herein for all purposes; specifically

- Exhibit “A” – Property Description and Depiction
- Exhibit “B” – Approved Consultants

3. Payment for Professional Services. Subject to the terms and provisions of this Agreement, the Developer shall be responsible for payment of all invoices of Consultants for Professional Services relating to the City’s review of the Project’s impact on the City’s subdivision

and zoning plans, infrastructure needs and demands, ordinance creation and revisions, and other on-site and off-site matters necessitated by the proposed development of the Property, and the financing of certain infrastructure for the development of the Property, as follows:

- (a) The Consultants will invoice the City approximately every thirty (30) days with a detailed billing statement of all Professional Services rendered in accordance with this Agreement, excluding invoices for Professional Services rendered prior to the Effective Date.
- (b) Deposits – Initial Payment and Replenishment. Within thirty (30) days after the execution of this Agreement, the Developer shall deliver to the City funds in the amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) (“**Initial Payment**”) to be used as a deposit towards the payment of total costs incurred for Professional Services for City Consultants. The City agrees to hold the Initial Payment in a separate, interest-bearing fund (the “**Escrow Fund**”) maintained by the City which may only be used by the City for payment of the Professional Services related to the Project. Developer shall pay and subsequently replenish amounts on deposit in the Escrow Fund by delivering additional funds in \$10,000 increments to City within ten (10) business days of written notice from City that the balance in the Escrow Fund has decreased to less than \$2,000. The parties understand and agree that if the Developer fails to pay and/or make replenishment payment(s) in accordance with the requirements of this **Section 3**, all work by City Consultants shall cease until such time as Developer deposits funds sufficient to comply with its obligations under this Section. The Initial Payment and all other funds delivered to the City by the Developer pursuant to this **Section 3(b)** shall be used by the City solely to pay for Professional Services as described in this Agreement.
- (c) Within five (5) business days after receipt of a request from Developer for copies of invoices received from a Consultant, the City shall forward such invoice to the Developer. The Developer shall have ten (10) days from receipt during which to review each invoice and to make objections. Attorney-client privileged information may be redacted from invoice by the City or the City Attorney. If the Developer objects to any portion of an invoice, the City, the Developer and the Consultant shall attempt to resolve the dispute within a reasonable period of time.

4. Effect of Agreement. This Agreement shall not: (a) bind or obligate the City to approve any documents or agreements related to the development of the Property; or (b) be considered an impact fee.

5. Vested Rights/Chapter 245 Waiver. This agreement shall confer no vested rights on the property, or any portion thereof. Nothing in this Agreement shall be implied to vest any rights in the parties. In addition, nothing contained in this Agreement shall constitute a “permit” as defined in Chapter 245, Texas Local Government Code and nothing in this Agreement shall be considered to provide the City with fair notice of Owner’s Project. **OWNER/DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE BASED**

UPON THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6. **Impact Fees.** Nothing in this Agreement, the Agreement itself, and the dealing between the Parties shall be considered an impact fee.

7. **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 or 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 (and in no case more than forty-five (45) days following the date of termination) 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. Section 5 of this Agreement shall survive termination for thirty years. Notwithstanding the foregoing, this Agreement shall automatically terminate upon the collection of the first annual installment of PID assessments associated with the Property if this Agreement is still in effect at such time.

8. **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the provision of Professional Services in connection with the development of the Property.

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

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

11. **Notice.** All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "Notice") must be in writing, shall be signed by or on behalf of the Party giving the Notice, and shall be effective as follows: (a) on or after the 10th business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by E-mail; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person and delivery by regular mail (with a confirming copy sent by E-mail). Notices given pursuant to this section shall be addressed as follows:

DEVELOPER:

COMPANY NAME
ATTN: CONTACT NAME
ADDRESS
CITY, ST ZIP
EMAIL

with copies to:

LAWYER NAME
ADDRESS
CITY, ST ZIP
EMAIL

CITY:

City of Blue Ridge, Texas
200 S. Main St.
Blue Ridge, Texas 75424

With a copy to:

Messer, Fort & McDonald, PLLC
Attn: Wm. Andrew Messer
6371 Preston Road, Suite 200
Frisco, Texas 75034
Email: andy@txmunicipallaw.com

12. Non-Recordation. This Agreement shall not be recorded. If the City or its Consultants files this Agreement of record, this Agreement shall automatically terminate as of the date of recordation, and no notice of termination shall be required by the Developer. If the Developer files this Agreement of record, the Agreement shall automatically terminate five (5) days following receipt by the City of a filed-stamped copy of the recorded Agreement. Each Party shall deliver a file-stamped copy of the recorded Agreement within one (1) business day of recordation.

13. 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

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

15. 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.

16. 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.

17. Authority for Execution. The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and the Mayor has full authority to execute this Agreement and bind the City to the same. 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.

18. Governmental Immunity. The parties agree that City has not waived its governmental immunity by entering into and performing its respective obligations under this Agreement.

19. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed herein

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IN WITNESS WHEREOF, this Professional Services Agreement has the Effective Date as of the day and year first written above.

CITY:

CITY OF BLUE RIDGE, TEXAS

By: _____
Rhonda Williams, Mayor

ATTEST:

Edie Sims, City Secretary

APPROVED AS TO FORM:

City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2022, by Rhonda Williams, Mayor of the City of Blue Ridge, on behalf of the City.

Notary Public, State of Texas
(Seal)

DEVELOPER:

COMPANY NAME
a Texas **limited liability corporation**

By: _____
Name, Title

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of ____, 2022, by _____, _____ (title) of (COMPANY NAME), a Texas **limited liability** corporation, on behalf of said corporation.

Notary Public, State of Texas
(Seal)

EXHIBIT "A"
PROPERTY DESCRIPTION AND DEPICTION
LEGAL DESCRIPTION (approx. [REDACTED] acres)

PROPERTY DEPICTION

EXHIBIT "B"
APPROVED CONSULTANTS AND RATES

City's Attorney	Billing Rate \$350 per hour for principal or senior associate; \$275 per hour for associates; \$85 per hour for paralegals. Opinion letters for bonds will be separate.
City's Engineer	As reasonably determined by City to include engineering and planning.
City's Bond Counsel	As reasonably determined by City.
Financial Advisor	As reasonably determined by City.
PID Administrator	As set forth in an executed contract for PID administration services approved by the City.