

**PRE-DEVELOPMENT CONSULTANT AND MASTER DEVELOPMENT
TRI-PARTY AGREEMENT**

THIS PRE-DEVELOPMENT CONSULTANT AND MASTER DEVELOPMENT AGREEMENT is hereby made and entered into this 17th day of November, 2021, ("Effective Date") by and between Bryan Commerce and Development, Inc., a Texas Local Government Corporation, hereinafter referred to as "BCD", the City of Bryan, and Lero & Associates, Inc., hereinafter referred to as the "Consultant", "Master Developer" or "Consultant/Master Developer".

WHEREAS, BCD desires to encourage the redevelopment of a specific area of Midtown, Bryan, Texas; and

WHEREAS, the Consultant intends to market this area in a way that results in the selection of one or more third-party developers to execute a shared vision for this area, that certain area identified as North of Northgate in the Midtown Area Plan, which is more fully identified on Exhibit A hereto as the ("Redevelopment Area"); and

WHEREAS it is proposed that the Consultant shall be responsible for the creation and distribution of necessary materials to advertise and solicit development partners for the Redevelopment Area; and

WHEREAS, a significant portion of the Redevelopment Area is currently owned or is in the process of being acquired by Bryan Commerce and Development, Inc., ("BCD"), a local government corporation and the economic development arm of the City of Bryan; and

WHEREAS, in order for the Consultant to identify a developer to undertake projects within the Redevelopment Area, it may be necessary for BCD to be an active participant with the Consultant, in order to provide assistance that ultimately results in the selection of one or more developers for the Redevelopment Area; and,

WHEREAS, Consultant also will have the exclusive opportunity as Master Developer, as more specifically set forth in this Agreement, to actively participate with BCD in the identification and selection of one or more third-party developer(s) for the Redevelopment Area; and,

WHEREAS, the parties desire to enter into this Pre-Development Consultant and Master Developer Agreement in order to: a) Designate the Consultant as the exclusive Consultant with which BCD will be an active participant, during the period hereof, for the purpose of identifying and engaging a master third-party developer for the Redevelopment Area; b) Set forth the issues that need to be explored and addressed prior to any final third-party Development Agreement(s) that arise from this Agreement; and, c) Set forth matters that need to be included in any future Development Agreement(s) for the development of the Redevelopment Area.

NOW, THEREFORE, in consideration of the performance by BCD and Consultant under the terms hereof, and for other good and valuable considerations, the City, BCD, and Consultant hereby covenant and agree as follows:

I. DEFINITIONS

As used in this instrument, the following terms, when having an initial capital letter in the text of this Agreement, shall have the following meaning:

AGREEMENT: This Pre-Development Consultant Agreement, taken and construed as a whole; as amended from time to time.

BCD: Bryan Commerce and Development, Inc., a Texas Local Government Corporation created under Chapter 431 of the Texas Transportation Code.

CITY: The City of Bryan, Texas.

COMPREHENSIVE PLAN: The officially adopted Comprehensive Plan of the City, and any amendments or additions thereto.

CONSULTANT AND MASTER DEVELOPER: Lero & Associates.

DEVELOPMENT AGREEMENT(S): Any third-party agreement(s) with the City and/or BCD for the development of the Redevelopment Area that are a direct result from the services provided by the Consultant.

EFFECTIVE DATE: The effective date of this Agreement which shall be the date this Agreement is approved and signed by all parties.

FORCE MAJURE: The occurrence of any of the following events, Acts of God, failure of power, riots, insurrection, war, or other reason of a like nature that materially and adversely affects performance of Consultant's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Consultant.

REDEVELOPMENT AREA: The area of land as shown on Exhibit A.

THIRD-PARTY DEVELOPERS: One or more developers presented by Consultant/Master Developer with whom City and/or BCD enters into a development agreement for the development of all or any part of the Redevelopment Area.

ZONING ORDINANCE; Chapter 130 of the Code of Ordinances of the City of Bryan, Texas.

