

UTILITY AGREEMENT
BY AND BETWEEN
BAYBROOK MUNICIPAL UTILITY DISTRICT NO. 1,
BC-SB BAYBROOK JV, LLC, AND
THE CITY OF LEAGUE CITY, TEXAS

STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

THIS UTILITY AGREEMENT (the "Agreement") made and entered into as of the _____ day of _____, 2024 by and between **BC-SB BAYBROOK JV, LLC**, a Texas limited liability company ("Developer"); **BAYBROOK MUNICIPAL UTILITY DISTRICT NO. 1**, a body politic and corporate and governmental agency created and operating under the provisions of Chapters 49 and 54, Texas Water Code, and pursuant to Article XVI, Section 59, Texas Constitution (hereinafter collectively the term "District" shall refer to both Developer and Baybrook Municipal Utility District No. 1, as the intent of this Agreement is for Developer to assign all rights and responsibilities to said District. Thus, the representations herein by said Baybrook Municipal Utility District No. 1 at this time represent Developer's commitment to cause or direct the same to occur); and the **CITY OF LEAGUE CITY, TEXAS**, a municipal corporation (the "City").

WITNESSETH

For and in consideration of the mutual promises, obligations, covenants, and benefits set forth, the District and the City contract and agree as follows:

ARTICLE I
Background and Representations

Section 1.01. Background.

The District was originally created by Order of the Texas Commission on Environmental Quality (the "TCEQ") on July 9, 1984, and operates under Chapters 49 and 54 of the Texas Water Code for the purpose of providing water, sanitary sewer, and drainage to serve the land within its boundaries. The District was subsequently granted park and recreational and road powers, including the authority to construct and finance roads. Originally, the District contains approximately 884.330 acres of land in Harris County, Texas. The boundaries of the District are described by metes and bounds in **Exhibit "A,"** which is attached hereto and incorporated herein by reference for all purposes.

The District has petitioned the City to annex approximately 450 acres of land, as more adequately described and shown on **Exhibit "B"** (the "Clearfield Tract"). The

Clearfield Tract will be or currently is completely inside the City's city limits. As a result, both the City and the District function in a common orbit and have some common duties and responsibilities to the present and future landowners.

The District will acquire and construct a water distribution system and a sewage collection system to serve the Clearfield Tract and works and improvements necessary to properly drain the area within its boundaries. Additionally, the District will acquire and construct certain parks and recreational facilities, storm water detention facilities, and roads to serve the Clearfield Tract. The District will make adequate arrangements so that it will have the financial capability to enable it to acquire and construct the needed facilities and to discharge any obligations incurred in acquiring and constructing such facilities.

The City is a municipal corporation and is operating under a Home Rule Charter adopted under the laws of the State of Texas. The City has the power under the laws of the State of Texas to acquire, own, and operate a water and sanitary sewer system and works and improvements necessary for the drainage of the lands in the City. The City also has the authority, pursuant to Article 402.014 et seq., Local Government Code, as amended, to contract with a district organized under the authority of Article XVI, Section 59, of the Constitution of Texas, whereby the district will acquire or construct, for the City water supply or treatment systems, water distribution systems, sanitary sewer collection or treatment systems or works or improvements necessary for the drainage of lands in the City, roads, park and recreational facilities that are also included in the Clearfield Tract.

In order to provide a water distribution system, sanitary sewer collection system, drainage works and improvements, park and recreational facilities, and roads to serve that portion of the City which lies within the boundaries of the District and which lies inside the Clearfield Tract; in order to assure that the District will have the financial capabilities to extend the services to the present and future landowners within the boundaries of the District; in order to secure the commitment of the District to extend the services without discrimination and on the same basis as extension of services made to all other landowners in the District; and in consideration of the District constructing the System (hereinafter defined), the City is willing to commit and obligate itself to accept title to portions of the System as provided herein and to operate and maintain the portions of the System as set forth herein.

The District plans to proceed at the earliest possible time, in an expeditious manner, with the acquisition and construction of the necessary water, sanitary sewer, and drainage systems to serve all the land within the District, which is also within the Clearfield Tract, without discrimination and without preference toward any particular landowner or landowners. The District is willing to commit to extend utilities as required by this Agreement.

In order to assure the continuing and orderly development of the land and property within the District, the District and the City desire to enter into this Agreement whereby the District will acquire and/or construct local and general benefit systems, improvements, facilities, equipment, and appliances necessary for a water distribution, sanitary sewer collection, and drainage system, and will purchase, in the form of capital recovery fees, water and wastewater treatment capacities to serve the area within the District, as provided in this Agreement in accordance with all requirements of the City, in order that all of the land and property in the District will be placed in the position ultimately to receive adequate water, sanitary sewer, and drainage services. This Agreement further sets forth the terms and conditions pursuant to which the District may fund, design, and construct certain road and park and recreational facilities.

Section 1.02. Definitions.

a. **Approving Bodies.** The term "Approving Bodies" shall mean the City, the TCEQ, the Texas Department of Health, and any other federal, state, county, or local agency having jurisdiction.

b. **Bonds and Bond Date.** The term "Bonds" as used in this Agreement shall mean the District's bonds, notes, or lease obligations payable from ad valorem taxes, which it issues from time to time that apply and pertain to the Clearfield Tract. The term "Bond Date" shall mean the date of issuance of a series of Bonds.

c. **Capital Recovery Fees.** The term "Capital Recovery Fees" shall have the same meaning as such term is used in City Code of Ordinance 2023-15 for water and wastewater and the City Code of Ordinance 2021-32 for roadways, as hereafter amended, or such similar capital recovery fee ordinance then in effect. The Parties agree the City may amend and change the Capital Recovery Fees from time to time.

d. **City.** The term "City" shall mean the City of League City, Texas, a municipal corporation, and home rule city.

e. **Construction Funds.** The term "Construction Funds" shall mean money required by this Agreement to be deposited into the Construction Fund to be created pursuant to Section 3.09 of this Agreement.

f. **Developer.** The term "Developer" is initially BC-SB Baybrook JV, LLC and thereafter shall be any individual, partnership, corporation, or other entity that develops land for subdivision and resale within the District and/or applies to use General Benefit Facilities within the City.

g. **District.** The term "District" shall mean Baybrook Municipal Utility District No. 1, a body politic and corporate and governmental agency created and operating under the provisions of Chapters 49 and 54, Texas Water Code, as amended, and pursuant to Article XVI, Section 59 and Article III, Section 52 of the Texas Constitution and, where appropriate, the Board of Directors thereof.

h. **District Engineer.** The term "District Engineer" shall mean the independent engineering firm, which may be employed by the District. The District's current Engineer is LJA Engineering.

i. **Detention System.** The term "Detention System" shall mean that portion of the Drainage System that includes the District's internal stormwater detention facilities included in the Clearfield Tract.

j. **Drainage System.** The term "Drainage System" shall mean the District's Drainage System as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same included in the Clearfield Tract.

k. **Engineering Report.** The term "Engineering Report" shall mean a study, analysis, or report of the District Engineer describing the needed water, sewer, and drainage, road and recreational facilities to serve the area within the District for the Clearfield Tract.

l. **General Benefit Facilities.** The term "General Benefit Facilities" shall be defined as such term is defined in City Code of Ordinance 2023-15 for water and wastewater Capital Recovery Fees, as hereafter amended, or such similar capital recovery fee ordinance then in effect.

m. **Local Benefit Facilities.** The term "Local Benefit Facilities" shall be defined as such term is defined in City Code of Ordinance 2023-15 for water and wastewater Capital Recovery Fees, as hereafter amended, such similar capital recovery fee ordinance then in effect.

n. **Park System.** The term "Park System" shall mean the District's park and recreational facility system in the Clearfield Tract as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

o. **Phase or Proposed Extension.** The term "Phase" or "Proposed Extension" shall mean any part of the System to be acquired or constructed to serve an area that it is economically feasible to serve.

p. **Road System.** The term “Road System” shall mean the public road improvement system, and facilities in aid thereof, intended to serve the District and the Clearfield Tract, as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way, and sites required for same.

q. **Sanitary Sewer System.** The term "Sanitary Sewer System" shall mean the District's sanitary sewer system and only the portion that is located in the City limits to serve the Clearfield Tract, as it now exists or as it may be acquired, constructed, improved, and extended in the future, including necessary easements, rights-of-way and sites required for same.

r. **Security Interest.** The term “Security Interest” means the interest granted pursuant to Section 6.01 hereof in the System to serve property withing the District.

s. **System.** The term “System” shall mean the Water System, Sanitary Sewer System, and/or Drainage System described in Section 2.01 of this Agreement and/or the water supply and sewage treatment capacities described in Section 6.03 of this Agreement that serve the Clearfield Tract. The System will also include the Road System and the Park System that serve the Clearfield Tract.

t. **TCEQ.** The term “TCEQ” shall mean the Texas Commission on Environmental Quality or the subsequent Texas commission.

u. **Water System.** The term “Water System” shall mean the District’s water system that is located inside the City limits and serves the Clearfield Tract, as it now exists or as it may be acquired, constructed, improved, and extended.

