

Original

Summary of 380 Economic Development Agreement Between Smithville Land Partners, LLC and City of Smithville

380 Agreement Term = 6-years **# of Lots / Homes** = ~~112~~
Now
114

Obligations of Smithville Land Partners, LLC:

- Must voluntarily annex property (34.858-acres).
- Must start project on or before December 31, 2022.
- Must spend minimum \$4,500,000 on infrastructure improvements.
- Must complete infrastructure improvements by December 31, 2023.
- Must construct utility and roadway infrastructure at sole cost to Smithville Land Partners, LLC with 2-year performance warranty. Infrastructure will be assigned (given) to the City.
- Must provide varying layouts, rooflines, facades, and setbacks that offer a distinct yet complementary inventory of homes.
- Must maintain records showing compliance w/ obligations (e.g., expenditures, tax receipts, etc.)
- Must meet performance criteria (# lots sold) to be eligible for Economic Incentive Program (EIP).
- Must pay taxes on unsold property then request reimbursement from City.
- Must refund any EIP granted upon default of agreement.

Obligations of City:

- Must not charge Impact Fees
- Must approve voluntary annexation of 34.858-acre property.
- Must develop service level agreement (e.g., fire, police, garbage, utilities, etc.).
- Must agree to reimburse Smithville Land Partners, LLC for rollback taxes upon project start.
- Must reimburse 100% of Smithville Land Partners, LLC property taxes (City portion only) upon attainment of performance milestones over a 5-year year period (2023–2027).
- Must provide water and wastewater services to property line at agreed capacity.
- Must discount water and wastewater tap fees by 50%.

A fully-loaded subdivision (112 homes) will bring approximately \$890k in revenue from property taxes and utility fees to the City over the term of the agreement. See below:

EIP Calculation For Enclave 380 Agreement

Calendar Year	Estimated Value of Enclave	Value per \$100	Tax Rate	Performance Criteria (Cumulative # of Lots Sold)	Est. Tax Liability of Remaining Land	EIP Target Rebate %	Est. Tax Value with Homes Built	Est. Rollback Tax Refund	Est. Property Tax Refund (City Only)	50% Credit for Water / Sewer Tap per Home	Est. Property Tax Revenue w/ Homes Built	50% Revenue for Water / Sewer Tap per Home	Revenue From Water / Sewer Service	Revenue From Garbage Service	Net Loss / Gain to City
2022	\$1,750,000	\$17,500	\$0.5490	Start Project	\$1,750,000	100%	N/A	\$9,608	N/A	N/A	N/A	N/A	N/A	N/A	-\$9,608
2023	\$8,960,000	\$89,600	\$0.5490	Infrastructure Comp.	\$8,960,000	100%	N/A	N/A	\$49,191	\$0	\$49,191	\$0	\$0	\$0	\$0
2024	\$8,960,000	\$89,600	\$0.5490	30	\$6,560,000	100%	\$11,400,000	N/A	\$36,015	\$112,500	\$62,587	\$112,500	\$33,120	\$3,294	\$62,985
2025	\$6,560,000	\$65,600	\$0.5490	60	\$4,160,000	100%	\$22,800,000	N/A	\$22,839	\$112,500	\$125,173	\$112,500	\$66,240	\$6,588	\$175,163
2026	\$4,160,000	\$41,600	\$0.5490	90	\$1,760,000	100%	\$34,200,000	N/A	\$9,662	\$112,500	\$187,760	\$112,500	\$99,360	\$9,882	\$287,339
2027*	\$1,760,000	\$17,600	\$0.5490	112	\$860,200	100%	\$42,560,000	N/A	\$4,723	\$82,500	\$233,657	\$82,500	\$123,648	\$12,298	\$364,880
TOTALS															
		\$9,608	\$122,429	\$420,000	\$658,367	\$420,000	\$322,968	\$32,062	\$890,367						
										PROJECTED CITY REVENUE					
										\$890,367					
										DEVELOPER CREDITS					
										NET LOSS / GAIN TO CITY					

