



**REGULAR MEETING OF THE CITY COUNCIL  
COUNCIL CHAMBERS    APRIL 14, 2015    1:30 P.M.**

**CONSENT AGENDA**

- \* Approval of minutes – April 7, 2015
- \* Confirmation of committee appointments
- A) Authorize the City Manager to submit an application for grant funding through the 2015 Entergy Environmental Initiatives Fund
- B) Authorize the acceptance of one ten foot wide Exclusive Water Line Easement from Parkdale Mall, LLC
- C) Authorize the acceptance of one ten foot wide Exclusive Water Line Easement from Parkdale Crossing CMBS, LLC
- D) Approve a resolution accepting maintenance of the street, storm sewer, water and sanitary sewer improvements in West Commerce Parkway (Washington Boulevard Park) Reconstruction

# BEAUMONT

TEXAS

**TO:** City Council

**FROM:** Kyle Hayes, City Manager

**PREPARED BY:** Dr. Joseph Majdalani, P.E., Public Works Director *JM*

**MEETING DATE:** April 14, 2015

**REQUESTED ACTION:** Council consider a resolution authorizing the City Manager to submit an application for grant funding through the 2015 Entergy Environmental Initiatives Fund.

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## **BACKGROUND**

Entergy Texas, Inc. is currently offering \$1,000,000 in grant funding that is specifically designed to help with projects that benefit the environment. The types of projects Entergy Texas, Inc. has historically provided funding for vary greatly from simply assisting with the replacement of light fixtures for greater efficiency to restoring wetlands in key areas.

The City has prepared two (2) grant proposals for submission to Entergy Texas, Inc. for a pilot program to showcase LED lighting in our city. These proposals would be the first opportunity for the City of Beaumont to demonstrate the benefits of LED lighting within the city. The first proposal is a retrofit of the existing lamps located along IH-10 and Spur 380 that will replace the current lamps with LED lamps. The second proposal is to install LED luminaires in lieu of traditional lighting along Northwest Parkway, a proposed roadway currently under design in Beaumont. The proposed projects will provide for increased energy efficiency, lower annual power outage, reduction in the number of man-hours required for maintenance, and improve maintenance worker safety. The City of Beaumont would identify these two (2) projects and request consideration for funding from the 2015 Entergy Environmental Initiatives Fund (EIF).

## **FUNDING SOURCE**

Not applicable.

## **RECOMMENDATION**

Approval of resolution.

# Project A

## **Proposal for Entergy Environmental Initiatives Fund Projects**

The City of Beaumont is proposing to replace all existing state highway lighting fixtures within the city limits with LED light fixtures. Presently, the City of Beaumont maintains nearly 1,600 light fixtures within the city limits with 722 fixtures under consideration for replacement. These fixtures cover the highway systems IH-10 and Martin Luther King Jr. Parkway within the city limits.

The fixtures are organized into the following categories for light distribution:

1. High Mast Lighting Fixtures
2. Cobra Head Lighting Fixtures

### **High Mast Lighting Fixtures**

The fixture height above finished grade is approximately one-hundred and fifty (150) feet and presently features high pressure sodium (HPS) lamps operating at four-hundred (400) Watts each. Each structure presently carries twelve (12) lamps per high mast pole. Light is distributed symmetrically from a supporting ring structure. There are forty (40) poles in total; twenty-five (25) along IH-10 and fifteen (15) along Martin Luther King Jr. Parkway.

The proposed high mast LED light fixtures will provide a lumen output equal to or greater than the existing fixtures. The LED light fixtures will illuminate the pavement at a level equal to or greater than 0.6 foot-candles on IH-10 and 0.8 foot-candles on Martin Luther King Jr. Parkway. The City will propose to install LED light fixtures for all 25 high-mast poles located along IH-10 and 15 high-mast poles located along Martin Luther King Jr. Parkway.

### **Cobra Head Lighting Fixtures**

The fixture height above finished grade is approximately forty-five (45) feet and presently features a single high pressure sodium lamp operating at 400 Watts. Light is distributed asymmetrically from a single or double "headed" pole. Poles are arranged along the center median on IH-10 and staggered along both sides of Martin Luther King Jr. Parkway for a total of two-hundred and forty-two (242) Lamps.

The proposed LED light fixtures will replace the cobra head light fixtures on a 1-to-1 basis and will provide a lumen output equal to or greater than the existing fixtures. The LED light fixtures will illuminate the pavement at a level equal to or greater than 0.6 foot-candles on IH-10 and 0.8 foot-candles on Martin Luther King Jr. Parkway.

This project is located within the 77704 zip code and the existing power usage rate is \$0.12 per kilowatt hour at a voltage of 480 V.

# Project A

## Cost

The City is proposing to perform the LED light installation in house. The cost associated with the purchase of the LED light fixtures is as follows:

1. 480 LED High Mast/Adapter:  $(\$760 + \$30) \times 480 = \$379,200$
2. 242 LED Cobra Head:  $\$760 \times 242 = \$183,920$

## Benefit

1. Total annual energy consumption for all 48 high mast light fixtures will be reduced from 921,600 KWH with the current 400 Watt HPS lamps to 414,720 KWH using 180 Watt LED lamps. At the current usage rate that equates to cost savings of \$60,825 annually.
2. Total annual energy consumption for all 242 cobra head light fixtures will be reduced from 387,200 KWH with the current 400 Watt HPS lamps to 135,520 KWH using 140 Watt LED lamps. At the current usage rate that equates to cost savings of \$30,201 annually.
3. Man hours spent maintaining the light fixtures will be reduced by at least 50% due to longer service life (typically 100,000 hours) of LED lamps.

The City of Beaumont requests your consideration for grant funding from the Entergy Environmental Initiatives Fund (EIF).

# Project B

## Proposal for Entergy Environmental Initiatives Fund Projects

The City of Beaumont is proposing to install new energy efficient LED lighting fixtures along the proposed Northwest Parkway project. Currently in the design phase, Northwest Parkway will be arterial roadway connecting FM 364 (Major Drive) to Parkdale Mall with additional connections at Old Dowlen Road and Pointe Parkway. A total of forty-four (44) light fixtures are planned to illuminate the roadway's 1.9 mile path. This project would be the first in the City of Beaumont to utilize LED fixtures for roadway illumination.

### Planned HPS Luminaires v. Proposed LED Luminaires

The current design for Northwest Parkway utilizes eighty-eight (88) 400W High Pressure Sodium (HPS) luminaires. With this grant, The City of Beaumont is proposing to utilize forty-four (44) 250W LED luminaires in lieu of the HPS lamps. Light will distribute asymmetrically from single poles arranged along both sides of the project roadway in a staggered configuration. The proposed fixture height above finished grade will be thirty-five (35) feet. The LED light fixtures will illuminate the pavement at a level equal to or greater than 0.8 foot-candles along Northwest Parkway.

This project encompasses both 77706 and 77713 zip codes. The existing power usage rate is \$0.12 per kilowatt hour at a voltage of 480 V.