Section 1.03. Representations by the District.

The District makes the following representations:

a. The District is a body politic and corporate, and a governmental agency created and operating under the provisions of Chapters 49 and 54, Texas Water Code, pursuant to Article XVI, Section 59 and Article III, Section 52, Texas Constitution, and are authorized and empowered by the provisions of Chapter 54, Texas Water Code, and Chapter 552 Local Government Code, as amended, to enter into this Agreement. Upon creation and by action of its Board of Directors, a certified copy of which will be provided to the City, the President and Secretary of the District shall be duly authorized to execute and deliver a complete acceptance of the terms and conditions of this Agreement.

b. The District has the power and authority to acquire and construct the System and has the power and authority, subject to the approval of the Approving Bodies and its

duly qualified electors at an election called for such purposes, to issue and sell unlimited tax bonds to acquire and construct the System to serve the present and future landowners within the District.

c. The District proposes to issue and sell its bonds from time to time, to acquire and construct the System to serve the area within the District and shall use its best efforts to procure from the appropriate federal, state, county, municipal, and other authorities the necessary permits and approval to issue and sell its bonds and construct the System.

d. It is currently contemplated that the System will be acquired and constructed in integral and operational stages sufficient to provide service to the area within the District as development proceeds. As the acquisition and construction of each such integral stage of the System is completed and becomes fully operational, the District shall transfer such stage of the System (except for parks and recreational facilities and storm water detention facilities) to the City free and clear of all liens, except for easements, restrictions, mineral, oil and gas, and mining rights and reservations, zoning laws and defects in title; provided, however, that such easements, restrictions, minerals, oil and gas and mining rights and reservations do not individually or in the aggregate or in combination materially interfere with the operation of the System. The City and the District recognize that, in the event that System components are financed and constructed as described in the first paragraph of Section 4.01, the District cannot acquire the System from the Developer until the TCEQ has approved the purchase and the District has sold its Bonds. As provided herein, the City upon completion of construction and its acceptance of the System has the right and duty to operate and maintain the System. The District agrees to formally convey the System including any warranties within 30 days from the date of completion and acceptance of the System, or, in the event of a Developer-constructed facility, 30 days after the delivery of its Bonds used to finance purchase thereof. In the event that the District fails to formally convey the System and such failure remains uncorrected after 10 days written notice, the City may, at its option, transfer operation and maintenance responsibility to the District. The formal conveyance to the City shall be subject to the Security Interest retained by the District, more particularly described in Section 6.01 of this Agreement, for the purpose of securing the performance of the City under Section 6.01 of this Agreement. At such time as the principal, interest, and redemption premium, if any, on the District's Bonds issued to acquire and construct the applicable integral stage of the System have been paid or provided for in full, the District shall execute a release of such Security Interest with respect to such integral stage and the City shall own such integral stage of the System free and clear of such Security Interest. All warranties of contractors and subcontractors, if any, and all other rights beneficial to the operation of the System will be transferred by the District to the City. Notwithstanding anything contained in this Agreement to the contrary, the City shall have no obligation to accept ownership or maintenance responsibility of park and recreational facilities or storm water detention facilities.

e. **THE DISTRICT AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS ASSERTED BY CONTRACTORS OR SUBCONTRACTORS (OR EMPLOYEES OF CONTRACTORS OR SUBCONTRACTORS) OF THE DISTRICT WITHOUT REGARD TO CAUSE OR CAUSES AND EXPRESSLY INCLUDING, TO THE EXTENT PERMITTED BY LAW, THE NEGLIGENCE OF THE CITY.**

Section 1.04. Representations of City.

The City makes the following representations:

a. The City is a home rule city operating under the laws of the State of Texas and is authorized and empowered by Article 552, Local Government Code, as amended to enter into this Agreement. By ordinance of the City Council, the Mayor has been duly authorized to execute and deliver this Agreement.

b. The City has the authority to levy, assess, and collect ad valorem taxes on property within the District and to use the taxes collected by it from property within the City, including the area within the District, as provided in this Agreement.

c. The City presently has or will have the power and authority to obtain the water supply and sanitary sewer treatment facilities necessary to properly serve the System to be acquired and constructed by the District.

d. The City will accept conveyances, as provided for herein, of the completed integral stages of the System (except for the Parks System and the Detention System), which have been acquired or constructed by the District in accordance with the terms and provisions of this Agreement.

ARTICLE II Description of System

Section 2.01. Description of System.

Preliminary plans and specifications of the System shall be prepared by the District Engineer in accordance with the requirements of the City. The System may include structures or improvements outside the boundaries of the District if reasonably necessary to serve the area within the District. All final plans and specifications for the System shall be submitted to the City staff for approval. The final plans and specifications for each integral stage of the System shall be prepared in accordance with the standards of the City in effect as of the date of submission thereof to govern the property located within the boundaries of the District the designated member of City staff for approval. If a Planned Unit Development ("PUD") is established to govern the property located within

the boundaries of the District, then this section shall not apply to the Park System as long as such facilities comply with such duly approved PUD.

Section 2.02. Design of the System.

The District shall design the System in accordance with sound engineering principles and in compliance with all requirements of the Approving Bodies. If necessary, the City shall join or cooperate in obtaining necessary permits, provided that all costs of obtaining such permits are paid by the District. If appropriate, such permits shall be in the name of the City.

Section 2.03. Quality of Materials.

Only material satisfactory for the intended purpose and meeting any requirements of the Approving Bodies shall be used by the District.

Section 2.04. Construction.

The District shall construct the System in accordance with the final plans and specifications. All changes of the final plans and specifications shall be submitted to the City for approval. Written approval shall be required for all General Benefit Facilities.

ARTICLE III Construction of the System

Section 3.01. Policy of Extension.

The District shall construct or extend the System in such stages as is economically feasible. The District shall proceed with the construction or extension of the System in an expeditious manner in such stages as is economically feasible from time to time in order that all of the areas within the District will eventually receive the benefits of water, sanitary sewer, and drainage services. Such extension shall be accomplished by the District in accordance with prudent and sound management principles. Accordingly, the District's duty to proceed with the construction or extension of the System shall be subject to and consistent with existing development trends within the District and surrounding areas, the marketability of developed lots and acreage within the District, the need for expansions to the System to serve areas within the District, the limitations imposed by Section 5.01 and 5.02 hereof, existing economic conditions, and existing conditions in the municipal bond market. When any party hereto determines that it is economically feasible to extend the System, or any part thereof, to a particular area, it shall so notify the other in writing or by the submission of new plats and construction plans. If either the District or the City does not agree with the determination of the other that it is economically feasible to extend the System or any part thereof to a particular area, then

it shall so notify the other in writing. Such dispute concerning the economic feasibility shall be resolved by arbitration under Section 9.02. In the event that the decision of the arbitrator or arbitrators favors economic feasibility, the District's obligation to extend the System or any part thereof shall remain limited by Article VI.

The District shall use commercially reasonable efforts to cause the timely construction and activation of all necessary lift stations required to serve property within the District. The District shall coordinate with the Developer and utility providers to ensure that power availability and lift station construction schedules are aligned to minimize the need for temporary bypass operations. As part of the first plan submittal for any public infrastructure within the development requiring a lift station, the Developer shall provide a utility coordination and lift station delivery schedule demonstrating that all required facilities can be completed and placed into service in accordance with this Agreement. Unless otherwise approved in writing by the City Engineer, the permanent power to serve any required lift station shall be made available no later than 180-calendar days after the recordation of the first plat for a residential lot within the District. Temporary pump and haul operations or other bypass pumping measures shall not extend beyond this timeline unless a written extension is granted by the City Engineer, which shall not be reasonably withheld if the Developer can demonstrate to the City reasonable efforts to request permanent power within 60 calendar days of recordation of the first plat for a residential lot within the District.

