

## **WATER ARTERIAL TRANSMISSION GRID MAIN CONSTRUCTION REIMBURSEMENT AND ANNEXATION AGREEMENT**

This Water Arterial Transmission Grid Main Construction Reimbursement and Annexation Agreement ("Agreement") is entered into between the City of Corpus Christi ("City"), a Texas home-rule municipality, and Cypress Point Capital, LLC ("Developer/Owner"), a Texas Limited Liability Company.

**WHEREAS**, the Developer/Owner, in compliance with the City's Unified Development Code ("UDC"), has a plat, approved by the Planning Commission on November 10, 2021, to develop a tract of land, to wit approximately 18.72 acres to be known as Caroline's Heights Unit 1, in Nueces County, Texas as shown in the attached **Exhibit 1**, the content of such exhibit being incorporated by reference into this Agreement;

**WHEREAS**, under the UDC, the Developer/Owner is responsible for the construction of the Arterial Transmission and Grid Main Extension ("Grid Main Extension");

**WHEREAS**, it is in the best interests of the City to have the Grid Main Extension constructed to its ultimate capacity under the City's applicable Master Plan;

**WHEREAS**, Section 8.5.1.c. of the UDC authorizes the acceptance of applications to be eligible for reimbursement in the future when certain funds become available in the Arterial Transmission and Grid Main Line Trust Fund and are appropriated by the City Council;

**WHEREAS**, the Developer/Owner has applied for reimbursement for extending a Grid Main Extension as shown in **Exhibit 2**, the content of such exhibit being incorporated by reference into this Agreement; and

**WHEREAS**, pursuant to Texas Local Government Code §43.0671, the property owner has requested annexation of 37.44 acres described by metes and bounds on the attached **Exhibit A** (Property), pursuant to the petition as shown in **Exhibit B**.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties do covenant and agree as follows:

### **1. TRUSTEE LIABILITY.**

The City is a trustee of the Wastewater Trust Fund pursuant to UDC §8.5. The City is acting as Trustee to further its governmental functions of providing water and sewer service. Texas Constitution Article 11, Section 3 prohibits the City from becoming a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit. As such, the City's participation as a Trustee does not create a loan of its credit. Execution of this agreement constitutes a promise to pay only to the extent that the assets and future assets of the trust are sufficient for such purpose, and it is expressly agreed that any judgment will only be satisfied out of the assets of the trust and not out of the City's assets. The City is excluded from personal liability.

### **2. REQUIRED CONSTRUCTION.**

Developer/Owner shall construct the Grid Main Extension in compliance with the City's UDC, the City's Infrastructure Design Manual, and all local, state, and federal laws, codes, and regulations, and in accordance with the plans and specifications submitted to the City's

Development Services Department and reviewed and approved by the City's Development Services Engineer.

### 3. PLANS AND SPECIFICATIONS.

- a. Developer/Owner shall contract with a professional engineer licensed in the State of Texas and acceptable to the City's Development Services Engineer to prepare plans and specifications for the Grid Main Extension, as shown in the attached **Exhibit 3**, the content of such exhibit being incorporated by reference into this Agreement, with the following minimum requirements:

WATER ITEMS		QUANTITY	UNIT
1	12" PVC PIPE	3153	LF
2	12" CAP TAPPED FOR 2"	2	EA
3	12" TEE	8	EA
4	12" GATE VALVE W/BOX	7	EA
5	12" EL, ANY ANGLE	4	EA
6	FIRE HYDRANT ASSEMBLY	5	EA
7	6" DIA X 30" PVC PIPE NIPPLE	15	EA
8	6" 90° EL	4	EA
9	6" GATE VALVE W/BOX	5	EA

- b. The plan must comply with the City's master plans.
- c. The plans and specifications must comply with the City's Wastewater Distribution Standards and Standard Specifications.
- d. Before the Developer/Owner starts construction, the plans and specifications must be approved by the City's Development Services Engineer.

### 4. SITE IMPROVEMENTS.

Prior to the start of construction of the Grid Main Extension, the Developer/Owner shall acquire and dedicate to the City the required additional public utility easements ("Easements"), if any, necessary for the completion of the Grid Main Extension. If any of the property needed for the Easements is owned by a third party and the Developer/Owner is unable to acquire the Easements through reasonable efforts, then the City may use its powers of eminent domain to acquire the Easements. The Developer/Owner will be responsible for the Easement acquisition cost.

### 5. PLATTING FEES.

Developer/Owner shall pay the City the required acreage fees and pro-rata fees as required by the UDC.