### Cost

		<u>Units</u>	<u>Total</u>
44 – LED Cobra head	=	\$ 740.00ea.	\$ 32,560.00
44 – Ground rod 5/8" x 10'	=	\$ 16.42ea.	\$ 722.48
44 – Round Steel Light Poles	=	\$ 1,860.00ea.	\$ 81,840.00
10000 ft of 2" rolled conduit	=	\$ 11.00/ft	\$110,000.00
10000 ft of # 6 Black wire	=	\$ 450.00/M	\$ 4,500.00
10000 ft of # 6 White wire	=	\$ 450.00/M	\$ 4,500.00
10000 ft of # 6 Green wire	=	\$ 450.00/M	\$ 4,500.00
350 lf- 24" Concrete Pour Foundation	=	\$150.00/LF	\$ 52,500.00
176 – 11/4 in x 48 inch anchor bolts w/nuts	=	\$ 23.90/EA	\$ 4,206.40
12 type C concrete polymer junction box	=	\$ 227.00/EA	\$ 2,724.00
		<b><u>Total</u></b>	<b>\$298,052.88</b>

### Benefit

1. Total annual energy consumption for Northwest Parkway will be reduced from 140,800 KWH with the 400 Watt HPS lamps to 44,000 KWH using 250 Watt LED lamps. At the current usage rate that equates to a savings of \$11,616 annually.

2. Man hours spent maintaining the light fixtures will be reduced by at least 50% due to longer service life (typically 100,000 hours) of LED lamps.

## Project B

3. LED fixtures will provide an improved distribution and uniformity of light along Northwest Parkway resulting in increased driver safety.

The City of Beaumont requests your consideration for grant funding from the Entergy Environmental Initiatives Fund (EIF).

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF BEAUMONT:

THAT the City Manager be and he is hereby authorized to apply for grant funding through the 2015 Entergy Environmental Initiatives Funds (EIF) for a pilot program to showcase LED lighting within the City of Beaumont.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 14th day of April,  
2015.

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- Mayor Becky Ames -

# **BEAUMONT**

— T E X A S —

**TO:** City Council

**FROM:** Kyle Hayes, City Manager

**PREPARED BY:** Dr. Joseph Majdalani, P.E., Public Works Director *JM*

**MEETING DATE:** April 14, 2015

**REQUESTED ACTION:** Council consider a resolution authorizing the acceptance of one (1) ten foot (10') wide Exclusive Water Line Easement.

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## **BACKGROUND**

Parkdale Mall, LLC has agreed to convey one (1) ten foot (10') wide exclusive Water Line Easement to the City of Beaumont. The easement is described as being a 0.0.0133 acre tract out of and part of Lots 3 and 4, Block 1, Parkdale Mall Addition, situated in the Frederick Bigner Survey, Abstract No. 1. The water line easement is for the construction of the new Buffalo Wild Wings located at 4235 Dowlen Road.

## **FUNDING SOURCE**

Not applicable.

## **RECOMMENDATION**

Approval of resolution.

RESOLUTION NO.

WHEREAS, Parkdale Mall, LLC has agreed to convey one (1) ten foot (10') wide exclusive water line easement, said easement being a 0.0133 acre tract out and part of Lots 3 and 4, Block 1, Parkdale Mall Addition, Frederick Bigner Survey, Abstract No. 1, as described and shown in Exhibit "1," attached hereto, to the City of Beaumont for the construction of a new Buffalo Wild Wings restaurant located at 4235 Dowlen Road; and,

WHEREAS, the City Council has considered the purpose of said conveyance and is of the opinion that the acceptance of said conveyance is necessary and desirable and that same should be accepted;

NOW, THEREFORE, BE IT RESOLVED BY THE

CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT one (1) ten foot (10') exclusive water line easement conveyed by Parkdale Mall, LLC, being a 0.0133 acre tract out of and part of Lots 3 and 4, Block 1, Parkdale Mall Addition, Frederick Bigner Survey, Abstract No. 1, as described and shown in Exhibit "1," attached hereto, be and the same is hereby, in all things, accepted for the stated purpose.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 14th day of April, 2015.

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- Mayor Becky Ames -

STATE OF TEXAS X

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF JEFFERSON X

### WATER LINE EASEMENT

THAT, PARKDALE MALL, LLC, a Texas Limited Liability Company, hereinafter called "GRANTOR", whether one or more, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00), and other good and valuable consideration to us in hand paid by the CITY OF BEAUMONT, a municipal corporation domiciled in Jefferson County, Texas, hereinafter called "GRANTEE", the receipt and sufficiency of which consideration is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto the CITY OF BEAUMONT, P. O. Box 3827, Beaumont, Texas 77704, Jefferson County, Texas, its successors and assigns, a perpetual, exclusive, water line easement (the "Easement") to construct, alter, and maintain waterlines and related appurtenances on the hereinafter described lands which said easement is under, over, in and across those certain tracts or parcels of land owned by GRANTOR situated in the County of Jefferson, State of Texas, and being more particularly described in Exhibit "A", attached and made a part hereof for all purposes (the "Easement Area").

The Easement herein granted shall be used for the purpose of placing, constructing, operating, repairing, rebuilding, replacing, relocating, and/or removing water lines and related appurtenances in the Easement Area, and, it is expressly understood and agreed that the City of Beaumont shall have the right of reasonable ingress to and egress from the Easement Area and use of the same for the purposes aforesaid; provided, however that Grantee use of the Easement and the rights appurtenant thereto shall in no event unreasonably interfere with or hinder the

EXHIBIT "1"

business operations on the Grantor's adjacent property and/or Grantor's ingress and egress thereto.

Grantor reserves the right to continue to use and enjoy the surface of the Easement Area for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the purposes provided herein, including but not limited to the right to place surfacing materials over and across the Easement Area and to use the same for parking areas, driveways, walkways or sidewalks, landscaping and/or lighting; provided, however, no permanent buildings may be placed on the Easement Area. Notwithstanding the foregoing, Grantee shall not be responsible for the repair and replacement of any improvements placed by Grantor within the Easement Area and the same shall be repaired and maintained by Grantor, at Grantor's sole cost and expense.

The conveyance of the Easement granted herein is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, in the Easement Area of record in the office of the County Clerk of the County of Jefferson (collectively, the "Permitted Exceptions").

This Easement may be amended or terminated only by the written consent of the parties hereto, or their respective successors and assigns.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said CITY OF BEAUMONT, its successors and assigns forever, by, through, or under Grantor, but not otherwise, subject to the Permitted Exceptions.

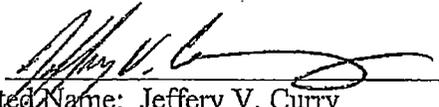
*[Signature Page Follows]*

EXECUTED this 6th day of April, 2015.

**GRANTOR:**

PARKDALE MALL, LLC,  
a Texas Limited Liability Company

By: CBL & Associates Management, Inc.,  
Its managing agent

By:   
Printed Name: Jeffery V. Curry  
Title: Chief Legal Officer



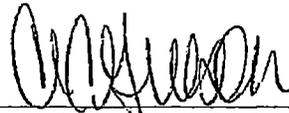
ACKNOWLEDGMENT

STATE OF TENNESSEE           X  
DISTRICT OF HAMILTON       X

This instrument was acknowledged before me on this the 6<sup>th</sup> day of April, 2015, by Jeffery V. Curry, as Chief Legal Officer of CBL & Associates Management, Inc., and the Company acknowledged this instrument as Managing Agent on behalf of Parkdale Mall, LLC, a Texas Limited Liability Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 6<sup>th</sup> day of April, 2015.