Section 3.02. Preparation of Final Plans and Specifications.

When the determination is made that it is economically feasible to construct or extend the System in a Phase, the District shall direct the District Engineer to prepare final plans and specifications of the Phase.

Section 3.03. Approval of Final Plans and Specifications.

Before the commencement of construction within the District, the District shall submit to the City all final plans and specifications of each integral stage of the System, or any part thereof, and secure the City's approval thereto. Whenever feasible, plans for interrelated or dependent systems should be submitted at the same time. If the City finds such plans and specifications to be in accordance with the City's standards existing at the time of review of any proposed plans and specifications, it shall approve the same. The construction of the System shall conform to the approved plans and specifications and to such standards and specifications as may be established from time to time by the City. Without limiting the generality of the foregoing, all water wells, water meters, flushing valves, valves, pipes, and appurtenances thereto installed or used within the District shall conform to the specifications of the City. Without limiting the generality of the foregoing, all water service lines and sewer service lines, lift stations, sewage treatment facilities, and appurtenances thereto installed or used within the District to serve the Clearfield

Tract shall comply with the City's standard plans and specifications. The final plans and specifications of the Phase shall be submitted to such Approving Bodies as may require such submission and the District shall use its best efforts to obtain any necessary approvals. After the final plans and specifications have been approved by all Approving Bodies, the District shall be authorized to proceed with construction as provided herein.

Section 3.04. Advertisement for Bids.

Construction contracts shall be let on a competitive bidding basis in accordance with the applicable requirements of Chapters 49 and 54, Texas Water Code, as amended, or any successor provisions. After preparation of final plans and specifications and their approvals as required by this Agreement, the District shall advertise for or solicit bids (as required) for the construction of the Phase described in the final plans and specifications. All bids shall include evidence of financial condition of the bidders. The City's representatives shall be notified of and invited to attend each pre-bid conference and the bid opening in accordance with the notice provision of Section 9.04 of this Agreement.

Section 3.05. Re-advertisement for Bids.

The District reserves the right to re-advertise for bids if the first bids are not acceptable to the District.

Section 3.06: Award of Construction Contract; Certain Contract Provisions.

If the District has on deposit Construction Funds in a sum sufficient to pay the construction costs of the proposed work or has reasonable assurance that such funds will be forthcoming, then the District shall enter into a contract or contracts with the contractor or contractors whose bids have been accepted by the District. The District shall award all construction contracts on the basis of the most advantageous bid by a responsible, competent contractor, in accordance with Chapters 49 and 54 of the Texas Water Code, as amended, and the rules of the TCEQ. The District may not award a contract for General Benefit Facilities to a contractor other than the contractor submitting the lowest responsible bid, unless such award complies with the statutory requirements regarding the award of public bids and is approved by the City. Each contract with the District shall comply with Chapters 49 and 54, Texas Water Code, as amended, provide for retainage in accordance with Section 49.273, Texas Water Code, as amended, or any successor provision, require a performance bond and a payment bond in accordance with applicable requirements of Texas Government Code, Ch. 2253, as amended, and/or Texas Property Code, as applicable, require workers' compensation insurance, builders' risk insurance, and public liability insurance in such sums as the District shall determine, and require a covenant and warranty to diligently prosecute the work in a good and workmanlike manner and in accordance with the final plans and specifications.

In addition to any other construction contract provisions, any construction contract for District's facilities shall include: (i) the construction contractor's two year warranty of work performed under the contract for public utilities and roads, along with a warranty bond, and the warranty period will start at receipt of final acceptance (ii) at a minimum, the insurance coverage required by the City for similar public works contracts, with the City named as an additional insured on such insurance policies, (iii) the contractor's indemnification of the City meeting the express negligence and conspicuousness doctrines and covering all claims by contractors, their employees, subcontractors and their employees, and (iv) the contractor's waiver of its workers compensation carrier's subrogation rights.

Section 3.07. The District to Pursue Remedies Against Professional Consultants, Contractors, and Subcontractors and Their Sureties.

In the event of the errors or omissions of any professional consultant, or a default of any contractor or any subcontractor under any contract made by it in connection with the Phase or in the event of breach of warranty with respect to any materials, workmanship or performance guarantee, the District will promptly proceed (subject to agreement by the parties to the contrary) either separately or in conjunction with others, to exhaust the remedies of the District against the professional consultant, the contractor or subcontractor responsible for such default, error, or omission, and against each such surety for the performance of such contract. The District agrees to advise the City of the steps it intends to take in connection with any such default, error, or omission. Any amounts recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing, after the deduction of the costs and expenses of collection, shall be deposited into the Construction Fund to be used by the District for constructing future extensions of the System.

If the District fails to take action, or if the City deems the action taken by the District was inappropriate, the City may, in its own name, or in the name of the District, prosecute or defend any action or proceeding or take any other action involving any such professional consultant, contractor, subcontractor, or surety that the City deems reasonably necessary and, in such event, the District hereby agrees to cooperate fully with the City and take all action necessary to effect the substitution of the City for the District in any such action or proceeding. Any amounts recovered by way of damages, refunds, adjustments, or otherwise in connection with the foregoing, after the deduction of the costs and expenses of collection, shall be deposited into the Construction Fund to be used by the District for constructing future extensions of the System. If the City brings an unsuccessful action against a professional consultant, contractor, subcontractor, or surety, the expenses of such action shall be borne equally by the City and District.

Section 3.08. Inspection During Construction.

The Director of Development Services for the City may request reasonable increases in the frequency and duration of District inspections and the District Engineer shall comply with such requests and shall make reports to the Director of Development Services as often as the Director of Development Services shall request and at least weekly, and shall recommend final acceptance of the facilities to the District's Board of Directors when appropriate. The District's Engineer shall file all required documents with the TCEQ. The City's representative and the District's representative shall meet as often as the City reasonably requests, and the District's Engineer can provide such representative the preceding week's daily inspection reports on a weekly basis and more frequently when requested by the City's representative. If the Director of Development Services for the City discovers that the construction, the District's inspection, or the materials are materially deficient, or not in substantial conformance with the approved plans, specifications, or sound engineering or construction practices, the Director of Development Services for the City shall notify and consult with the District's Engineer regarding the problem. The District's Engineer shall have a reasonable period of time in which to cure the problem or cause the problem to be cured. If the Director of Development Services and the District's Engineer are unable to resolve the problem and the District's Engineer is unable to cure the problem, the Director of Development Services reserves the right to require the District's Engineer to halt construction until problems are resolved. If it becomes necessary for the City to retain outside professional help to resolve such dispute, and if the cause of the dispute is the fault of the District, its suppliers, consultants or contractors, the District shall reimburse the city for the direct expense of such services to the extent allowed by law, otherwise the City shall bear such expenses.

Section 3.09. Proceeds of District's Bonds.

Proceeds of the District's Bonds may be used by the District for the following purposes:

- a. Payment of monies not to exceed the first two years interest on any series of District's Bonds. Capitalized interest is allowed only in amounts which are prudent and necessary to stabilize debt service requirements and District's tax rates.
- b. Payment of accrued interest on any series of Bonds from their date to the date of their delivery.
- c. Except as provided in paragraphs (1) and (2) above, proceeds received from the sale of any series of Bonds shall be deposited into the Construction Fund as Construction Funds and shall be used solely as provided in this Agreement as it may be amended from time to time, including pre-funding projects that make up the System.

Section 3.10. Disbursement from Construction Fund.