### 6. DEVELOPER/OWNER TO AWARD CONTRACT FOR IMPROVEMENTS.

Developer/Owner shall award a contract and complete the Grid Main Extension, under the approved plans and specifications, within 24 months of the effective date of this Agreement.

### 7. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

### 8. PROMPT AND GOOD FAITH ACTIONS.

The parties shall act promptly and in good faith in performing their duties and obligations under this Agreement. If this Agreement calls for review or inspections by the City, then the City's reviews or inspections must be completed thoroughly and promptly.

## 9. DEFAULT.

The following events shall constitute default:

- a. Developer/Owner fails to engage a professional engineer for the preparation of plans and specifications by the 10th calendar day after the date of approval of this Agreement by the City Council.
- b. Developer/Owner's professional engineer fails to submit the plans and specifications to the City's Director of Engineering Services and to the Development Services Engineer by the 60th calendar day after the date of approval of this Agreement by the City Council.
- c. Developer/Owner fails to award a contract for the construction of the project, according to the approved plans and specifications, by the 70th calendar day after the date of approval of this Agreement by the City Council.
- d. Developer/Owner's contractor does not reasonably pursue construction of the project under the approved plans and specifications.
- e. Developer/Owner's contractor fails to complete construction of the project, under the approved plans and specifications, on or before 24 months of the approval of this Agreement by City Council.
- f. Either the City or the Developer/Owner otherwise fails to comply with its duties or obligations under this Agreement.

## 10. NOTICE AND CURE.

- a. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver notice of the default, in writing, to the defaulting party stating, in sufficient detail, the nature of the default and the requirements to cure such default.
- b. After delivery of the default notice, the defaulting party has 15 business days from the delivery of the default notice ("Cure Period") to cure the default.
- c. In the event the default is not cured by the defaulting party within the Cure Period, then the non-defaulting party may pursue its remedies in this section.
- d. Should the Developer/Owner fail to perform any obligation or duty of this Agreement, the City shall give notice to the Developer/Owner, at the address stated in section 12, of the need to perform the obligation or duty and, should the Developer/Owner fail to perform the required obligation or duty within 15 days of receipt of the notice, the City may perform the obligation or duty, charging the cost of such performance to the Developer/Owner by reducing the reimbursement amount due to the Developer/Owner.
- e. In the event of an uncured default by the Developer/Owner, after the appropriate notice and Cure Period, the City has all its common law remedies and the City may:
  - 1. Terminate this Agreement after the required notice and opportunity to cure the default.
  - 2. Refuse to record a related plat or issue any certificate of occupancy for any structure to be served by the project; and/or

3. Perform any obligation or duty of the Developer/Owner under this Agreement and charge the cost of such performance to the Developer/Owner. The Developer/Owner shall pay to the City the reasonable and necessary cost of the performance within 30 days from the date the Developer/Owner receives notice of the cost of performance. In the event the Developer/Owner pays the City under the preceding sentence and is not otherwise in default under this Agreement, then the Agreement shall be considered in effect and no longer in default.

f. In the event of an uncured default by the City after the appropriate notice and Cure Period, the Developer/Owner has all its remedies at law or in equity for such default.

#### 11. FORCE MAJEURE.

a. The term "force majeure" as employed in this Agreement means and refers to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; or other causes not reasonably within the control of the party claiming the inability.

b. If, by reason of force majeure, either party is rendered wholly or partially unable to carry out its obligations under this Agreement, then the party claiming force majeure shall give written notice of the full particulars of the force majeure to the other party within ten (10) business days after the occurrence or waive the right to claim it as a justifiable reason for delay. The obligations of the party giving the required notice, to the extent affected by the force majeure, are suspended during the continuance of the inability claimed but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

#### 12. NOTICES.

a. Any notice or other communication required or permitted to be given under this Agreement must be given to the other party in writing at the following address:

1. If to the Developer/Owner: Cypress Point Capital, LLC  
61 Bare Le Doc  
Corpus Christi, TX 78414

2. If to the City: City of Corpus Christi  
Attn: Director, Development Services Department  
2406 Leopard Street 78401  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

with a copy to: City of Corpus Christi  
Attn: Assistant City Manager, Business Support Services  
1201 Leopard Street 78401  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

b. Notice must be made by United States Postal Service, First Class mail, certified, return receipt requested, postage prepaid; by a commercial delivery service that provides proof of delivery, delivery prepaid; or by personal delivery.

- c. Either party may change the address for notices by giving notice of the change under the provisions of this section.

### 13. THIRD PARTY BENEFICIARY.

Developer/Owner's contracts with the professional engineer for the preparation of the plans and specifications for the construction of the Grid Main Extension, contracts for testing services, and contracts with the contractor for the construction of the Grid Main Extension must provide that the City is a third-party beneficiary of each contract.

