

**DEVELOPMENT AGREEMENT
AMENDMENT**

THIS AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR INTERSECTION IMPROVEMENTS ON BLUE MOUND ROAD (FM 156) AND INDUSTRIAL BOULEVARD (collectively the “AMENDED DEVELOPMENT AGREEMENT”) is made and entered into this 19th day of October, 2021, by and between the City of Saginaw, Texas (the "City"), and Fuel City Saginaw, LLC ("Developer").

WITNESSETH

WHEREAS, Intersection Improvements on FM 156 at Industrial Blvd. and Cantrell / Sansom Rd. (the "Project"), as depicted in Exhibit “A”, and it being identified and designated for funding by the Regional Transportation Council of the North Central Texas Council of Governments (“NCTCOG”) under COVID-19 #00X Infrastructure Program as shown in Exhibit “B”; and

WHEREAS, the Project is being funded by a Surface Transportation Block Grant from the Federal Government; and

WHEREAS, the Project will require matching funds from the City, Texas Department of Transportation (“TxDOT”), and the city of Fort Worth, as shown on Exhibit “B”; and

WHEREAS, the TxDOT will administer the Project on behalf of the NCTCOG; and

WHEREAS, Tarrant County has recognized that the city of Blue Mound does not have available funding and has offered financial assistance toward the Project, which will be covered in a separate agreement between the City and Tarrant County; and

WHEREAS, the City and the Developer entered into a development agreement on April 6, 2021 (the “Development Agreement”) for cost sharing of the Subsurface Utility Engineering (“SUE”) for the Project; and

WHEREAS, the Developer has agreed to pay for the Project management, design, environmental studies and half of the SUE cost per the Development Agreement; and

WHEREAS, the City has agreed to be the Project sponsor with TxDOT; and

WHEREAS, the City and TxDOT will enter into an Advance Funding Agreement For Surface Transportation Block Grant and Local Contribution/Participation (the “AFA”) which will cover the design and environmental phase of the Project (collectively the “AFA- Design Phase”); and

WHEREAS, as the Project further develops the City and TxDOT will amend the AFA that will cover the construction and funding of the Project (the “AFA – Construction / Funding Phase”); and

WHEREAS, the City and Developer acknowledge that the foregoing issues should be addressed through an amendment to the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Developer covenant and agree as follows:

1. Developer Obligations.

A. Project Management.

- a. Developer agrees to fund the Project management and coordination of the Project.
- b. Project Management will include:
 - i. Overseeing the Project design; and
 - ii. Overseeing the Project environmental studies; and
 - iii. Transmitting to TxDOT requisite design and environmental documents leading to the approval and construction of the Project by TxDOT; and
 - iv. Overseeing the development of Project schedule and budget.
- c. Project Coordination will include:
 - i. Coordinating with TxDOT the various aspects of the Project development; and
 - ii. Coordinating with the cities and Tarrant County during the Project development.
- d. Project Agreement assistance will include:
 - i. Provide assistance to the City with Project agreements, including the AFA, amendment to the AFA, ROW and easement acquisitions, and other interlocal agreements as needed.
 - ii. Assistance to the City with Project funding agreements with the City of Fort Worth and Tarrant County.

B. Project Design.

- a. Developer agrees to fund the design of the Project (the “Project Design”) and has entered into an agreement with Hayden Consultants, Inc. (“HCI”) for that purpose.
 - i. HCI Project Design services include:
 - 1. Data collection including survey and geotechnical studies; and
 - 2. Preparing a Project schematic; and
 - 3. Design of pavement, drainage facilities, traffic signal, and traffic control plans; and
 - 4. Preparing plans, specifications and estimates (“PS&E”); and
 - 5. Preparing and submitting to TxDOT the PS&E to 60%, 90% and final set for review and comments.
 - ii. HCI construction engineer services will be limited to responding to RFIs and other design related questions.

C. Environmental Studies.

- a. Developer agrees to fund the environmental studies and has entered into an agreement with aci consulting (“ACI”) for that purpose.
- b. ACI will develop and submit to TxDOT a Categorical Exclusion environmental document, respond to comments, and seek environmental approval by TxDOT.
- c. ACI will provide notification when the environmental approvals have been received.

D. Utilities.

- a. HCI as part of the design process, based on the SUE investigation, and discussion with the City, utility providers, and other consultants, will identify utility conflicts and needed utility relocations; and
 - b. HCI will inform and will work with the City on the utility conflicts and will notify the City of approvals / comments from TxDOT regarding these conflicts and relocations.
- E. ROW and Easements
 - a. HCI as part of the design process will identify and define the needed ROW including utility and temporary construction easements; and
 - b. HCI will create the ROW and utility and temporary construction easements legal documents as identified above.
- F. Developer ROW and Easements
 - a. ROW and temporary construction easements from Developer's property (collectively the "Developer ROW") have been identified as being needed for the Project, and as shown on the schematic, attached as Exhibit A; and
 - b. Developer intends to donate this Developer ROW for the Project, contingent upon the City fulfilling the obligations in this Amended Development Agreement.