Projected Water and Sewer Revenue - Enclave at Riverbend

# of Homes	Average Monthly Water Use per Household (Gallons)	Cost per 1000 Gallons	Water Base Rate (for first 2000 Gallons)	Average Cost per Household / Month	Annual Revenue from Water Use	Average Monthly Sewer Use per Household (Gallons)	Cost per 1000 Gallons	Sewer Base Rate	Average Cost per Household / Month	Annual Revenue from Sewer Use	Combined Water & Sewer Revenue
1	12,000	\$3.50	\$18.00	\$53.00	\$636	6000	\$4.00	\$15.00	\$39.00	\$468	\$1,104
30	600,000	\$3.50	\$18.00	\$53.00	\$19,080	60,000	\$4.00	\$15.00	\$39.00	\$14,040	\$33,120
60	960,000	\$3.50	\$18.00	\$53.00	\$38,160	150,000	\$4.00	\$15.00	\$39.00	\$28,080	\$66,240
90	1,260,000	\$3.50	\$18.00	\$53.00	\$57,240	210,000	\$4.00	\$15.00	\$39.00	\$42,120	\$99,360
112	1,560,000	\$3.50	\$18.00	\$53.00	\$71,232	300,000	\$4.00	\$15.00	\$39.00	\$52,416	\$123,648

	Size	Fee	# Homes	Cost
Water Tap	3/4" - 1"	\$3,000	112	\$336,000
Sewer Tap	4"	\$4,500	112	\$504,000

Revenue to City is from Water and Sewer Tap = \$7,500 per Home or \$840,000 for 112 Homes. 50% discount would be \$420,000.

Sample Water Calculation = 12,000 gallons - 2000 gallons (Base Rate) = 10,000 gallons x \$3.50 / 1000 gallons

10,000 Gallons = \$35

Base Rate = \$18

Total = \$53

Sample Sewer Calculation = 6,000 gallons x \$4.00 / 1000 gallons

6,000 Gallons = \$24

Base Rate = \$15

Total = \$39

Projected Solid Waste Revenue - Enclave at Riverbend

# of Homes	Cost per Month for 2X per Week Service	Annual Revenue from Solid Waste Services	City Expense for 2X per Week Service	Annual Expense for Solid Waste Services	Net Profit / Loss for Solid Waste Services
1	\$38.50	\$462	\$29.35	\$352	\$110
30	\$38.50	\$13,860	\$29.35	\$10,566	\$3,294
60	\$38.50	\$27,720	\$29.35	\$21,132	\$6,588
90	\$38.50	\$41,580	\$29.35	\$31,698	\$9,882
112	\$38.50	\$51,744	\$29.35	\$39,446	\$12,298

Residential Garbage Pick-up is 2X per week plus once a month bulk

Commercial Garbage Rates Vary Depending upon Frequency of pick-up and Size of Container / Dumpster Required.

FREE residential recycling @ 404 Royston Street (6:00 am to 10:00 pm)

FREE curbside Leaf & Limb pick-up (City)

ANNEXATION OF THE ENCLAVE - ASSUMPTIONS & PROJECTED TAX REVENUE TO THE CITY OF SMITHVILLE

BACKGROUND

34.858 Acre Development - 19.018 acres SF-1 (112 Lots); 7.957 Acre Detention / Open Space; 0.645 Park / Open Space; 7.238 Acres ROW				
112 Single Family Residential (SF-1) homes. Typical Lot Size = 50' x 130' (6,500 sf).				
8.602 acres in this subdivision will be dedicated for detention pond, parks, and/or open space				
Voluntary Annexation (via petition) and possible 380 Economic Development agreement.				
FMV of property after annexation and completion of infrastructure = \$8,960,000				
Water, sewer, and garbage service available from the City of Smithville				
Electric service available from Bluebonnet Electric Cooperative				

CITY FEES

50% Water Tap = \$1,500 per lot = \$168,000 for 112 Homes				
50% Sewer Tap = \$2,250 per lot = \$252,000 for 112 Homes				
Construction Permit = 1/2% of Infrastructure Cost = \$25,000 + Plan Review Fee = \$40,000				