### 14. PERFORMANCE AND PAYMENT BONDS.

Developer/Owner shall, before beginning the work that is the subject of this Agreement, furnish a performance bond payable to the City of Corpus Christi. Bond furnished must meet the requirements of Texas Insurance Code 3503, Texas Government Code 2253, and all other applicable laws and regulations. The performance or payment bond must name the City as an obligee. If the Developer/Owner is not an obligor, the Developer/Owner shall be named as a joint obligee. The bond must clearly and prominently display on the bond or on an attachment to the bond:

- (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

### 15. WARRANTY.

Developer/Owner shall fully warranty the workmanship of and function of the Grid Main Extension and the construction thereof for a period of one year from and after the date of acceptance of the facilities by the City's Director of Engineering Services.

### 16. REIMBURSEMENT.

- a. The cost for the Grid Main Extension less \$13,459.68 lot/acreage fee credit is \$471,448.10. Accordingly, subject to the conditions for reimbursement from the Water Arterial Transmission and Grid Main Trust Fund and the appropriation of funds, the City will reimburse the developer the reasonable, actual cost of the Grid Main Extension up to an amount not to exceed **\$471,448.10** as shown in the attached **Exhibit 4**, the contents of such exhibit being incorporated by reference into this Agreement.
- b. Subject to the conditions for reimbursement from the Water Arterial Transmission and Grid Main Trust Fund and the appropriation of funds, the City agrees to reimburse the Developer/Owner monthly upon invoicing for work performed. The submitted invoice shall be deemed administratively complete by the City prior to payment. The reimbursement will be made no later than 30 days from the date of the City's administrative approval of the invoice. Developer/Owner shall submit all required performance bonds under the provisions of this Agreement.
- c. Cost-supporting documentation to be submitted shall include:
  - 1. Summary of Costs and Work Performed Form provided by the Development Services Department
  - 2. Contractor and professional services invoices detailing work performed

3. The first reimbursement request requires submittal of invoices for work performed. Future disbursements shall provide evidence of payment by the developer/owner through a cancelled check or bank ACH for the previous submittal. The final reimbursement request shall require evidence that all invoices to date have been paid.
- d. The work must be constructed in a good and workmanlike manner and must have been inspected and accepted by the City to be eligible for reimbursement,. The City agrees to conduct periodic inspections and approve the progress of the work at key points during construction.
- e. The final 5% of the total contract reimbursement amount will be held as retainage until the City issues public infrastructure acceptance in accordance with Unified Development Code.
- f. In the event that the City terminates this Agreement as a result of an uncured default by the Developer/Owner and at a time when there has been a partial completion and/or partial payment for the improvements, then the City shall only reimburse the Developer/Owner for its costs that were legitimately incurred towards the completion of the improvements that have been inspected and accepted by the City up to the time that the uncured default occurred.

#### **17. PAYMENTS, CREDITS, AND DEFERRED REIMBURSEMENT.**

All payments, credits, priority of reimbursement, and deferred reimbursement shall be made in accordance with UDC §8.5. Developer/Owner understands and agrees that if funds are not available in the Water Arterial Transmission and Grid Main Trust Fund, that reimbursement will not be made until such funds are available, appropriated, and this Agreement has priority per UDC §8.5.1.C.

#### **18. INDEMNIFICATION.**

**Developer/Owner covenants to fully indemnify, save and hold harmless the City of Corpus Christi, its officers, employees, and agents, ("indemnitees") against any and all liability, damage, loss, claims, demands suits and causes of action of any nature whatsoever asserted against or recovered from city on account of injury or damage to person including, without limitation on the foregoing, workers compensation and death claims, or property loss or damage of any other kind whatsoever, to the extent any injury, damage, or loss may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the Developer/Owner's failure to comply with its obligations under this agreement or injury, loss, or damage which arise out of or are in any manner connected with, or are claimed to arise out of or be in any manner connected with the construction, installation, existence, operation, use, maintenance, repair, restoration, or removal of the public improvements associated with this Agreement, including the injury, loss or damage caused by the sole or contributory negligence of the indemnitees or any of them, regardless of whether the injury, damage, loss, violation, exercise of rights, act, or omission is caused**

or is claimed to be caused by the contributing or concurrent negligence of indemnitees, or any of them, but not if caused by the sole negligence of indemnitees, or any of them, unmixed with the fault of any other person or entity, and including all expenses of litigation, court costs, and attorney's fees, which arise, or are claimed to arise, out of or in connection with the asserted or recovered incident.