II. PRE-DEVELOPMENT STAGE

A. CONSULTANT PARTICIPATION

This Agreement envisions, and attempts to address, two separate factors that need to be accomplished, in anticipation of any Third-Party Development Agreement(s) being entered into. The first factor concerns the need to create high end, professional material to market and attract potential developers for the Redevelopment Area. The second factor concerns the specific issues that need to be explored, and addressed, in order to complete future Third-Party Development Agreement(s) with the City and or BCD. Nothing in this Agreement shall be construed to create a partnership or joint venture.

BCD hereby grants the Consultant for the term of this Agreement, the right to be an active participant in locating one or more third-party developer(s) to plan and develop land located within the Redevelopment Area in accordance with the adopted Midtown Area Plan. During the term of this Agreement, the Consultant shall work to market the Redevelopment Area for the purpose of identifying and selecting-a one or more private sector third-party development partner(s) for the Redevelopment Area.

The City and BCD may assist in locating potential developers and/or end users and may enter into discussions and negotiations with third parties with respect to the Redevelopment Area and shall bring those potential users to the attention of the Consultant. The parties hereto agree that for the term of this Agreement, the City and BCD may not enter into any agreement with any third parties for the development of the Redevelopment Area without the express approval and participation of the Consultant, unless such approval and participation is expressly waived in writing by the Consultant. The City shall not be deemed to be an active participant in a project and will not be entering an agreement for development in violation of the foregoing when the City simply acts in its governmental capacity, including, by way of example, but not limited to, such matters as the issuance of permits or licenses; the rezoning or platting of property; the creation of Public Improvement Districts; and/or the extension, or construction, of public facilities.

Notwithstanding the foregoing, the City and BCD shall be entitled to be active participants, with any person or entity the City Council deems appropriate, and without the consent of the Consultant, as to any project, located outside the Redevelopment Area, and which the City Council, in its sole discretion, finds: a) to be in compliance with the Midtown Area Plan; and b) is not likely to be used or needed for the development of the Redevelopment Area.

B. MARKETING

The parties agree that the Consultant shall be responsible for (a) the creation and distribution of any marketing and other material needed to identify and secure one or more third-party partners for the development of the Redevelopment Area and (b) within 6 months after execution of agreement, submittal to the City of a Conceptual Master Plan for the Redevelopment Area.

All materials shall be approved by BCD prior to their public release.

III. AGREEMENT STAGE

A. BASIC TERMS OF DEVELOPMENT AGREEMENT(S).

The Consultant shall work towards identifying relationships that will result in one or more Third-Party Development Agreements for the Redevelopment Area. Although the specific terms of any Development Agreement(s) that result from the services of the Consultant will be negotiated separately from this contract, the Consultant shall only proceed with developers that will address the following items during or prior to the execution of a Third-Party Development Agreement:

1. Land Use. The development will only include types of land uses which the City has specified as appropriate for the Redevelopment Area, such as multi-family, office, retail, commercial, residential, etc., and which potential uses may not encompass all permitted and conditional uses under the Zoning Ordinance for the current District in which the subject land is located.
2. Public Assistance. The developer shall specify what types of public participation is applicable, and/or necessary, for any given project.
3. Compliance with Laws. Potential developer must agree to comply with all applicable laws, including such things as public bidding, insurance and other related matters.
4. Agreement on Land Acquisition or Lease. The third-party developer and the City shall agree on whether the developer will purchase any additional land in the Redevelopment Area. All parties shall agree to a) the description of each site to be purchased; and, b) the method by which the site will be acquired, which may include such things as how the appraisals are to be conducted and how the financing of these matters will occur.

