MISSOURI CITY DEVELOPMENT AUTHORITY
MEETING AGENDA

Notice is hereby given of a meeting of the Board of Directors of the Missouri City Development Authority to be held on **Monday, May 4, 2009,** at **5:45 p.m.** at: **City Hall, 2nd Floor Conference Room behind Council Chamber**, 1522 Texas Parkway, Missouri City, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The Board of Directors reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1. ROLL CALL

2. Approval of the minutes of the meeting of April 6, 2009.

3. Consider approving the updated Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes.

4. Consider authorizing the Chair to execute and the Secretary to attest the First Amendment to the Development Agreement between the Missouri City Development Authority and Perry Homes.

5. Consider authorizing the Chair to execute and the Secretary to attest an agreement among the Missouri City Development Authority, the City of Missouri City and Perry Homes relating to payment of Developer Advances under the First Amended Development Agreement for Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B.

6. Consider declaring The Ainbinder Company in default of the Development Agreement dated May 15, 2006 and cancelling the Development Agreement.

7. Consider declaring Wal-Mart Stores Texas, L.P., in default of the Development Agreement and cancelling the Development Agreement.

8. Consider authorizing payment of invoice.

9. ADJOURN

In compliance with the Americans with Disabilities Act, the City of Missouri City will provide for reasonable accommodations for persons attending Missouri City Development Authority meetings. To better serve you requests should be received 24 hours prior to the meetings. Please contact Patrice Fogarty, City Secretary, at 281.403.8685.

CERTIFICATION

I certify that a copy of the May 4, 2009, agenda of items to be considered by the Missouri City Development Authority was posted on the City Hall bulletin board on May 1, 2009 at 3:00 p.m.

_____
Maria Gonzalez, Deputy City Secretary

I certify that the attached notice and agenda of items for consideration by the Board of Directors was removed by me from the City Hall bulletin board on the ____ day of _____, 2009.

_____ Title: _____

Missouri City Development Authority
Agenda Item
May 4, 2009

2. Approval of the minutes of the meeting of April 6, 2009.

Background information attached as follows:

April 6, 2009 Missouri City Development Authority Minutes

MISSOURI CITY DEVELOPMENT AUTHORITY
MEETING MINUTES

1. ROLL CALL

The Board of Directors of the Missouri City Development Authority held a meeting on Monday, April 6, 2009, at 6:15 p.m. in the Council Conference Room at City Hall, Second Floor, 1522 Texas Parkway, Missouri City, Texas.

Present were Chairman Owen, Directors Reiter, Wyatt, Jimerson, Gary, Gibson, and Kolaja; City Manager Simpson, City Attorney Kelley and City Secretary Fogarty; Assistant City Manager Atkinson, First Assistant City Attorney Smith, and Director of Public Works/City Engineer Elmer. Also present: Rick Hale for Perry Homes.

Chairman Owen called the meeting to order at 6:20 p.m.

2. Approval of the minutes of the meeting of March 16, 2009.

A motion to approve the minutes of the March 16, 2009, meeting was made by Director Reiter and seconded by Director Jimerson. The Board unanimously approved the minutes of the meeting of March 16, 2009, as presented.

3. Consider approving the Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes.

The Report of McCall Gibson and Company on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes was reviewed by First Assistant City Attorney Smith and Director of Finance Vela, it appears to be in order. City Manager Simpson presented an overview on the agreement between the City and Perry Homes. The City will issue certificates of obligation to reimburse Perry Homes. The goal is to sell the certificates of obligation in July in the net amount of $5.44 million for Perry Homes. Director Reiter inquired if the reimbursement due to Perry Homes is $7.6 million and if Perry Homes will settle the reimbursement for $5.44 million. First Assistant City Attorney Smith stated that is correct. City Manager Simpson stated that as of April 6, interest is $756,000 on the expenses Perry Homes has submitted for reimbursement. Even though the City is issuing certificates of obligation, Simpson noted taxpayers will not be paying the debt because payments will come from PID assessments.

Motion made by Director Barbara Gibson and seconded by Director Cynthia Gary; the Board unanimously approved the Report on Applying Agreed-Upon Procedures to Construction, Engineering, and Related Costs Reimbursable to Perry Homes.

4. CLOSED EXECUTIVE SESSION

At 6:32 p.m., the Board of Directors convened in closed executive session pursuant to chapter 551 of the Texas Government Code, for one or more of the following reasons:

Texas Government Code, Section 551.071 – Consultation with attorney to seek or receive legal advice regarding pending or contemplated litigation, a settlement offer, or on a matter which the duty of the attorney to the City under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Texas Open Meetings Act: PID 4 bond issuance.

5. RECONVENE INTO OPEN SESSION

The MCDA reconvened into open session at 6:38 p.m., with no action taken at this time.

6. ADJOURN

Director Wyatt moved to adjourn the meeting at 6:38 p.m. and seconded by Director Kolaja. Motion passed unanimously. Meeting adjourned.

BY: _____
Allen Owen, Chairman

ATTEST: _____
Eunice Reiter, Secretary

Missouri City Development Authority
Agenda Item
May 4, 2009

3. Consider approving the updated Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes.

Background information attached as follows:

Cover Memo

Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes

Missouri City Development Authority
Agenda Item Cover Memo
May 4, 2009

To: Missouri City Development Authority Board of Directors
Agenda Item: **3** Consider approving the **updated** Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes.

Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

McCall, Gibson & Company, PLLC, Certified Public Accountants, has completed its Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes relating to Sections 1, 2, 3, 3A and 3B of Creekmont. The Development Agreement between the Development Authority and Perry Homes requires the Development Authority to receive and approve the report.

BACKGROUND

On February 7, 2006, Perry Homes entered into a Development Agreement with the Missouri City Development Authority. Pursuant to the Agreement, Perry Homes paid costs associated with the construction of infrastructure for the development of Creekmont Subdivision, Sections 1 and 2 ("Developer Advances"). On December 19, 2008, Perry Homes requested reimbursement of the Developer Advances.

Section 5.02(d) of the Development Agreement requires a certified public accountant to calculate the amount that may be payable to the Developer and prepare and submit a report to the Development Authority. The Development Authority contracted with McCall, Gibson to prepare the report. Perry Homes provided the necessary information. **At its meeting on April 6, 2009, the Board approved the report relating to Sections 1 and 2. The report has been updated to include Sections 3, 3A and 3B.** The report is attached.

FISCAL ANALYSIS

The Development Authority is obligated to pay the cost of the report as administrative expenses of PID 4.

STAFF'S RECOMMENDATION

Staff recommends approval of the updated Report on Applying Agreed-Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes.

Frank Simpson
Executive Director

DRAFT
SUBJECT TO CHANGE

PUBLIC IMPROVEMENT DISTRICT NO. 4

OF

THE CITY OF MISSOURI CITY, TEXAS

REPORT ON APPLYING AGREED-UPON PROCEDURES TO

CONSTRUCTION, ENGINEERING AND RELATED COSTS REIMBURSABLE

TO PERRY HOMES (DEVELOPER)

MAY 4, 2009

McCALL, GIBSON & COMPANY, PLLC
Certified Public Accountants

DRAFT
SUBJECT TO CHANGE

TABLE OF CONTENTS

	SCHEDULE
INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES	
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS REIMBURSABLE TO PERRY HOMES (DEVELOPER)	A
SCHEDULE COMPARING ACTUAL REIMBURSABLE COSTS WITH EXHIBIT B OF DEVELOPMENT AGREEMENT	B

McCALL, GIBSON & COMPANY, PLLC

Certified Public Accountants

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May 4, 2009

DRAFT
SUBJECT TO CHANGE

City Council Members
Public Improvement District No. 4
City of Missouri City, Texas

Independent Accountant's Report
on Applying Agreed-Upon Procedures

We have performed the procedures enumerated below, which were agreed to by the City Council Members of the City of Missouri City, Texas (the "City") on behalf of the Public Improvement District No. 4 (the "PID No. 4") on the invoices and schedules submitted by Perry Homes ("Developer") as of May 4, 2009. These procedures were performed solely to assist you in determining the amount to be reimbursed to the Developer involved and to facilitate the preparation of a comparison of the actual costs incurred with the Creekmont Preliminary Cost Summary as documented in Exhibit B of the Development Agreement dated February 7, 2006 and amended May 4, 2009. According to Section 5.02 of the Development Agreement, "the Authority shall hire a certified public accountant to calculate the amount due the Developer for the Developer Advances being repaid with interest calculated thereon".

This engagement to apply agreed-upon procedures was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the Council Members of the City. Consequently, we make no representation regarding the sufficiency of the procedures either for the purpose for which this report has been requested or for any other purpose. The procedures performed are summarized as follows:

A. We reviewed certain schedules and supporting invoices submitted by the Developer in substantiation of the costs to be reimbursed. Our review included all documentation supporting items, amounts, and proof of payment for which reimbursement is requested. In addition, we reviewed all agreements provided to us relative to the reimbursement request.

B. We verified the mathematical accuracy of all engineering invoices greater than $5,000. We compared the total of the invoices submitted to notations on the final engineering invoices on the project to ascertain whether or not all invoices rendered on the project were included in the reimbursement

C. We reviewed the computation of certain costs looking for any amounts required to be paid 100% by the Developer, in accordance with the Development Agreement. Any costs required to be paid by the Developer were deducted.

D. For the construction contracts, we footed the final pay estimates, and we calculated the extensions of any line item greater than $5,000.

E. We obtained verbal confirmation from Allgood Construction Company, Incorporated, Liftwater Construction, Inc., Hurtado Construction Co. Inc., E.L. Harris III Construction, Inc. and Crostex Construction, Inc. that contracts have been paid in full and that there were no outstanding claims against the City, PID No. 4 or the Developer.

F. We prepared schedules that compute interest in accordance with the terms of the Development Agreement.

G. We prepared a reimbursement report for the benefit of the City, including the accountant's report and schedule of amounts reimbursable to the Developer, and have compared the amounts for the PID improvements, Exhibit B in the Development Agreement, with the actual reimbursable costs.

The attached Schedule A titled "Schedule of Construction, Engineering and Related Costs Reimbursable to Perry Homes (Developer)", sets forth their reimbursable costs. This reimbursement is in accordance with the terms and conditions of the Development Agreement by and among the Missouri City Development Authority, PID No. 4 and Perry Homes dated February 7, 2006. That Agreement was amended on May 4, 2009.

Perry Homes originally submitted schedules and invoices totaling $4,146,151.87, including interest of $575,937.87 calculated at 4.75% through January 27, 2009. Several updates were submitted, with the final totaling $3,346,392.42, including interest of $464,278.61. After our initial report, Section Three and Paving items were added, bringing the total due to $5,656,398.17, including interest of $764,110.27. We have revised the reimbursable amount to $6,075,366.98, including interest of $1,183,079.08 calculated through May 4, 2009. The following changes were made to the original schedule:

A. We calculated interest through May 4, 2009 at the prime commercial lending rate of JPMorgan Chase Bank plus 1% compounded semi-annually, which resulted in an addition to the reimbursement amount of $418,968.81.

According to the Development Agreement, the Developer is to be paid interest on the reimbursable amount at the prime commercial lending rate of JPMorgan Chase Bank plus 1% per annum compounded semiannually. We calculated the interest rate using a per annum basis of 365 days. The following details the interest rates used for the periods included:

Dates	Prime Rate	Prime Rate plus 1%
February 11, 2005 to March 21, 2005	5.50%	6.50%
March 22, 2005 to May 2, 2005	5.75%	6.75%
May 3, 2005 to June 29, 2005	6.00%	7.00%
June 30, 2005 to August 8, 2005	6.25%	7.25%
August 9, 2005 to September 19, 2005	6.50%	7.50%
September 20, 2005 to October 31, 2005	6.75%	7.75%
November 1, 2005 to December 12, 2005	7.00%	8.00%
December 13, 2005 to January 30, 2006	7.25%	8.25%
January 31, 2006 to March 27, 2006	7.50%	8.50%
March 28, 2006 to May 9, 2006	7.75%	8.75%
May 10, 2006 to June 28, 2006	8.00%	9.00%
June 29, 2006 to September 17, 2007	8.25%	9.25%
September 18, 2007 to October 30, 2007	7.75%	8.75%
October 31, 2007 to December 10, 2007	7.50%	8.50%
December 11, 2007 to January 21, 2008	7.25%	8.25%
January 22, 2008 to January 29, 2008	6.50%	7.50%
January 30, 2008 to March 17, 2008	6.00%	7.00%
March 18, 2008 to April 29, 2008	5.25%	6.25%
April 30, 2008 to October 7, 2008	5.00%	6.00%
October 8, 2008 to October 28, 2008	4.50%	5.50%
October 29, 2008 to December 15, 2008	4.00%	5.00%
December 16, 2008 to May 4, 2009*	3.25%	4.25%

*Assumes no change in prime interest rate after April 29, 2009

Section 5.02(d)(2) of the agreement states the report should certify "that funds are available to make such payment". This report does not meet that contract provision.

DRAFT
SUBJECT TO CHANGE

Schedule B compares the actual reimbursable costs due the Developer with Exhibit B of the Development Agreement and an estimate of the cost to complete the projects.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the aforementioned reimbursable costs. Accordingly, we do not express an opinion on the costs to be reimbursed as of May 4, 2009. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Development Authority and is not intended to be and should not be used by anyone other than this specified party. However, this report is a matter of public record and its distribution is not limited. This report should not be associated with the presentation of any financial data of the City or PID No. 4 except to comply with filing requirements as required by the respective agreements.

We appreciate this opportunity to be of service to you.