This indemnity specifically includes all claims, damages, and liabilities of whatever nature, foreseen or unforeseen, under any hazardous substance laws, including but not limited to the following:

- (a) all fees incurred in defending any action or proceeding brought by a public or private entity and arising from the presence, containment, use, manufacture, handling, crating, storage, treatment, discharge, release, or burial on the property or the transportation to or from the property of any hazardous substance. The fees for which the developer/owner shall be responsible under this subparagraph shall include but shall not be limited to the fees charged by (i) attorneys, (ii) environmental consultants, (iii) engineers, (iv) surveyors, and (v) expert witnesses.
- (b) any costs incurred attributable to (i) the breach of any warranty or representation made by Developer/Owner in this agreement, or (ii) any cleanup, detoxification, remediation, or other type of response action taken with respect to any hazardous substance on or under the property regardless of whether that action was mandated by the federal, state or local government.

**This indemnity shall survive the expiration or earlier termination of the agreement.**

**19. ASSIGNMENT OF AGREEMENT.**

This Agreement or any rights under this Agreement may not be assigned by the Developer/Owner to another without the written approval and consent of the City's City Manager.

**20. DISCLOSURE OF INTEREST.**

Developer/Owner agrees, in compliance with the Corpus Christi Code of Ordinance Sec. 2-349, to complete, as part of this Agreement, the Disclosure of Interest form attached to this Agreement as **Exhibit 5**.

**21. EFFECTIVE DATE.**

This Agreement becomes effective and is binding upon and inures to the benefit of the City and the Developer/Owner and their respective heirs, successors, and assigns from and after the date of final execution by all parties.

## 22. DEDICATION OF GRID MAIN EXTENSION LINE.

Upon completion of the construction, the dedication of Grid Main Extension will be subject to City inspection and approval.

## 23. CERTIFICATE OF INTERESTED PARTIES.

Developer/Owner agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement.

Form 1295 requires disclosure of "interested parties" with respect to entities that enter contracts with cities. These interested parties include:

- (1) persons with a "controlling interest" in the entity, which includes:
  - a. an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock or otherwise that exceeds 10 percent;
  - b. membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
  - c. service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
- (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser or attorney for the business entity.

Form 1295 must be electronically filed with the Texas Ethics Commission at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). The form must then be printed, signed, notarized, and filed with the City. For more information, please review the Texas Ethics Commission Rules at <https://www.ethics.state.tx.us/legal/ch46.html>.

## 24. CONFLICT OF INTEREST

Developer/Owner agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office if required. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>

## 25. GOVERNING LAW.

The City is entering this agreement pursuant to its Home Rule authority and the authority granted pursuant to Texas Local Government Code §395.001. This agreement is not a development agreement under Texas Local Government Code 212.172, and Texas Local Government Code 212.172 and 212.174 do not apply to this agreement.

## 26. ANNEXATION COVENANT.

This Agreement constitutes a request for annexation of 37.44 acres, as shown in the attached **Exhibit A** (Property). Developer/Owner agrees to the annexation of the said Property when the Property adjoins the City limits or will adjoin the City limits by any simultaneous annexation of other properties or at a later date to be solely determined by the City of Corpus Christi City Council.

## 27. COVENANT RUNNING WITH THE LAND.

It is agreed by and between the parties hereto that the annexation covenant above shall be binding upon the successors and assigns of the said Owner and constitutes a covenant running with the land. This Agreement shall be recorded in the Real Property Records of Nueces County and shall be binding upon all parties having any right, title, or interest in the Property or any part thereof, including their heirs, successors, and assigns, and shall inure to the benefit of the owners of the Property and the City.



**EXECUTED IN ONE ORIGINAL** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**DEVELOPER/OWNER:**

Cypress Point Capital, LLC  
61 Bare Le Doc  
Corpus Christi, TX 78414

By: \_\_\_\_\_  
George Shaheen

STATE OF TEXAS                   §  
   §  
COUNTY OF NUECES           §

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by  
George Shaheen, manager, on behalf of Cypress Point Capital, LLC.

\_\_\_\_\_  
Notary Public's Signature

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Rebecca Huerta  
City Secretary

\_\_\_\_\_  
Albert J. Raymond III  
Director of Development Services

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF NUECES   §

This instrument was signed by Rebecca Huerta, City Secretary, for the City of Corpus Christi, Texas, and acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Albert J. Raymond III, Director of Development Service for the City of Corpus Christi, Texas.

\_\_\_\_\_  
Notary Public's Signature

Approved to Legal Form: \_\_\_\_\_

\_\_\_\_\_  
Buck Brice  
Assistant City Attorney