5. Agreement on Traffic Circulation. The third-party developer and the City shall agree on the design of all access and circulation elements associated with the development and how to address those necessary traffic improvements. Future agreement shall also include the method of financing of these improvements.
6. Agreement on Progress Phasing and Schedule. The third-party developer and the City shall agree on a progress schedule, by which each phase of the Project will be undertaken, and completed.
7. Streets and Relocation of Utilities. The third party developer and the City shall agree upon how streets and utilities within, or adjacent to, the Redevelopment Area are to be addressed by the Project, including how the costs of such matters are to be addressed.
8. Zoning Changes. The third-party developer shall indicate any necessary zoning changes which will be addressed, including the timing of such changes. Nothing contained within this Agreement, nor any future Agreement, shall be deemed to bind the City of Bryan, acting in its governmental capacity, to make any such zoning changes.

B. OBLIGATIONS OF THE PARTIES TO PROCEED

Neither BCD nor the City have an obligation to proceed with any Development Agreement(s) that results from this consulting process.

C. SCHEDULE OF PERFORMANCE

The parties agree to the following Progress Milestones and performance schedule:

1. A quarterly update on progress shall be submitted by Consultant to BCD every three months after the Effective Date of this agreement; and
2. The Consultant shall update staff as needed on the identification and selection of third-party developers for the Redevelopment Area; and
3. The Consultant shall facilitate the submittal of Third-Party Development Agreement(s) for any Redevelopment Area projects within twenty-four (24) months after the Effective Date; and
4. Any Third-Party Development Agreement(s) facilitated by the Consultant shall be given final consideration by City Council within (30) months after the Effective Date of this agreement.

D. TERM

Term of this Agreement shall be for the duration of the performance schedule set forth in Section C above. Provided, however, either party may terminate this agreement by written notice to the other if the performance schedule is not met.

E. MILESTONES

The failure of Consultant to achieve any Progress Milestone by the deadlines set forth in Section III.C, shall be deemed a default of this Agreement and the Agreement may be terminated by CITY and BCD.

If Consultant is rendered wholly or partly unable to meet any Progress Milestone by the deadline for such Progress Milestone set forth in Section III(C) because of an event of Force Majeure, Consultant's time to meet such Progress Milestone date shall be extended to the extent such delay impacted its ability to maintain its schedule by the actual number of calendar days Consultant was delayed to meet any such Progress Milestone date as a direct and proximate result of such event of Force Majeure.

As a condition precedent to Consultant's entitlement to an appropriate extension of time to the Progress Milestones, Consultant shall deliver to CITY written notice, describing in reasonable detail the event of delay, its cause, when and how Consultant obtained knowledge of the event and of the actual or anticipated delay caused thereby and the date the event commenced or occurred, not later than 15 calendar days after the date Consultant obtains both (a) knowledge or reasonable cause to believe that such event has commenced or occurred and (b) knowledge or reasonable cause to believe that the event either has resulted in or may result in delay in achieving a Progress Milestone. Consultant shall use commercially reasonable efforts to remedy any inability to perform and minimize the impact of any delay.

IV. COMPENSATION AND REIMBURSEMENT

A. The Consultant/Master Developer shall be reimbursed by BCD for actual expenses related to marketing the property and identifying and securing a one or more third-party developer in an amount not to exceed \$50,000. Consultant/Master Developer shall invoice BCD monthly based on actual costs. Invoices and proof of payment of the actual costs shall be submitted with the request for reimbursement.

B. Consultant/Master Development shall be compensated by BCD for marketing the property and identifying and securing one or more-third party developers in the sum of \$30,000.00, payable in twelve (12) equal installments of \$2,500.00 on a monthly basis during the twelve-month period beginning the first month after the execution of this agreement.

C. The Consultant/Master Developer shall have the right, during the exclusivity period of this agreement, to enter into any lawful agreement for compensation and/or fee sharing and/or profit sharing with any third-party developer(s) with whom the City enters into a development agreement. The Consultant/Master Developer shall disclose to City and BCD the terms of any proposed fee sharing and/or profit sharing prior to City's and BCD's consideration of a development agreement. City and BCD's payment obligation to Consultant/Master Developer under this Agreement shall be reduced by the amount Consultant/Master Developer receives for compensation and/or fee sharing and/or profit sharing with any third-party developer(s) (a "third-party amount"); and for amounts previously paid to Consultant/Master Developer by City and/or BCD under this Agreement, Consultant/Master Developer shall reimburse the paying entity in an amount equivalent to the third-party amount within sixty (60) days of Consultant/Master Developer's receipt of such third-party amount.