My Commission Expires 2 - 10 - 2018



A.C. Greeson -Notary Public, State of Tennessee

RETURN TO: City of Beaumont  
Antoinette Hardy - Engineering  
P. O. Box 3827  
Beaumont, TX 77704



**EXHIBIT "A"**

Legal Description: 10 Feet Wide Exclusive Water Line Easement  
Containing 0.0133 Acres  
Out of and Part of Lots 3 & 4, Block 1  
Parkdale Mall Addition  
Volume 14, Pages 245 and 246, Map Records  
Frederick Bigner Survey, Abstract No. 1  
Beaumont, Jefferson County, Texas

**BEING** a 10 feet wide exclusive water line easement containing 0.0180 acres situated in the Frederick Bigner Survey, Abstract No. 1, Jefferson County, Texas and being out of and part of Lot 4, Block 1 of Parkdale Mall Addition, a subdivision of the City of Beaumont, Jefferson County, Texas, according to the plat thereof recorded in Volume 14, Pages 245 and 246, Map Records, Jefferson County, Texas and also out of and part of Lot 4 of the Amended Plat of Lots 2, 4 and 9, Block 1 of Parkdale Mall Addition as recorded in Clerk's File No. 2007006814, Official Public Records of Real Property, Jefferson County, Texas, said 0.0133 acre easement being more particularly described as follows:

*NOTE: All bearings are referenced to the Easterly line of the said Lot 4 as SOUTH 32°00'00" EAST as recorded in the above referenced Volume 14, Pages 245 and 246, Map Records, Jefferson County, Texas.*

**COMMENCING** at a scribed "X" in a concrete curb found for the Southeasterly corner of the said Lot 4 and in the North line of Lot 3 of the said Parkdale Mall Addition and being an exterior ell corner of Lot 5, Block 1 of the said Parkdale Mall Addition, said corner also being the beginning of a curve turning to the right, having a radius of 1237.35 feet and being subtended by a chord bearing NORTH 75°27'59" WEST having a chord length of 254.34 feet;

**THENCE** NORTHWESTERLY, along and with said curve and for the boundary between the said Lots 3 and 4, for an arc length of 254.79 feet to the **POINT OF BEGINNING** of the easement herein described:

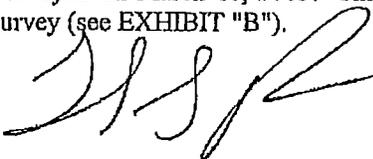
**THENCE** NORTHWESTERLY, continuing along and with said curve and for the boundary between the said Lots 3 and 4, for an arc length of 10.01 feet to a point for corner;

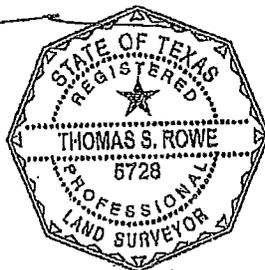
**THENCE** NORTH 18°21'28" EAST, over and across the said Lot 4, for a distance of 57.88 feet to a point for corner;

**THENCE** SOUTH 71°38'32" EAST, over and across the said Lot 4, for a distance of 10.00 feet to a point for corner;

**THENCE** SOUTH 18°21'28" WEST, continuing over and across the said Lot 4, for a distance of 58.29 feet to the **POINT OF BEGINNING** and containing 0.0133 Acres, more or less.

Surveyed on March 10, 2015. This legal description is being submitted along with a plat based on this survey (see EXHIBIT "B").

  
Thomas S. Rowe, RPLS No. 5728  
TBPLS Firm No.: 10106700



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**EXHIBIT "A"**

MARK W. WHITELEY & ASSOCIATES, INC.

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1237.35'	254.79'	254.34'	N75°27'59"W	11°47'53"
FND C2	1237.35'	421.58'	419.54'	S71°36'17"E	19°31'16"
CALL C2	1237.35'	421.58'			19°31'18"
C3	1237.35'	10.01'	10.01'	N69°20'08"W	0°27'48"
C4	1237.35'	10.01'	10.01'	S69°20'08"E	0°27'48"

**NOTE:**

1. NOTHING IN THIS SURVEY IS INTENDED TO EXPRESS AN OPINION REGARDING OWNERSHIP OR TITLE.
2. THE WORD CERTIFY IS UNDERSTOOD TO BE AN EXPRESSION OF PROFESSIONAL JUDGMENT BY THE SURVEYOR, WHICH IS BASED ON HIS BEST KNOWLEDGE, INFORMATION AND BELIEF, FORMED IN THE COURSE OF HIS PERFORMING THE SURVEY IN COMPLIANCE WITH THE STANDARDS OF PRACTICE REQUIRED AND PROMULGATED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS AND THE TEXAS SOCIETY OF PROFESSIONAL SURVEYORS. AS SUCH, IT CONSTITUTES NEITHER A GUARANTEE NOR A WARRANTY, EXPRESSED OR IMPLIED.
3. BEARINGS ARE REFERENCED TO EASTERLY LINE OF LOT 4 AS RECORDED IN VOLUME 14, PAGES 245 AND 246, MAP RECORDS, JEFFERSON COUNTY, TEXAS.

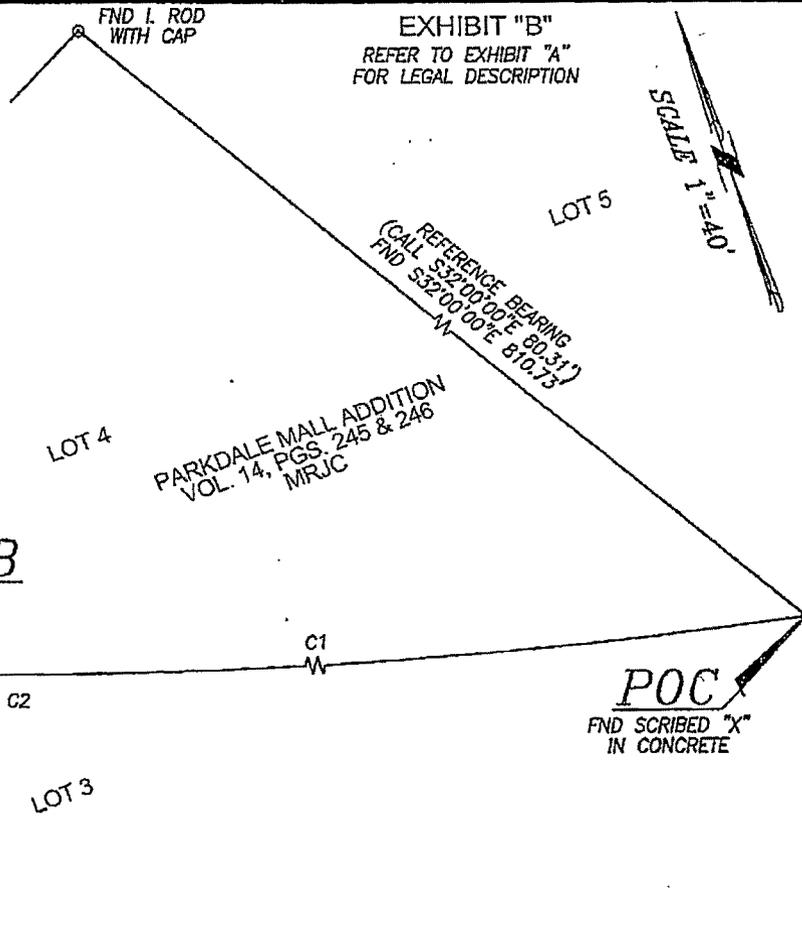
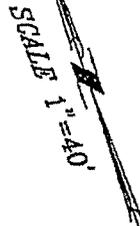


EXHIBIT "B"  
REFER TO EXHIBIT "A"  
FOR LEGAL DESCRIPTION



RE-PLAT OF LOT 4  
CF. NO. 2007006814  
OPRJC

10' EXCLUSIVE WATER  
LINE EASEMENT  
(0.0133 ACRES)

FND N61°43'16"W 39.05'  
(CALL N61°50'41"W 38.72')

FND SCRIBED "X"  
IN CONCRETE

CALC.  
CORNER

POB

POC  
FND SCRIBED "X"  
IN CONCRETE

EXISTING WATER LINE

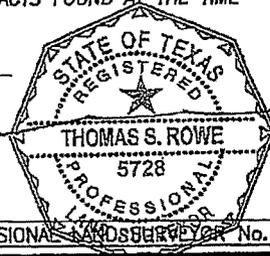
LINE	BEARING	DISTANCE
L1	N18°21'28"E	57.88'
L2	S71°38'32"E	10.00'
L3	S18°21'28"W	58.29'
L4	S18°21'28"W	20.07'
L5	N71°38'32"W	10.00'
L6	N18°21'28"E	20.47'

TO THE OWNERS OF THE PREMISES SURVEYED  
AS OF THE DATE OF THE SURVEY:

I, THOMAS S. ROWE DO HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE SURFACE OF THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THE SURVEY.