Monies in the District's Construction Fund shall be used only as authorized by Chapters 49 and 54, Texas Water Code, as amended, by the rules of the TCEQ, or by this Agreement, for the following purposes:

a. Payment for labor, services, materials, and supplies used or furnished in the construction of the System, or any part thereof, all as provided in the final plans and specifications therefore or as provided in change orders relating to the System, or any part thereof, that have been approved by the District, the District's Engineer, and the City with regard to payments for General Benefit Facilities, including payment for such labor, services, materials, and supplies used as herein specified whether said improvements are located within or without the District as long as the same is for the benefit of the District, payment for labor, services, materials, and supplies used or furnished to make any and all necessary improvements, extensions, additions, and repairs to the System, and payment for miscellaneous expenses incidental to any of the foregoing items.

b. Payment of legal and engineering fees and expenses relating to the creation and organization of the District, relating to the construction of the System, or any part thereof, and payment of the premiums on any required surety bond and payment of the premiums of all insurance required to be taken out and maintained during the construction of the System, or any part thereof, if not paid by the contractor pursuant to his contract with the District.

c. Payment of expenses incurred in seeking to enforce any remedy against any professional consultant, contractor, subcontractor or surety or any claim pursuant to Section 3.07.

d. Payment of the District's expenses in issuing and selling its Bonds, including legal and fiscal expenses.

e. Payment for all necessary lands, rights-of-way, easements, sites, equipment, buildings, structures, and facilities related to the System or any part thereof. The purchase price of land shall be in accordance with the rules of the TCEQ, i.e., at the "Developer's cost", which shall include taxes and carrying costs. For purposes of this requirement, the City's approval of the plans related to the particular project in question shall constitute approval of both the quantity of land needed for such site and the particular site itself. No further approvals shall be necessary for park and recreational facilities as long as such facilities comply with the Planned Unit Development Overlay District ("PUD") governing the property located within the boundaries of the District.

f. Payment of reasonable administrative and operating expenses incurred during construction of the System or any part thereof.

g. Payment to acquire the System, or any part thereof, as contemplated by Article IV of this Agreement, including a sum which may be allowed by the TCEQ as the cost of money to any third party constructing the System, or any part thereof, pursuant to Article IV of this Agreement.

h. Payment of such other fees, expenses, and items as may be approved by the District and the City with respect to General Benefit Facilities.

i. Pre-funding any design, testing, or construction of the System.

Except for payments under paragraphs 5 and 8 hereinabove and with regard to payments made under this Section, if a disbursement has received the approval of the TCEQ and the District, as applicable, the approval of the City shall not be required, provided such disbursement is in accordance with this Agreement.

Section 3.11. Authorization for Withdrawals from Construction Funds.

No money shall be withdrawn from the District's Construction Fund except by check, wire transfer, warrant, or voucher executed by three members of the Board of Directors of the District. No construction funds shall be used by the District except as is authorized by the following as applicable: Chapters 49 and 54, Texas Water Code, as amended; Chapter 7930, Texas Special District Local Laws Code; the rules of the TCEQ; and by this Agreement.

Section 3.12. Investment of Construction Funds.

Pending their use, the Construction Funds may be invested and reinvested as determined by the District in direct or fully guaranteed obligations of the United States of America or its agencies or the obligations of political subdivisions rated "A" or better by Moody's Investors Service, Inc. All investments of the District shall comply with the Public Funds Investment Act and the District's duly adopted Investment Policy. The District shall invest the Construction Funds so that it preserves its capital and liquidity, and the maximum earnings and profits thereon can be obtained, provided that such investment does not cause the Bonds to become arbitrage bonds within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended. Earnings and profits from investing in Construction Funds shall be deemed to be Construction Funds and shall be deposited into the Construction Funds. Nothing herein shall preclude the District from complying with the terms and conditions of its Bond Order or Resolution nor prohibit the District from making investments in accordance with the requirements of law.

Section 3.13. Surplus Construction Funds.

Surplus Construction Funds, if any, shall be used for future extension of the System pursuant to this Agreement or for such other purposes as approved by the TCEQ.

Section 3.14. Construction Audit.

The District shall have the construction costs of the System, or any part thereof audited in accordance with the rules of the TCEQ and the requirements of law. The District shall file with the City a copy of the Developer Reimbursement Audit and each annual audit. All District records, except as otherwise provided by law, shall be public records and shall be made available to the City during normal business hours.

Section 3.15 Applicability to Park System.

Sections 3.01 through 3.08 of this Article shall not apply the Park System, if (i) the City staff elects to waive such requirements or (ii) each of the following conditions are met:

- a. The proposed facilities of the park System comply with a Planned Unit Development that governs the property located within the boundaries of the District;
- b. The proposed facilities of the Park System have been designed in accordance with the with all applicable statutory and regulatory requirements; and
- c. The District has complied with all applicable requirements under Chapter 49, Texas Water Code, related to competitive bids for construction, development, improvement, or acquisition of the Park System.

ARTICLE IV

Construction by Third Parties and Acquisition by the District Section

4.01. Construction by Third Parties.

The rules and regulations of the TCEQ allow, under certain circumstances, the construction of water, sanitary sewer, and drainage facilities by a "developer" of property within a district for subsequent sale to the District. These rules as presently adopted would allow a Developer of property in the District to construct the System in stages and sell the same to the District. Any such third party must construct the System, or portion thereof, in accordance with the final plans and specifications approved by the City and in accordance with the provisions of this Agreement insofar as the same may be applicable. Without limiting the generality of the foregoing, any third party constructing facilities for sale to the District must comply with the applicable provisions of Article III of this Agreement.

Under the provisions of 30 Texas Administrative Code, Section 293.47, a third party is required to contribute 30 percent of construction costs as defined therein. It is, however, the policy of the City to encourage reasonable tax rates and bond issuance practices that foster the prudent issuance of Bonds and the long-term commitment of the Developer to achieve the development goals and economic feasibility projected in a particular bond issue. The City will allow those districts legally entitled to 100 percent reimbursement (30 TAC 293.47) to include such reimbursement in bond issues provided the costs qualify as permissible expenditures under the provisions of Section 3.10 of this Agreement and comply with the rules of the TCEQ, including the "Economic Feasibility" requirements as set forth herein and defined in 30 Texas Administrative Code 293.59 and is judged economically feasible in accordance with the process outlined in Paragraph (h) of this Section and based upon an evaluation of the criteria in Paragraphs (a) through (g) of this Section. The District hereby covenants and warrants that it will undertake the following to insure the economic feasibility of its bond issues:

a. Each ending debt service balance (cumulative balance) as shown in the District's cash flow analysis will be not less than 25 percent of the following year's debt service requirements.

b. For the District's first Bond issue, at least 25 percent of the projected value of homes, buildings, and/ or other improvements shown on the District's tax rate calculation shall be completed prior to advertising the sale of Bonds.

c. For second and subsequent Bond issues, the District shall have homes, buildings, or other improvements equal to 75 percent of the value of homes, buildings, or other improvements used in the projected tax rate calculations contained in all prior Bond issues. This value can be located in areas developed from prior Bond issues or a combination of prior Bond issue areas, proposed Bond issue areas, or future Bond issue areas.

d. For any Bond issue, the combined projected debt service tax rate, as defined in 30 TAC 293.59 referenced above, shall not exceed \$1.50.

e. For each Bond sale, the District shall demonstrate that, at final buildout, the District's projected net direct debt as a percentage of current and estimated certified assessed value will not exceed twenty (20%).

f. The District, as required in Section 5.02, will obtain the City's approval prior to the advertisement and sale of Bonds for projects to serve the Clearfield Tract. Whenever the District requests such approval, the District will provide the City with a copy of the Engineering Report and will certify to the City that the District has complied with the above-listed requirements. The City's approval process shall only include the matters listed in this Agreement.

The District may acquire a partially completed System or partially completed part of such System and complete the same in accordance with the provisions of Article III of this Agreement; provided, however, that nothing therein shall require the City to accept or maintain the System, or any part thereof, until the same has been completed and accepted by the City in accordance with the provisions of this Agreement.

ARTICLE V

Obligations to Extend the System

Section 5.01. Obligations of the District.

The District shall construct and extend the System in stages to serve the future users in the District so ultimately all the landowners in the Service Area within the District will be in a position to receive services from the System. Notwithstanding the foregoing, however, the District's obligation is subject to the provisions of Section 3.01 hereof. Furthermore, the District shall not be obligated to extend the System into an area if any of the following conditions exist:

- a. The City is in default under the provisions of this Agreement.
- b. The ratio of the District's bonded indebtedness to its assessed valuation after the issuance of the Bonds requested for the Phase based on 100 percent of the appraised value as set by the Harris Central Appraisal District exceeds:
 - 1. 25 percent during the first 24 months after the Bond date;
 - 2. 20 percent during the 24 months following the expiration of the initial 24-month period; and
 - 3. 10 percent thereafter.
- c. The ratio of the District's bonded indebtedness in connection with extending service to an area, to the projected assessed valuation of property in such area at full development, as estimated by the District's Engineer at 100 percent of the appraised value as set by the Harris and/or Galveston Central Appraisal District, is more than 10 percent.
- d. The District is unable to sell its Bonds pursuant to the provisions of this Agreement.
- e. The Attorney General of the State of Texas refuses to approve the District's Bonds, if such approval is required.

f. If the District's projected tax rate exceeds or would exceed the rate of \$1.00 per \$100 assessed valuation of taxable property assessed at 100 percent of fair market value the year after the District issues bonds for the Clearfield Tract.

g. The District fails to deannex the Clearfield Tract once the bonds are retired or the District issues debt that extends debt service payments further than 2060.