McCall, Gibson & Company, PLLC
Certified Public Accountants

2009 MO City AUP

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Allgood Construction Company, Incorporated			
Construction - Water, Sewer, and Drainage to serve Creekmont, Section One			
Amount Paid by Developer	$	1,148,994.86	
Less Amount Allocable to Other Projects		672,653.85	$ 476,341.01
Carter & Burgess, Inc.			
Engineering - Water, Sewer and Drainage to serve Creekmont, Section One			
Amount Paid by Developer	$	222,471.71	
Less Amount Allocable to Other Projects		158,403.67	64,068.04
Terracon Consultants, Inc.			
Materials Testing - Water, Sewer and Drainage Creekmont, Section One			
Amount Paid by Developer	$	29,808.50	
Less Amount Allocable to Other Projects		20,645.37	9,163.13
Allgood Construction Company, Incorporated			
Construction - Paving Creekmont, Section One			
Amount Paid by Developer	$	850,561.93	
Less Amount Allocable to Other Projects		459,638.62	390,923.31
Carter & Burgess, Inc.			
Engineering - Paving Creekmont, Section One			
Amount Paid by Developer	$	128,878.30	
Less Amount Allocable to Other Projects		73,881.91	54,996.39

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Terracon Consultants, Inc.			
Materials Testing - Paving			
Creekmont, Section One			
Amount Paid by Developer	$	42,994.88	
Less Amount Allocable to Other Projects		24,648.01	$ 18,346.87
Allgood Construction Company, Incorporated			
Construction - Water, Sewer, and Drainage to serve			
Creekmont, Section Two			
Amount Paid by Developer	$	1,966,268.03	
Less Amount Allocable to Other Projects		904,520.43	1,061,747.60
Carter & Burgess, Inc.			
Engineering - Water, Sewer and Drainage to serve			
Creekmont, Section Two			
Amount Paid by Developer	$	298,051.18	
Less Amount Allocable to Other Projects		148,203.25	149,847.93
Terracon Consultants, Inc.			
Materials Testing - Water, Sewer and Drainage			
Creekmont, Section Two			
Amount Paid by Developer	$	51,737.25	
Less Amount Allocable to Other Projects		24,461.37	27,275.88
Allgood Construction Company, Incorporated			
Construction - Paving			
Creekmont, Section Two			
Amount Paid by Developer	$	699,375.33	
Less Amount Allocable to Other Projects		351,726.23	347,649.10

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Allgood Construction Company, Incorporated			
Construction - Paving			
South Creekmont, Section Two			
Amount Paid by Developer	$	67,486.59	
Less Amount Allocable to Other Projects		29,607.30	$ 37,879.29
Carter & Burgess, Inc.			
Engineering - Paving			
Creekmont, Section Two			
Amount Paid by Developer	$	110,911.04	
Less Amount Allocable to Other Projects		52,595.78	58,315.26
Terracon Consultants, Inc.			
Materials Testing - Paving			
Creekmont, Section Two			
Amount Paid by Developer	$	25,872.33	
Less Amount Allocable to Other Projects		12,263.88	13,608.45
Crostex Construction, Inc.			
Construction - Water, Sewer, and Drainage to serve			
Creekmont, Section Three			
Amount Paid by Developer			346,125.25
Carter & Burgess, Inc.			
Engineering - Water, Sewer and Drainage to serve			
Creekmont, Section Three			
Amount Paid by Developer	$	46,043.62	
Less Amount Allocable to Other Projects		722.89	45,320.73

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SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Terracon Consultants, Inc.			
Materials Testing - Water, Sewer and Drainage			
Creekmont, Section Three			
Amount Paid by Developer	$	14,852.75	
Less Amount Allocable to Other Projects		233.19	$ 14,619.56
E. L. Harris III Construction, Inc.			
Construction - Paving			
Creekmont, Section Three			
Amount Paid by Developer	$	265,590.10	
Less Amount Allocable to Other Projects		106,236.04	159,354.06
Liftwater Construction, Inc.			
Construction - Lift Station			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	382,602.76	
Less Amount Allocable to Other Projects		336,898.18	45,704.58
Liftwater Construction, Inc.			
Construction - Lift Station			
Creekmont, SectionThree			
Amount Paid by Developer	$	382,602.76	
Less Amount Allocable to Other Projects		359,164.51	23,438.25
Allgood Construction Company, Incorporated			
Construction - Offsite Improvements			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	1,459,158.40	
Less Amount Allocable to Other Projects		1,284,851.72	174,306.68

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Allgood Construction Company, Incorporated			
Construction - Offsite Improvements			
Creekmont, Section Three			
Amount Paid by Developer	$	1,459,158.40	
Less Amount Allocable to Other Projects		1,369,770.36	$ 89,388.04
Carter & Burgess, Inc.			
Engineering - Lift Station and Offsite Improvements			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	230,685.43	
Less Amount Allocable to Other Projects		203,128.44	27,556.99
Carter & Burgess, Inc.			
Engineering - Lift Station and Offsite Improvements			
Creekmont, Section Three			
Amount Paid by Developer	$	230,685.43	
Less Amount Allocable to Other Projects		216,553.64	14,131.79
Terracon Consultants, Inc.			
Materials Testing - Lift Station			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	103.50	
Less Amount Allocable to Other Projects		91.14	12.36
Terracon Consultants, Inc.			
Materials Testing - Lift Station			
Creekmont, Section Three			
Amount Paid by Developer	$	103.50	
Less Amount Allocable to Other Projects		97.16	6.34

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Terracon Consultants, Inc.			
Materials Testing - Offsite Improvements			
Creekmont, Section One and Two			
Amount Paid by Developer	$	7,377.50	
Less Amount Allocable to Other Projects		6,496.21	$ 881.29
Terracon Consultants, Inc.			
Materials Testing - Offsite Improvements			
Creekmont, Section Three			
Amount Paid by Developer	$	7,377.50	
Less Amount Allocable to Other Projects		6,925.55	451.95
Hurtado Construction Co. Inc.			
Construction - Detention Facility			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	1,127,824.00	
Less Amount Allocable to Other Projects		930,770.59	197,053.41
Hurtado Construction Co. Inc.			
Construction - Detention Facility			
Creekmont, Section Three			
Amount Paid by Developer	$	1,127,824.00	
Less Amount Allocable to Other Projects		1,026,770.97	101,053.03
Carter & Burgess, Inc.			
Engineering - Detention Facility			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	157,514.85	
Less Amount Allocable to Other Projects		129,993.86	27,520.99

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Carter & Burgess, Inc.			
Engineering - Detention Facility			
Creekmont, Section Three			
Amount Paid by Developer	$ 157,514.85		
Less Amount Allocable to Other Projects	143,401.52	$	14,113.33
Carter & Burgess, Inc.			
Engineering - Drainage Study			
Creekmont, Sections One and Two			
Amount Paid by Developer	$ 24,625.11		
Less Amount Allocable to Other Projects	20,322.61		4,302.50
Carter & Burgess, Inc.			
Engineering - Drainage Study			
Creekmont, Section Three			
Amount Paid by Developer	$ 24,625.11		
Less Amount Allocable to Other Projects	22,418.70		2,206.41
City of Missouri City, Texas			
Impact Fees			
Creekmont Section One			
139 lots @ $2,991.90			
Amount Paid by Developer			415,874.10
City of Missouri City, Texas			
Impact Fees			
Creekmont Section Two			
67 lots @ $2,991.90			
Amount Paid by Developer			200,457.30

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION		REIMBURSABLE COST
City of Missouri City, Texas		
Impact Fees		
Creekmont Section Three		
93 lots @ $2,991.90		
Amount Paid by Developer	$	278,246.70
TOTAL AMOUNT REIMBURSABLE TO PERRY HOMES AS OF MAY 4, 2009	**$**	**4,892,287.90**
Add: Developer Interest *		1,183,079.08
TOTAL AMOUNT PAYABLE TO PERRY HOMES AS OF MAY 4, 2009	**$**	**6,075,366.98**

* Interest is calculated based upon the JPMorgan Chase Bank prime commercial lending rate plus one percent compounded semiannually in accordance with the Development Agreement.

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE COMPARING ACTUAL REIMBURSABLE COSTS
WITH EXHIBIT B OF DEVELOPMENT AGREEMENT
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION	ESTIMATED COST ALLOCATION EXHIBIT B	PID NO. 4 COSTS TO BE REIMBURSED TO PERRY HOMES AT MAY 4, 2009	ESTIMATED ADDITIONAL COST TO COMPLETE
PUBLIC IMPROVEMENTS			
WATER			
Water - Section 1	$ 146,500	$ 128,492	$ -
Water - Section 2	157,125	197,224	
Water - Section 3	51,000	41,451	
Water - North Highway 6	392,023		392,023
SANITARY SEWER			
Lift Station and Off-Site Force Main	469,273	332,838	136,435
Sanitary - Trunk Line, Section 1	37,377	26,494	
Sanitary - Section 1 (Non-Shared)	211,890	155,648	
Sanitary - 9.16 Acres & Hwy 6 (Section 2)	37,628		37,628
Sanitary - Section 2 (Non-Shared)	399,097	291,137	
Sanitary - Section 3 (Non-Shared)	143,086	135,469	
Sanitary - North Highway 6 (Shared)	70,908		70,908
Sanitary - North Highway 6 (Non-Shared)	454,606		454,606
STORM SEWER			
Storm - Trunk Line, Section 1	57,579	59,451	
Storm - Section 1 (Non-Shared)	135,742	104,472	
Storm - 9.16 Acres & South Creekmont Drive (Section 2)	8,461		8,461
Storm - Trunk Line Section 2	234,386	284,824	
Storm - Section 2 (Non-Shared)	232,718	275,966	
Storm - Section 3 (Non-Shared)	123,093	169,205	
Storm Water Pollution Protection Plan South Highway 6	15,978	14,381	
Storm - North Highway 6 (Shared)	325,971		325,971
Storm - North Highway 6 (Non-Shared)	408,765		408,765
Storm Water Pollution Protection Plan North Highway 6	20,676		20,676
Detention and Channel Improvements	560,896	298,106	262,790
PAVING			
Paving - South Hwy 6 (Sections 1,2,3)	1,750,000	935,805	814,195
Paving - North. Hwy 6 (Sections 4,5)	1,492,312		1,492,312
MISCELLANEOUS			
Utility and Paving Engineering	704,217	546,747	157,470
Water/Sewer Impact Fees - North	687,000		687,000
Water/Sewer Impact Fees - South	897,000	894,578	
SUBTOTAL	$ 10,225,307	$ 4,892,288	$ 5,269,240
Developer Interest	$ -	$ 1,183,079	$ -
TOTAL	**$ 10,225,307**	**$ 6,075,367**	**$ 5,269,240**

DRAFT
SUBJECT TO CHANGE

TOTAL ACTUAL COSTS TO DATE AND ESTIMATED ADDITIONAL COST TO COMPLETE	ACTUAL OVER (UNDER) ESTIMATE	% VARIANCE OVER (UNDER) ESTIMATE
$ 128,492	$ (18,008)	-12.29%
197,224	40,099	25.52%
41,451	(9,549)	-18.72%
392,023	-	0.00%
469,273	-	0.00%
26,494	(10,883)	-29.12%
155,648	(56,242)	-26.54%
37,628	-	0.00%
291,137	(107,960)	-27.05%
135,469	(7,617)	-5.32%
70,908	-	0.00%
454,606	-	0.00%
59,451	1,872	3.25%
104,472	(31,270)	-23.04%
8,461	-	0.00%
284,824	50,438	21.52%
275,966	43,248	18.58%
169,205	46,112	37.46%
14,381	(1,597)	-9.99%
325,971	-	0.00%
408,765	-	0.00%
20,676	-	0.00%
560,896	-	0.00%
1,750,000	-	0.00%
1,492,312	-	0.00%
704,217	-	0.00%
687,000	-	0.00%
894,578	(2,422)	-0.27%
$ 10,161,528	$ (63,779)	
$ 1,183,079	$ 1,183,079	
$ 11,344,607	**$ 1,119,300**	

Missouri City Development Authority
Agenda Item
May 4, 2009

4. Consider authorizing the Chair to execute and the Secretary to attest the First Amendment to the Development Agreement between the Missouri City Development Authority and Perry Homes.

Background information attached as follows:

Cover Memo

First Amendment to the Development Agreement with Perry Homes

Missouri City Development Authority
Agenda Item Cover Memo
May 4, 2009

To: Missouri City Development Authority Board of Directors
Agenda Item: **4** Consider authorizing the Chair to execute and the Secretary to attest the First Amendment to the Development Agreement between the Missouri City Development Authority and Perry Homes.

Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

The First Amendment to the Development Agreement between the Missouri City Development Authority and Perry Homes, LLC, makes changes to the February 7, 2006 agreement necessary to conform to the parties' agreement for the issuance of certificates of obligation to pay Developer Advances related to Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B.

BACKGROUND

The Development Agreement is amended to include the City as a party and to provide representations that the City is authorized to enter into the agreement, in the place of the Public Improvement District.

The amendment establishes the amount of Developer Advances at a total of $7,600,000 and incorporates new Exhibits to reflect the expenditures and the audit of the expenditures. The allowed expenditures include paving which was not included in the original agreement.

The amendment provides for the payment of the Developer Advances by the City through the issuance of its certificates of obligation in the amount of $5,850,000 and providing payment of approximately $5,415,000 to Perry Homes in complete satisfaction of the repayment obligations under the agreement. The assessments are assigned by the Development Authority to the City to be used to cash-flow the payments required on the certificates of obligation.

FISCAL ANALYSIS

The amendment provides an income stream to fund the certificates of obligation that will pay Perry Homes for its Developer Advances.

STAFF'S RECOMMENDATION

Authorize the Chair to execute and the Secretary to attest the First Amendment to the Development Agreement between the Missouri City Development Authority and Perry Homes.

Frank Simpson
Executive Director

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE MISSOURI CITY DEVELOPMENT AUTHORITY AND PERRY HOMES DATED FEBRUARY 7, 2006

This First Amendment to the Development Agreement between the Missouri City Development Authority (the "Authority"), a nonprofit local government corporation formed by and on behalf of the City of Missouri City, Texas, and Perry Homes, LLC, a Texas limited liability company (the "Developer") joined herein by the City of Missouri City, Texas (the "City"), a Texas home-rule municipality, is made this the ___ day of May, 2009.

Whereas, the Authority and the Developer entered into the Development Agreement on February 7, 2006, to provide for the construction of certain public infrastructure to serve Creekmont Subdivision, a recorded subdivision in Fort Bend County, Texas, and to provide for reimbursement of the Developer for its expenses in constructing such public infrastructure through the collection of special assessments (the "Assessments") levied on the lots located within Creekmont Subdivision and within the boundaries of the City's Public Improvement District No. 4 ("PID 4"); and

Whereas, the Developer has constructed the public infrastructure necessary to serve Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision and has requested reimbursement for its expenses pursuant to the Development Agreement; and

Whereas, the Development Agreement did not include the pavement expenses in the amounts to be reimbursed to the Developer; and

Whereas, the Authority has determined that it is presently unable to issue debt secured by the Assessments to provide reimbursement to the Developer, as contemplated by the Development Agreement; and

Whereas, the City is willing to issue certificates of obligation in an amount that will allow the debt service, repayment and other expenses for the lots in Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision to be paid from the Assessments for and in consideration of the conveyance of such public infrastructure improvements to the City; and

Whereas, the total costs and expenses of the Developer are known and have been audited and have been agreed to by all the parties as reported in the Report on Applying Agreed Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes; and

Whereas the parties desire to resolve all issues related to the construction, costs and expenses of construction, and reimbursement for such construction for Section 1, 2, 3, 3A and 3B of Creekmont Subdivision by

execution of this First Amendment to the Development Agreement, contingent upon the approval, sale and delivery of the City's Certificates of Obligation, Series 2009A, in aggregate principal amount not to exceed $5,850,000 and the payment of a portion of the proceeds therefrom to Developer; now, therefore,

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

For and in consideration of the mutual promises, covenants, obligations and benefits of this First Amendment to the Development Agreement, the Authority, the Developer and the City contract and agree as follows:

Section 1.01 "Definitions" is amended by the addition of the definition of "Perry Homes" which reads as follows:

> **1.01 Definitions.** The terms "Act," "Agreement," "Authority," "Developer," "City," "PID," "Plan," and "PID Agreement" have the meanings set forth in the preamble hereof and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory and the word "may" is permissive.
>
> *** * ***
>
> *Perry Homes* shall mean, collectively, Perry Homes, LLC, a Texas limited liability company, the successor-in-interest to Perry Homes, a Joint Venture, by Perry-Houston Interests, LTD, a Texas limited partnership, as its managing joint venturer, and by PH Financial, L.L.C., a Texas limited liability company, as its general partner.

Section 2.03 "Representation of the PID" is amended to read as follows:

> **2.03 Representations of the City.** The City hereby represents that:
>
> (A) The City is duly created and existing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.
>
> (B) The City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest

upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

Article 5 "Project Financing and Funding" is amended by the addition of a new subsection to be numbered 5.01 (c) which reads as follows:

5.01 The Developer Advances.

* * *

(c) Notwithstanding the foregoing, as to Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision, the Developer Advances for PID 4 total $7,600,000 as set forth in Exhibits B-1 and C hereto, the Report on Applying Agreed Upon Procedures to Construction, Engineering and Related Costs Reimbursable to Perry Homes prepared by McCall Gibson & Company, PLLC.

Section 5.04 "City Issuance" is amended to read as follows:

5.04 Payment of Developer Advances related to Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision. The payment of Developer Advances related to Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision, as set forth in Section 5.01(c), is limited to the funding available from the City's issuance of its Certificates of Obligation, Series 2009A, in the aggregate principal amount supported by the projected Assessments, assuming collections at a rate of ninety-seven percent (97%) for said Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision. Such Certificates of Obligation are expected to be issued in the approximate aggregate principal amount of $5,850,000, with an expected net reoffering premium of approximately $14,139.30, and with issuance costs of approximately $278,636.75. The funding anticipated for payment of such Developer Advances for Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision is approximately $5,415,500. Developer shall convey to the City, simultaneous with the payment of the Developer Advances for Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision, title to the public infrastructure improvements in such

Sections. The public infrastructure improvements are described in Exhibit B-1 attached hereto. The Authority authorizes the City to maintain and use the proceeds of the Assessments collected for the lots in Sections 1, 2, 3, 3A and 3B of Creekmont Subdivision for the payment of the debt service and all expenses related to its Certificates of Obligation, Series 2009A.