2. City Obligations.

- A. Project Agreements.
 - a. The City will timely execute the AFA-Design Phase with TxDOT that will cover the design and environmental studies for the Project in the same general form and terms as has been presented to the City for consideration, a draft form of the Advance Funding Agreement For Surface Transportation Block Grant and Local Contribution/Participation with exhibits is attached as Exhibit C.
 - b. The City will actively and timely work toward entering into interlocal agreements with the City of Fort Worth, and Tarrant County as it relates to the Project including Project funding.
 - c. The City will use its best efforts to amend the AFA with TxDOT for the construction and funding of the Project, referred to as the AFA – Construction / Funding Phase.
- B. Project Coordination
 - a. The City will timely review and participate in the Project development to expedite design, environmental studies, ROW and easement acquisition, and utility coordination and relocation.
- C. Project Right of Way and Easement Acquisition
 - a. The City will timely acquire or cause to be acquired ROW and / or easements that are needed for the Project, according to TxDOT standards and procedures.
- D. Utilities
 - a. The City will timely relocate or cause to be relocated any utility relocations that

- are needed for the Project, according to TxDOT standards and procedures.
- b. The City will be responsible for the design of the utility relocations.

E. Project Budget

- a. A Project Budget has been prepared and agreed to by the Parties, included in the Project Budget is a breakdown of the Project component including project management, design, environmental studies, right-of-way, utilities, and construction costs, and is attached as Exhibit D.
- b. The Project Budget includes an estimate of the allocation of the Project costs to the entities associated with the Project including Developer, City, city of Fort Worth, Tarrant County, State (TxDOT), and Federal.
- c. Neither Party warrants nor represents the costs associated in the Project Budget, it solely an estimate of Project costs for reference.

F. Project Funding

- a. The City commits that it will timely fund its proportional share of the local match of the construction cost, to cost of acquiring the necessary Project ROW and easements, and the cost associated with relocation of utilities that are in conflict Project, that are in the City.
- b. The City will proactively work toward obtaining the additional Project funding commitments from the city of Fort Worth and Tarrant County.

3 Applicable Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas. Venue for any action arising under this Agreement shall lie in Tarrant County, Texas.

4 Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, by personal delivery, or by overnight courier to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City:

The City of Saginaw, Texas
333 West Mcleroy Blvd.
Saginaw, Texas 76179
Attn: City Manager
Assistant City Manager, Dolph Johnson
djohnson@saginawtx.org

If to Developer:

Fuel City Saginaw, LLC
6315 Lakehurst Avenue
Dallas, Texas 75230
Attn: Mark Dietz, Vice President
mark@thedietzgroup.net

5. Attorneys; Fees. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement.

6. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

7. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

8. Authority. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to same.

9. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

10. Default. No party shall be in default of provisions under this Agreement until notice of the alleged failure of such party to perform has been given as provided herein (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has been given ten (10) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based upon the nature of the alleged failure, but in no event less than ten (10) days after written notice of the alleged failure has been given). Each of the City and Developer agree that no party will be liable for any punitive, speculative, consequential or special damages under this Agreement.

11. Exhibits. The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

- | | |
|-----------|--|
| Exhibit A | Schematic Plan FM 156 at Industrial Ave. and Cantrell / Sansom Rd., Tarrant County, (CSJ: 0718-02-076) |
| Exhibit B | COVID-19 #00X Infrastructure Program, Regional Transportation Council |
| Exhibit C | Draft form of: Advance Funding Agreement For Surface Transportation Block Grant and Local Contribution / Participation On-System |
| Exhibit D | Project Budget |

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

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THE CITY OF SAGINAW, TEXAS

By: _____
Todd Flippo, Mayor,
City of Saginaw

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on this the ____ day of _____, 2021 by
Todd Flippo, Mayor of the City of Saginaw, Texas, on behalf of the City of Saginaw, Texas.

Notary Public, State of Texas

DEVELOPER:

Fuel City Saginaw, LLC

By: _____
Mark Dietz, Vice President

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on this the ____ day of _____, 2021
by Mark Dietz, the Vice President of Fuel City Saginaw, on behalf of said entity.

Notary Public, State of Texas

Exhibit A

Schematic Plan FM 156 at Industrial Ave. and Cantrell / Sansom Rd., Tarrant County
(CSJ: 0718-02-076)

Exhibit B

COVID-19 #00X Infrastructure Program, Regional Transportation Council

Exhibit C

Draft form of: Advance Funding Agreement For Surface Transportation Block Grant and Local
Contribution / Participation On-System

Exhibit D

Project Budget