Section 5.02. Limitation on District's Bond Indebtedness and Covenant to Sell Bonds.

The District will issue and sell its Bonds for the purpose of acquiring and constructing the System as permitted herein; provided, however, the District shall not issue and sell its Bonds, if the ratio of the District's indebtedness to its assessed valuation at the time of issuance or sale based on 100 percent of the appraised value as set by the Harris Central Appraisal District exceeds: (a) 25 percent during the first 24 months after the Bond Date; and (b) 20 percent thereafter. For purposes of computing the limitation hereunder, the most current certificate of value issued by the Harris Central Appraisal District shall control. On January 1 of each year and at such other times as the parties may agree, the assessed valuation shall be estimated by the Harris Central Appraisal District for the purpose of computing the limitation hereunder with the consent of the Board of Directors of the District and the City Council of the City. After the assessed valuation is finalized in any year by Harris Central Appraisal District, such assessed valuation shall control for purposes of making the computations hereunder, unless the parties otherwise agree. The only debt to be considered in making the computation under Section 5.01 and this Section 5.02 is that debt occasioned by the issuance of Bonds as defined herein, and no other debt of the District shall be considered in making the calculations hereunder. The terms and conditions of the Bonds which the District shall sell from time to time for the purpose of constructing the System shall be reviewed and approved by the City Council. The District's Bonds shall expressly provide that the District shall reserve, at a minimum, the right to redeem said Bonds on any interest payment date subsequent to the 10th anniversary of the date of issuance or on any date thereafter without premium. Bonds (other than refunding bonds and bonds sold to a federal or state agency) shall only be sold after the taking of public bids therefore, and no Bonds shall be sold for less than 97 percent of par provided the net effective interest rate on Bonds so sold, taking into account any discount or premium as well as the interest rate borne by such Bonds, shall not exceed two percent above the highest average interest rate reported by the Daily Buyer in its weekly "20 Bond Index" during the 30-day period next preceding: (1) the date notice of the sale of the Bonds is given; or (2) the date of sale of the Bonds, whichever is greater. Bonds may be advertised or sold by the District only with the prior approval of the City Council. The Bonds of the District shall be sold to the lowest and best bidder after the District has advertised for and solicited bids. All Bonds of the District shall be approved by the Attorney General of the State of Texas.

Section 5.03. Grants.

The City shall reasonably cooperate with the District and any third parties in any application to obtain any governmental grants for the acquisition and construction of the System. Unless otherwise agreed, the costs of applying for a governmental grant shall be borne by the District and, furthermore, the District shall bear all direct and indirect expenses related to all grant applications and studies.

ARTICLE VI Ownership and Operation

Section 6.01. Ownership by City.

As the acquisition and construction of each integral stage of the System (except for parks and recreational facilities and storm water detention facilities) are completed and each integral stage of the System becomes operational, the District shall convey the same to the City, reserving, however, a Security Interest therein for the purpose of securing the performance of the City under this Agreement. Performance by the City shall include, but not be limited to, (1) providing the adequate maintenance and operation of the System; (2) providing the water and wastewater treatment capacity resulting from the purchase of water and wastewater Capital Recovery Fees; (3) providing reasonable and timely review and approval as required herein; and (4) maintaining the water distribution and wastewater collection line capacity as constructed by the District. At such time as the principal of and interest on the Bonds issued to acquire and construct the System, and redemption premium, if any, have been paid or provided for, the District shall execute a release of such Security Interest and the City shall own the System free and clear of such Security Interest. For purposes of this Article VI, the term "System" shall not apply to parks and recreational facilities and storm water detention facilities, and the City shall have no duty to accept ownership or maintenance obligations related thereto. Any parks and recreational facilities and storm water detention facilities located within the District will be maintained by the District or the homeowner's association serving land within the District.

Section 6.02. Operation by City.

As construction of each integral stage of the System is completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the final plans and specifications, or any modifications thereof, and in accordance with all applicable laws, rules, and regulations, the City will accept the same whereupon such portion of the System shall be operated and maintained by the City at its sole expense as provided herein. Notwithstanding anything contained in this Agreement to the contrary, the City shall have no obligation to accept ownership or maintenance responsibility of park and recreational facilities or storm water detention

facilities. Such acceptance shall be subject to (i) the District providing the City with the District Engineer's Certificate of Substantial Completion and the Affidavit of Bills Paid; (ii) the District providing the City with "as-built" drawings for each constructed Phase; and (iii) the District providing the City with any manuals or other material relating to the proper operation of the System. The City shall not be responsible for the cost of any repair to the System identified by the City as in need of repair prior to the City's acceptance. Thereafter, the City shall formally accept the System and such acceptance shall operate to transfer to the City all bond and warranties of the contractor and subcontractor. The City may accept temporary facilities under certain circumstances satisfactory to the City. Before such temporary facilities may be put in place, written agreements containing the criteria under which the temporary facilities will be removed must be executed by the City and the District. Nothing herein shall be deemed to require the City to accept or maintain any portion or part of the System that is not functionally integrated and operational (e.g., sewer lines not connected to an operating sewage treatment plant or paving not complete), until the City deems the System is operating in an acceptable manner. In the event the System has not been completed in accordance with the final plans and specifications, the City will advise the District in what manner said System does not comply and the District shall correct the same, whereupon the City shall again inspect the System and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the portions of the System which the City has accepted and provide service to all users within the District without discrimination consistent with current City service policy. The City's obligation to provide water supply to the System and treatment of sewage collected in the System shall be subject to the water supply and sewage treatment capacity paid for by the District by the payment of water and wastewater Capital Recovery Fees, subject to the rules, policies and ordinances of the City and the capacity of the System. The City agrees to reserve the capacities constructed by or paid for by the District to serve persons within the District.

Section 6.03. Water Supply and Sewage Treatment.

As a part of the operation of the portions of the System which have been accepted by the City, the City shall supply, in such quantities as the District has paid for (or is entitled to by City Ordinance or Agreement), to the District all of its requirements of potable water of such quality and in such quantity and at such pressure as may be required by the TCEQ and subject to the rated capacity of the water supply lines constructed by the District as may be agreed upon by the parties. Water from the City's existing water supply system shall be delivered to the System at a point to be agreed upon by the District and the City. The parties anticipate that the City will, as development occurs within the District and other areas, make the necessary modifications and enlargements to the City's water supply and wastewater treatment facilities in order that it will have sufficient capacity to supply such development. To enable the City to effectively manage water and wastewater treatment capacity needs, the District shall provide to the City by December 31 of each year during the term of this Agreement, a

written projection of new improvements and System Phases to be connected to the City's facilities during the next year and to provide such other information as the City may reasonably require evaluating its future water supply and wastewater treatment capacity needs. However, it is within the City's discretion to determine if and when the City may expand such facilities.

If the City has not constructed a regional wastewater treatment plant to serve the District, the Developer and/or District have the right to design, construct, own and operate one or more temporary wastewater treatment plants to serve the District, individually or jointly with other municipal utility districts in the area. The Developer/District's design and construction of the temporary wastewater treatment plant must be in compliance with the City's Master Water and Sewer Plan or the District must receive written approval of the design and construction of the plant. If the District must construct a temporary wastewater treatment plant, the District shall receive impact fee credits for the design, construction and testing costs for construction of the temporary wastewater treatment plant from the City. If the District, or another municipal utility district in the same wastewater service area is operating a temporary wastewater treatment plant, all sewer revenues collected by the City from the District's customers shall be rebated to the municipal utility district operating the temporary wastewater treatment plants.

Section 6.04. Rates.

The City shall fix such rates and charges for customers of the System as the City, in its sole discretion, determines is necessary; provided that the rates and charges for services afforded by the System will be equal and uniform to those charged other similar users within the City. All revenue from the System shall belong exclusively to the City, subject to Section 6.03 of this Agreement.