Section 7.15 "Legal costs" is amended to read as follows:

7.15 Conditions precedent. This First Amendment to the Development Agreement between the Missouri City Development Authority and Perry Homes dated February 7, 2006 shall be effective from and after the approval, sale and delivery of the City's Certificates of Obligation, Series 2009A, in the aggregate principal amount not to exceed $5,850,000 and delivery of a portion of the proceeds therefrom, in the approximate amount of $5,415,000, to Developer.

Exhibit B-1 is added and reads as attached hereto.

Exhibit C is added and reads as attached hereto.

Notwithstanding anything contained in this First Amendment to the contrary, the parties expressly acknowledge and agree that the issues being amended relate only to PID 4 and that the duties and obligations of the parties with respect to Reinvestment Zone Number Two, City of Missouri City, remain outstanding.

All other terms, provisions, conditions and obligations of the Development Agreement not amended or deleted hereby shall continue in full force and effect.

Dated this the ___ day of May, 2009.

(Signature pages to follow.)

Perry Homes

Perry Homes, LLC
A Texas limited liability company

_____
By:
Title:

Missouri City Development Authority

_____
By: Allen Owen
Title: Chairperson

ATTEST:

_____
Eunice Reiter, Secretary

Approved as to Legal form:

_____
Caroline Kelley, City Attorney

City of Missouri City, Texas

_____
By: Allen Owen
Title: Mayor

ATTEST:

_____
Patrice Fogarty, City Secretary

Approved as to Legal form:

_____
Caroline Kelley, City Attorney

Missouri City Development Authority

_____
By: Allen Owen
Title: Chairperson

ATTEST:

_____
Eunice Reiter, Secretary

Approved as to Legal form:

_____
Caroline Kelley, City Attorney

City of Missouri City, Texas

_____
By: Allen Owen
Title: Mayor

ATTEST:

_____
Patrice Fogarty, City Secretary

Approved as to Legal form:

_____
Caroline Kelley, City Attorney

EXHIBIT B-1

Creekmont Preliminary TIRZ & PID Cost Summary

4/17/2009

Item	TIRZ Reimbursement	PID Reimbursement
Water		
Off-site Water Main	$362,116	
Water - South Watts Plantation (Sec. 1 plat)	$118,860	
Water - Section 1		$146,500
Water - Section 2		$157,125
Water - Section 3		$51,000
Water - North Hwy. 6		$392,023
Water Total	**$480,976**	**$746,648**
Sanitary Sewer		
Lift Station & Off-site Force Main	$479,130	$469,273
Sanitary - South Watts Plantation (Sec. 1 plat)	$47,933	
Sanitary - Trunk Line (Sec. 1 plat)	$133,642	$37,377
Sanitary - Section 1 (non-shared)		$211,890
Sanitary - 9.16 Ac & Connection N. Hwy. 6 (Sec. 2 plat)	$53,236	$37,628
Sanitary - Section 2 (non-shared)		$399,097
Sanitary - Section 3 (non-shared)		$143,086
Sanitary - North Hwy. 6 (shared)	$192,887	$70,908
Sanitary - North Hwy. 6 (non-shared)		$454,606
Sanitary Sewer Total	**$906,828**	**$1,823,865**
Storm Sewer		
Storm - South Watts Plantation (Sec. 1 plat)	$183,390	
Storm - Trunk Line Sec. 1	$603,919	$57,579
Storm - Section 1 (non-shared)		$135,742
Storm - 9.16 Ac & South Creekmont (Sec. 2 plat)	$88,738	$8,461
Storm - Trunk Line Sec. 2	$746,255	$234,386
Storm - Section 2 (non-shared)		$232,718
Storm - Section 3 (non-shared)		$123,093
SWPPP - South Hwy. 6	$105,682	$15,978
Storm - North Hwy. 6 (shared)	$893,360	$325,971
Storm - North Hwy. 6 (non-shared)		$408,765
SWPPP - North Hwy. 6	$62,501	$20,676
Detention & Channel Improvements	$725,659	$560,896
Storm Sewer Total	**$3,409,504**	**$2,124,265**
Paving		
Paving - South Creekmont (300' deep)	$138,346	
Paving - Watts Plantation South Hwy. 6	$409,986	
Erosion Control South Hwy. 6	$12,075	
Paving - North Creekmont (300' deep)	$120,597	
Paving - Watts Plantation N. Hwy. 6 (300' deep)	$165,456	
Erosion Control North Hwy. 6	$7,466	
Paving - South Hwy. 6 (Sections 1, 2, & 3)		$1,050,000
Paving - North Hwy. 6 (Sections 4 & 5)		$900,000
Paving Total	**$853,926**	**$2,803,926**
Misc.		
Utility & Paving Engineering	$853,466	$704,217
Traffic Signals	$420,000	
Water/Sewer Impact Fees - North ($3,000/lot)		$687,000
Water/Sewer Impact Fees - South ($3,000/lot)		$897,000
Misc. Total	**$1,273,466**	**$2,288,217**
TOTAL	**$6,924,700**	**$9,786,921**

Note: Where costs are split between TIRZ and PID, the actual costs for each line item shall be allocated according to the percentages reflected in these cost estimates

Exhibit C

DRAFT
SUBJECT TO CHANGE

PUBLIC IMPROVEMENT DISTRICT NO. 4

OF

THE CITY OF MISSOURI CITY, TEXAS

REPORT ON APPLYING AGREED-UPON PROCEDURES TO

CONSTRUCTION, ENGINEERING AND RELATED COSTS REIMBURSABLE

TO PERRY HOMES (DEVELOPER)

MAY 4, 2009

McCALL, GIBSON & COMPANY, PLLC
Certified Public Accountants

DRAFT
SUBJECT TO CHANGE

TABLE OF CONTENTS

	SCHEDULE
INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES	
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS REIMBURSABLE TO PERRY HOMES (DEVELOPER)	A
SCHEDULE COMPARING ACTUAL REIMBURSABLE COSTS WITH EXHIBIT B OF DEVELOPMENT AGREEMENT	B

Exhibit C

McCALL, GIBSON & COMPANY, PLLC

Certified Public Accountants

13831 Northwest Frwy.
Suite 610
Houston, Texas 77040-5216
(713) 462-0341
Fax (713) 462-2708
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May 4, 2009

DRAFT
SUBJECT TO CHANGE

City Council Members
Public Improvement District No. 4
City of Missouri City, Texas

Independent Accountant's Report
on Applying Agreed-Upon Procedures

We have performed the procedures enumerated below, which were agreed to by the City Council Members of the City of Missouri City, Texas (the "City") on behalf of the Public Improvement District No. 4 (the "PID No. 4") on the invoices and schedules submitted by Perry Homes ("Developer") as of May 4, 2009. These procedures were performed solely to assist you in determining the amount to be reimbursed to the Developer involved and to facilitate the preparation of a comparison of the actual costs incurred with the Creekmont Preliminary Cost Summary as documented in Exhibit B of the Development Agreement dated February 7, 2006 and amended May 4, 2009. According to Section 5.02 of the Development Agreement, "the Authority shall hire a certified public accountant to calculate the amount due the Developer for the Developer Advances being repaid with interest calculated thereon".

This engagement to apply agreed-upon procedures was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the Council Members of the City. Consequently, we make no representation regarding the sufficiency of the procedures either for the purpose for which this report has been requested or for any other purpose. The procedures performed are summarized as follows:

A. We reviewed certain schedules and supporting invoices submitted by the Developer in substantiation of the costs to be reimbursed. Our review included all documentation supporting items, amounts, and proof of payment for which reimbursement is requested. In addition, we reviewed all agreements provided to us relative to the reimbursement request.

B. We verified the mathematical accuracy of all engineering invoices greater than $5,000. We compared the total of the invoices submitted to notations on the final engineering invoices on the project to ascertain whether or not all invoices rendered on the project were included in the reimbursement

C. We reviewed the computation of certain costs looking for any amounts required to be paid 100% by the Developer, in accordance with the Development Agreement. Any costs required to be paid by the Developer were deducted.

D. For the construction contracts, we footed the final pay estimates, and we calculated the extensions of any line item greater than $5,000.

E. We obtained verbal confirmation from Allgood Construction Company, Incorporated, Liftwater Construction, Inc., Hurtado Construction Co. Inc., E.L. Harris III Construction, Inc. and Crostex Construction, Inc. that contracts have been paid in full and that there were no outstanding claims against the City, PID No. 4 or the Developer.

F. We prepared schedules that compute interest in accordance with the terms of the Development Agreement.

G. We prepared a reimbursement report for the benefit of the City, including the accountant's report and schedule of amounts reimbursable to the Developer, and have compared the amounts for the PID improvements, Exhibit B in the Development Agreement, with the actual reimbursable costs.

The attached Schedule A titled "Schedule of Construction, Engineering and Related Costs Reimbursable to Perry Homes (Developer)", sets forth their reimbursable costs. This reimbursement is in accordance with the terms and conditions of the Development Agreement by and among the Missouri City Development Authority, PID No. 4 and Perry Homes dated February 7, 2006. That Agreement was amended on May 4, 2009.

Perry Homes originally submitted schedules and invoices totaling $4,146,151.87, including interest of $575,937.87 calculated at 4.75% through January 27, 2009. Several updates were submitted, with the final totaling $3,346,392.42, including interest of $464,278.61. After our initial report, Section Three and Paving items were added, bringing the total due to $5,656,398.17, including interest of $764,110.27. We have revised the reimbursable amount to $6,075,366.98, including interest of $1,183,079.08 calculated through May 4, 2009. The following changes were made to the original schedule:

A. We calculated interest through May 4, 2009 at the prime commercial lending rate of JPMorgan Chase Bank plus 1% compounded semi-annually, which resulted in an addition to the reimbursement amount of $418,968.81.

According to the Development Agreement, the Developer is to be paid interest on the reimbursable amount at the prime commercial lending rate of JPMorgan Chase Bank plus 1% per annum compounded semiannually. We calculated the interest rate using a per annum basis of 365 days. The following details the interest rates used for the periods included:

Dates	Prime Rate	Prime Rate plus 1%
February 11, 2005 to March 21, 2005	5.50%	6.50%
March 22, 2005 to May 2, 2005	5.75%	6.75%
May 3, 2005 to June 29, 2005	6.00%	7.00%
June 30, 2005 to August 8, 2005	6.25%	7.25%
August 9, 2005 to September 19, 2005	6.50%	7.50%
September 20, 2005 to October 31, 2005	6.75%	7.75%
November 1, 2005 to December 12, 2005	7.00%	8.00%
December 13, 2005 to January 30, 2006	7.25%	8.25%
January 31, 2006 to March 27, 2006	7.50%	8.50%
March 28, 2006 to May 9, 2006	7.75%	8.75%
May 10, 2006 to June 28, 2006	8.00%	9.00%
June 29, 2006 to September 17, 2007	8.25%	9.25%
September 18, 2007 to October 30, 2007	7.75%	8.75%
October 31, 2007 to December 10, 2007	7.50%	8.50%
December 11, 2007 to January 21, 2008	7.25%	8.25%
January 22, 2008 to January 29, 2008	6.50%	7.50%
January 30, 2008 to March 17, 2008	6.00%	7.00%
March 18, 2008 to April 29, 2008	5.25%	6.25%
April 30, 2008 to October 7, 2008	5.00%	6.00%
October 8, 2008 to October 28, 2008	4.50%	5.50%
October 29, 2008 to December 15, 2008	4.00%	5.00%
December 16, 2008 to May 4, 2009*	3.25%	4.25%

*Assumes no change in prime interest rate after April 29, 2009

Section 5.02(d)(2) of the agreement states the report should certify "that funds are available to make such payment". This report does not meet that contract provision.

Schedule B compares the actual reimbursable costs due the Developer with Exhibit B of the Development Agreement and an estimate of the cost to complete the projects.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of an opinion on the aforementioned reimbursable costs. Accordingly, we do not express an opinion on the costs to be reimbursed as of May 4, 2009. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the Development Authority and is not intended to be and should not be used by anyone other than this specified party. However, this report is a matter of public record and its distribution is not limited. This report should not be associated with the presentation of any financial data of the City or PID No. 4 except to comply with filing requirements as required by the respective agreements.

We appreciate this opportunity to be of service to you.

McCall, Gibson & Company, PLLC
Certified Public Accountants

2009 MO City AUP

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Allgood Construction Company, Incorporated			
Construction - Water, Sewer, and Drainage to serve Creekmont, Section One			
Amount Paid by Developer	$	1,148,994.86	
Less Amount Allocable to Other Projects		672,653.85	$ 476,341.01
Carter & Burgess, Inc.			
Engineering - Water, Sewer and Drainage to serve Creekmont, Section One			
Amount Paid by Developer	$	222,471.71	
Less Amount Allocable to Other Projects		158,403.67	64,068.04
Terracon Consultants, Inc.			
Materials Testing - Water, Sewer and Drainage Creekmont, Section One			
Amount Paid by Developer	$	29,808.50	
Less Amount Allocable to Other Projects		20,645.37	9,163.13
Allgood Construction Company, Incorporated			
Construction - Paving Creekmont, Section One			
Amount Paid by Developer	$	850,561.93	
Less Amount Allocable to Other Projects		459,638.62	390,923.31
Carter & Burgess, Inc.			
Engineering - Paving Creekmont, Section One			
Amount Paid by Developer	$	128,878.30	
Less Amount Allocable to Other Projects		73,881.91	54,996.39

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4

SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Terracon Consultants, Inc.			
Materials Testing - Paving			
Creekmont, Section One			
Amount Paid by Developer	$	42,994.88	
Less Amount Allocable to Other Projects		24,648.01	$ 18,346.87
Allgood Construction Company, Incorporated			
Construction - Water, Sewer, and Drainage to serve			
Creekmont, Section Two			
Amount Paid by Developer	$	1,966,268.03	
Less Amount Allocable to Other Projects		904,520.43	1,061,747.60
Carter & Burgess, Inc.			
Engineering - Water, Sewer and Drainage to serve			
Creekmont, Section Two			
Amount Paid by Developer	$	298,051.18	
Less Amount Allocable to Other Projects		148,203.25	149,847.93
Terracon Consultants, Inc.			
Materials Testing - Water, Sewer and Drainage			
Creekmont, Section Two			
Amount Paid by Developer	$	51,737.25	
Less Amount Allocable to Other Projects		24,461.37	27,275.88
Allgood Construction Company, Incorporated			
Construction - Paving			
Creekmont, Section Two			
Amount Paid by Developer	$	699,375.33	
Less Amount Allocable to Other Projects		351,726.23	347,649.10

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4

SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST	
Allgood Construction Company, Incorporated				
Construction - Paving				
South Creekmont, Section Two				
Amount Paid by Developer	$	67,486.59		
Less Amount Allocable to Other Projects		29,607.30	$	37,879.29
Carter & Burgess, Inc.				
Engineering - Paving				
Creekmont, Section Two				
Amount Paid by Developer	$	110,911.04		
Less Amount Allocable to Other Projects		52,595.78		58,315.26
Terracon Consultants, Inc.				
Materials Testing - Paving				
Creekmont, Section Two				
Amount Paid by Developer	$	25,872.33		
Less Amount Allocable to Other Projects		12,263.88		13,608.45
Crostex Construction, Inc.				
Construction - Water, Sewer, and Drainage to serve				
Creekmont, Section Three				
Amount Paid by Developer				346,125.25
Carter & Burgess, Inc.				
Engineering - Water, Sewer and Drainage to serve				
Creekmont, Section Three				
Amount Paid by Developer	$	46,043.62		
Less Amount Allocable to Other Projects		722.89		45,320.73