DATE SURVEYED: MARCH 10, 2015

*Thomas S. Rowe*



THOMAS S. ROWE REGISTERED PROFESSIONAL LAND SURVEYOR No. 5728

DOWLEN ROAD

DR BY: CDD SCALE: 1"=40' SHEET No.: 1 of 1  
VER: ACAD 2014  
JOB NO. 15-199 FILE: WA\2015\15-199\15-199 PARKDALE MALL LLC.DWG

**MARK W. WHITELEY AND ASSOCIATES INCORPORATED**  
CONSULTING ENGINEERS, SURVEYORS, AND PLANNERS  
T.R.P.L.S. FIRM NO. 10166709

P. O. BOX 5402 BEAUMONT, TEXAS 77702-0402 409-332-0421  
3260 EASTERLY FRY, BEAUMONT, TEXAS 77705 409-332-1944

10' WIDE EXCLUSIVE  
WATER LINE EASEMENT  
(0.0133 ACRES)  
FREDRICK BIGNER SURVEY  
ABSTRACT NO. 1  
BEAUMONT, JEFFERSON  
COUNTY, TEXAS

# **BEAUMONT**

— T E X A S —

**TO:** City Council

**FROM:** Kyle Hayes, City Manager

**PREPARED BY:** Dr. Joseph Majdalani, P.E., Public Works Director *JM*

**MEETING DATE:** April 14, 2015

**REQUESTED ACTION:** Council consider a resolution authorizing the acceptance of one (1) ten foot (10') wide Exclusive Water Line Easement.

---

## **BACKGROUND**

Parkdale Crossing CMBS, LLC has agreed to convey one (1) ten foot (10') wide exclusive Water Line Easement to the City of Beaumont. The easement is described as being a 0.0047 acre tract out of and part of Lot 3, Block 1, Parkdale Mall Addition, situated in the Frederick Bigner Survey, Abstract No. 1. The water line easement is for the construction of the new Buffalo Wild Wings located at 4235 Dowlen Road.

## **FUNDING SOURCE**

Not applicable.

## **RECOMMENDATION**

Approval of resolution.

STATE OF TEXAS                   X  
COUNTY OF JEFFERSON           X

KNOW ALL MEN BY THESE PRESENTS:

**WATER LINE EASEMENT**

THAT, **PARKDALE CROSSING CMBS, LLC**, a Delaware Limited Liability Company, hereinafter called "GRANTOR", whether one or more, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00), and other good and valuable consideration to us in hand paid by the CITY OF BEAUMONT, a municipal corporation domiciled in Jefferson County, Texas, hereinafter called "GRANTEE", the receipt and sufficiency of which consideration is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto the **CITY OF BEAUMONT**, P. O. Box 3827, Beaumont, Texas 77704, Jefferson County, Texas, its successors and assigns, a perpetual, exclusive, water line easement (the "Easement") to construct, alter, and maintain waterlines and related appurtenances on the hereinafter described lands which said easement is under, over, in and across those certain tracts or parcels of land owned by GRANTOR situated in the County of Jefferson, State of Texas, and being more particularly described in Exhibit "A", attached and made a part hereof for all purposes (the "Easement Area").

The Easement herein granted shall be used for the purpose of placing, constructing, operating, repairing, rebuilding, replacing, relocating, and/or removing water lines and related appurtenances in the Easement Area, and, it is expressly understood and agreed that the City of Beaumont shall have the right of reasonable ingress to and egress from the Easement Area and use of the same for the purposes aforesaid; provided, however that Grantee use of the Easement and the rights appurtenant thereto shall in no event unreasonably interfere with or hinder the

**EXHIBIT "1"**

business operations on the Grantor's adjacent property and/or Grantor's ingress and egress thereto.

Grantor reserves the right to continue to use and enjoy the surface of the Easement Area for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Grantee for the purposes provided herein, including but not limited to the right to place surfacing materials over and across the Easement Area and to use the same for parking areas, driveways, walkways or sidewalks, landscaping and/or lighting; provided, however, no permanent buildings may be placed on the Easement Area. Notwithstanding the foregoing, Grantee shall not be responsible for the repair and replacement of any improvements placed by Grantor within the Easement Area and the same shall be repaired and maintained by Grantor, at Grantor's sole cost and expense.

The conveyance of the Easement granted herein is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, in the Easement Area of record in the office of the County Clerk of the County of Jefferson (collectively, the "Permitted Exceptions").

This Easement may be amended or terminated only by the written consent of the parties hereto, or their respective successors and assigns.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said CITY OF BEAUMONT, its successors and assigns forever, by, through, or under Grantor, but not otherwise, subject to the Permitted Exceptions.

*[Signature Page Follows]*

EXECUTED this 10th day of April, 2015.

**GRANTOR:**

PARKDALE CROSSING CMBS, LLC,  
a Delaware Limited Liability Company

By: CBL & Associates Management, Inc.,  
Its managing agent

By: [Signature]  
Printed Name: Jeffery V. Curry  
Title: Chief Legal Officer



**ACKNOWLEDGMENT**

STATE OF TENNESSEE           X

DISTRICT OF HAMILTON       X

This instrument was acknowledged before me on this the 10th day of April, 2015, by Jeffery V. Curry, as Chief Legal Officer of CBL & Associates Management, Inc., and the Company acknowledged this instrument as Managing Agent on behalf of Parkdale Crossing CMBS, LLC, a Delaware Limited Liability Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 10th day of April, 2015.

My Commission Expires 2 - 10 - 2018

[Signature]

A.C. Greeson - Notary Public, State of Tennessee

RETURN TO: City of Beaumont  
Antoinette Hardy - Engineering  
P. O. Box 3827  
Beaumont, TX 77704



**EXHIBIT "A"**

Legal Description: 10 Feet Wide Exclusive Water Line Easement  
Containing 0.0047 Acres  
Out of and Part of Lot 3, Block 1  
Parkdale Mall Addition  
Volume 14, Pages 245 and 246, Map Records  
Frederick Bigner Survey, Abstract No. 1  
Beaumont, Jefferson County, Texas

**BEING** a 10 feet wide exclusive water line easement containing 0.0047 acres situated in the Frederick Bigner Survey, Abstract No. 1, Jefferson County, Texas and being out of and part of Lots 3, Block 1 of Parkdale Mall Addition, a subdivision of the City of Beaumont, Jefferson County, Texas, according to the plat thereof recorded in Volume 14, Pages 245 and 246, Map Records, Jefferson County, Texas, said 0.0047 acre easement being more particularly described as follows:

