



PRE-DEVELOPMENT AND PROFESSIONAL SERVICES AGREEMENT

This Pre-Development and Professional Services Agreement (this "Agreement"), effective as of _____, 202__ (the "Effective Date"), is made and entered into by and between the City of Howe, Texas, a municipality (the "City"), and Centurion American Development Group ("Owner"). The Owner is the owner of or has under contract the real property in Grayson County, Texas, containing approximately _____ +/- acres generally described in Exhibit A, attached hereto as the same may be supplemented by the mutual written agreement of City and Owner (the "Development Area"). It is intended that Owner will provide a survey and metes and bounds description of the Development Area.

WHEREAS, the Owner owns or has under contract approximately _____ +/- acres of land in the city limits and/or ETJ of the City that it desires to develop which is further described in Exhibit "A" (the "Development Area"); and

WHEREAS, the City and Owner hereby recognize and agree that issues, including but not limited to infrastructure, associated with and necessitated by developing the Development Area will require the City to obtain professional services from independent, third-party consultants including, but not limited to: (i) engineering services to identify infrastructure needs; (ii) planning services; (iii) financial advisory services and (iv) legal services (including associated fees, expenses and out of pocket expenses such as telephone expenses, copying, postage, mileage, etc.) (collectively, the "Professional Services"); and

WHEREAS, Owner hereby agrees to pay for Professional Services rendered to the City in accordance with the terms of this Agreement; and

WHEREAS, the City Council of the City, by and through this Agreement, shall maintain sufficient controls to ensure that the public purpose and best interests of the City are carried out.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The representations, covenants, and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby adopted as findings of the City Council.

2. Exhibits. All Exhibits referenced in this Agreement, and listed below, are incorporated herein for all purposes; specifically:

Exhibit “A” – Development Area description.

3. Payment for Professional Services. Owner agrees to pay for Professional Services as set forth herein.

(a) Owner initially agrees to pay up to \$25,000.00 (“Initial Cap”) for Professional Services rendered to the City by WSB, LLC. (engineering), WSB, LLC (planning), Specialized Public Finance Inc. (financial advisors), P3Works, LLC (financial advisors), and Wolfe, Tidwell & McCoy, LLP (legal) in accordance with this Agreement including, but not limited to, the requirement that they provide itemized invoices (typically on a monthly basis) describing, in reasonable detail, the services rendered and the time expended (the “Initial Cap”). The City retains the right to change or add Professional Services providers as necessary. If the Owner’s payment toward the Initial Cap reaches \$20,000.00, and all parties agree to continue negotiations, discussions and/or other work on the Development Area, the parties may amend or extend this Agreement, in writing, to increase Owner’s payment obligation, to a mutually agreed upon amount in excess of \$25,000.00, for the professional services described herein and provide for the escrow of additional funds. Otherwise, either party shall be able to, without any liability whatsoever and/or any further action, immediately terminate the Agreement in writing pursuant to the terms of this agreement. The parties may also mutually agree to continue to operate under the terms of this agreement. Failure to terminate this agreement within 21 days of reaching \$20,000.00 hereby affirms the parties mutually agree to continue to operate under the terms of this agreement.

(b) Prior to incurring any costs or expenses for Professional Services rendered by any consultant other than those named in this agreement, the City shall provide to Owner the name, qualifications, experience, and billing rate of the consultant, together with a copy of the proposed contract with the consultant (which contract shall be terminable at will by the City and shall require itemized monthly invoices describing, in reasonable detail, the services rendered and the time expended). Owner shall have five (5) business days after the receipt of each proposed contract within which to review and provide written comments to the City; and the failure of Owner to provide written comments shall be deemed acceptance of the proposed contract by Owner. The City shall use reasonable efforts to modify any proposed contract to take into consideration the written comments of Owner; however, in the event of a disagreement between Owner and the City that cannot be resolved, the decision of the City shall control.

(c) Owner shall only be obligated to pay the actual costs and expenses billed by the provider of Professional Services as set forth in this Agreement. This escrow does not reduce or remove any of Owner’s duty to pay invoices submitted by the City and Owner may not rely upon this escrow as payment of any Professional Services. Any unused escrow amount is to be returned to Owner at the completion of the project or termination of this agreement and final accounting of Professional Services.