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Terracon Consultants, Inc.			
Materials Testing - Water, Sewer and Drainage			
Creekmont, Section Three			
Amount Paid by Developer	$	14,852.75	
Less Amount Allocable to Other Projects		233.19	$ 14,619.56
E. L. Harris III Construction, Inc.			
Construction - Paving			
Creekmont, Section Three			
Amount Paid by Developer	$	265,590.10	
Less Amount Allocable to Other Projects		106,236.04	159,354.06
Liftwater Construction, Inc.			
Construction - Lift Station			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	382,602.76	
Less Amount Allocable to Other Projects		336,898.18	45,704.58
Liftwater Construction, Inc.			
Construction - Lift Station			
Creekmont, SectionThree			
Amount Paid by Developer	$	382,602.76	
Less Amount Allocable to Other Projects		359,164.51	23,438.25
Allgood Construction Company, Incorporated			
Construction - Offsite Improvements			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	1,459,158.40	
Less Amount Allocable to Other Projects		1,284,851.72	174,306.68

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4

SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Allgood Construction Company, Incorporated			
Construction - Offsite Improvements			
Creekmont, Section Three			
Amount Paid by Developer	$	1,459,158.40	
Less Amount Allocable to Other Projects		1,369,770.36	$ 89,388.04
Carter & Burgess, Inc.			
Engineering - Lift Station and Offsite Improvements			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	230,685.43	
Less Amount Allocable to Other Projects		203,128.44	27,556.99
Carter & Burgess, Inc.			
Engineering - Lift Station and Offsite Improvements			
Creekmont, Section Three			
Amount Paid by Developer	$	230,685.43	
Less Amount Allocable to Other Projects		216,553.64	14,131.79
Terracon Consultants, Inc.			
Materials Testing - Lift Station			
Creekmont, Sections One and Two			
Amount Paid by Developer	$	103.50	
Less Amount Allocable to Other Projects		91.14	12.36
Terracon Consultants, Inc.			
Materials Testing - Lift Station			
Creekmont, Section Three			
Amount Paid by Developer	$	103.50	
Less Amount Allocable to Other Projects		97.16	6.34

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4

SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST	
Terracon Consultants, Inc.				
Materials Testing - Offsite Improvements				
Creekmont, Section One and Two				
Amount Paid by Developer	$	7,377.50		
Less Amount Allocable to Other Projects		6,496.21	$	881.29
Terracon Consultants, Inc.				
Materials Testing - Offsite Improvements				
Creekmont, Section Three				
Amount Paid by Developer	$	7,377.50		
Less Amount Allocable to Other Projects		6,925.55		451.95
Hurtado Construction Co. Inc.				
Construction - Detention Facility				
Creekmont, Sections One and Two				
Amount Paid by Developer	$	1,127,824.00		
Less Amount Allocable to Other Projects		930,770.59		197,053.41
Hurtado Construction Co. Inc.				
Construction - Detention Facility				
Creekmont, Section Three				
Amount Paid by Developer	$	1,127,824.00		
Less Amount Allocable to Other Projects		1,026,770.97		101,053.03
Carter & Burgess, Inc.				
Engineering - Detention Facility				
Creekmont, Sections One and Two				
Amount Paid by Developer	$	157,514.85		
Less Amount Allocable to Other Projects		129,993.86		27,520.99

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4

SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION			REIMBURSABLE COST
Carter & Burgess, Inc.			
Engineering - Detention Facility			
Creekmont, Section Three			
Amount Paid by Developer	$ 157,514.85		
Less Amount Allocable to Other Projects	143,401.52	$	14,113.33
Carter & Burgess, Inc.			
Engineering - Drainage Study			
Creekmont, Sections One and Two			
Amount Paid by Developer	$ 24,625.11		
Less Amount Allocable to Other Projects	20,322.61		4,302.50
Carter & Burgess, Inc.			
Engineering - Drainage Study			
Creekmont, Section Three			
Amount Paid by Developer	$ 24,625.11		
Less Amount Allocable to Other Projects	22,418.70		2,206.41
City of Missouri City, Texas			
Impact Fees			
Creekmont Section One			
139 lots @ $2,991.90			
Amount Paid by Developer			415,874.10
City of Missouri City, Texas			
Impact Fees			
Creekmont Section Two			
67 lots @ $2,991.90			
Amount Paid by Developer			200,457.30

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4

SCHEDULE OF CONSTRUCTION, ENGINEERING AND RELATED COSTS
REIMBURSABLE TO PERRY HOMES (DEVELOPER)
May 4, 2009

DRAFT
SUBJECT TO CHANGE

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION		REIMBURSABLE COST
City of Missouri City, Texas		
Impact Fees		
Creekmont Section Three		
93 lots @ $2,991.90		
Amount Paid by Developer	$	278,246.70
TOTAL AMOUNT REIMBURSABLE TO PERRY HOMES AS OF MAY 4, 2009	**$**	**4,892,287.90**
Add: Developer Interest *		1,183,079.08
TOTAL AMOUNT PAYABLE TO PERRY HOMES AS OF MAY 4, 2009	**$**	**6,075,366.98**

* Interest is calculated based upon the JPMorgan Chase Bank prime commercial lending rate plus one percent compounded semiannually in accordance with the Development Agreement.

DRAFT
SUBJECT TO CHANGE

CITY OF MISSOURI CITY, TEXAS
PUBLIC IMPROVEMENT DISTRICT NO. 4
SCHEDULE COMPARING ACTUAL REIMBURSABLE COSTS
WITH EXHIBIT B OF DEVELOPMENT AGREEMENT
May 4, 2009

(SEE ACCOMPANYING DISCLAIMER OF OPINION AND
EXPLANATION OF AGREED-UPON PROCEDURES PERFORMED)

DESCRIPTION	ESTIMATED COST ALLOCATION EXHIBIT B	PID NO. 4 COSTS TO BE REIMBURSED TO PERRY HOMES AT MAY 4, 2009	ESTIMATED ADDITIONAL COST TO COMPLETE
PUBLIC IMPROVEMENTS			
WATER			
Water - Section 1	$ 146,500	$ 128,492	$ -
Water - Section 2	157,125	197,224	
Water - Section 3	51,000	41,451	
Water - North Highway 6	392,023		392,023
SANITARY SEWER			
Lift Station and Off-Site Force Main	469,273	332,838	136,435
Sanitary - Trunk Line, Section 1	37,377	26,494	
Sanitary - Section 1 (Non-Shared)	211,890	155,648	
Sanitary - 9.16 Acres & Hwy 6 (Section 2)	37,628		37,628
Sanitary - Section 2 (Non-Shared)	399,097	291,137	
Sanitary - Section 3 (Non-Shared)	143,086	135,469	
Sanitary - North Highway 6 (Shared)	70,908		70,908
Sanitary - North Highway 6 (Non-Shared)	454,606		454,606
STORM SEWER			
Storm - Trunk Line, Section 1	57,579	59,451	
Storm - Section 1 (Non-Shared)	135,742	104,472	
Storm - 9.16 Acres & South Creekmont Drive (Section 2)	8,461		8,461
Storm - Trunk Line Section 2	234,386	284,824	
Storm - Section 2 (Non-Shared)	232,718	275,966	
Storm - Section 3 (Non-Shared)	123,093	169,205	
Storm Water Pollution Protection Plan South Highway 6	15,978	14,381	
Storm - North Highway 6 (Shared)	325,971		325,971
Storm - North Highway 6 (Non-Shared)	408,765		408,765
Storm Water Pollution Protection Plan North Highway 6	20,676		20,676
Detention and Channel Improvements	560,896	298,106	262,790
PAVING			
Paving - South Hwy 6 (Sections 1,2,3)	1,750,000	935,805	814,195
Paving - North. Hwy 6 (Sections 4,5)	1,492,312		1,492,312
MISCELLANEOUS			
Utility and Paving Engineering	704,217	546,747	157,470
Water/Sewer Impact Fees - North	687,000		687,000
Water/Sewer Impact Fees - South	897,000	894,578	
SUBTOTAL	$ 10,225,307	$ 4,892,288	$ 5,269,240
Developer Interest	$ -	$ 1,183,079	$ -
TOTAL	**$ 10,225,307**	**$ 6,075,367**	**$ 5,269,240**

DRAFT
SUBJECT TO CHANGE

TOTAL ACTUAL COSTS TO DATE AND ESTIMATED ADDITIONAL COST TO COMPLETE	ACTUAL OVER (UNDER) ESTIMATE	% VARIANCE OVER (UNDER) ESTIMATE
$ 128,492	$ (18,008)	-12.29%
197,224	40,099	25.52%
41,451	(9,549)	-18.72%
392,023	-	0.00%
469,273	-	0.00%
26,494	(10,883)	-29.12%
155,648	(56,242)	-26.54%
37,628	-	0.00%
291,137	(107,960)	-27.05%
135,469	(7,617)	-5.32%
70,908	-	0.00%
454,606	-	0.00%
59,451	1,872	3.25%
104,472	(31,270)	-23.04%
8,461	-	0.00%
284,824	50,438	21.52%
275,966	43,248	18.58%
169,205	46,112	37.46%
14,381	(1,597)	-9.99%
325,971	-	0.00%
408,765	-	0.00%
20,676	-	0.00%
560,896	-	0.00%
1,750,000	-	0.00%
1,492,312	-	0.00%
704,217	-	0.00%
687,000	-	0.00%
894,578	(2,422)	-0.27%
$ 10,161,528	$ (63,779)	
$ 1,183,079	$ 1,183,079	
$ 11,344,607	**$ 1,119,300**	

Missouri City Development Authority
Agenda Item
May 4, 2009

5. Consider authorizing the Chair to execute and the Secretary to attest an agreement among the Missouri City Development Authority, the City of Missouri City and Perry Homes relating to payment of Developer Advances under the First Amended Development Agreement for Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B.

Background information attached as follows:

Cover Memo

Missouri City Development Authority
Agenda Item Cover Memo
May 4, 2009

To: Missouri City Development Authority Board of Directors

Agenda Item: **5** Consider authorizing the Chair to execute and the Secretary to attest an agreement among the Missouri City Development Authority, the City of Missouri City and Perry Homes, LLC, relating to payment of Developer Advances under the First Amended Development Agreement for Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B.

Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

The agreement among the Missouri City Development Authority, the City of Missouri City and Perry Homes, LLC, settles the obligations of the parties arising from the First Amended Development Agreement relating to Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B.

BACKGROUND

The Development Authority and Perry Homes entered into a Development Agreement for the construction of public infrastructure related to Creekmont Subdivision. The Development Agreement provided for the repayment of Perry Homes' Developer Advances related to the construction of the public infrastructure from the assessments collected on the lots in Creekmont. The Development Authority found that it could not issue debt to provide for repayment of the Developer Advances. The City has agreed to issue its certificates of obligation to resolve the repayment of Perry Homes, and the parties have agreed to enter into this Compromise and Settlement Agreement related to the parties' obligations under the Development Agreement, as amended.

FISCAL ANALYSIS

The agreement provides for resolution of all obligations of the Development Authority, the City and Perry Homes arising from the Development Agreement, as amended, relating to Creekmont, Sections 1, 2, 3, 3A and 3B.

STAFF'S RECOMMENDATION

Authorize the Chair to execute and the Secretary to attest an agreement among the Missouri City Development Authority, the City of Missouri City and Perry Homes, LLC, relating to payment of Developer Advances under the First Amended Development Agreement for Creekmont Subdivision, Sections 1, 2, 3, 3A and 3B.

Frank Simpson
Executive Director

Missouri City Development Authority
Agenda Item
May 4, 2009

6. Consider declaring The Ainbinder Company in default of the Development Agreement dated May 15, 2006 and cancelling the Development Agreement.

Background information attached as follows:

Cover Memo

The Ainbinder Economic Development Agreement

Notice Letter

Response from The Ainbinder Company

Missouri City Development Authority
Agenda Item Cover Memo
May 4, 2009

To: Missouri City Development Authority Board of Directors
Agenda Item: **6** Consider declaring The Ainbinder Company in default of the Development Agreement dated May 15, 2006 and cancelling the Development Agreement.

Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

The Ainbinder Company entered into the Development Agreement to construct certain improvements on May 15, 2006. Except for the realignment of Trammel Fresno Road, no progress has been made toward construction of the improvements. Declaration of default allows the Development Agreement to be cancelled thereby terminating the financial obligations to reimburse The Ainbinder Company.

BACKGROUND

The Ainbinder Company entered into a Development Agreement with Reinvestment Zone Number Two and the Missouri City Development Authority for the construction of certain improvements to support the construction and operation of a mixed commercial and residential development within Reinvestment Zone Number Two. The improvements described in the Development Agreement are on-site and off-site water lines and sanitary sewer lines; storm sewer and drainage improvements; realignment of Trammel Fresno Road; and a share of detention pond improvements. The realignment of Trammel Fresno Road has been completed. No other progress has been made toward construction of the improvements. Sec. 6.01(b) provides that if the Developer fails to commence or complete the improvements or the development in accordance with the terms of the Development Agreement, the Reinvestment Zone or the Development Authority may terminate the Development Agreement and be relieved of any obligation to reimburse the Developer. Sec. 6.01(c) requires 60 days notice of default. On February 19, 2009, notice of default was sent to The Ainbinder Company. The notice period expired on April 21, 2009.

Mr. Thomas Sage, Vinson & Elkins, responded for The Ainbinder Company, contending that The Ainbinder Company is not in default in that it commenced the development by its negotiations for an anchor tenant. Mr. Sage also contends that the infrastructure construction is required to coincide with the expected development of the Development. Finally, Mr. Sage contends that the failure of the Authority or Reinvestment Zone to complain of the inaction until nearly three years after the date of the agreement is indication that timeliness was not a priority. A copy of Mr. Sage's letter is attached.

Sec. 7.16 requires any waiver to be in writing. Neither the Zone nor the Authority has waived the terms Sec. 7.12, therefore timeliness is a requirement.

The only specific improvements described in the Development Agreement are the water lines, sanitary sewer lines, storm water and drainage facilities, the road realignment, and the prorated share of the detention pond improvements. The purpose of the Development Agreement was to provide for the construction of public infrastructure to support the proposed retail and residential development. The object was construction, not negotiation. While the road may have been realigned, no other work has been done toward the other improvements. The improvements have not been commenced and they have not been completed.

Staff members met with representatives of The Ainbinder Company on April 15, 2009 and were unable to find a mutually agreeable resolution.

The Board of Directors of Reinvestment Zone Number Two discussed this matter on April 16, 2009, and recommended that default be declared and that the contract be cancelled.

FISCAL ANALYSIS

Cancellation removes the obligation to reimburse The Ainbinder Company for the public infrastructure improvements described in the Development Agreement.

STAFF'S RECOMMENDATION

Declare The Ainbinder Company in default of the Development Agreement among Reinvestment Zone Number Two, City of Missouri City, the Missouri City Development Corporation and The Ainbinder Company dated May 15, 2006, and cancel the Development Agreement.

Frank Simpson
Executive Director

ECONOMIC DEVELOPMENT GRANT AGREEMENT

This **ECONOMIC DEVELOPMENT GRANT AGREEMENT** (this "Agreement") is made as of May 15, 2006, by and between the **CITY OF MISSOURI CITY, TEXAS** (the "City"), a Texas home-rule city, and **THE AINBINDER COMPANY** (the "Recipient"), a Texas corporation.