*NOTE: All bearings are referenced to the Easterly line of the said Lot 4 as SOUTH 32°00'00" EAST as recorded in the above referenced Volume 14, Pages 245 and 246, Map Records, Jefferson County, Texas.*

**COMMENCING** at a scribed "X" in a concrete curb found for the Southeasterly corner of the Lot 4, Block 1 of the said Parkdale Mall Addition, the same being the Southeasterly corner of Lot 4 of the Amended Plat of Lots 2, 4 and 9, Block 1 of Parkdale Mall Addition as recorded in Clerk's File No. 2007006814, Official Public Records of Real Property, Jefferson County, Texas and in the North line of the said Lot 3 and being an exterior ell corner of Lot 5, Block 1 of the said Parkdale Mall Addition, said corner also being the beginning of a curve turning to the right, having a radius of 1237.35 feet and being subtended by a chord bearing NORTH 75°27'59" WEST having a chord length of 254.34 feet;

**THENCE** NORTHWESTERLY, along and with said curve and for the boundary between the said Lots 3 and 4, for an arc length of 254.79 feet to the **POINT OF BEGINNING** of the easement herein described:

**THENCE** SOUTH 18°21'28" WEST, over and across the said Lot 3, for a distance of 20.07 feet to a point for corner;

**THENCE** NORTH 71°38'32" WEST, continuing over and across the said Lot 3, for a distance of 10.00 feet to a point for corner;

**THENCE** NORTH 18°21'28" EAST, over and across the said Lot 3, for a distance of 20.47 feet to a point for corner, said point being in the common line between the said Lots 3 and 4 and being the beginning of a curve turning to the left, having a radius of 1237.35 feet and being subtended by a chord bearing SOUTH 69°20'08" EAST having a chord length of 10.01 feet;

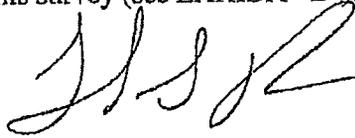
EXHIBIT "A"

Page 1 of 2

MARK W. WHITELEY & ASSOCIATES, INC.

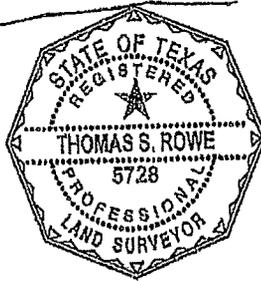
**THENCE** SOUTHEASTELY, along and with the common line between the said Lots 3 & 4 and along and with said curve, for an arc length of 10.01 feet to the **POINT OF BEGINNING** and containing 0.0047 Acres, more or less.

Surveyed on March 10, 2015. This legal description is being submitted along with a plat based on this survey (see EXHIBIT "B").



Thomas S. Rowe, RPLS No. 5728

TBPLS Firm No.: 10106700



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EXHIBIT "A"

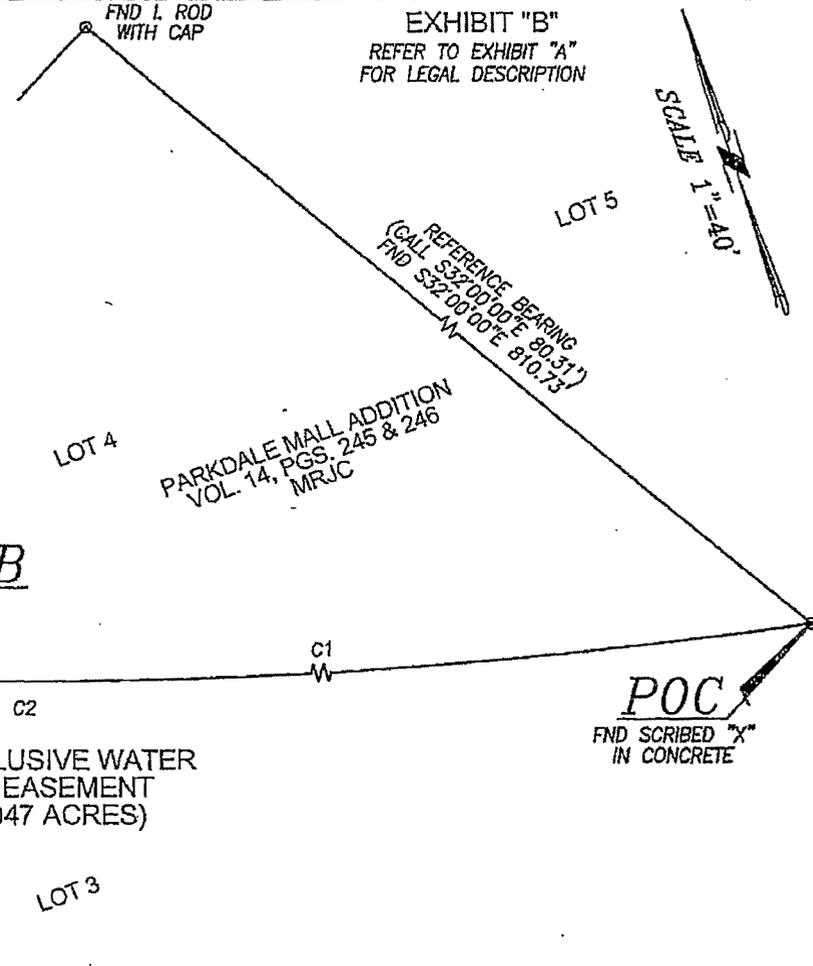
Page 2 of 2

MARK W. WHITELEY & ASSOCIATES, INC.

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1237.35'	254.79'	254.34'	N75°27'59"W	11°47'53"
FND C2	1237.35'	421.58'	419.54'	S71°36'17"E	19°31'16"
CALL C2	1237.35'	421.58'			19°31'18"
C3	1237.35'	10.01'	10.01'	N69°20'08"W	0°27'48"
C4	1237.35'	10.01'	10.01'	S69°20'08"E	0°27'48"

**NOTE:**

1. NOTHING IN THIS SURVEY IS INTENDED TO EXPRESS AN OPINION REGARDING OWNERSHIP OR TITLE.
2. THE WORD CERTIFY IS UNDERSTOOD TO BE AN EXPRESSION OF PROFESSIONAL JUDGMENT BY THE SURVEYOR, WHICH IS BASED ON HIS BEST KNOWLEDGE, INFORMATION AND BELIEF, FORMED IN THE COURSE OF HIS PERFORMING THE SURVEY IN COMPLIANCE WITH THE STANDARDS OF PRACTICE REQUIRED AND PROMULGATED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS AND THE TEXAS SOCIETY OF PROFESSIONAL SURVEYORS. AS SUCH, IT CONSTITUTES NEITHER A GUARANTEE NOR A WARRANTY, EXPRESSED OR IMPLIED.
3. BEARINGS ARE REFERENCED TO EASTERLY LINE OF LOT 4 AS RECORDED IN VOLUME 14, PAGES 245 AND 246, MAP RECORDS, JEFFERSON COUNTY, TEXAS.



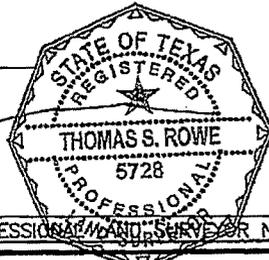
LINE	BEARING	DISTANCE
L1	N18°21'28"E	57.88'
L2	S71°38'32"E	10.00'
L3	S18°21'28"W	58.29'
L4	S18°21'28"W	20.07'
L5	N71°38'32"W	10.00'
L6	N18°21'28"E	20.47'

TO THE OWNERS OF THE PREMISES SURVEYED  
AS OF THE DATE OF THE SURVEY:

I, THOMAS S. ROWE DO HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE SURFACE OF THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THE SURVEY.