TOTAL	\$168,000
	\$252,000
	\$65,000
TOTAL	\$485,000

ASSUMPTIONS

Assume \$4,500,000 for Infrastructure Development (Developer Cost)				
Assume City Tax Rate = \$0.54901 per \$100 valuation.				
Assume a \$80,000 sales price for residential lots.				
Assume a \$300,000 sales price for the average new home.				
Assume \$100,000 per acre @ current FMV.				
Number of Residential Lots:	112			
Average Price (\$\$\$) for Lot:	\$80,000		VALUE	TOTAL
Average Price (\$\$\$) for New Home:	\$300,000		\$8,960,000	\$42,560,000
Value of Detention Pond / Open Space:	\$860,200 (8.602 Acres)		\$860,200	
Value of ROW:	\$723,800 (7.238 Acres)		\$723,800	
			TOTAL	\$44,144,000

Based on the assumptions above and tax rate of \$0.54901, the annual property tax revenue to the City for 112 homes would be:

	VALUE
Per House:	\$2,086
Fully Loaded Subdivision:	\$233,659

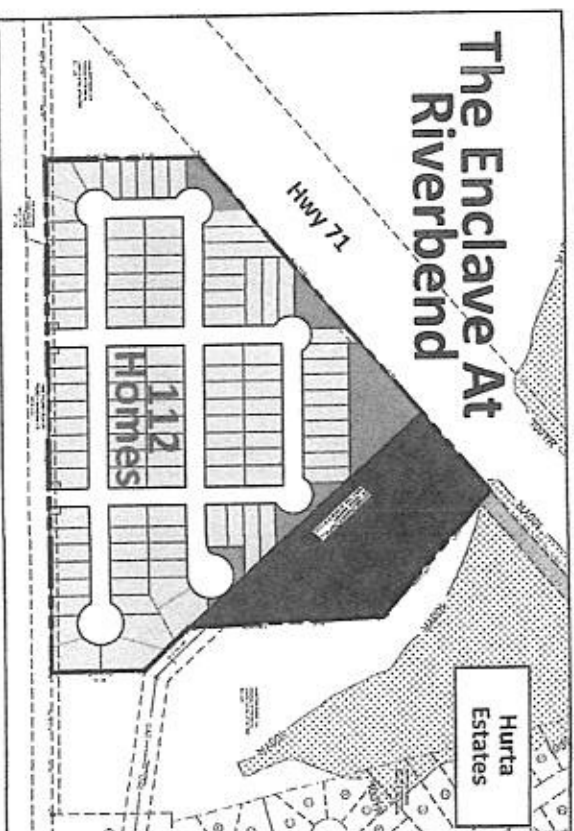
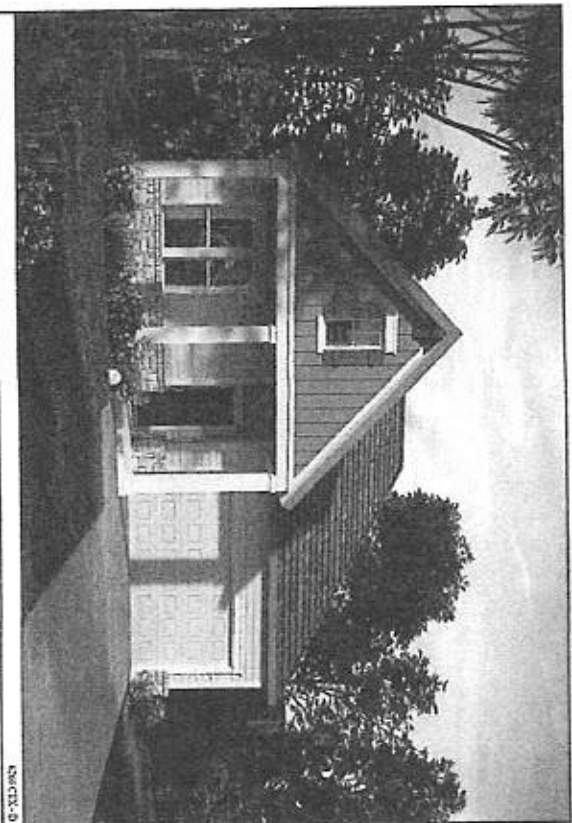
NEW

Current Development Projects

PENDING

Smithville Land Partners, LLC

- 35-acre Subdivision – 112 Homes
- Zoning: Annexation Pending (SF1)
- Estimated Value = \$42,500,000
- \$4.5M Developer Investment
- Lot Size: 50' x 130' = 6,500 sq. ft.
- 1,500 to 1,800 sq. ft. homes
- Target Price Range = \$380k



ISSUES:

- Property is not inside City Limits. If not annexed, the Subdivision will fall under Bastrop County jurisdiction.

