

SECOND AMENDMENT TO ACQUISITION AND DEVELOPMENT AGREEMENT

This SECOND AMENDMENT TO ACQUISITION AND DEVELOPMENT AGREEMENT (this “**Amendment**”) is entered into effective as of _____, 2021, by and between the City of Bay City, Michigan, a municipal corporation (the “**City**”), and UBP Bay City, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“**UBP**”).

BACKGROUND

A. The City and BCBP entered into an Acquisition and Development Agreement dated as of January 2, 2020, as amended by an Amendment to Acquisition and Development Agreement dated as of April 29, 2020 (the “**ADA**”). Capitalized terms used but not defined herein shall have the meanings attributed to such term in the ADA.

B. The City and UBP desire to further amend the ADA as more fully set forth herein.

AGREEMENT

1. Section 1(c). Section 1(c) is amended to add the following after the end of the first sentence:

“If necessary or desirable in order to begin design and construction activities related to the rehabilitation of the Liberty Bridge, the Conveyance of the Liberty Bridge may occur prior to all requirements to issue a Notice to Proceed have been satisfied, so long as all activities are performed in compliance with applicable Laws. The parties acknowledge and agree that if the ADA is terminated without the Conveyance of the New Independence Bridge as contemplated in Section 1(e), the Liberty Bridge will revert to the City in accordance with the procedures and obligations set forth in Section 19 of this Agreement. The City will have no obligation to reimburse UBP for any costs, expenses or betterments expended for the rehabilitation of the Liberty Bridge.”

2. Section 1(e). Section 1(e) is hereby amended as follows:

“Upon Conveyance via lease, UBP shall close the Independence Bridge for use by the public on the date the New Independence Bridge opens to traffic. UBP will take all necessary steps to secure the closed bridge to prevent public access and preservation of the asset for the City until the Independence Bridge is demolished pursuant to the terms of Section 14 of this Agreement, and at such time, the lease for the Independence Bridge will automatically terminate.”

3. Section 3(c). The second sentence of Section 3(c) is amended as follows:

~~“At Settlement~~**After the Effective Date and upon receipt of invoices**, UBP shall reimburse the City for Professional Fees payable by the City for services through Settlement.”

4. Section 6(c). The first sentence of Section 6(c) is amended to change the first clause as follows:

“If, at any time within ~~eighteen (18)~~ **twenty-eight (28)** months after the Effective Date,”

5. Professional Fees. The second sentence in the definition of “Professional Fees” in Appendix A is amended as follows:

“Legal fees reimbursed by UBP for completing this Agreement through Settlement will not exceed ~~\$250,000~~ **\$450,000**.”

6. Effect of Amendment. In all other respects, the ADA remains in full force and effect and, except as provided above, the ADA otherwise remains unchanged and unaltered and all of the terms, covenants and conditions of the ADA are hereby ratified and confirmed. In the event of any dispute between the terms of this Amendment and the ADA, the terms of this Amendment shall prevail.

7. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Amendment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

[Signature Page to Second Amendment Follows]

The undersigned parties have executed this Second Amendment to Acquisition and Development Agreement as of the date first set forth above.

UBP BAY CITY, LLC

By: Doug Witt
Its: Chief Executive Officer

BAY CITY MICHIGAN

By: Kathleen Newsham
Mayor of Bay City

By: Tema Lucero
Clerk of Bay City

ATTEST

Tema Lucero
Clerk of Bay City