(d) After the City receives an itemized invoice from any provider of Professional Services, the City will forward a copy to Owner. Providers of Professional Services may jointly serve invoices on the City and Owner, triggering the deadlines herein. Owner shall have ten (10)

days after the receipt of each invoice during which to object to any portion thereof (which objection shall be in writing and shall set forth in detail the basis for the objection). If Owner fails to object within such 10-day period, Owner shall be deemed to have approved the invoice. If Owner objects to any portion of an invoice, the City, Owner, and the service provider shall attempt to resolve the dispute within a reasonable period of time; however, if notwithstanding their collective good faith efforts the dispute cannot be timely resolved, then City shall pay all or such portion of the disputed amount that the City certifies to Owner, in writing, is due and payable to such service provider. Production of statements, documents and information to Owner or Developer shall not constitute a waiver of the attorney-client privilege nor work product immunity nor any other applicable protection, including confidentiality. Further, the parties may exchange documents and information in negotiations and work related to the Development Area. If after the producing party becomes aware of any inadvertent or unintentional disclosure, the producing party may designate any such information as protected material or information, including matters protected by: (i) the attorney-client privilege; (ii) work product immunity; (iii) or any other applicable privilege or protection and request return, redaction or protection of such information. Owner and Developer recognize that Professional Services are rendered solely for the benefit of the City. Owner and Developer recognize that this agreement does not create any attorney-client relationship, other provider-client relationship, confidential relationship nor contractual relationship with those providing Professional Services to the City.

(e) Owner shall, upon request by the City, initially escrow the amount up to Twenty-Five Thousand Dollars (\$25,000.00) with the City. At the request of City, Owner shall pay additional escrow up to the Initial Cap. City, pursuant to the terms of this agreement, shall use this amount(s) to pay invoices for Professional Services. After Owner's 10-day review period, City shall pay (1) the full amount of any invoice to which Owner has not objected, or (2) the portion of any disputed invoice to which Owner has not objected. City shall pay in full within ten (10) days after written certification from the City the amount of any disputed invoice that the City certifies to Owner, in writing, is due and payable. Upon completion of the project or termination of this agreement, City shall use said funds only to pay outstanding invoices due under this agreement.

(f) If requested by Owner, the City agrees to provide further information as reasonably necessary to explain and detail any invoice for Professional Services, however, City shall not be required to provide any information that is privileged.

4. City's Obligations. The City shall utilize the Professional Services in an efficient and reasonable manner for the benefit of the City and the Development Area. The City shall inform all service providers of the terms of this Agreement. The failure or neglect of the City to enforce any of its rights under this agreement will not be deemed to be a waiver of that or any other of its rights.

5. Termination.

(a) Unless earlier terminated as provided in Section 5(b) below, this Agreement shall have a primary term of two (2) years after the Effective Date, and shall thereafter continue on an annual basis unless terminated as provided herein.

(b) Either City or Owner may, in their respective sole judgment, terminate this Agreement upon delivery of written notice to the other party, subject to Owner's continuing obligation to pay outstanding unpaid invoices for Professional Services as set forth in Section 5(c) below.

(c) Upon any termination of this Agreement pursuant to Section 5(b), City shall request final invoices for all Professional Services rendered pursuant to this agreement and may pay said invoices from the escrow funds. To the extent necessary, Owner shall be obligated to pay (i) all remaining invoices for Professional Services that are outstanding and unpaid as of the date notice of termination is delivered to the City, provided that such Professional Services were incurred and performed in accordance with the terms of this Agreement, and (ii) all invoices for Professional Services incurred and performed in accordance with the Agreement prior to the date notice of termination where invoices are delivered to the City after the date of termination.

6. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the obligation of Owner to pay for Professional Services.

7. Amendment. This Agreement may only be amended or altered by written instrument signed by Owner and the City.

8. Successors and Assigns. Neither the City nor Owner may assign or transfer this Agreement or any interest in this Agreement without prior written consent of the other party. This Agreement is binding upon, and inures to the benefit of the City and Owner and their permitted assigns; however, this Agreement confers no rights or benefits on any third parties and, in particular, no rights or benefits on any provider of Professional Services other than for payment of services rendered.

9. Notice. Any notice required or contemplated by this Agreement shall be deemed given: (a) if mailed via U.S. Mail, Certified Mail Return Receipt Requested, on the earlier of the date actually received at the delivery address or five business days after mailed; (b) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address; and (c) if otherwise given (including by FAX or E-mail), when actually received at the delivery address. All notices shall be addressed as set forth below; however, any party may change its address for purposes of this Agreement by giving notice of such change as provided by this Section 9.