STATUS:

- Voluntary Annexation petition and 380 Economic Development Agreement pending.

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this _____ day of _____, 2022, by and between the **City of Smithville, Texas**, a General Law, Type A municipality ("**City**"), and **Smithville Land Partners, LLC.**, a Texas limited liability company ("**Developer**"). The foregoing are referred to collectively as the "**Parties**."

WHEREAS, the City has adopted Resolution No. 2022-_____, ("**City Resolution**"), establishing an economic development program and authorizing the Mayor to enter into this Agreement with Developer in recognition of the positive economic benefits to the City through the construction by Developer of phased residential development (the "**Development**") on the 34.858 acres described in **Exhibit A**, attached hereto and made a part hereof (the "**Developer Property**"); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code consisting of Developer's construction of the Development in conformance with the City's development approvals for the Development; and

WHEREAS, Developer will expend at least \$4,500,000 in the site construction of the Development, including but not limited to private (excluding homes) and public improvements, land costs, park/recreational equipment and facilities, sidewalks, pedestrian facilities and trails, water, wastewater, drainage, storm sewer, erosion sedimentation controls, dry utilities, irrigation, landscaping, fill and grading, entry monumentation, street lights, and road improvements (the "**Improvements**"); and

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and the City Resolution and constitutes a valid and binding obligation of the City in the event Developer proceeds with construction of the Development. The City acknowledges that Developer is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to construct the Development.

2. **Definitions.**

2.1 "**Development**" means the improvements to be constructed by Developer or its successors or assigns on the Developer Property.

2.2 "**Economic Incentive Payment**" ("**EIP**") means payments of the amount required to be paid by the City to Developer under the Program and Section 5.1 of this Agreement.

2.3 "**Effective Date**" is the date this Agreement is executed to be effective by the Parties.

- 2.4 **“Developer Property”** means the 34,858-acre tract of land that has been annexed into the corporate limits of the City, is owned by Developer and described in Exhibit A, and which Developer intends to develop upon execution of this Agreement.
- 2.5 **“Living Unit Equivalent” (LUE)** means the typical flow of water or wastewater that would be produced by a single-family residence located in a typical subdivision.
- 2.6 **“Program”** means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolution to promote local economic development and stimulate business and commercial activity within the City.
- 2.7 **“Recapture Liability”** means the total amount of all EIP’s that are paid as a result of this Agreement that are subject to recapture by the City from Developer in the event of a Developer default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on **December 31, 2027**.
4. **Rights and Obligations of Developer.**
- 4.1 Annexation. The Developer Property has been annexed into the City through a Developer petition for voluntary annexation, conditioned upon plat approval.
- 4.2 Capital Investment. Developer agrees to spend at least \$4,500,000 to design, construct and complete the Improvements on the Developer’s Property within two (2) years after receiving all jurisdictional approvals and permits for construction of the Improvements. Developer agrees to provide the City with documentation that shows proof that this obligation has been satisfied, and the City shall have the right to audit Developer’s records to verify same. The Parties may agree to extend the period of time for Developer to construct and complete the Improvements by mutual written agreement.
- 4.3 Compliance with Regulations. Developer agrees that it will comply with the City’s development approval processes and shall construct the Development consistent with City ordinances, development regulations, and requirements in effect as of the Effective Date of this Agreement.
- 4.4 Developer Accounting. Developer shall maintain complete books and records showing that it has complied with its obligations herein, which books and records shall be deemed complete if kept in accordance with generally acceptable accounting principles. Such books and records shall be available for examination by the duly authorized officers or agents of the City during normal business hours upon request made not less than ten (10) business days prior to the date of such examination.