Section 6.05. Contractual Enterprise Fund.

a. The Parties agree that the District shall establish, maintain, and account for a separate fund for the water and sewer facilities operated by the District (the "Enterprise Fund"). The Enterprise Fund shall be used exclusively for the receipt of revenues and the payment of all expenses associated with the ownership, operation, maintenance, and consultant management of the District's water and sewer facilities. The Parties further agree that the District shall set and maintain water and sewer rates and charges at levels sufficient to ensure that revenues generated by the Enterprise Fund are adequate to cover all costs and expenses incurred in connection with the operation and maintenance of such facilities.

b. The Parties acknowledge that the District receives a portion of sales and use tax revenue pursuant to that certain Strategic Partnership Agreement ("SPA") between

the City and the District, as may be amended from time to time. The Parties agree that the District may deposit and use revenues received under the SPA to support the District's Enterprise Fund, including but not limited to payment of costs for water, sewer, drainage, or other utility facilities and services that benefit property within the District or are otherwise necessary to provide service to customers of the District. Such use of SPA funds shall be in addition to any other lawful use authorized under the SPA, Texas law, or the District's rules and policies.

c. The Parties further agree that any surplus revenue generated within the Enterprise Fund, after payment of all associated operating, maintenance, and capital costs, may be transferred to the District's General Fund upon approval by a majority vote of the District's Board of Directors. Such transfer shall be considered a lawful use of District funds and may be used for any purpose authorized by law.

d. Nothing in this section shall be construed to limit the District's discretion to allocate SPA revenues to other eligible funds or accounts, nor shall it limit the District's authority to issue bonds or otherwise finance capital improvements under applicable law.

Section 6.06 District Rates.

The District agrees to establish and maintain water and sewer rates and charges for customers of its water and sewer system at levels sufficient to generate revenues adequate to independently support the ongoing operation, maintenance, and debt service of the system. The District further agrees to set such rates and charges at levels that are equal to or greater than the rates and charges imposed by the City for similarly situated single-family residential customers. Notwithstanding the foregoing, the District may adopt rates lower than those imposed by the City, upon the City's prior written approval.

Section 6.07 District Tax Rate Limitation and Use of Excess Revenue.

a. The District agrees that it shall not adopt a total ad valorem tax rate (including debt service, maintenance and operations, and any other components) in excess of \$1.00 per \$100 of assessed valuation without first obtaining the prior written approval of the City. The District shall submit any such request for approval in writing to the City, and the City shall have no obligation to grant such approval.

b. If the City denies the District's request to exceed the \$1.00 tax rate cap and the District nonetheless adopts a total tax rate in excess of \$1.00 per \$100 of assessed valuation, then any ad valorem tax revenue generated by the District in excess of the \$1.00 rate shall be immediately deposited into the District's debt service fund and used solely to reduce and adequately pay for the District's outstanding bonded indebtedness. Such excess revenues shall not be used for maintenance and operations or any other purpose. The District may not issue additional debt until the District has adopted a total tax rate

of \$1.00 per \$100 of assessed valuation or less, unless written permission is given by the City.

c. The District shall account for such excess revenue separately and shall provide an annual report to the City demonstrating compliance with this provision, including the total tax rate adopted, the revenue collected above the \$1.00 rate, and the corresponding deposits into the debt service fund.

Section 6.08. Conditional Homestead Exemptions and Operation & Maintenance Tax Rate Limitations

The District agrees that, beginning in the next calendar year following the issuance of residential certificates of occupancy within the portion of the District located inside the corporate limits of City, and assuming the Strategic Partnership Agreement between the District and the City of Houston has been extended and remains in effect to continue the sharing of sales and use tax revenue pursuant to Section 43.0751 of the Texas Local Government Code, the District shall adopt and implement the following homestead exemption and tax rate limitations:

- a. Upon the issuance of 400 residential units within the City:
 - 1. The District shall adopt and apply a residential homestead exemption in the amount of five percent (5%) of the appraised value of each qualified residence homestead within the District, as permitted under Section 11.13(n) of the Texas Tax Code.
 - 2. The District shall further adopt and apply an additional exemption from ad valorem taxation of Fifty Thousand Dollars (\$50,000) for individuals who are sixty-five (65) years of age or older or disabled, as permitted under Section 11.13(d) of the Texas Tax Code.
 - 3. The District shall adopt an order limiting its operation and maintenance tax rate such that it shall not exceed \$0.15 per \$100 of assessed valuation on taxable property within the District, regardless of the District's full authorized tax rate under its enabling legislation.
- b. Upon the issuance of 700 residential units within the City:
 - 1. The District shall increase the residential homestead exemption to ten percent (10%) of the appraised value of each qualified residence homestead.
 - 2. The over-65/disabled exemption shall be revised to a flat One Hundred Thousand (\$100,000) exemption per eligible residence.

3. The District shall further reduce and cap its operation and maintenance tax rate to no more than \$0.13 per \$100 of assessed valuation.
- c. Upon the issuance of 1,000 residential units within the City:
1. The District shall increase the residential homestead exemption to fifteen percent (15%) of the appraised value of each qualified residence homestead.
 2. The over-65/disabled exemption shall be increased to One Hundred Fifty Thousand Dollars (\$150,000) per eligible residence.
 3. The District shall adopt a revised maximum operation and maintenance tax rate not to exceed \$0.12 per \$100 of assessed valuation.
- d. Upon the issuance of 1,250 residential units within the City:
1. The District shall further increase the residential homestead exemption to twenty percent (20%) of the appraised value of each qualified residence homestead.
 2. The over-65/disabled exemption shall be increased to Two Hundred Thousand Dollars (\$200,000) per eligible residence.
 3. The District shall adopt a revised maximum operation and maintenance tax rate not to exceed \$0.10 per \$100 of assessed valuation.

Each exemption and tax rate limitation required under this Section shall be determined and voted upon in the calendar year following the issuance of the required number of certificates of occupancy or equivalent documentation, as verified by the City or other appropriate permitting authority. The District shall not implement the next tier of exemptions or reductions until the applicable threshold has been met.

These obligations shall only apply if the Strategic Partnership Agreement with the City of Houston has been extended and remains in full force and effect, including continued sharing of local sales and use tax revenues with the District. If the Strategic Partnership Agreement is not extended, is terminated, or the sales tax sharing provision is removed or suspended, the obligations under this Section shall be of no further force or effect.

Section 6.09. Modification Procedure

The City acknowledges that unforeseen or material changes in legal, financial, or operational circumstances may occur that may impact the District's ability to comply with the obligations set forth in Sections 6.07 and 6.08. In such case, the District may submit a written request to the City identifying the specific obligation and the basis for the proposed amendment or modification. The City shall consider such request in good faith. Any approved amendment shall be documented in writing and executed by both parties. No waiver or modification shall be implied by performance or non-performance unless formally approved in writing.

Section 6.10. Strategic Partnership Agreement

The District agrees to negotiate in good faith and use its best efforts to extend the terms of the existing Strategic Partnership Agreement ("SPA") with the City of Houston. The Developer acknowledges that the continuation of the SPA is critical to the shared objectives of the Parties, including the allocation of sales and use tax revenues and the provision of municipal-level services within the boundaries of the District. The District shall take all reasonable actions within its authority to pursue such an extension, including engaging legal counsel, coordinating with the City, and considering proposed amendments in furtherance of the SPA's renewal or extension. The District shall keep the City reasonably informed of all material developments related to such efforts.

Section 6.11. Special Conditions.