V. MISCELLANEOUS

A. Indemnity. The Consultant shall indemnify and hold harmless the City, its officials, officers, trustees, agents and employees from and against any and all liability, damage, loss, cost and expense (including, but not limited to, court costs and attorneys' fees) of any nature, including those for personal injury (including death) or property damage to the extent that such liability, damage, loss, cost or expense is caused by or is attributable to the negligence or willful misconduct of the Consultant, its agents or employees, but excluding claims arising from the gross negligence or willful misconduct of the City, its officials, officers, trustees, agents or employees.

B. Insurance Requirements. The Consultant agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this Agreement with the City. All parties to this Agreement hereby agree that the Consultant's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. In consideration of City's waiver of requirement of providing evidence of Workers' Compensation Insurance & Employers' Liability Insurance, Consultant agrees that only Bill Lero shall perform the Consultant's work pursuant to this Agreement.

1. Commercial General Liability Insurance. Consultant shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent developers, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City and its agents, officers, officials, and employee shall be listed as an additional insured.
2. Automobile Liability Insurance. To the extent Consultant owns or leases automobiles that are used in its business operations, Consultant shall maintain Automobile Liability insurance with a limit of not less than \$500,000 each accident. Consultant shall not transport persons other than himself, equipment, or materials in his personal vehicle in performance of this Agreement. Consultant shall not operate or use any other motor vehicle in performance of services under this Agreement.
3. Policy Limits. Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Consultant agrees to endorse City and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.
4. Deductibles, Coinsurance Penalties & Self-Insured Retention. Consultant may maintain reasonable and customary deductibles, subject to approval by the City. Consultant shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.
5. SubContractors. If the Consultant's insurance does not afford coverage on behalf of any SubContractor(s) hired by the Consultant, the SubContractor(s) shall maintain insurance coverage equal to that required of the Consultant. It is the responsibility of the Consultant to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the SubContractor.
6. Acceptability of Insurers – Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.
7. Evidence of Insurance – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within ten (10) business days after the full execution of this Agreement by the Consultant's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City. Renewal certificates shall be sent a minimum of ten (10) days prior to coverage expiration. Upon request, Consultant shall furnish the City with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan
Risk Management

PO Box 1000
Bryan, TX 77805
Emailed to: aflores@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Consultant's obligation to maintain such insurance.

C. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: City Manager
 City of Bryan
 P.O. Box 1000
 Bryan, Texas 77805-1000

If to Consultant: Lero & Associates, Inc.
 Bill Lero
 1733 Briarcrest Dr., Ste. 202
 Bryan, Texas 77802

D. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

E. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

F. Third Parties. The City and Consultant intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than City and Consultant or permitted assignees of City and Consultant.

G. No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

H. Assignment. Neither party shall assign this Agreement without the written consent of the other party.

- I. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
- J. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
- K. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- L. No Waiver. City's failure to take action to enforce this Agreement in the event of Consultant's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
- M. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
- N. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- O. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
- P. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the Effective Date of this Agreement for all purposes.
- Q. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.
- R. Government Code provisions. Consultant hereby verifies that it complies with the following requirements. (a) Pursuant to Texas Government Code 2252.152, contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations are prohibited; a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Government Code Sections 806.051, 807.051, or 2252.153. (b) Pursuant to Texas Government Code 2270.002, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification the company that it: (i) does not boycott Israel, and (ii) will not boycott Israel during the term of the contract.
- S. Basic Safeguarding of Contractor Information Systems.
1. The Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements

“reflective of actions a prudent business person would employ” which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

- 2. Contactor shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

IN WITNESS THEREOF, the parties have caused this Pre-Development Consulting Agreement to be duly executed as of the date first above written.