- 4.5 Submission of Data. Within thirty (30) days following the end of each calendar year following the year, Developer shall submit to the City written documentation detailing the Ad Valorem Property Tax revenue paid on the Developer Property for such calendar year. Developer shall submit the following:
- (a) A copy of all property tax receipts for any ad valorem property taxes paid by Developer for that calendar year showing the Ad Valorem Property Tax paid; and
 - (b) Such other data as the parties mutually determine reasonably appropriate to evidence the Ad Valorem Property Tax paid.
- 4.6 Utility and Roadway Construction. All water and wastewater utilities and roadways required to be constructed on or for the Developer Property shall be constructed to City standards at the sole cost of Developer and accepted upon substantial completion of construction, in accordance with applicable City ordinances and regulations. All water and wastewater utilities and roadway construction contracts shall contain a two-year performance warranty, which shall be assigned to the City.
- 4.7 Construction Plan Submittal, Review, and Approval. The Developer is responsible for submitting civil construction plans to the City for 3rd Party review to ensure all zoning and building applicable code requirements are met. In addition, the Developer must submit a drainage analysis to verify that post development stormwater flow (runoff) is equal to or better than pre-development flow and that measures have been taken to ensure that there is no adverse impact to adjacent property owners. The construction plan review / building permit fee for commercial or subdivision development = 1/2 percent of the total infrastructure construction cost plus fees for 3rd Party engineering review of construction plans.
- 4.8 Home Owner's Association / Deed Restrictions. The Developer will establish a Home Owner's Association ("*HOA*"). The HOA will be responsible for the operation and maintenance of all parks, open spaces, drainage structures, monumentation, and irrigation systems contained within the Development Property. Any deed restrictions or private covenants will be finalized and filed for recordation as part of the final plat application process with the City. Enforcement of such deed restrictions or private covenants (where more stringent than City Ordinance) will be the responsibility of the HOA.
- 4.9 Variability of Design Construction. The Developer agrees to incorporate variability with respect to the design and construction of homes within the subdivision. The Developer will offer varying layouts, rooflines, facades, and setbacks that provide a distinct yet complementary inventory of homes.

5. **Rights and Obligations of the City.** In consideration of Developer's compliance with this Agreement, the City agrees as follows:

5.1 Economic Incentive Payments. Pursuant to Chapter 380 of the Texas Local Government Code, City and Developer agree that receipt of Economic Incentive Payments (EIP) with respect to the Developer's Property are contingent upon the following terms and conditions:

5.1.1 EIP's Based on Ad Valorem Property Tax. City shall, pursuant to Chapter 380 of the Texas Local Government Code, but subject to the conditions set out herein, make annual EIPs to Developer within thirty (30) days after Developer submits to the City the documentation of Ad Valorem Property Tax revenue paid for the Developer Property for such calendar year as required in Section 4.5 (Submission of Data), above. The EIPs are to be calculated as follows:

(a) Calculations will be based upon the Ad Valorem Property Tax actually paid by Developer and collected by the City on the Developer's Property;

(b) The Project shall meet a construction start date of December 31, 2022, or not later than 90 days after receiving all City approvals and permits necessary to begin construction. Construction start is defined as a minimum of 5% (\$225,000) of the estimated \$4,500,000 project costs must be incurred.

(c) Infrastructure construction (e.g., roads, curbs, street lights, gutters, water, wastewater, electric, etc.) shall be completed no later than December 31, 2023 with acceptance by the City upon expiration of the 2-year performance warranty. Additional time for construction will be allowed should the contractor provide written documentation to the Developer and City with evidence of delays beyond his control, such as supply chain issues, work schedule restrictions (e.g. COVID shutdowns, strikes, force majeure, etc.), major weather events that impact production or cause setbacks (e.g. flooding of the Colorado River, major erosion, tornadoes, wind damage, etc.), or any other reasonable impact to the delivery schedule beyond the reasonable control of the contractor or developer.