The City of Howe

Attn: Mayor
City Hall
PO Box 518
Howe, TX 75459

With a copy to:
Wolfe, Tidwell & McCoy, LLP
James C. Tidwell
320 N. Travis Street, Suite 205
Sherman, TX 75090
PHONE: 903.868.1933
FAX: 903.892.2397

Owner: **Centurion American Development Group**

Address: 1800 Valley View Lane, Suite 300
Farmers Branch, TX 75234

Attn: _____, _____ (title)
Phone: (469) 892-7200 (office)
_____ (cell)
FAX: _____
E-mail: info@centurionamerican.com

With a copy to:

Attn: _____

Phone: _____ (office)
_____ (cell)
FAX: _____
E-mail: _____

10. Interpretation. Both parties may be represented by an attorney. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either party.

11. Applicable Law. This Agreement is made, and shall be construed in accordance with the laws of the State of Texas and venue shall lie in Grayson County, Texas.

12. Severability. In the event any portion or provision of this Agreement is illegal, invalid, or unenforceable under present or future law, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

14. Sovereign Immunity. The parties agree that City has not waived its sovereign immunity by entering into and performing its respective obligations under this Agreement.

15. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

16. Authority to execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed herein.

18. PARTIES' ACKNOWLEDGMENT OF CITY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/OWNER'S WAIVER AND RELEASE OF CLAIMS.

- A. OWNER/DEVELOPER RELEASES THE CITY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS PURSUANT TO THIS AGREEMENT.**
- B. OWNER/DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE CITY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION BASED UPON THIS AGREEMENT.**
- C. OWNER/DEVELOPER WAIVES THEIR RIGHT TO STATUTORY OR CONSTITUTIONAL TAKINGS CLAIMS UNDER THE TEXAS CONSTITUTION AND FEDERAL CONSTITUTION, TO CLAIMS FOR ILLEGAL EXACTIONS, TO CLAIMS OF VIOLATION OF A CIVIL RIGHT, FOR ANY VIOLATION OF A PROPERTY RIGHT, TO ANY STATUTORY CLAIMS UNDER CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE, AND/OR ANY OTHER LAW, STATUTE OR OTHERWISE ARISING FROM OBLIGATIONS SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE OBLIGATION TO DEPOSIT ESCROW FUNDS.**
- D. OWNER/DEVELOPER RECOGNIZES THAT THE ENTRY OF THIS AGREEMENT AND THE PAYMENT OF PROFESSIONAL FEES IS NOT A GUARANTEE OF ANYTHING AND**

THAT THERE IS NO GUARANTEE OF FUTURE AGREEMENTS, DEVELOPMENT, DEVELOPMENT AGREEMENTS, FUNDING DISTRICTS OR OTHER MATTERS. OWNER WAIVES ANY CLAIMS FOR SUCH FAILURES. OWNER HEREBY AGREES TO FULLY RELEASE, DISCHARGE AND ACQUIT THE CITY OF HOWE, TEXAS, AND ALL THEIR PAST, PRESENT AND FUTURE OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS, INSURERS, RISK POOL, CLAIM HANDLERS, ATTORNEYS, CONSULTANTS, ENGINEERS AND HEIRS (ALL BOTH IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES), AND THOSE IN PRIVITY WITH ANY OF THEM, WHETHER NAMED HEREIN OR NOT (HEREINAFTER "RELEASED PARTIES"), FROM ALL ACTIONS, CAUSES OF ACTION, CLAIMS (INCLUDING SUBROGATION CLAIMS AND CLAIMS FOR CONTRIBUTION AND INDEMNITY), SUITS FOR DECLARATORY JUDGMENT, APPLICATIONS FOR INJUNCTIONS OR ORDERS, AND DEMANDS, ON ACCOUNT OF, OR IN CONNECTION WITH, OR IN ANY WAY GROWING OUT OF NEGOTIATIONS REGARDING THE DEVELOPMENT AREA OR PROPERTY, FAILURE OR LACK OF CONSENT TO CREATE A DISTRICT, ANY FUTURE NEGOTIATIONS, DISCUSSIONS OR MEETINGS REGARDING THE DEVELOPMENT AREA, A DEVELOPMENT AGREEMENT OR DRAFT, THE CREATION OF A DISTRICT, THE FAILURE TO REACH AN AGREEMENT ON A DEVELOPMENT AGREEMENT, THE FAILURE OF ANY DISTRICT TO ISSUE BONDS, ANY COST OF IMPROVEMENTS, ANY DEBT, ANY ENGINEERING, LEGAL OR INVESTIGATIVE EXPENSES, AND ALL COSTS OF ANY AND ALL CLAIMS FOR LOSS, DAMAGE, WORK, INJURY OR OTHER MATTERS ARISING FROM THIS AGREEMENT OR THE CONTEMPLATED WORK AND NEGOTIATIONS. THE OWNER ACKNOWLEDGES THAT THE CITY MAY NOT APPROVE ANY REQUESTED DEVELOPMENT AGREEMENT AND/OR CONSENT TO CREATE A DISTRICT. THIS AGREEMENT DOES NOT CREATE ANY RIGHT, GUARANTEE OR PROMISE OF CONSENT.