AGREED AND ACCEPTED:

ATTEST:

Mary L Stratta

Mary Lynne Stratta, City Secretary

CITY OF BRYAN:

Andrew Nelson

Andrew Nelson, Mayor



APPROVED AS TO FORM:

Thomas A. Leeper

Thomas A. Leeper, Interim City Attorney

AGREED AND ACCEPTED:

BRYAN COMMERCE AND DEVELOPMENT, INC.

ATTEST:

Mary L Stratta

Mary Lynne Stratta, Corporate Secretary

Andrew Nelson

Andrew Nelson, President



(SEAL)

LERO & ASSOCIATES, INC.

Bill Lero

Bill Lero, President

PAGE 1

OAK TERRACE ADDITION

D/R 151/547

SURVEYED BY J.A. ORR

SCALE 1"=200'

DEC. 21, 1951

Proposed
Redevelopment
Area

HIGHLAND PARK ADDITION

NOTE: FOR DETAILS SEE PAGES 2,3,4

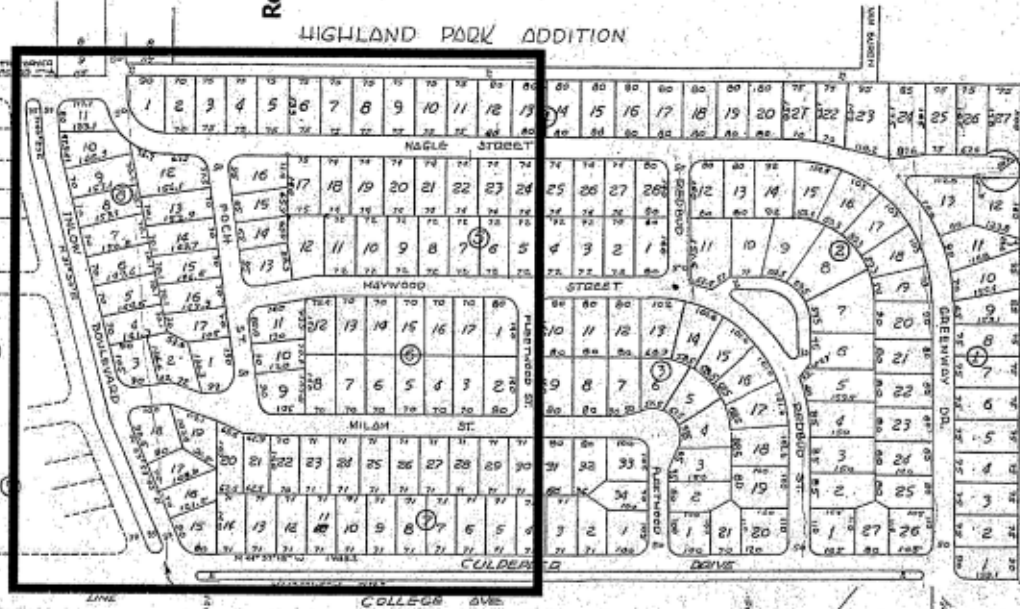
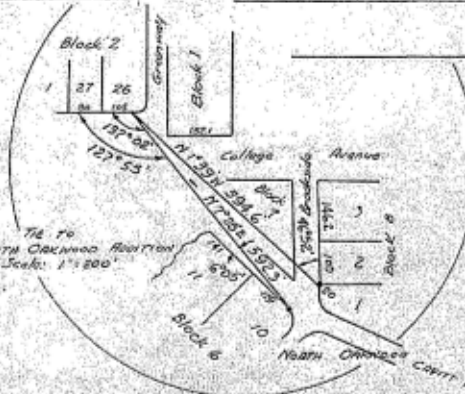


EXHIBIT "A"

CITY OF
COLLEGE STATION

copy on
map to
be added



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