DATE SURVEYED: MARCH 10, 2015

*Thomas S. Rowe*



THOMAS S. ROWE - REGISTERED PROFESSIONAL LAND SURVEYOR No. 5728

DR BY: CDD  
VER: ACAD 2014  
JOB NO. 15-199

SCALE: 1"=40'  
SHEET No.: 1 of 1  
FILE W:\2015\15-199\15-199 PARKDALE CROSSING CMBS LLC.DWG

**MARK W. WHITELEY AND ASSOCIATES INCORPORATED**  
CONSULTING ENGINEERS, SURVEYORS, AND PLANNERS  
L.B.P.L.S. FIRM NO. 10108700

P. O. BOX 8482  
BEAUMONT, TEXAS 77706-5482  
409-682-9421

2850 EASTEX Fwy.  
BEAUMONT, TEXAS 77705  
(713) 409-682-1348

**10' WIDE EXCLUSIVE WATER LINE EASEMENT (0.0047 ACRES)**  
**FREDRICK BIGNER SURVEY**  
**ABSTRACT NO. 1**  
**BEAUMONT, JEFFERSON COUNTY, TEXAS**

# BEAUMONT

— T E X A S —

**TO:** City Council

**FROM:** Kyle Hayes, City Manager

**PREPARED BY:** Dr. Joseph Majdalani, P.E., Public Works Director *JM*

**MEETING DATE:** April 14, 2015

**REQUESTED ACTION:** Council consider a resolution accepting maintenance of the street, storm sewer, water and sanitary sewer improvements in West Commerce Parkway (Washington Boulevard Park) Reconstruction.

---

## **BACKGROUND**

On February 19, 2015, a final inspection from all entities was completed on the following:

- West Commerce Parkway formerly Washington Boulevard Park approximately 249 feet to and including the cul-de-sac had been abandoned and a reconstruction of the existing West Commerce Parkway roadway approximately 194 feet to and including the cul-de-sac.

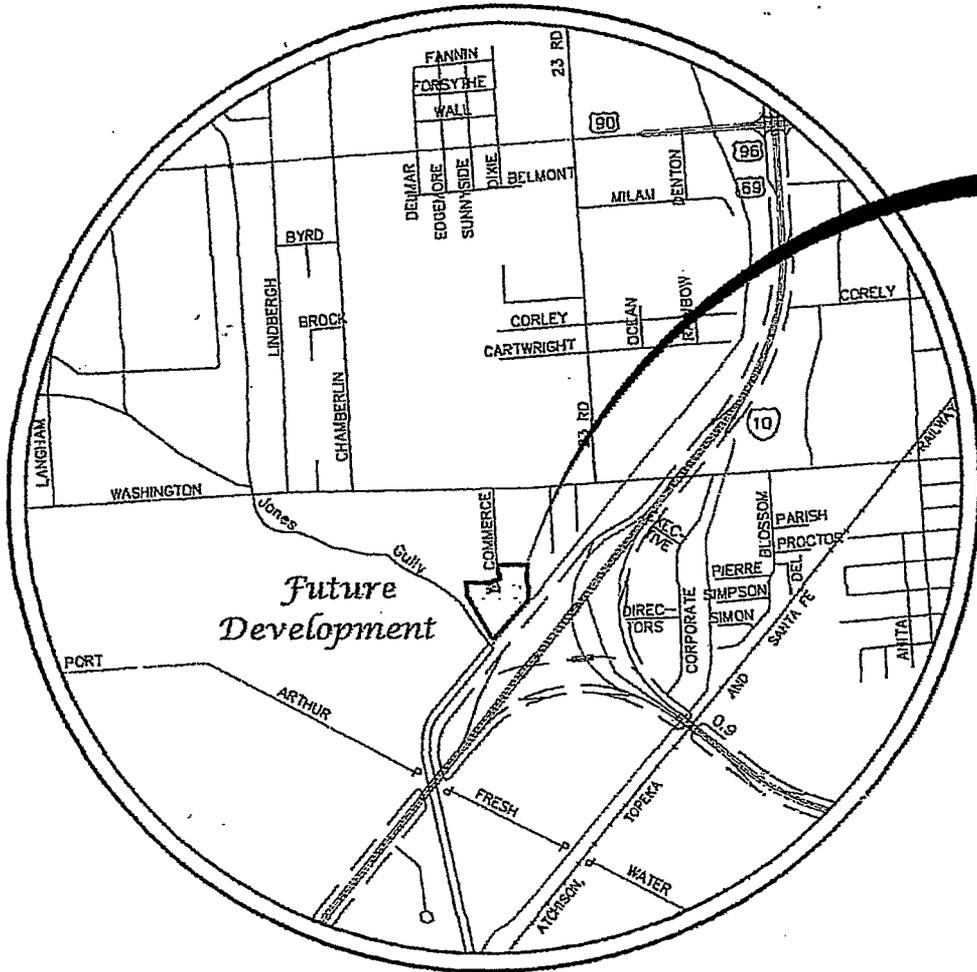
Recommended for approval are the storm sewer, water and sanitary sewer improvements for West Commerce Parkway right-of-way only.

## **FUNDING SOURCE**

Not applicable.

## **RECOMMENDATION**

Approval of resolution.



**West Commerce Parkway  
Reconstruction**

VICINITY MAP  
NTS

**WEST COMMERCE PARKWAY  
RECONSTRUCTION**

RESOLUTION NO.

WHEREAS, construction of the streets, storm sewer, water and sanitary sewer improvements constructed in West Commerce Parkway (formerly Washington Boulevard Park) Reconstruction have been completed as follows:

Streets

- West Commerce Parkway, formerly Washington Boulevard Park, approximately 249 feet to and including the cul-de-sac which had previously been abandoned and the reconstructed area of the existing West Commerce Parkway roadway approximately 194 feet to and including the cul-de-sac.

Storm Sewer, Water and Sanitary Sewer Improvements

- West Commerce Parkway, right-of-way only.

; and,

WHEREAS, the developers of said street desire to have these improvements accepted and maintained by the City; and,

WHEREAS, the director of the Public Works and Engineering Department has determined that said improvements meet city standards and qualify for acceptance for permanent maintenance, and the City Council is of the opinion that said improvements should be accepted and maintained by the City of Beaumont;

NOW, THEREFORE, BE IT RESOLVED BY THE  
CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT the above-referenced street, storm sewer, water and sanitary sewer improvements in West Commerce Parkway (Washington Boulevard Park) Reconstruction, with the exception of streetlights, are hereby accepted by the City of Beaumont and shall

be continuously maintained by the City contingent upon filing of the final plat, complete with filings of dedication of all rights-of-way and easements required on the preliminary and final plats and installation of the streetlights.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 14th day of April, 2015.

---

- Mayor Becky Ames -

# BEAUMONT

TEXAS

## REGULAR MEETING OF THE CITY COUNCIL COUNCIL CHAMBERS    APRIL 14, 2015    1:30 P.M.

### AGENDA

#### CALL TO ORDER

- \* Invocation                      Pledge                      Roll Call
- \* Presentations and Recognition
- \* Public Comment: Persons may speak on scheduled agenda items 1-2/Consent Agenda
- \* Consent Agenda

#### GENERAL BUSINESS

1. Consider approving Chapter 380 incentives for economic development activities and authorizing the execution of Chapter 380 economic development agreements for a convention hotel and waterpark at Ford Park
2. Consider approving the award of a bid to LD Construction of Beaumont for the East Lucas Street Asphalt Resurfacing Project (Idylwood to Magnolia)

#### COMMENTS

- \* Councilmembers/City Manager comment on various matters
- \* Public Comment (Persons are limited to 3 minutes)

#### EXECUTIVE SESSION

- \* Consider matters related to contemplated or pending litigation in accordance with Section 551.071 of the Government Code:

Justin Jackson vs. City of Beaumont; Cause No. B-195,252

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Mitchell Normand at 880-3777 three days prior to the meeting.