(d) With respect to the Developer's Property, the EIPs will be a dollar amount equal to the percentage of the Ad Valorem Property Tax actually paid on the Developer's Property by Developer for each calendar year as set forth below:

Calendar Year	EIP Performance Criteria	Percent (%) Rollback Tax Reimbursement	Percent (%) Property Tax Reimbursement
2022	Start Project	100%	50%
2023	Infrastrure Complete	N/A	100%
2024	30 Lots Sold (30 Total)	N/A	100%
2025	30 Lots Sold (60 Total)	N/A	100%
2026	30 Lots Sold (90 Total)	N/A	100%
2027	22 Lots Sold (112 Total)	N/A	100%

(e) In addition to the other terms and conditions in this Agreement, if Developer has not sold or otherwise conveyed at least thirty (30) lots within the Developer's Property by **December 31, 2024** to an unrelated 3rd party, then no EIP's shall be due and owing after this date. Thereafter, for the term of this Agreement, if thirty (30) additional lots have not been sold or otherwise conveyed within the Developer's Property, no EIP's shall be due and owing for that respective year and each year thereafter. The sale of more than thirty (30) lots in a given year will be credited to the next year's EIP target (reference EIP performance criteria in Section 5.1(d) above). The Parties agree that the terms of this subsection may be modified by mutual written agreement.

5.2 Payments Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula applied to Ad Valorem Property Tax revenues, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Developer. All payments by the City under this Agreement are subject to the City's appropriation of funds for such payments in the budget year for which they are made. The payments to be made to Developer shall be made from (i) annual appropriations from the general funds of the City, or (ii) from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, or (iii) from a combination of (i) and (ii) above, subject to any applicable limitations or procedural requirements. Failure of the City to appropriate funds annually for the payments to be made to Developer hereunder shall be considered a default and breach of contract by the City.

5.3 Impact Fees. City shall not charge Developer or its successors or assigns sewer or water impact fees for the water supply or wastewater treatment capacity to be provided to the Developer's Property.

5.4 Discounted Tap Fees. Tap fees shall be due and owing from future builders or owners of individual homes and businesses as same are connected to the City's water and

sanitary sewer system. The Developer (Smithville Land Partners, LLC) will receive a 50% discount if he installs the water and sewer taps as part of the infrastructure construction and/or he becomes the builder of record. If anyone other than Smithville Land Partners, LLC becomes the builder of record (and water and sewer taps were not previously installed as part of the subdivision's infrastructure construction), tap fees will not be discounted and will be due at 100% of the cost.

5.5 Sidewalks and Roadways. Developer has agreed to provide four (4) feet wide sidewalks along both sides of public streets constructed by Developer within or adjacent to the Developer's Property at no cost to the City. Sidewalks shall be part of the Developer's Improvements and contributions eligible for EIPs.

5.6 City Utility Poles. City shall relocate, at its sole cost and expense, any City-owned utility poles located within the Developer Property that conflict with planned roadways or any of the Improvements.

5.7 Annexation Fees. City is solely responsible for all fees related to the annexation of the Developer Property into the City's corporate limits.

5.8 Utility Service. City shall provide water and wastewater service to the Developer Property, as such property is annexed into the City, with a reservation of capacity of (i) no less than 120 LUE's for water service, and (2) 120 LUE's for wastewater service for the Developer Property. It is currently contemplated that electricity service to the Developer Property will be provided by Bluebonnet Electric Cooperative.

5.9 Service Plan. Pursuant to Texas Local Government Code § 43.0672(b), the City shall provide the Development Property with municipal services (fire, police, ambulance, etc.) within sixty (60) days of the annexation per a mutually accepted service agreement.

6. **Zoning/Preliminary Plat Approval.** Immediately upon the City's approval of annexation, the Developer Property shall be automatically zoned SF-1, Single Family Residential Zoning District as per the City's Zoning Regulations for newly annexed properties. Developer shall also concurrently apply for City approval of a preliminary plat for the Developer Property as a condition of said annexation, and such preliminary plat shall be approved by the City provided the preliminary plat meets all applicable City requirements (with approved variances). City agrees to review and provide written comment on the Developer's preliminary plat application to Developer in advance of annexation approval so as to give Developer sufficient opportunity to submit a preliminary plat application that meets all applicable City requirements (with approved variances).
7. **Taxable Property.** If and when any part of the Developer Property is sold or otherwise transferred by Developer to any third party (other than a transfer related to an assignment of all or part of Developer's rights and obligations hereunder or a transfer to a Developer related entity created by Developer for the purpose of developing the Developer Property, as described in Section 10.7 below), taxes on the transferred property shall accrue and be owing to the City commencing on January 1st of the year following the date of such transfer. Developer shall not be entitled to any reimbursement for taxes paid for the transferred property for the year following the date of transfer.