RECITALS

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, the City Council of the City of Missouri City adopted Ordinance No. O-06-25 establishing a grant program to promote economic development as more fully described therein (the "Grant Program"); and

WHEREAS, the Recipient intends to construct certain commercial retail improvements within the City (the "Project"), and the City Council of the City has determined that the Recipient's grant application is consistent with the Grant Program, and that the Project would not likely go forward in the manner best anticipated to promote economic development within the City without the aid of a grant from the City under the Grant Program; and

WHEREAS, the City and the Recipient wish to set out the terms and conditions under which the Recipient will be paid under the Grant Program, as more fully set out herein; now, therefore,

For and in consideration of the mutual covenants set forth herein, the City and the Recipient agree as follows:

ARTICLE 1

GENERAL TERMS

1.1 Definitions. The terms defined in the preamble hereto shall have the meaning provided for them therein. The following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

"Grant Payments" means the payments described in **Article 5** from the City to the Recipient in consideration of the Project.

"Improvements" means the improvements to State Highway 6 and Fort Bend Parkway and related improvements described on **Exhibit A**, attached hereto.

(A) The City is duly authorized, created and existing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) The City has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

2.3 No partnership or agency created. Each party agrees and represents that the City and the Recipient are not agents, partners or venturers of the other with respect to the Project, and that nothing in this Agreement shall be construed to create any such relationship.

ARTICLE 3

THE PROJECT AND IMPROVEMENTS

3.1 Description of the Project and Improvements.

(a) The Project consists of the retail commercial improvements to be constructed and projects located within the City described in **Exhibit B**.

(b) The Improvements consist of the roadway improvements described in **Exhibit A**. The scope of the Improvements shall not be revised or amended except by amendment to this Agreement, except as specifically authorized below.

3.2 Completion of the Improvements. The Recipient hereby agrees to commence the Improvements and proceed to completion thereof in accordance with this Agreement. Without limitation, the Recipient agrees to comply with all applicable codes, permits and regulations of any governmental authority having jurisdiction over the Project, including the City. The Improvements will be constructed pursuant to a schedule that is mutually agreeable to the Parties. The Improvements shall include all

engineering, legal and other consultant fees and expenses related to such Improvements.

3.3 Minor amendments. The City Manager is authorized to approve minor amendments to the Improvements that do not require amendments to this Agreement. A "minor amendment" consists of an amendment that, in conjunction with any prior such amendments, does not constitute a change of more than ten percent in any deadline, reimbursement amount or any material criterion of benefit to the City.

3.4 Monitoring progress. The City may, but is not required to, monitor the progress of the Improvements to determine its compliance with this Agreement. City personnel shall have reasonable access to the Improvements, all books and records relating thereto, and such other information as the City may determine is relevant to the Project and the Recipient's compliance with this Agreement.

ARTICLE 4

CONSTRUCTION OF THE IMPROVEMENTS

4.01 Construction manager. The Recipient agrees to construct the Improvements and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the Improvements. The Recipient will obtain all necessary permits and approvals from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the Improvements, provide periodic reports of such construction to the City upon request, and cause the construction to be performed in accordance approved plans.

4.02 Design of the Improvements. Prior to the commencement of construction or implementation of the Improvements, the plans and specifications must be approved by the City. If there are any material changes to the plans and specifications, the Recipient shall submit such changes to the City for approval. For purposes of this section, a material change requiring Authority approval shall not include any change order that, under current state law applicable to the City, would not require re-bidding. The Improvements shall be designed in accordance with City standards applicable to similar public improvements within the City.

4.03 Construction contracts. The Recipient shall prepare the Improvements construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications and the agreed-upon forms. The Recipient shall comply with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the

City, including without limitation any applicable requirement relating to payment, performance and maintenance bonds.

4.04 Construction and implementation of the Improvements. The Recipient shall be responsible for the inspection and supervision of the construction and implementation of the Improvements. Upon completion of a contract for the construction of the Improvements, the Recipient shall provide the City with a final cost summary of all costs associated with such contract, and show that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed by such contractors. Following completion of a construction contract, the Recipient will call for inspection of the applicable Improvements by the City and any other applicable governmental agency. Upon approval thereof as being in compliance with applicable standards relating thereto, the Improvements will be conveyed to and accepted by the City or other applicable governmental agency and incorporated into such system for maintenance and operation.

ARTICLE 5

GRANT PAYMENTS

5.1 Grant Payments; source.

(a) In consideration of the construction of the Project by the Recipient, the City agrees to provide Grant Payments to the Recipient in the amount of the costs of the Improvements plus interest as provided in **Sec. 5.2(b)**. The estimated costs of improvements is set forth on **Exhibit A**. Prior to any payment, any reimbursed amounts must be verified by an independent auditor selected by the City, the costs of which are borne by the Recipient.

(b) The Grant Payments are payable from a special fund of the City composed of the Project Sales Tax; provided that the City may make Grant Payments from any lawful source available to the City therefor. If the special fund composed of the Project Sales Tax does not include a sufficient amount on deposit as of the date on which the Project has generated sufficient Project Sales Tax receipts as provided in **Sec. 5.2(a)**, the City shall make the Grant Payments from any other lawful sources available to the City. This agreement shall be subordinate to any pledge of the City's tax revenue with respect to the City's bonded indebtedness.

5.2 Timing of Grant Payments.

(a) The City shall make the Grant Payments to the Recipient as provided in **Sec. 5.1(b)** on the first day of the next calendar quarter following the completion of the Improvements and the City's receipt of Project Sales Tax

revenue in amount equal to the Grant Payments plus any accrued interest as provided in **Sec. 5.2(b)**.

(b) Interest on the Recipient's expenditures with respect to the Improvements shall accrue at a rate equal to the lesser of (i) the Recipient's actual borrowing costs, or (ii) the prime commercial lending rate of JPMorgan Chase Bank, National Association, or any successor to its commercial banking activities, plus one percent, compounded semiannually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. Interest shall be calculated on the basis of a year of 360 days and the actual days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day). Notwithstanding the above, interest shall begin to accrue effective from the date of completion of the Improvements, terminating three years thereafter.

5.3 Abandonment of Project. If the City Manager determines that the Recipient has abandoned the Project, Grant Payments shall cease unless and until this Agreement is terminated according to the provisions of Article 6 relating to default or the City Manager determines that the Project is no longer abandoned. The Project is considered abandoned if no measurable work to completion is documented to the City Manager by the Recipient for 60 days or longer.

ARTICLE 6

DEFAULT

6.1 Default.

(a) If the Recipient does not perform its obligations hereunder in substantial compliance with this Agreement, in addition to the other rights given the City under this Agreement, the City may cease Grant Payments and require the Recipient to repay any prior Grant Payments, and may further seek actual damages incurred by the City for any such default.

(b) If the City fails to timely make Grant Payments in accordance with this Agreement, the Recipient may seek damages for such failure to pay equal to the amount unpaid, plus accrued interest. The Recipient shall have no recourse against any other funds of the City other than as specified herein with respect to Grant Payments or damages relating to nonpayment thereof.

(c) The party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 30 days to remedy the default prior to the declaration of any default hereunder. In the event of a material default hereunder, either party may terminate this Agreement by providing written notice thereof to the other party.

ARTICLE 7

GENERAL

7.1 Inspections, audits. The Recipient agrees to keep such operating records with respect to the Project and other activities contemplated by this Agreement and all costs associated therewith as may be required by the City or by State and federal law or regulation.

7.2 Recipient operations and employees. All personnel supplied or used by the Recipient in the performance of this Agreement or with respect to the Project shall be deemed contractors or subcontractors of the Recipient and will not be considered employees, agents, contractors or subcontractors of the City for any purpose whatsoever. The Recipient shall be solely responsible for the compensation of all such contractors and subcontractors.

7.3 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the City shall be personally responsible for any liability arising under or growing out of the Agreement. THE RECIPIENT SHALL INDEMNIFY AND SAVE HARMLESS THE CITY, ITS OFFICERS AND EMPLOYEES AND THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, AND AGENTS FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED BY ANY PERSON, PERSONS, OR PROPERTY RESULTING FROM THE NEGLIGENT ACTS OF THE RECIPIENT, OR ANY OF ITS AGENTS, OFFICERS, OR REPRESENTATIVES WITH RESPECT TO THE PROJECT, THE GRANT PROGRAM OR RELATED MATTERS.

7.4 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

The Recipient:

The Ainbinder Company
2415 W. Alabama, Suite 205
Houston, Texas 77098

The City:

City of Missouri City, Texas
1522 Texas Parkway
Missouri City, Texas 77489
Attention: City Manager

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by the other party.

7.5 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Recipient and the City. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section.

7.6 Invalidity. If any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, except to the extent of a complete failure of consideration.

7.7 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Party, its successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Party, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect; provided that, by written notice thereof to the City, the Recipient may assign the Grant Payments to a Project lender in connection with a development loan and may further assign this Agreement to any entity having common control as, or controlled by, the Recipient or Granite Properties Inc.

7.8 Exhibits; titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as

to the agreement between the parties hereto. Any reference herein to a Section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.9 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.10 Entire Agreement. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term the expiring the earlier of 10 years thereafter, or on the date that the Grant Payments have been completed.

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed as of the date first written above.

THE AINBINDER COMPANY

By: _____
Name: BARTON L. DUCKWORTH
Title: PRESIDENT

CITY OF MISSOURI CITY, TEXAS

_____

ATTEST:

_____
Deputy City Secretary

Exhibit A

The Improvements

KELLY R. KALUZA & ASSOCIATES, INC.

Consulting Engineers & Surveyors
3014 Avenue I, Rosenberg, Texas 77471
(281) 341-0808 ■ FAX (281) 341-6333

MAY 4, 2006

SUMMARY OF CHAPTER 380 AGREEMENT PRELIMINARY CONSTRUCTION COSTS FOR PARKWAY PLAZA PUBLIC ROADWAY IMPROVEMENTS CITY OF MISSOURI CITY, FORT BEND COUNTY, TEXAS

A.	State Highway 6 (Right Turn Lane)		
	I.	Storm Sewer & Drainage Improvements =	$ 11,850.00
	II.	Concrete Paving Improvements =	$ 71,360.00
	III.	Miscellaneous =	$ 15,000.00
		Total Estimated Construction Cost =	$ 98,210.00
		5% Contingencies =	$ 4,910.50
		10% Surveying, Engineering and Testing =	$ 9,821.00
		Total Estimated Cost for State Highway 6 (Right Turn Lane) =	$ 112,941.50
B.	Fort Bend Parkway (Acceleration/Deceleration)		
	I.	Storm Sewer & Drainage Improvements =	$ 23,700.00
	II.	Concrete Paving Improvements =	$ 125,500.00
	III.	Miscellaneous =	$ 15,000.00
		Total Estimated Construction Cost =	$ 164,200.00
		5% Contingencies =	$ 8,210.00
		10% Surveying, Engineering and Testing =	$ 16,420.00
		Total Estimated Cost for Fort Bend Parkway =	$ 188,830.00
		GRAND TOTAL =	$ 301,771.50

A. **State Highway 6 (Right Turn Lane)**

I. **Storm Sewer & Drainage Improvements**

1.	36" Reinforced Concrete Pipe - 50 Linear Feet @ $95.00/Linear Foot =	$ 4,750.00
2.	Type "C" Inlet - 2 Each @ $3,500.00/Each =	$ 7,000.00
3.	Trenching & Shoring - 50 Linear Feet @ $2.00/Linear Foot =	$ 100.00
	Total Estimated Cost for Storm Sewer & Drainage Improvements =	**$ 11,850.00**

II. **Concrete Paving Improvements**

1.	Excavation of Street - 500 Cubic Yards @ $9.00/Cubic Yard =	$ 4,500.00
2.	7% Lime Stabilized Subgrade - 770 Square Yards @ $5.00/Square Yard =	$ 3,850.00
3.	9" Concrete Pavement - 650 Square Yards @ $85.00/Square Yard =	$ 55,250.00
4.	6" Concrete Curb - 720 Linear Feet @ $3.00/Linear Foot =	$ 2,160.00
5.	Hydromulch Seeding - 1,600 Square Yards @ $0.50/Square Yard =	$ 800.00
6.	Sawcut & Remove Existing Concrete Curb - 600 Linear Feet @ $8.00/Linear Foot =	$ 4,800.00
	Total Estimated Cost for Concrete Paving Improvements =	**$ 71,360.00**

III. **Miscellaneous**

1.	Furnish & Install Storm Water Pollution Prevention Plan - 1 Lump Sum @ $5,000.00 =	$ 5,000.00
2.	Furnish/Install Signage, Pavement Marking & Traffic Control - 1 Lump Sum @ $10,000.00 =	$ 10,000.00
	Total Estimated Cost for Miscellaneous Costs =	**$ 15,000.00**

B. Fort Bend Parkway (Acceleration/Deceleration Lane)

I. Storm Sewer & Drainage Improvements

1.	36" Reinforced Concrete Pipe - 100 Linear Feet @ $95.00/Linear Foot =	$ 9,500.00
2.	Type "C" Inlet - 4 Each @ $3,500.00/Each =	$ 14,000.00
3.	Trenching & Shoring - 100 Linear Feet @ $2.00/Linear Foot =	$ 200.00
	Total Estimated Cost for Storm Sewer & Drainage Improvements =	**$ 23,700.00**

II. Concrete Paving Improvements

1.	Excavation of Street - 600 Cubic Yards @ $9.00/Cubic Yard =	$ 5,400.00
2.	7% Lime Stabilized Subgrade - 1,440 Square Yards @ $5.00/Square Yard =	$ 7,200.00
3.	9" Concrete Pavement - 1,200 Square Yards @ $85.00/Square Yard =	$ 102,000.00
4.	6" Concrete Curb - 900 Linear Feet @ $3.00/Linear Foot =	$ 2,700.00
5.	Hydromulch Seeding - 2,000 Square Yards @ $0.50/Square Yard =	$ 1,000.00
6.	Sawcut & Remove Existing Concrete Curb - 900 Linear Foot @ $8.00/Linear Foot =	$ 7,200.00
	Total Estimated Cost for Concrete Paving Improvements =	**$ 125,500.00**

III. Miscellaneous

1.	Furnish & Install Storm Water Pollution Prevention Plan - 1 Lump Sum @ $5,000.00 =	$ 5,000.00
2.	Furnish/Install Signage, Pavement Marking & Traffic Control - 1 Lump Sum @ $10,000.00 =	$ 10,000.00
	Total Estimated Cost for Miscellaneous Costs =	**$ 15,000.00**

Exhibit B

The Project

KELLY R. KALUZA & ASSOCIATES, INC.
Consulting Engineers & Surveyors
3014 Avenue I, Rosenberg, Texas 77471
(281) 341-0808 ■ FAX (281) 341-6333

June 18, 2004

A FIELD NOTE DESCRIPTION of 41.919 Acres of Land being a portion of the remainder of a call 106.70 Acre Tract of Land (Volume 567, Page 940; Deed Records of Fort Bend County, Texas) being in the Moses Shipman Survey, Abstract No. 86, Fort Bend County, Texas.