The District and the City both recognize that the District is a "City Service District", and that the City may impose special conditions on the operation, financing, and management of the District. The District and the City agree as follows:

- a. This Agreement requires no rebate of City taxes to the District based upon the City's representation in Section 1.04 (e).
- b. Bond issues shall include 70 percent or 100 percent reimbursement as provided by TCEQ rules and regulations.
- c. Bonds shall be issued in series with a minimum limit on each series of Bonds being \$1,000,000.00, except the District's last bond issue.
- d. The parties agree that economic and development factors may change significantly over the duration of this Agreement. Accordingly, the parties agree that in the event of unforeseen significant changes, they will, upon request of one of the parties, engage in bona fide negotiations to amend the Agreement to respond to changed circumstances which are beyond the control of any of the parties. This provision shall not be construed as imposing on any of the parties an obligation, per se, to amend the Agreement.

e. The final maturity of all Bonds issued shall not exceed 30 years from the date of the initial series of water, sewer, and drainage Bonds; provided, however, that unless otherwise agreed to in writing by the City, the final maturity on any series of Bonds shall not extend beyond December 31, 2060.

f. The District meetings shall be open to the public and City personnel shall be able to attend any and all meetings. The District agrees to provide the City for informational purposes or for posting at City Hall or elsewhere, as deemed appropriate by the City, copies of all notices of meetings of the Board. Such notices shall be furnished by the District to the City sufficiently in advance of such meeting as may be necessary to permit posting thereof by the City for the time required by law for notices of public meetings of the Board.

g. The District shall post signs at two entrances to the District notifying the public that it is a municipal utility district regulated by the TCEQ. The Developer shall use its best efforts to ensure that all homebuilders provide prospective purchasers with the notices required by Section 49.452 of the Texas Water code, as amended.

h. The District understands that the property located within the Service Area of the district is subject to a PUD. The City and the District hereby agree that the PUD shall govern development within the Service Area, including but not limited to certain sidewalk and trail location and width requirements. In the event that the City would like to widen the contemplated sidewalks or extend the sidewalks to areas within the Service Area not contemplate by the PUD, the District agrees to do so on the following conditions: (i) the City pays for any incremental costs associated with the requested changes; and (ii) in the event that the City would like to extend the sidewalks to additional areas (as opposed to widening sidewalks in planned locations), the additional locations will be mutually agreed upon by the District and the City, so as not to interfere with development plans for the District. The City and District agree that the PUD will include at least 15 (fifteen) acres of park dedication to the City and at least 10% of the developable area dedicated to commercial development. The City and District agree the PUD will have no more than 1,500 single-family homes. However, to allow the Developer a certain amount of flexibility to respond to market conditions, this quantity may be increased to a different quantity than specified, subject to prior written notice by the Developer to the City, so long as such variance does not exceed the quantity set forth by 15%.

i. The Parties agree that all commercially zoned acreage is designed with 2,000 gallons of water and wastewater usage per day per acre. Any planned usage increased above that amount will need written approval from the City.

j. Refunding Bonds may be issued, as herein provided, but said Bonds shall not extend the final maturity of the Bonds being refunded. The City may grant a waiver of this requirement in its sole discretion.

k. The District will exercise reasonable control over consultant fees to ensure that said fees and charges are competitive and reasonable.

l. All Bonds issued by the District shall meet the debt to assessed valuation ratios as defined in Section 4.01(g) of this Agreement.

m. The City and the District agree that the District, in order to complete full development, will issue Bonds in series and that the District will not be dissolved until development is substantially complete.

Section 6.12. Ad Valorem Tax by District.

The parties to this Agreement recognize that the District, in order to pay the principal and interest on its Bonds and establish and maintain the interest and sinking fund and reserve fund required by the District's Bond Order or Resolution authorizing the issuance of its Bonds and that it will be necessary for the District to levy an ad valorem tax for such purposes. The parties further recognize that the District may levy a maintenance tax as authorized by the Texas Water Code, as amended.

Section 6.13. Limit of City's Liability.

Unless the City abolishes the District and assumes the assets and liabilities of the District, the Bonds or any other obligations of the District shall never become an obligation of the City. The City's obligations under this Agreement shall not extend beyond its obligation to operate and maintain the System and make water and sewer capacity and services available to the District.

Section 6.14. Maintenance of the System.

Subject to the limitations, if any, which may be provided by law and after acceptance of each integral stage of the System, the City shall at all times maintain the System in the City's ownership, or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles. Each party hereto will comply with all contractual provisions and agreements entered into by it and with all the valid rules, regulations, directions, or orders by any governmental, administrative, or judicial body promulgating the same. If either party violates any such rule, regulation, direction or order, it shall be solely responsible for any fine, penalty, or sanction imposed on it.

Section 6.15. City Park Property.

The City acknowledges and agrees that the construction and development of regional public recreational facilities may occur within the District on property generally described and shown on the Draft PUD ("City Park").

ARTICLE VII Default Provisions

Section 7.01. Default and Remedies in Event of Default.

Default shall mean the failure by either party to comply with the terms and conditions of this Agreement. Provided, however, that upon creation of the District, a default by one District shall not be a default by the non-defaulting District.

In addition to all the rights and remedies provided by the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a breach by the other party, each party shall be entitled to the equitable remedy of specific performance or mandamus.

Section 7.02. Interruption of Services.

As part of the consideration for this Agreement, and in the mutual interest of maintaining amicable relations between governmental entities operating within the same sphere, the District waives the right to sue the City for damages for claims arising from interruption of water or sanitary sewer services.

ARTICLE VIII Developer Provisions

Section 8.01. Developer Indemnity.

THE DEVELOPER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL CLAIMS (OTHER THAN CLAIMS FOR BREACH OF THIS AGREEMENT) ASSERTED BY THE DEVELOPER AGAINST THE CITY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT WITHOUT REGARD TO CAUSES OR THE BASIS FOR SUCH CLAIMS, EXPRESSLY INCLUDING THE NEGLIGENCE OF THE CITY.

Section 8.02. City Legal Fees.

The Developer agrees to pay the City's reasonable legal fees incurred in connection with the negotiation and drafting of this Agreement.

Section 8.03. Certain Road Construction.

a. The Parties agree and acknowledge that the design and construction of certain public roadways, including thoroughfares, collectors, and arterials will be necessary to provide access to the property within the District. The costs for the design and construction of certain roadways have been included in a future roadway Capital Recovery Fee study that should be approved in the forth quarter of 2024 ("Road CRF Study"). That Road CRF Study will incorporate and calculate new roadway capital recovery fees ("Road CRF"). The Developer plans to design and construct a portion of Beamer Road as a major thoroughfare and the City shall award credits to the Developer against any Road CRFs in exchange for the design and construction of that portion of Beamer Road.

b. If the Developer elects to design and construct any of the roadway improvements described above, the parties agree to enter into a separate Transportation Development Agreement whereby the City shall award credits to the Developer against any Road CRFs due to the City for the construction or development of property within the District in an amount equal to all costs expended by the Developer or District in the design and construction of such roadways.

Section 8.04. Potential Fire Station Site.

The Parties agree that the City will require a fire station site. The Developer agrees to deed a site, not more that 4.5 acres within 90 days of the execution of this Agreement. The Parties agree that this fire station site counts as commercial development in the PUD.

ARTICLE IX Miscellaneous Provisions

Section 9.01. General Benefit/Oversized Facilities.

In conjunction with the District's design and construction of the System, as described in Article III, the City may determine, from time to time, that certain facilities should be sized to serve areas outside the District, as well as areas within the District or the City may determine that the District should construct certain water, sewer, drainage facilities, or road facilities (as such road facilities are reflected on the City's master thoroughfare plan) outside the District to serve areas both inside and outside the District (in either case, facilities sized to serve areas outside the District shall be called "Oversized Facilities" or "General Benefit Facilities"). Subject to the terms and conditions of this Section 3.03, the District hereby agrees that, in conjunction with the District's design and construction of the System as set out in this Agreement, the District shall cooperate with the City to include the Oversized Facilities as required by the City. The City, in turn,

hereby agrees that as between the District and the City, the City shall fund its share of the construction costs of the Oversized Facilities. In order to carry out the design and construction of the Oversized Facilities, the City and the District agree to enter a development agreement providing for the terms and conditions of the Oversized Facilities. If the Oversized Facilities are designed and constructed by the District as part of the design and construction of its System (collectively, the Oversized Facilities and the System, the "Project"), the construction costs of the Oversized Facilities shall be determined in accordance with TCEQ rules and regulations so the Project construction costs will be shared by the City and the District on the basis of benefits received which are generally the design capacities in the Project for the City and the District respectively. The City hereby agrees that the District, subject to TCEQ rules, may elect to agree upon Capital Recovery Fee Credits in lieu of the payment of construction costs by the City in an amount equal to one dollar for each dollar expended by the District on the City's portion of the construction costs for the Oversized Facilities.