- E. OWNER/ DEVELOPER AGREES NOT TO ASSERT OR PROSECUTE ANY FUTURE CLAIMS OR LAWSUIT FOR INJURIES AND/OR DAMAGES, FOR DECLARATORY JUDGMENT, OR SEEK COURT ORDERS DIRECTING ANY ACTION BY THE RELEASED PARTIES ARISING OUT OF OR IN CONNECTION WITH THE ABOVE DESCRIBED EVENTS, NEGOTIATIONS, AGREEMENTS OR PROPOSED DISTRICT(S). OWNER/DEVELOPER, JOINED BY THEIR RELATED ENTITIES FURTHER AGREES TO DEFEND, HOLD HARMLESS AND INDEMNIFY THE RELEASED PARTIES FOR ANY EXPENSES, COSTS, AND ATTORNEY'S FEES INCURRED SHOULD IT BECOME NECESSARY TO TAKE LEGAL ACTION TO ENFORCE THIS RELEASE AND INDEMNITY SECTION. IT IS INTENDED THAT THIS RELEASE AND INDEMNITY WILL COVER ALL CLAIMS OR SUITS, INCLUDING BUT NOT LIMITED TO TAKINGS, CONSTITUTIONAL OR STATUTORY RIGHTS, THE TEXAS GOVERNMENT CODE, THE TEXAS LOCAL GOVERNMENT CODE, THE WATER CODE, THE TEXAS CONSTITUTION, ANY STATE OR FEDERAL STATUTE OR REGULATION, THE U.S. CONSTITUTION, CITY ORDINANCES, CITY REGULATIONS, LOSS OF MONEY, LOSS OF PROFITS, LOSS OF PROPERTY, LOSS OF RIGHTS, 42 USC 1983, DEFENSE COSTS, ATTORNEY'S FEES, INTEREST AND ALL OTHER CAUSES OF ACTIONS AND DAMAGES.

F. THIS AGREEMENT DOES NOT WAIVE ANY IMMUNITY, DEFENSE OR CONDITION PRECEDENT TO SUIT AGAINST THE CITY AND IS NOT INTENDED TO CREATE ANY RIGHT, INTEREST OR CLAIM. ALL IMMUNITY, DEFENSES AND CONDITIONS PRECEDENT TO SUIT ARE SPECIFICALLY RETAINED.

G. THIS AGREEMENT IS NOT A JOINT ENTERPRISE.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

19. Vested Rights/Chapter 245 Waiver. This agreement shall confer no vested rights on the property, or any portion thereof. Nothing in this Agreement shall be implied to vest any rights in the parties. In addition, nothing contained in this Agreement shall constitute a “permit” as defined in Chapter 245, Texas Local Government Code and nothing in this Agreement shall be considered to provide the City with fair notice of Owner’s Project. **OWNER/DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE BASED UPON THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

20. Attorney’s Fees. In any legal proceeding brought to enforce the terms of this Agreement, including but not limited to a proceeding brought pursuant to ¶ 18 or 19 above or asserting releases, waiver or defenses pursuant to ¶ 18 or 19 above, the prevailing party may recover its reasonable and necessary attorneys’ fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, effective on September 1, 2005 or as it may subsequently be amended.

ATTEST:

CITY OF HOWE, TEXAS

City Secretary

By: _____
Karla McDonald, Mayor

OWNER,

**CENTURION AMERICAN DEVELOPMENT
GROUP**

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of _____, 2024 by _____, _____ of Centurion American Development Group (Owner), on behalf of said entity/corporation.

Notary Public, State of Texas

EXHIBIT “A”

Development Area Descriptions

[Immediately following this page]