BEGINNING at a 5/8 inch diameter iron rod found for the North corner of the Fort Bend Parkway call 6.806 Acre 300 foot wide right-of-way tract (Fort Bend County Clerk's File No. 2003011895); Said corner being in the Easterly line of said call 106.70 Acre Tract and in the Westerly line of a call 44.8957 Acre Tract (Fort Bend County Clerk's File No. 2000099935); Said corner being the most Easterly Southeast corner of this tract;

THENCE; Southwesterly, along the Northwesterly right-of-way line of said Fort Bend Parkway call 6.806 Acre Tract, being along a non-tangent curve to the right with the radius point bearing North 60 Degrees, 45 Minutes, 47 Seconds West with the following curve data:

Delta:	12 Degrees, 24 Minutes, 49 Seconds
Radius:	5579.60 feet
Length:	1208.87 feet
Tangent:	606.81 feet
Chord:	South 35 Degrees, 26 Minutes, 37 Seconds West - 1206.50 feet (reference bearing) to a 5/8 inch diameter iron rod found for corner;

THENCE; South 70 Degrees, 20 Minutes, 44 Seconds West - 51.45 feet to a 5/8 inch diameter iron rod found for the most Southerly corner of this tract; Said corner being the most Westerly corner of said call 6.806 Acre Tract and being in the Northeasterly right-of-way line of State Highway No. 6 (225 feet wide);

THENCE; North 72 Degrees, 54 Minutes, 17 Seconds West - 999.79 feet along the Northeasterly line of a call 10.599 Acre Tract for the right-of-way of said State Highway No. 6 (Fort Bend County Clerk's File No. 9810630) to a 5/8 inch diameter iron rod with plastic cap set for the Southwest corner of this tract;

THENCE; North 17 Degrees, 5 Minutes, 43 Seconds East - 250.00 feet leaving said State Highway No. 6 right-of-way line to a 5/8 inch diameter iron rod with plastic cap set for interior corner of this tract;

THENCE; North 2 Degrees, 50 Minutes, 30 Seconds West - 811.27 feet to a 5/8 inch diameter iron rod set for the Northwest corner of this tract;

THENCE; North 87 Degrees, 9 Minutes, 30 Seconds East - 1328.51 feet along the Southerly Line of a 0.466 Acre Tract of Land for the widening of Trammel-Fresno Road (width varies) to a 5/8 inch diameter iron rod with plastic cap set for corner;

THENCE; Southeasterly, along the Southerly line of a call 0.3245 Acre Tract of Land for road right-of-way (Fort Bend County Clerk's File No. 2003011895) with the following courses and distances:

South 88 Degrees, 40 Minutes, 12 Seconds East - 265.67 feet to a 5/8 inch diameter iron rod with cap found for corner;

South 85 Degrees, 8 Minutes, 46 Seconds East - 55.01 feet to a 5/8 inch diameter iron rod with cap found for the Northeast corner of this tract;

THENCE; South 3 Degrees, 19 Minutes, 53 Seconds East - 398.62 feet along the Westerly line of said call 44.8957 Acre Tract being along the Easterly line of said call 106.70 Acre Tract to the **PLACE OF BEGINNING** and containing 41.919 Acres of Land.

C. Tim Griffith

C. Tim Griffith, R.P.L.S. No. 4349

STATE OF TEXAS
REGISTERED
C. TIM GRIFFITH
4349
PROFESSIONAL
LAND SURVEYOR

NewQuest
PROPERTIES™

Rec'd 11/3/06 JS

November 1, 2006

Ms. Thelma A. Lenz
Office of the City Secretary of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

Re: Economic Development Agreement by and between the City of Missouri City, Texas and A-S 91 Ft. Bend Parkway-Hwy 6, L.P. ("Agreement")

Dear Ms. Lenz,

Enclosed please find one fully executed original counterpart of the above referenced Agreement. We have kept one fully executed counterpart for our files.

There is a blank in the first paragraph of the Agreement for the date of the Agreement. Please advise me at the following email address (llees@newquest.com) of the date the City would like to use and we can each fill in that date on our respective counterparts.

Thank you.

Sincerely,

Lisa Lees

Lisa Lees
Vice President

Enclosure

see MCDA Feedback #71 re NewQuest

8807 W. Sam Houston Pkwy. N., Suite 200 • Houston, TX 77040 • Tel 281.477.4300 • Fax 281.477.4399
www.newquestproperties.com

Brokerage • Development • Investment • Leasing • Tenant Representation
Member ICSC

GS

Frank Simpson – City Manager

1522 Texas Parkway
Missouri City, Texas 77489

Phone: 281.403.8690
www.missouricitytx.gov

February 19, 2009

Certified Mail, Return Receipt Requested No. 7003 3110 0000 3989 2570

The Ainbinder Company
2415 W. Alabama, Suite 205
Houston, Texas 77098
Attn: Barton Duckworth

Re: Economic Development Grant Agreement
Notice of Default, Abandonment of Project

Dear Mr. Duckworth:

On May 15, 2006, your company entered into an Economic Development Grant Agreement with the City of Missouri City. Under the terms of the agreement, your company was to construct certain infrastructure improvements.

Section 5.3 of the agreement provides that the project is considered abandoned if no measurable work to completion is documented to the City Manager by your company for sixty days or longer. I, as City Manager, have not received any report of measurable work for a period in excess of sixty days.

Section 6.1 of the agreement provides that if your company does not perform its obligations in substantial compliance with the agreement, the City may cease any payments and may give your company notice of default.

This letter is notice of default under the agreement for failure to report measurable progress toward completion for a period of more than sixty days. Your company has thirty days from receipt of this notice to remedy the default. Otherwise, a declaration of default will be made. The default will be considered a material default and the agreement will be terminated.

Sincerely,

Frank Simpson
City Manager

cc: Caroline Kelley, City Attorney
Wes Vela, Director of Finance
Scott Elmer, Director of Public Works
Ornita Green, Director of Planning

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Ainbinder Company
2415 W. Alabama, Suite 205
Houston, Texas 77098
Attn: Barton Duckworth

Re: Economic Development Grant

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Heather Martin ☐ Agent ☐ Addressee

B. Received by (Printed Name) Heather Martin
C. Date of Delivery 2/20/09

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 3110 0000 3989 2570

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7003 3110 0000 3989 2570

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ .83
Certified Fee	2.70
Return Reciept Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 5.73

Postmark Here

Mailed 2.19.09

Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

The Ainbinder Company
2415 W. Alabama, Suite 205
Houston, Texas 77098
Attn: Barton Duckworth

PS Form 3800, June 2002 See Reverse for Instructions

Vinson&Elkins

Thomas A. Sage tsage@velaw.com
Tel 713.758.2159 **Fax** 713.615.5728

March 20, 2009

Mr. Frank Simpson
City Manager/Zone Administrator
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

Re: Denial of Default – Economic Development Grant Agreement, Development Agreement

Dear Mr. Simpson:

I am writing in response to your letters dated February 19, 2009 to the Ainbinder Company related to alleged defaults under both (i) the Development Agreement with Reinvestment Zone Number Two, City of Missouri City, Texas and the Missouri City Development Authority ("the "Development Agreement"); and (ii) the Economic Development Grant Agreement with the City of Missouri City (the "Grant Agreement"). Please consider this our written response to both letters and the Developer respectfully disagrees with your characterization and maintains that there is **no basis to declare a default under either the Development Agreement or the Grant Agreement**.

Since 2006, the Ainbinder Company has worked diligently to promote and develop their project. The Developer has undertaken extensive negotiations with both H.E.B. Grocery and the Kroger Corporation to locate large facilities within his development. Unfortunately, due to the slow-down in local markets, both of these establishments located elsewhere. In addition, the Developer has pursued negotiations with Tart, Costco, Home Depot and Lowe's Home Improvement. It is my understanding that the Ainbinder Company continues to work towards successful completion with their partner, Grenite Properties. As such, while we agree that <u>infrastructure construction</u> has not commenced, the Developer has commenced and continues to make all reasonable efforts to develop this property.

<u>Development Agreement</u>

You have asserted that the Developer's actions constitute a default under 6.01 of the Development Agreement. The provisions of 6.01(b) provide the Zone or the Authority the right to terminate the Development Agreement if "the Developer fails to <u>commence</u> or

complete the TIRZ improvements or the Development in accordance with the terms of this [Development] Agreement". In fact, the Developer has commenced the Development as originally contemplated and is diligently working to complete the Development as described in the Development Agreement. Further, the only mention of a time frame is provided in Section 4.04(a) which states that the "Developer shall commence construction in a timely fashion to coincide with the expected development of the Development."

Given that there is no express schedule of performance, it is our contention that the Developer's efforts constitute commencement of the Development and, while it has become a more attenuated process that the Developer desires, they are working towards completion. Lastly, you indicate that the agreement indicates that "time is of the essence". Since it has been three years since the execution of this Development Agreement, we contend that your conduct constitutes either a waiver of this provision or evidence that timeliness may not have been of primary concern.

In either case, we maintain that there is no default under the Development Agreement and the rights and obligations of both parties remain in effect.

Grant Agreement

In regards to the Grant Agreement, you rely upon the language in 5.3 to support your notice of default and actions to terminate the Grant Agreement. It should be noted that Section 5.3 only applies to the City's ability to interrupt Grant Payments rather than providing any basis for a determination of default. I am not aware of any commencement of Grant Payments to the Developer, therefore the provision of Section 5.3 have yet to become applicable. To the extent that you may maintain its effect, please consider this letter to constitute documentation of measurable work (i.e. active negotiation with major commercial tenants) to completion.

Secondarily, and more specifically in response to your assertions of default under Section 6.1, you take the position that the Developer's failure to "report measurable progress", as provided in Section 5.3 is grounds to declare a Default. As mentioned above, we think that is an incorrect reading of the Grant Agreement and further have tendered this letter as our report of measurable progress. In addition, Section 3.2 of the Grant Agreement includes that the "Improvements will be constructed pursuant to a schedule that is mutually agreeable to the Parties." To date, no such schedule has been proposed by the City or agreed

to among the Parties. There has been no material change in the original project plan, the scope of Improvements, the cost estimates or the location of the infrastructure. As such, the Developer continues to work diligently and with all reasonable efforts to perform its obligations under the Grant Agreement and there is no default under the Grant Agreement.

Conclusion

As set forth herein, we disagree with your assertions of default and continued that, while frustrated by economic factors, the Developer has worked to bring the anticipated Development to the City. Neither Grant Agreement nor the Development Agreement provide a specific schedule for the Development and do not tie any reimbursements to specific progress horizons. Rather, these agreements indicate the City's desire to bring additional development into the City within the Developer's agreement to work continuously to provide the anticipated Development. While the Developer's efforts to secure the anchor commercial tenants have been unsuccessful and the local housing market has stalled, the Developer continues to work to overcome these external circumstances and therefore has not defaulted under either agreement.

We can appreciate the City's desire to manage its existing development obligations; however, we do not think it is necessary to wipe the slate clean. We hope that this correspondence has allayed any concerns that you may have regarding the Developer's commitment to this project. Further, we appreciate the time to deal with the unanticipated national economic crisis.

Very truly yours,

Thomas A. Sage

1628:2150

Cc: Michael Ainbinder, The Ainbinder Company
Caroline Kelley, City Attorney, City of Missouri City

Missouri City Development Authority
Agenda Item
May 4, 2009

7. Consider declaring Wal-Mart Stores Texas, L.P., in default of the Development Agreement and cancelling the Development Agreement.

Background information attached as follows:

Cover Memo

Development Agreement

Notice Letter

Wal-Mart Response

Missouri City Development Authority
Agenda Item Cover Memo
May 4, 2009

To: Missouri City Development Authority Board of Directors
Agenda Item: **7** Consider declaring Wal-Mart Stores Texas, L.P., in default of the Development Agreement and cancelling the Development Agreement.

Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

Wal-Mart Stores Texas, L.P., entered into the Development Agreement to construct certain improvements in 2006. No progress has been made toward construction of the improvements. Declaration of default allows the Development Agreement to be cancelled thereby terminating the financial obligations to reimburse Wal-Mart.

BACKGROUND

Wal-Mart entered into a Development Agreement with Reinvestment Zone Number Two and the Missouri City Development Authority for the construction of certain improvements to support the construction and operation of a Wal-Mart Store within Reinvestment Zone Number Two. No progress has been made toward construction of the improvements. On February 10, 2009, notice of default was sent to Wal-Mart. Default may not be declared until 60 days notice of the alleged default has been given. The notice period expired on April 12, 2009.

Wal-Mart responded with an acknowledgement of the Authority's right to terminate the Development Agreement. The Board of Directors of Reinvestment Zone Number Two discussed this matter on April 16, 2009, and recommended that default be declared and that the contract be cancelled.

FISCAL ANALYSIS

Cancellation removes the obligation to reimburse Wal-Mart for the traffic signal and other traffic improvements described in the Development Agreement.

STAFF'S RECOMMENDATION

Declare Wal-Mart Stores Texas, L.P., in default of the Development Agreement and cancel the Development Agreement.

Frank Simpson
Executive Director

3.23.06
TIC2#2
Appr

DEVELOPMENT AGREEMENT

This Development Agreement (this "*Agreement*") is made as of _____, 2006, by and between the **REINVESTMENT ZONE NUMBER TWO, CITY OF MISSOURI CITY, TEXAS** (the "*Zone*"), a tax increment reinvestment zone created by the City pursuant to Chapter 311 of the Texas Tax Code, as amended, acting by and through its governing board of directors (the "*Zone Board*"), **MISSOURI CITY DEVELOPMENT AUTHORITY**, a nonprofit local government corporation formed by and on behalf of the City of Missouri City, Texas (the "*Authority*"), and **WAL-MART STORES TEXAS, L.P.**, a Texas limited partnership (the "*Developer*").

RECITALS

WHEREAS, pursuant to Chapter 311 of the Texas Tax Code, the City Council of the City of Missouri City (the "*City*") created the Zone in the City; and

WHEREAS, the Zone Board adopted a Plan (as defined below in **Section 1.01**), as amended, that provides that the Zone will undertake to make certain acquisitions and improvements in the Zone, and was approved, as amended, by the City Council of the City; and

WHEREAS, the Texas Tax Code provides that the Zone may enter into agreements as the Zone Board considers necessary or convenient to implement the Plan and achieve its purposes; and

WHEREAS, the City and the Zone have contracted with the Authority as a nonprofit, Texas local government corporation pursuant to the provisions of Chapter 431, Subchapter D, Tex. Trans. Code, to carry out the purposes of the Zone, including administration, supervision, construction, financing and other duties, and committed the revenues of the Zone to the Authority for such purposes, all as to be more particularly set forth in the Agreement Between the City, the Zone and the Authority (the "*Tri-Party Agreement*"); and

WHEREAS, the Developer is the owner of certain property within the Zone, and wishes to finance and construct certain Zone projects; and

WHEREAS, the Authority and the Zone have determined that they can best carry out their functions pursuant to the Tri-Party Agreement and the Plan by contracting with the Developer to provide for the efficient and effective implementation of certain aspects of the Plan, and the Authority and the Developer desire to enter into this Agreement to enable the development and financing of certain projects in connection with the Developer's development of property within the Zone, and the reimbursement of the Developer as provided herein; and

#59 v3

WHEREAS, the parties wish to provide for the possibility that Fort Bend Independent School District may participate in the Zone, and therefore have included references thereto in this Development Agreement to accommodate such event; now, therefore,

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits of this Agreement, the Zone, the Authority and the Developer contract and agree as follows:

ARTICLE 1

GENERAL TERMS

1.01 Definitions. The terms *"Agreement," "Authority," "Developer," "City," "Zone," "Zone Board,"* and *"Tri-Party Agreement"* have the meanings set forth in the preamble hereof, and the following capitalized terms shall have the meanings provided below, unless otherwise defined or the context clearly requires otherwise. For purposes of this Agreement the words "shall" and "will" are mandatory, and the word "may" is permissive.

Act shall mean the Increment Financing Act, Chapter 311, Texas Tax Code, as amended.

Authority Bonds shall mean any bond, note or other obligation issued or incurred in one or more series pursuant to **Article V**, secured by Tax Increment or funds deposited in the Revenue Fund, including refunding bonds.

City Debt shall mean direct debt of the City as defined in **Section 5.04**, below.

County shall mean Fort Bend County, Texas.

Development shall mean the residential and commercial development within the Zone projected to be carried out by the Developer, described in **Exhibit A** attached hereto.

Developer Advances shall mean any funds advanced by the Developer pursuant to **Section 5.01**, and shall include any interest payable thereon.

FBISD shall mean the Fort Bend Independent School District.

Net Tax Increment shall mean the annual collections of the Tax Increment, less (i) any amounts required to be disbursed to FBISD for the payment of Project Costs related

to educational facilities incurred directly by FBISD, and (ii) amounts reasonably required or anticipated to be required for the administration and operation of the Zone and the Authority, including a reasonable operating reserve.