8. **Rollback Taxes Reimbursement.** To the extent rollback taxes are assessed on all or any portion of the Developer Property, City agrees to reimburse to Developer any such rollback taxes paid to City as an additional grant to Developer pursuant to Chapter 380 of the Texas Local Government Code. City acknowledges that the determination of property tax valuation, equalization, exemption, special open space valuation, and tax rollback are within the exclusive province of the appraisal district and as a result, City takes no position on these matters.
9. **EIP Recapture.** In the event the City terminates this Agreement as a result of Developer's default, the City may recapture and collect from Developer the Recapture Liability. Developer shall pay to the City the Recapture Liability within thirty (30) days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Developer may be entitled. The Parties may agree to extend the timeframe and/or terms of payment of the Recapture Liability by Developer by mutual written agreement. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination.

10. Miscellaneous.

- 10.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 10.2 Representations and Warranties. The City represents and warrants to Developer that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement.
- 10.3 Default. If either the City or Developer should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, Developer shall have the right to terminate this Agreement by giving written notice thereof to City and to pursue any remedy at law or in equity for the City's breach. If Developer remains in default after notice and opportunity to cure, City shall have the right to terminate this Agreement by giving written notice thereof to Developer and to pursue any remedy at law or in equity for Developer's breach, in addition to the right of EIP recapture set forth above. Notwithstanding the above, the Parties may agree to modify the default, notice and cure provisions herein by mutual written agreement.
- 10.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the City and Developer to enforce provisions of this Agreement and recover damages for breach, the prevailing party

in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

- 10.5 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the construction of the Development. This Agreement may only be amended, altered or revoked by written instrument signed by the Parties.
- 10.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns.
- 10.7 Assignment. Except as noted hereinbelow, Developer may not assign all or any part of its rights and obligations to a third party without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the immediately preceding sentence, Developer shall be authorized to assign this Agreement and all rights hereunder to a related entity created by Developer for the purpose of developing the Developer Property, without the prior written consent of the City. The City may not assign all or part of its rights and obligations to a third party without the express written consent of Developer, which consent shall not be unreasonably withheld, conditioned or delayed.
- 10.8 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.
- 10.9 Termination. In the event Developer elects not to construct the Development as contemplated by this Agreement, Developer shall notify the City in writing, and this Agreement and the obligations on the part of all Parties shall be deemed terminated and of no further force or effect.
- 10.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Smithville
317 Main Street
Smithville, Texas 78957
Attn: City Manager

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, Texas 78664
Attn: Charles Crossfield
Phone: (512) 255-8877
Email: charlie@scrllaw.com

If to Developer:

Smithville Land Partners, LLC.
311 Westwood Terrace
Austin, Texas 78746
Attn: S. Todd McCullough
Email: todd@insite-austin.com

With a required copy to:

DuBois, Bryant & Campbell, LLP
Attn: Zeeshan Malik
303 Colorado St., Ste. 2300
Austin, Texas 78701
Phone: (512)-457-8000
Email: zmalik@dbcllp.com

Either party may designate a different address at any time upon written notice to the other Parties.

- 10.11 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 10.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Bastrop County, Texas.
- 10.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 10.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 10.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 10.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a

"*force majeure* event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God; fire; explosion; vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.

- 10.17 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Development or the design, construction or operation of any portion of the Development.

(signature page follows)

EXECUTED to be effective as of the _____ day of _____, 2022 (the "Effective Date").

CITY OF SMITHVILLE, TEXAS,

By: _____
Sharon Foerster, Mayor

Date: _____, 2022

SMITHVILLE LAND PARTNERS, LLC.
a Texas limited liability company

By: _____
S. Todd McCullough, Manager

Date: _____, 2022