**April 14, 2015**

Consider approving Chapter 380 incentives for economic development activities and authorizing the execution of Chapter 380 economic development agreements for a convention hotel and waterpark at Ford Park .

---

# BEAUMONT

TEXAS

**TO:** City Council

**FROM:** Kyle Hayes, City Manager

**PREPARED BY:** Tyrone E. Cooper, City Attorney

**MEETING DATE:** April 14, 2015

**REQUESTED ACTION:** Council consider a resolution approving Chapter 380 incentives for economic development activities and authorizing the execution of Chapter 380 economic development agreements for a convention hotel and waterpark at Ford Park

---

## BACKGROUND

The City of Beaumont has been approached by Pate Development, L.P., ZJZ Hospitality, Inc., and Innovative Leisure Partners with a proposal for the construction of a convention hotel and waterpark to be located at Ford Park. This project is intended to bolster local economic development by stimulating business and commercial activity within the city. The hotel is represented to be a full service, 200-room Embassy Suites Hotel with an adjacent waterpark described as a state of the art, first class waterpark. Innovative Leisure Partners will be the operator of the waterpark. ZJZ Hospitality, Inc. will operate the hotel. In order to make this project possible, the developers have approached the City and Jefferson County seeking economic development incentives in the form of hotel occupancy and ad valorem tax abatements. The developers have filed an application with the City for Chapter 380 economic development incentives in order to construct and operate the 200-room Embassy Suites Hotel and adjacent waterpark. The application has been reviewed and it has been determined that the proposed project does satisfy the purpose and goals of the program in that it will enhance the City's economic base and diversify and expand job opportunities.

The City of Beaumont has discussed with the developers tax abatement incentives in keeping with its Chapter 380 economic development program policies as follows: a ten (10) year ad valorem tax abatement for both the 200-room Embassy Suites Hotel and adjacent waterpark, as well as a twelve (12) year abatement of the City hotel occupancy tax for the hotel. It should be noted that the incentives for the hotel will only be available upon construction of the waterpark.

Additionally, in order to maintain sufficient controls to ensure that the public purpose is carried out, it is necessary to enter into economic development agreements with the developers establishing the expectations and terms of the transaction.

**FUNDING SOURCE**

Abated taxes.

**RECOMMENDATION**

The requested action is a resolution approving the Chapter 380 incentives and a resolution authorizing the execution of Chapter 380 economic development agreements for the hotel and waterpark.

RESOLUTION NO.

WHEREAS, the City of Beaumont has been approached by Pate Development, L.P., ZJZ Hospitality, Inc., and Innovative Leisure Partners with a proposal for the construction of a convention hotel and waterpark to be located at Ford Park; and,

WHEREAS, this project is intended to bolster local economic development by stimulating business and commercial activity within the city; and,

WHEREAS, the developers have approached the City and Jefferson County seeking economic development incentives in the form of hotel occupancy and ad valorem tax abatements and have filed an application with the City for Chapter 380 economic development incentives; and,

WHEREAS, the application has been reviewed and it has been determined that the proposed project does satisfy the purpose and goals of the program in that it will enhance the City's economic base and diversify and expand job opportunities; and,

WHEREAS, in order to maintain sufficient controls to ensure that the public purpose is carried out, it is necessary to enter into economic development agreements with the developer establishing the expectations and terms of the transaction; and,

WHEREAS, the City Council is of the opinion that approval of an application for Chapter 380 economic development incentives and entering into economic development agreements with Pate Development, L.P., ZJZ Hospitality, Inc., and Innovative Leisure Partners for a convention hotel and waterpark at Ford Park are in the best interest of the City of Beaumont and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE  
CITY COUNCIL OF THE CITY OF BEAUMONT:

THAT the statements and findings set out in the preamble to this resolution are hereby, in all things, approved and adopted; and,

THAT approval of an application for Chapter 380 economic development incentives for Pate Development, L.P., ZJZ Hospitality, Inc., and Innovative Leisure Partners for a convention hotel and waterpark at Ford Park is hereby approved; and,

BE IT FURTHER RESOLVED THAT the City Manager be and he is hereby authorized to execute economic development agreements with Pate Development, L.P., ZJZ Hospitality, Inc., and Innovative Leisure Partners for a convention hotel and waterpark at Ford Park. The agreements are substantially in the form attached hereto as Exhibits "1" and "2," and made a part hereof for all purposes.

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 14th day of April, 2015.

---

- Mayor Becky Ames -

CHAPTER 380  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
BETWEEN  
THE CITY OF BEAUMONT, TEXAS  
AND  
PATE DEVELOPMENT LP, ZJZ  
HOSPITALITY INC. or their assigns

EXHIBIT "1"

**CHAPTER 380**

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Chapter 380 Economic Development Incentive Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2015 by and among the City of Beaumont, Texas, a home rule city ("City") and Pate Development, a Texas Limited Partnership, and ZJZ Hospitality Inc. ("Developers").

**RECITALS**

WHEREAS, Jefferson County solicited proposals for the development of a Ford Park Convention Hotel and Water Park inside the City limits; and

WHEREAS, the Developers submitted a joint venture proposal for the development of a Convention Hotel and Water Park at Ford Park; and

WHEREAS, the Developers desires to develop a Water Park as more particularly described in the conceptual plan for the project attached hereto as Exhibit "A" (the "Project") and more particularly defined below, in Beaumont, Jefferson County, Texas; and

WHEREAS, the City has established a program in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to make loans or grants of public funds or other incentives for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the Developers have applied for development incentives from the City of Beaumont (**Exhibit "D"**); and

WHEREAS, the Beaumont City Council has adopted Resolution No. \_\_\_\_\_ authorizing City to make certain economic development incentives to Developers in recognition of, conditioned upon and derived from the positive economic benefits that will accrue to City through Developers' development of a Water Park project at a Capital Investment by Developers of at least \$10,000,000, all as more particularly described herein on **EXHIBIT "A,"** and

WHEREAS, the incentives to Developers under this Agreement are exclusively performance-based so that no abatements will be made to Developers until and unless the Water Park, as described below, are constructed and operational; and

WHEREAS, Developers estimate the total Capital Investment in the Project (as defined herein) will be a minimum of Ten Million Dollars (\$10,000,000), for the Water Park, all as more particularly described herein and in the field notes and metes and bounds attached hereto as **EXHIBIT "B,"** and

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Beaumont and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City and Developers; and

WHEREAS, the City recognizes the positive economic impact that the Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional tax revenue generated by the Project for the City; and

WHEREAS, in consideration of the development, construction and building of the Water Park, which will assist in stabilizing the existing Sales Tax Revenues, Property Tax Revenues and Hotel Occupancy Tax Revenues (as defined herein) to the City and create approximately seven (7) full time jobs and approximately one hundred ninety-three (193) part-time seasonal jobs located at the Project, the City agrees to use such funds in order to provide the Reimbursement Amount (as defined herein) to the Developers directly in the amounts described in Article V of this Agreement; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380 and other law, the Developers has agreed to comply with certain conditions to the payment of those benefits;

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developers agree as follows:

## **ARTICLE I** **REPRESENTATIONS**

1.1 Representations of the City. The City hereby represents to the Developers that as of the date hereof

(A) The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) The City has the power, authority and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof

(i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and

(ii) do not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

(D) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

1.2 Representations of the Developers. The Developers hereby represents to the City that as of the date of execution hereof;

(A) The Developers are duly authorized and existing and in good standing as a limited partnership under the laws of the State of Texas, and shall remain in good standing as such in the State of Texas during the Term of this Agreement.