Parties or *Party* shall mean the Zone, the Authority and the Developer as parties to this Agreement.

Plan shall mean the final project plan and reinvestment zone financing plan for the Zone as approved by City Council, as amended.

Revenue Fund shall mean the special fund established by the Authority and funded with Tax Increment payments made by the City pursuant to the Tri-Party Agreement (which payments are attributable to incremental ad valorem property taxes paid on the Development and other properties in the Zone).

Tax Increment shall mean funds deposited in the Revenue Fund by the City pursuant to the Tri-Party Agreement, including funds received pursuant to any Interlocal Agreements or similar agreements relating to the Zone between the City, the County, the Zone, and FBISD.

Taxing Unit shall mean individually and collectively any taxing unit contributing funds to the Zone, including the City, the County, and FBISD.

TIRZ Improvements shall mean the improvements described in *Article 3* hereof.

1.02 Singular and plural; gender. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa. Likewise, any masculine references shall include the feminine, and vice versa.

ARTICLE 2
REPRESENTATIONS

2.01 Representations of the Authority. The Authority hereby represents that:

(A) It is duly authorized, created and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) It has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment,

order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Authority under any agreement or instrument to which the Authority is a party or by which the Authority or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the Authority and, constitutes a legal, valid and binding obligation of the Authority, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the Authority does not require the consent or approval of any person which has not been obtained.

2.02 Representations of the Developer. The Developer hereby represents that:

(A) The Developer is duly authorized, created and existing under the laws of the State of Texas, is qualified to do business in the State of Texas and is duly qualified to do business wherever necessary to carry on the operations contemplated by this Agreement.

(B) The Developer has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i)have been duly authorized, (ii) will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developer or any provisions of the Developer's limited partnership agreement, and (iii) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.

(C) The Developer has sufficient capital to perform its obligations under this Agreement.

(D) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

2.03 Representation of the Zone. The Zone hereby represents that:

(A) The Zone is duly authorized, created and existing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) The Zone has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof (i) have been duly authorized, (ii) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Zone under any agreement or instrument to which the Zone is a party or by which the Zone or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the Zone and, constitutes a legal, valid and binding obligation of the Zone, enforceable in accordance with its terms.

(D) The execution, delivery and performance of this Agreement by the Zone does not require the consent or approval of any person which has not been obtained.

ARTICLE 3
THE PROJECT

3.01 The TIRZ Improvements. The TIRZ Improvements are intended to enhance the proposed implementation of a development within the Zone constituting the Development, as more fully described in the Plan.

3.02 TIRZ Improvements description. The TIRZ Improvements consist of acquisition, construction and development of the public improvements within the portion of the Zone comprising the Development, as more fully described in **Exhibit B**, and as described in the Plan. The TIRZ Improvements will be developed pursuant to a schedule that is mutually agreeable to the Parties. The TIRZ Improvements shall include all engineering, legal and other consultant fees and expenses related to such TIRZ Improvements.

3.03 Additional Projects. This Agreement does not apply to any projects not specifically defined herein unless this Agreement is amended to provide for the design and construction of such additional projects.

ARTICLE 4
DUTIES AND RESPONSIBILITIES OF THE DEVELOPER

4.01 Construction manager. The Developer agrees to construct the TIRZ Improvements and to provide and furnish, or cause to be provided and furnished, all materials and services as and when required in connection with the construction of the TIRZ Improvements. The Developer will obtain all necessary permits and approvals

from the City and all other governmental officials and agencies having jurisdiction, provide supervision of all phases of construction of the TIRZ Improvements, provide periodic reports of such construction to the Authority and the Zone upon request, and cause the construction to be performed in accordance with the Plan. The Authority and the City shall use their best efforts to assist the Developer in obtaining such permits and approvals necessary to construct the TIRZ Improvements.

4.02 Design of the TIRZ Improvements. The Developer shall prepare or cause to be prepared the plans and specifications for the TIRZ Improvements and make appropriate recommendations to the Zone. Prior to the commencement of construction or implementation of the TIRZ Improvements, the plans and specifications must be approved by the Authority. If there are any material changes to the plans and specifications, the Developer shall submit such changes to the Authority for approval. The TIRZ Improvements shall be designed in accordance with City standards applicable to similar public improvements within the City.

4.03 Construction contracts. The Developer and the Authority shall cooperate to promulgate form contract and bid documents that are acceptable to all parties for use in connection with TIRZ Improvement projects. The Developer shall prepare the TIRZ Improvements construction contract documents to ensure that the contract documents are in accordance with the approved plans and specifications and the agreed-upon forms. The Authority shall have 30 days to review and approve or disapprove all such contract documents. If the Authority approves, or fails to approve or disapprove within the specified time, the Developer shall be entitled to obtain proposals for the construction of the TIRZ Improvements. The Developer shall comply with all laws and regulations regarding the bidding and construction of public improvements applicable to similar facilities constructed by the City, including without limitation any applicable requirement relating to payment, performance and maintenance bonds. The TIRZ Board will provide periodic written reports to the City with regard to the progress of the implementation of the Plan as requested by the City from time to time.

4.04 Construction and implementation of the TIRZ Improvements. The Developer shall be responsible for the inspection and supervision of the construction and implementation of the TIRZ Improvements.

(a) The Developer shall commence construction of the TIRZ Improvements in a timely fashion to coincide with the expected development of the Development.

(b) Upon completion of a contract for the construction of the TIRZ Improvements, the Developer shall provide the Authority with a final cost summary of all costs associated with such contract, and show that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed

by such contractors. Following completion of a construction contract, the Developer will call for inspection of the applicable TIRZ Improvements by the City, and upon approval thereof as being in compliance with City standards relating thereto, the TIRZ Improvements will be accepted by the City and incorporated into the City system for operation and maintenance. Title to the applicable TIRZ Improvements shall remain with the Developer until reimbursement in full to the Developer pursuant to this Agreement; provided that if the Net Tax Increment from the Property has been insufficient to generate reimbursement pursuant to Section 5.02, title to all TIRZ Improvements shall be vested in the City upon termination of the Zone without further action.

4.05 Conveyance of easements. If necessary, the Developer shall grant the City all required temporary construction and access easements necessary to install and maintain the TIRZ Improvements. The Zone shall grant the Developer, and shall use its best efforts to obtain for the Developer from the City, all required temporary construction and access easements necessary to install and maintain the TIRZ Improvements.

ARTICLE 5
PROJECT FINANCING AND FUNDING

5.01 The Developer Advances.

(a) In connection with the construction of the TIRZ Improvements, the Developer agrees to provide sufficient funds as such become due for all costs thereof (the "*Developer Advances*"), constituting "project costs," as defined in the Act, including costs of design, engineering, materials, labor, construction, and inspection fees arising in connection with the TIRZ Improvements, all payments arising under any contracts entered into pursuant to this Agreement, all costs incurred in connection with obtaining governmental approvals, certificates or permits required as a part of any contracts entered into in accordance with this Agreement, and all related legal fees and out-of-pocket expenses incurred on behalf of the Authority in connection therewith. Developer Advances shall further include any amounts advanced by the Developer in connection with the administration of the Authority and the Zone and the design and construction of the TIRZ Improvements.

(b) Interest on each Developer Advance shall accrue at a rate equal to the lesser of (i) the Developer's actual borrowing costs, or (ii) the prime commercial lending rate of JPMorgan Chase Bank, National Association, or any successor to its commercial banking activities, plus one percent, compounded semiannually, whether such costs, fees, or expenses are paid or incurred before or after the effective date of this Agreement. Interest shall be calculated on the basis of a year of 360 days and the actual

days elapsed (including the first day but excluding the last day) occurring in the period for which such interest is payable, unless such calculation would result in a usurious rate, in which case interest shall be calculated on the per annum basis of a year of 365 or 366 days, as applicable, and the actual days elapsed (including the first day but excluding the last day).

5.02 Repayment of Developer Advances.

(a) In consideration of the development and construction of the TIRZ Improvements, the Authority shall begin repaying the Developer Advances, and shall continue such repayment until repaid in full, on the earliest date that funds are available from any of the following sources, and solely from such sources:

(i) proceeds from the sale of the Authority Bonds, as set forth in subsection (b), and

(ii) the Net Tax Increment, subject to the limitations set forth in subsection (c).

(b) As provided herein, the Authority shall issue one or more series of Authority Bonds at the earliest feasible date, which Authority Bonds will be secured by a pledge of the Revenue Fund. The net proceeds of the Authority Bonds shall be deposited to a special fund of the Authority, and shall be used by the Authority to reimburse the Developer for the full amount (or such portion thereof as is deemed by the Authority as supportable by the Development as provided below) eligible Developer Advances, plus interest. Such Authority Bonds shall be sold within 120 days (or such other period as may be agreed by the Parties) of a written request therefor from the Developer; provided that the Net Tax Increment (based upon the tax valuation of the Zone as certified or estimated by the Fort Bend County Appraisal District, or its successor) expected to be generated with respect to Development is sufficient to support the applicable Authority Bonds bearing interest at the then-current rate of interest as determined by the Authority's financial advisor for comparable issues, after taking into account the portion of the Development's Net Tax Increment required to pay any outstanding Authority Bonds, including Authority Bonds issued to refund outstanding Authority Bonds.

(c) In addition to the Developer's right to reimbursement from Authority Bond proceeds, upon request from the Developer, the Authority shall reimburse the Developer for Developer Advances, plus interest, from Tax Increment accumulated in the Revenue Fund attributable to the Development and available in accordance with the priorities described in Section 5.03, below.

(d) At such time as funds are available to pay all or any portion of the Developer Advances made hereunder, the Authority shall hire a certified public accountant to calculate the amount due the Developer and prepare and submit a report to the Authority certifying (1) the amount due the Developer for the Developer Advances being repaid with interest calculated thereon, and (2) that funds are available to make such payment. Such report shall be approved at the earliest practicable time, but not later than 90 days after submission by the Developer of the records required therefor. The Authority shall make payment to the Developer within 30 days of approval of the auditor's report. Such payment is conditioned upon the ability of the Developer to deliver a conveyance of the applicable TIRZ Improvements to the City without lien or encumbrance, in a form acceptable to the City and the Authority.

(e) The Authority shall provide to the Developer, upon the written request of the Developer, and on the earliest date such information is available after the date of such request, certified copies of all statements of revenue and the sources of such revenue of the Zone and Authority the intended use of which is to verify the availability of funds for repayment of the Developer Advances, if applicable, under this section.

5.03. Priorities. Amounts deposited in the Revenue Fund shall be applied in the following order of priority (i) disbursement to FBISD, if applicable, for educational facilities in accordance with the Interlocal Agreement with FBISD, the City and the Zone; (ii) amounts pledged or required for the payment of outstanding Authority Bonds, including Authority Bonds in the process of issuance and refunding Authority Bonds, (iii) administrative costs of the Zone and the Authority, and (iv) payments to the Developer pursuant to **Section 5.02(c), above.**

5.04. City issuance. Notwithstanding the above, in the event the City determines to issue its general obligation or other debt to fund reimbursement of the Developer (*"City Debt"*), rather than the issuance of Authority Bonds, the City shall be entitled to withdraw from amounts deposited in the Revenue Fund sufficient to service the City Debt, and payment to the Developer from City Debt proceeds shall be considered to satisfy the obligations of the Authority to the Developer with respect to such payment amounts.

5.05. Multiple developers. In the event the Authority enters into other agreements with developers of land within the Zone for the financing of TIRZ Improvements, it is the intention of the parties that the each developer shall be responsible for the creation of Tax Increment required for its own reimbursement. In such case, the Tax Increment generated within the Development shall not be considered in determining whether sufficient Net Tax Increment exists for the issuance of Authority Bonds, or direct payment of available Net Tax Increment unless the Developer shall give its written consent thereto. The net proceeds of Authority Bonds issued to reimburse multiple developers shall be allocated based upon the proportion of

Tax Increment generated by each developer, or such other method as the developers may agree upon.

ARTICLE 6
DEFAULT

6.01 Default.

(a) If the Zone or the Authority does not perform its obligations hereunder in substantial compliance with this Agreement, in addition to the other rights given the Developer under this Agreement, the Developer may seek actual damages incurred by the Developer for any such default.

(b) If the Developer fails to commence or complete the TIRZ Improvements or the Development in accordance with the terms of this Agreement, including the failure to fund Developer Advances, the Zone and/or the Authority may terminate this Agreement and shall be relieved of any obligation to reimburse the Developer for any Developer Advances made after notice of such default has been provided to the Developer in writing, and/or seek actual damages incurred for any such default.

(c) The Party alleging default shall provide written notice to the other party of such default, and the defaulting party shall have 60 days to remedy the default prior to the declaration of any default hereunder.

ARTICLE 7
GENERAL

7.01 Inspections, audits. The Developer agrees to keep such operating records with respect to the Development and other activities contemplated by this Agreement and all costs associated therewith as may be required by the Authority, the Zone, or by State and federal law or regulation. The Developer shall allow the Authority access to, and the Authority shall have a right at all reasonable times to audit, all documents and records in the Developer's possession, custody or control relating to the Development that the Authority deems necessary to assist the Authority in determining the Developer's compliance with this Agreement.

7.02 Developer operations and employees. All personnel supplied or used by the Developer in the performance of this Agreement shall be deemed contractors or subcontractors of the Developer and will not be considered employees, agents, contractors or subcontractors of the Zone, the Authority, or the City for any purpose whatsoever. The Developer shall be solely responsible for the compensation of all such contractors and subcontractors.

7.03 Personal liability of public officials, legal relations. To the extent permitted by State law, no director, officer, employee or agent of the Zone or the Authority shall be personally responsible for any liability arising under or growing out of the Agreement. The parties shall indemnify and save harmless each other and their respective officers, representatives, and agents from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any person, persons, or property resulting from the negligent acts of such party, or any of its agents, officers, or representatives in performing any of the services and activities under this Agreement. The expenses of the Zone or the Authority with respect to this section or Section 7.15, below, shall be satisfied from uncommitted Net Tax Increment attributable to the Development.

7.04 Notices. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

Missouri City Development Authority
c/o David Hawes
P.O. Box 22167
Houston, Texas 77092
Attn: President, Board of Directors

Reinvestment Zone Number Two
c/o David Hawes
P.O. Box 22167
Houston, Texas 77092
Attn: Chair, Board of Directors

Wal-Mart Stores Texas, L.P.
c/o Wal-Mart Stores, Inc.
Sam Walton Development Complex
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550
Attention: Bruce Wicking, esq.
Reference: Missouri City, TX (Sien), Sore No. 5449-00

With a copy to
Hugh Blanchard
Brown & Gay Engineers, Inc.
11490 Westheimer, Suite 700
Houston, Texas 77077

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the Authority, the Zone, or the Developer, as the case may be.

7.05 Amendments and waivers. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the Zone, the Authority and the Developer. No course of dealing on the part of the Parties, nor any failure or delay by one or more of the Parties, with respect to exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, except as otherwise provided in this section. Nothing herein shall be construed to constitute a covenant or obligation from the Developer that it will continuously operate a store or any other business or operations on the site of the Development.

7.06 Invalidity. In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement.

7.07 Successors and assigns. All covenants and agreements contained by or on behalf of a Party in this Agreement shall bind its successors and assigns and shall inure to the benefit of the other Parties, their successors and assigns. The Parties may assign their rights and obligations under this Agreement or any interest herein, only with the prior written consent of the other Parties, and any assignment without such prior written consent, including an assignment by operation of law, is void and of no effect. If such assignment of the obligations by the Developer hereunder is effective, the Developer shall be deemed released from such obligations. If any assignment of the obligations by the Developer hereunder is deemed ineffective or invalid, the Developer shall remain liable hereunder. The Developer may assign its reimbursement rights to a lender as collateral without consent of the Authority; provided that no such assignment shall be valid unless written notice thereof is provided to the Authority of such collateral assignment.