Section 9.02. Clearfield Deannexation

No later than six months before the District's final debt service payment on all outstanding Bonds, the District will provide Houston and the City with written notice of the date of such payment. Automatically, unless the City gives written notice otherwise, upon final payment of all debt service payments for the Bonds, the District will de-annex the Clearfield Tract from the District's boundaries, at which point the Clearfield Tract will no longer be part of the District. The District is required to deannex the Clearfield Tract from the District without any petitions or requirements as may be required now or in the future. The District will remove the Clearfield Tract from the District and will use the Clearfield metes and bounds, as attached to this agreement, or the District will hire a surveyor to draft a new description six months prior to the District's final debt service payment. The Parties agree if the District fails to deannex the Clearfield Tract from the District, either other Party may request a court to mandamus the District to act and the District will be responsible for any attorneys fees required to facilitate the removal of the Clearfield Tract from the District. The City agrees not to dissolve or annex the District prior to this date. The District will remain in place and may have to call an election to vote additional bonds to serve the District after the de-annexation of the Clearfield Tract. This automatic deannexation of the Clearfield Tract survives any termination of this Agreement.

The final maturity of all Bonds issued by the District shall not exceed 30 years from the date of the initial water, sewer, and drainage bonds to serve the Clearfield Tract; provided, however, that unless otherwise agreed to in writing by League City, the final maturity on any series of District bonds shall not extend beyond December 31, 2060.

Section 9.03 Arbitration.

Any controversy, dispute, or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by binding arbitration in accordance with the Texas Arbitration Act. No arbitrator shall have the jurisdiction or authority to add to, take from, nullify, or modify any of the terms of this Agreement, either directly or indirectly under the guise of interpretation. The arbitrator shall be bound by the facts and evidence submitted to him in the hearing and may not go beyond the terms of this Agreement as herein expressly set forth, and no arbitrator shall have the power to base any award on any alleged practices or oral understandings not incorporated herein. Any award rendered in arbitration proceedings under this Agreement shall be subject to judicial review at the instance of either party for the purpose of determining whether the arbitrator exceeded his power as herein limited, and neither party shall be deemed to have waived its right to such review by proceeding to arbitration without compulsion of a judicial decree. Within his power as herein limited, the arbitrator may enter an award based upon any remedy available to the parties as provided in Section 9.01 of this Agreement. Judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration proceeding shall be held at the principal offices of the City, or such other place in Harris County as is designated by the City. Each party represents that this Agreement was concluded upon the advice of counsel below. The provisions of this section are subject to and shall not be considered as attempting to exclude the jurisdiction of the TCEQ or any other governmental regulatory authority to arbitrate or settle disputes, hold hearings, or enter orders relating to the subject matter of this Agreement.

Prior to arbitration, the parties hereto agree to present all matters in dispute to the City Council in open session in an attempt to informally resolve disagreements hereunder. Each party hereto shall be provided copies of all relevant documents concerning matters at issue as well as copies of all documents filed with the TCEQ and the State Attorney General.

Section 9.04. Force Majeure.

In the event either party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is being affected by force majeure and to the extent that the due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, war,

blockages, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machinery or pipelines, and any other inabilities of either party whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by exercise of due diligence and care such party could not have avoided.

Section 9.05. Approval.

Whenever this Agreement requires or permits approval or consent to be hereafter given by either party, such approval or consent shall be evidenced by resolution adopted by the governing body of the party by an appropriate certificate executed by a person, firm, or entity previously authorized to determine and give such approval or consent on behalf of the governing body. The parties agree that no such approval or consent shall be unreasonably withheld.

Section 9.06. Address and Notices.

Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegraph, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three days after it is so deposited.

Notice given in any other manner shall be effective only if and when received by the party to be notified. However, in the event of service interruption or hazardous conditions, neither party will delay remedial action pending the receipt of formal Notice. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City:

City Manager
City Hall
300 West Walker
League City, TX 77573
Email: john.baumgartner@leaguecitytx.gov

If to the District:

Baybrook Municipal Utility District No. 1
3200 Southwest Frwy, Ste. 2600
Houston, TX 77027
Attn: Angie Lutz
Email: alutz@abhr.com

If to Developer:

BC-SB BAYBROOK JV, LLC
c/o Brookfield Residential
3200 Park Center Drive, Suite 1000M
Costa Mesa, California 92626
Email: Matthew.McCafferty@brookfieldpropertiesdevelopment.com

The parties shall have the right at any time to change their respective addresses and each shall have the right to specify as its address any other address upon at least 15 days written Notice to the other party.

Section 9.07. Assignability.

This Agreement shall bind and benefit the respective parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. Such Assignment shall be in the form and substance as the form of Assignment attached hereto as **Exhibit "C,"** and the District shall provide the City with a copy of the fully executed Assignment within ten (10) business days of execution thereof.

Section 9.08. Regulatory Agencies.

This Agreement shall be subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and of any regulatory body having jurisdiction.

Section 9.09. No Additional Waiver Implied.

The failure of either party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

Section 9.10. Captions.

The captions appearing at the first of each numbered Section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

Section 9.11. Severability.

The provisions of this Agreement are severable, and if any provisions or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement of other persons or circumstances shall not be affected thereby.

Section 9.12. Merger.

This Agreement embodies the entire understanding between the parties and there are no prior effective representations, warranties, or agreements between the parties except as set forth in the City ordinances consenting to the creation of the District.

Section 9.13. Construction of Agreement.

The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not author this Agreement.

Section 9.14. Term.

This Agreement shall be in force and effect from the date of execution hereof for a term of 40 years unless otherwise previously terminated pursuant to some term or condition of this Agreement or dissolution of the District.

Section 9.15. Agreement for an "Allocation Agreement".

The parties agree that this Utility Agreement is not an Allocation Agreement for purposes of Water code Section 54.016(f).

Section 9.16 Annexation of Property into the District.

The parties agree that this Agreement shall be construed to extend to any property that may be annexed into the District in the future without further amendment to this

Agreement, provided that the City has provided its written consent to the annexation of such property into the District.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, this the _____ day of _____, 2025.

BC-SB BAYBROOK JV, LLC

By: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2025, by _____, on behalf of _____.

Notary Public, State of Texas

(NOTARY SEAL)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, this the ____ day of _____, 2025.

CITY OF LEAGUE CITY, TEXAS

By: _____
John Baumgartner, ICMA-CM, P.E.
City Manager

STATE OF TEXAS §

§

COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2025, by John Baumgartner, as City Manager of the City of League City, on behalf of said City.

(SEAL)

Notary Public
STATE OF TEXAS

Name Printed or Typed
My commission expires: _____

Attest:

Diana Stapp
City Secretary

Approved as to Form:

City Attorney

**BAYBROOK MUNICIPAL UTILITY
DISTRICT**

By: _____
President, Board of Directors

STATE OF TEXAS §
§
COUNTY OF HARRIS §

 This instrument was acknowledged before me on _____, 2025 by
_____, as President of Baybrook Municipal Utility District,
on behalf of said District.

(SEAL)

Notary Public
STATE OF TEXAS

Name Printed or Typed
My commission expires: _____

Exhibit "A"

(Metes and Bounds Description of the Original District Land 861.5 acres)

Exhibit "B"
(Metes and Bounds Description of the Clearfield Tract)

Exhibit "C"
Form of Assignment

ASSIGNMENT OF AMENDED AND RESTATED UTILITY AGREEMENT

This Assignment of Amended and Restated Utility Agreement (this "Assignment") is made and entered into as of _____, ("Effective Date") by and between **BC-SB BAYBROOK JV, LLC** ("Developer"), and [Insert Permitted Assignee] (the "Assignee"). Developer and the Assignee are referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

Developer, on behalf of Baybrook Municipal Utility District No. 1, entered into that certain Amended and Restated Utility Agreement dated as of _____, 2025 (the "Utility Agreement") with the City of League City, Texas.

The Utility Agreement provides that Developer may assign its rights, duties, and obligations under the Utility Agreement to the Assignee.

Developer desires to make such assignment to the Assignee and the Assignee desires to accept same.

NOW, THEREFORE, for and in consideration of the mutual covenants and terms herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

1. Developer hereby assigns to the Assignee, and the Assignee hereby assumes and accepts, all of Developer's rights, duties, and obligations under the Utility Agreement.
2. The construction and validity of this Assignment shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Exclusive venue shall be in Harris County, Texas, and all parties consent to venue in Harris County.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of equal dignity as of the date and year first written above.

By:_____