7.08 Exhibits; titles of articles, sections and subsections. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of

this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

7.09 Construction. This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas, as such laws are now in effect.

7.10 Entire Agreement. This written Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

7.11 Term. This Agreement shall be in force and effect from the date of execution hereof for a term expiring on the date that the Developer Advances have been repaid in full, or January 1 of the year following the expiration of the Zone.

7.12 Time of the essence. Time is of the essence with respect to the obligations of the Parties to this Agreement.

7.13 Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such approval or consent shall not be unreasonably conditioned, withheld or delayed.

7.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

7.15 Legal costs. If any Party hereto is the prevailing party in any legal proceedings against another Party brought under or with relation to this Agreement, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party to such proceedings.

7.16 Waivers. The Authority may waive any provision of this Agreement by providing written evidence thereof in writing. Waiver of particular provision shall not be deemed a waiver of future compliance with such provision.

7.17 Further assurances. Each Party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

7.18 Effect of Tri-Party Agreement. The obligations of the Parties hereunder are specifically conditioned upon the approval, execution, and effectiveness of the Tri-Party Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the date first above written.

REINVESTMENT ZONE NUMBER TWO,
CITY OF MISSOURI CITY, TEXAS

By:_____
Name:_____
Title:_____

MISSOURI CITY DEVELOPMENT AUTHORITY

By:_____
Name:_____
Title:_____

WAL-MART STORES TEXAS, L.P.
a Texas limited partnership

By: Wal-Mart Stores East, L.P.
a Delaware limited partnership,
its General Partner

By: WSE Management, L.L.C.
a Delaware limited liability company
its General Partner

By:_____
Name:_____
Title:_____

Exhibit A
The Development

The construction and development of a new Wal-Mart Superstore facility (containing approximately) 220,000 square feet of space), a fueling station and six pad sites, on a 31.1448-acre tract of land owned by the Developer within the Zone, located in Fort Bend County, Missouri City, Texas, at the northwest intersection of Highway 6 and Vicksburg Boulevard, more particularly described as follows:

Exhibit B
The TIRZ Improvements

Construction of a new traffic signal at the intersection of State Highway 6 and Lake Shore Harbour Boulevard, and a new traffic signal at the intersection of Lake Shore Harbour Boulevard and Vicksburg Boulevard including any sidewalks, sidewalk modifications, signal connections for timing, traffic markings, signage and other related appurtenances as may be required by the reviewing agencies.

missouri CITY
TEXAS

Missouri City Development Authority

Frank Simpson
General Manager
1522 Texas Parkway
Missouri City, Texas 77489

Phone: 281.403.8500
Fax: 281.208.5591
fsimpson@missouricitytx.gov
www.missouricitytx.gov

February 9, 2009

Certified Mail, Return Receipt Requested No. 7003 3110 0000 3989 2617

Wal-Mart Stores Texas, L.P.
c/o Wal-Mart Stores, Inc.
Sam Walton Development Complex
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550
Attention: Bruce Wicking, Esq.
Reference: Missouri City, TX (Sien), Store No. 5449-00

Re: Development Agreement
Notice of Default, Failure to construct project

Dear Mr. Wicking:

Your company entered into a Development Agreement with the Reinvestment Zone Number Two, City of Missouri City and the Missouri City Development Authority. Under the terms of the agreement, your company was to construct certain infrastructure improvements, the "TIRZ Improvements."

Section 6.01 of the agreement provides that if your company fails to commence or complete the TIRZ Improvements or the Development in accordance with the terms of the agreement, then the Zone or the Authority may terminate the agreement. The section also provides that written notice of an alleged default shall be given to the defaulting party and the defaulting party shall have 60 days to remedy the default prior to the declaration of default.

Section 7.12 provides that time is of the essence with respect to the obligations of the parties to the agreement.

This letter is notice of default under the agreement for failure to commence or complete the TIRZ Improvements or the Development in accordance with the terms of the agreement. Your company has sixty days from receipt of this notice to remedy the default. Otherwise, a declaration of default will be made. If the declaration of default is made, the agreement will be terminated.

Additionally, in accordance with Section 7.04 of the agreement, the Missouri City Development Corporation changes its address to be as follows:

Missouri City Development Corporation
1522 Texas Parkway
Missouri City, Texas 77489
Attn: General Manager

and Reinvestment Zone Number Two, City of Missouri City changes its address to be as follows:

Reinvestment Zone Number Two, City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489
Attn: Zone Administrator

Sincerely,

Frank Simpson
General Manager
Missouri City Development Corporation

cc: Caroline Kelley, City Attorney
Wes Vela, Director of Finance
Scott Elmer, Director of Public Works
Ornita Green, Director of Planning

Hugh Blanchard
Brown & Gay Engineers, Inc.
11490 Westheimer, Suite 700
Houston, Texas 77077
Certified Main, Return Receipt Requested, No. 7003 3110 0000 3989 2648

7003 3110 0000 3989 2617

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	$ .42
Certified Fee	2.70
Return Reciept Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 5.32

Postmark Here: Mailed 2.10.09

Sent To: Walmart Stores Texas LP
Street, Apt. No.; or PO Box No.: 2001 S.E. 10th Street
City, State, ZIP+4: Bentonville, Arkansas 72716

PS Form 3800, June 2002 See Reverse for Instructions

7003 3110 0000 3989 2648

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	$ .42
Certified Fee	2.70
Return Reciept Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 5.32

Postmark Here: Mailed 2.10.09

Sent To: ~~Walmart Stores~~ Hugh Blanchard
Street, Apt. No.; or PO Box No.: Brown & Gay Engineers 11490 Westheimer, #700
City, State, ZIP+4: Houston, TX 77077

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hugh Blanchard
Brown & Gay Engineers, Inc.
11490 Westheimer, Suite 700
Houston, Texas 77077

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Michelle Howard ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 2-17-09

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

☐ Yes

48

2. Artic
(Tran

PS Form Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Wal-Mart Stores Texas, L.P.
c/o Wal-Mart Stores, Inc.
Sam Walton Development Complex
2001 S.E. 10th Street
Bentonville, Arkansas 72716-0550
Attention: Bruce Wicking, Esq.
Reference: Missouri City, TX (Sien), Store No. 5449-00

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X David R Quinney ☐ Agent ☐ Addressee

B. Received by (Printed Name) David R Quinney C. Date of Delivery FEB 13 '09

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7003 3110 0000 3989 2617

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

ANDREWS
ATTORNEYS KURTH LLP

600 Travis, Suite 4200
Houston, Texas 77002
713.220.4200 Phone
713.220.4285 Fax
andrewskurth.com

Jack E. Fields
713.220.4348 Direct
713.238.7182 Fax
jfields@andrewskurth.com

April 3, 2009

Mr. Frank Simpson
General Manager
Missouri City Development Corporation
1522 Texas Parkway
Missouri City, Texas 77489

RE: Development Agreement among Wal-Mart Stores Texas, LP, Missouri City Development Authority and Reinvestment Zone Number Two of Missouri City, Texas - Wal-Mart Project No. 5449-00

Dear Mr. Simpson:

Thank you for your letter of February 9, 2009 to Wal-Mart Stores Texas, L.P.

As the attorney for Wal-Mart on its Missouri City, Texas project, I can assure you that at the time when the Development Agreement mentioned in your letter was executed, Wal-Mart had every intention of commencing and completing the TIRZ Improvements in accordance with the terms of the Development Agreement. However, due to a number of unforeseen circumstances. Wal-Mart was not able to do so. Wal-Mart acknowledges your right to terminate the Development Agreement.

Wal-Mart enjoyed working with the Missouri City Development Corporation and Reinvestment Zone Number Two in connection with this matter and hopes to do so again in the future. Wal-Mart appreciates all of your prior consideration and efforts in this matter.

Very truly yours,

Jack E. Fields

1170:lrs

cc: Reinvestment Zone Number Two
City of Missouri
1522 Texas Parkway
Missouri City, Texas 77489
Attn: Zone Administrator

Ms. Caroline Kelley
City Attorney
City of Missouri
1522 Texas Parkway
Missouri City, Texas 77489

Wes Vela
Director of Finance
City of Missouri
1522 Texas Parkway
Missouri City, Texas 77489

Scott Elmer
Director of Public Works
City of Missouri
1522 Texas Parkway
Missouri City, Texas 77489

Ornita Green
Director of Planning
City of Missouri
1522 Texas Parkway
Missouri City, Texas 77489

Mr. Hugh Blanchard (via email: hblanchard@browngay.com)
Bruce Wickline (via email: bruce.wickline@walmartlegal.com)
Gregory Tesoro (via email: gregory.tesoro@walmartlegal.com)

Missouri City Development Authority
Agenda Item
May 4, 2009

8. Consider authorizing payment of invoice.

Background information attached as follows:

Cover Memo

Public Improvement District No. 4 – Developer Reimbursement

Missouri City Development Authority
Agenda Item Cover Memo
May 4, 2009

To: Missouri City Development Authority Board of Directors
Agenda Item: **8** Consider authorizing payment of invoice.

Submitted by: Gary W. Smith, First Assistant City Attorney

SYNOPSIS

The law firm of Andrews Kurth was retained to assist the Development Authority in resolving legal issues involved in the Perry Homes request for reimbursement under the Public Improvement District 4 Development Agreement.

BACKGROUND

Pursuant to the terms of the Development Agreement between Perry Homes and the Development Authority, Perry Homes requested reimbursement of its Developer Advances arising from the infrastructure construction in Creekmont Subdivision. After consultation with the Development Authority's financial advisor, assistance from bond counsel was necessary. The law firm of Andrews Kurth serves as bond counsel for the City and for the Development Authority.

Andrews Kurth reviewed the various documents related to PID 4 and the Perry Homes reimbursement request. After discussions with staff and with representatives of the Attorney General's office, Andrews Kurth determined that the Development Authority was legally prohibited from issuing debt secured by the PID assessments. Andrews Kurth outlined an alternative method to provide reimbursement for Perry Homes.

The legal services have been detailed in the invoice for legal services.

FISCAL ANALYSIS

Payment of the invoice will be made from the revenues generated by assessments collected in PID 4.

STAFF'S RECOMMENDATION

Authorize payment of the invoice to Andrews Kurth in the amount of $27,631.

Frank Simpson
Executive Director

ANDREWS KURTH LLP
ATTORNEYS
P. O. Box 201785
HOUSTON, TEXAS 77216-1785
TAXPAYER I.D. #74-1027138

April 27, 2009

As of April 27, 2009
Invoice No. 10445177
07866 21234/185470

Missouri City Development Authority
1522 Texas Parkway
Missouri City, TX 77489

Attention: Executive Director

Re: Public Improvement District No. 4 – Developer Reimbursement

FOR SERVICES RENDERED AND EXPENSES INCURRED as Counsel in connection with the above-referenced reimbursement

Counsel Fees and Expenses $27,631.00

TOTAL DUE FOR THIS MATTER.....$27,631.00

Please Return Remittance Copy With Payment
Attention: Rick Witte
Andrews Kurth LLP
P.O. Box 201785
Houston, Texas 77216-1785

Wire Transfer Instructions:
JPMorgan Chase Bank, Houston, Texas
Account No. 00100184952; ABA Code 113000609
Attention: Tiffany Sanders, Telephone Number (713) 750-3725
Reference 10445177, 00212347/185470

PAYMENT DUE UPON RECEIPT

For Questions or Comments Regarding this Bill, Please Contact the Accounting Department at (713) 220-4606.

EXHIBIT A

Detail of Time for Counsel Services

Date	Services	Attorney	Hours
01/09/09	Conference with R. Witte and M. Deitz regarding upcoming Public Improvement District Bonds; research law related to potential Public Improvement District financing.	K. M. KENYON	.80
01/08/09	Review of materials from First Southwest Company related to proposed PID financing.	R. A. WITTE	.80
01/08/09	Research statutes governing public improvement districts; research Attorney General review of public improvement districts.	K. M. KENYON	1.60
01/09/09	Office conference with M. Deitz, review of PID documents provided by Missouri City.	R. A. WITTE	.80
01/09/09	Review Attorney General all Bond Counsel letter; discussion with J. Kyle and C. Williams regarding PID transactions; review of Escondido PID transaction transcript; review of Chapter 372, Local Government Code; research list of items needed to assess PID deal.	K. M. KENYON	5.30
01/13/09	Review development agreement and other documents related to PID financing structure and real estate related issues.	M. B. ARNOLD	1.60
01/13/09	Review PID documents in preparation for conference call with City.	M. M. WHITE	4.40
01/13/09	Continue to research PID materials; review Ordinances and Development Agreement provided by the City; prepare internal memo; conference with R. Witte and M. White.	K. M. KENYON	4.60
01/14/09	Review of Public Improvement District documents and Development Agreement, telephone conference with Missouri City.	R. A. WITTE	1.80
01/14/09	Continue review and analysis of PID documents and real estate issues.	M. B. ARNOLD	2.60
01/14/09	Prepare for and participate in conference call with City regarding financing options.	M. M. WHITE	3.40

Date	Services	Attorney	Hours
01/14/09	Revise memo; office conference with M. White regarding ability to issue PID bonds; research legislative intent of PID statute; research past PID deals; conference with Attorney General related to PID bonds; conference with M. White and M. Arnold related to PID financing; conference call with Missouri City related to PID financing.	K. M. KENYON	6.10
01/16/09	Review of Public Improvement District documents.	R. A. WITTE	.80
01/22/09	Review of Public Improvement District Documents from Missouri City, Texas.	R. A. WITTE	.60
01/26/09	Review bid packages for public improvements and PID creation documents.	M. M. WHITE	4.30
01/27/09	Review of procurement issues.	R. A. WITTE	.50
01/27/09	Review procurement requirements applicable to Public Improvement District.	M. M. WHITE	2.80
01/28/09	Review of Public Improvement District materials from Missouri City.	R. A. WITTE	.80
01/29/09	Telephone conference with Gary Smith regarding PID matters; research regarding same.	M. M. WHITE	1.90
02/02/09	Office conference with M. White regarding structure; consideration of Attorney General issues.	R. A. WITTE	.60
02/02/09	Review statutes and telephone conference with Attorney General regarding failure to publish assessment ordinance, requirements of feasibility report; telephone conference with City Attorney's office regarding same.	M. M. WHITE	3.10
02/04/09	Review of additional Public Improvement District materials and issues.	R. A. WITTE	.70
02/04/09	Respond to questions from City Attorney regarding PID financing.	M. M. WHITE	.40
02/11/09	Telephone conference with City Attorney regarding PID issues; follow-up research.	M. M. WHITE	2.10
02/12/09	Telephone conference with City Attorney regarding PID issues; follow-up research.	R. A. WITTE	.60
02/21/09	Research legislative history of Section 271.114, Local Government Code.	M. M. WHITE	.50
03/04/09	Review proposed amendments to PID statute.	M. M. WHITE	.90
03/05/09	Review of draft memo to Missouri City, telephone conference with Missouri City.	R. A. WITTE	.60

Date	Services	Attorney	Hours
03/06/09	Review of memo, telephone conference with M. White, consideration of competitive bid issues.	R. A. WITTE	.60
03/06/09	Finalize and send e-mail to City regarding financing of Perry Homes improvements.	M. M. WHITE	1.40
03/13/09	Prepare for Missouri City Development Authority meeting.	R. A. WITTE	.80
03/16/09	Prepare for meeting at Missouri City, meeting with Missouri City Development Authority.	R. A. WITTE	2.50
03/16/09	Prepare for and attend meeting of Redevelopment Authority.	M. M. WHITE	2.80

SUMMARY

Attorney Number	Name	Hours	Rate	Value
07870	ARNOLD, M. B.	4.20	550.00	2,310.00
10056	KENYON, K. M.	18.40	315.00	5,796.00
07875	WHITE, M. M.	28.00	425.00	11,900.00
07866	WITTE, R. A.	12.50	610.00	7,625.00
		63.10		$27,631.00