(B) The Developers has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developers or of the provisions of Developers' partnership agreement or instrument to which Developers is a party or by which it may be bound, and (ii) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developers under any agreement or instrument to which the Developers is a party or by which the Developers or its assets may be bound or affected.

(C) The Developers agrees to provide evidence to the City, no later than the date it Commences Construction of the Water Park, which evidence is subject to the administrative approval of the City or its designee(s), whose approval shall not be unreasonably withheld, of sufficient available funds to perform its obligations under Article IV herein to complete the convention hotel and Water Park, at the time it needs to have the funds in order to do so.

(D) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developers, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

## **ARTICLE II** **DEFINITIONS**

The recitals to this Agreement are hereby incorporated for all purposes. The terms, "Agreement," "Chapter 380," "City," "Developers," and "Project," shall have the meanings as referenced above, and the following words or phrases shall have the following meanings:

2.1 "Act of Default" or "Default" means failure to timely, fully, and completely comply with one or more requirements, obligations, performance criteria, duties, terms, conditions or warranties, as stated in this Agreement.

2.2 "Annual Approved Spending Plan" means a detailed plan stating Developers' proposed use of Hotel Occupancy Tax revenues to be spent on the Project, accompanied by an opinion by the Texas Attorney General or other legal opinion, the source of which is agreed upon by Developers and City, confirming that said Spending Plan complies with the terms of Section 351 of the Texas Tax Code, as it may be amended from time to time, applicable to the Hotel Occupancy Tax Revenues.

2.3 "Assessed Taxable Value" means the taxable assessed ad valorem tax values set annually by the Jefferson County Appraisal District with respect to the Property, improvements, and tangible personal property included in the Project, including all improvements now or hereafter included therein, but excluding any assessed value attributable to the Property as of January 1, 2015 and excluding any assessed value attributable to inventory.

2.4 "Base Year Value" means the "Taxable Value" of all realty improvements of the Developers and/or its Affiliates, and which are located within the County as of January 1, 2015, as certified by the Jefferson County Appraisal District.

2.5 "Certificate of Occupancy" shall mean that document entitled "Certificate of Occupancy" (or other similar title) issued by City upon substantial completion of certain portions of the Project in accordance with all applicable codes, regulations, and ordinances of City. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, but shall include any temporary certificate of occupancy or other document authorizing temporary or conditional occupancy.

2.6 "Chapter 380 Payment(s)" means the amount(s) payable by City to Developers under Article V of this Agreement, to be paid from Property Tax Revenue or Hotel Occupancy Tax Revenue.

2.7 "Commence Construction" means (i) to commence the work of constructing the improvements or features with all approvals thereof required by applicable governmental authorities obtained as necessary; (ii) a notice to proceed has been issued to the contractor; (iii) onsite construction of the site development components (such as drainage, extensive grading or utilities) is underway and being pursued; and (iv) sufficient available funds are evidenced as required in Section 1.2 (C) herein.

2.8 "Completion" means, issuance of Certificates of Occupancy for the improvements or features for which Certificates of Occupancy may be issued, and all the improvements or features as outlined in Article IV are ready to Open for Business.

2.9 "Compliance" means timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty, condition or warranty as stated in this Agreement.

2.10 "Construction Sales and Use Tax Revenues" means the locally paid portion of sales and/or use tax revenues paid to the City by the Texas State Comptroller as the result of purchases of taxable items in connection with the construction of an improvement or feature of the Project during the term of the Agreement, with a goal to use suppliers and providers local to Beaumont.

2.11 "Continuously Operate" means (i) operation in accordance with the standards of operation of comparable facilities, without interruption for any reason other than Down Times and (ii) possession of all personal property and inventory necessary for the operation in accordance with the standard of operation of comparable facilities.

2.12 "Water Park Area" means an approximately 13.22 acre area depicted in Exhibits "A" and "B" that may include parking area similar to the space within the area depicted for the lease area.

2.13 "Development Fees" means any and all fees imposed by City upon Developers (including but not limited to Developers' affiliates, assigns, successors, related parties, contractors and subcontractors) in any way related to Developers' platting, zoning, permitting, designing, building, constructing or developing the Project. Development Fees shall include but not be limited to permitting/approval fees, inspection fees and supervision fees.

2.14 "Down Times" means temporary cessation of operation of all or substantially all of a facility for, and only for, limited periods of time for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) during the period following any fire or other casualty or condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent, and only to the extent, necessary to adjust the claim and take other actions related to the repair and restoration of the facility;

(b) as a result of such commercially reasonable interruptions for repairs, remodeling or installation of new equipment as are incidental to the normal operation of the facility after notice to the City with regard thereto;

(c) during any period required by applicable law, to the extent, and only to the extent, that the necessity of compliance is not the result of Developers' failure to timely fulfill its obligations under this Agreement;

(d) in keeping with the standard hours and days of operation of comparable facilities taking into account the seasonal nature of the Project and the fact that operation of portions of the Project are subject to weather conditions; or

(e) during any period of Force Majeure or during any period Developers, or any operator of any element of the Project reasonably deems it is socially irresponsible to operate all or part of the facilities due to circumstances which are not Force Majeure but under which a socially responsible operator would temporarily curtail or cease operations, such as if a pervasive flu or other communicable illness were present or threatened; provided, however, that during the Down Times described in clauses (a) through (e) above, Developers shall (i) use its commercially reasonable efforts to minimize the disruption of such Down Time and (ii) use its commercially reasonable efforts to minimize the disruption to the areas of the facility which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the facility.

"Effective Date" means the first date by which this Agreement has been signed by all of the parties hereto.

2.15 "Eligible Property" means that property identified and described in Exhibit "B" which is eligible for the tax incentives provided for herein.

2.16 "Federal Bankruptcy Code" means Title 11, United States Code, as amended, and any successor statute.

2.17 "Fiscal Year" shall mean the twelve consecutive month period designated by the City as its fiscal year. As of the date of this Agreement, the City's fiscal year commences on October 1 and ends on September 30.

2.18 "Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's negligence or willful misconduct and (d) could not be avoided by the Party who suffers it by the exercise of commercially reasonable efforts (provided that such commercially reasonable efforts shall not require such Party to expend a material amount of money to avoid the act giving rise to a Force Majeure). Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include but not be limited to: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disruption, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) the unavailability of necessary and essential equipment or supplies; (vii) a breach by the City of this Agreement or any other actions, omissions of or delays by a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach or noncompliance by the affected Party of its obligations under this Agreement or any applicable law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition; or (C) weather conditions which could be

anticipated by experienced contractors operating at the relevant location and exercising commercially reasonable business judgment.

2.19 "Hotel" means a 200 room Embassy Suites Convention Hotel.

2.20 "Insolvent" means failure to timely pay debts in the ordinary course of business or failure to pay all debts when and as they become due, or insolvent within the meaning of the Federal Bankruptcy Code.

2.21 "Licensing Agreement" has the meaning assigned to such term in Article IV.

2.22 "Management Agreement" has the meaning assigned to such term in Article IV.

2.23 "Maximum City Commitment" shall mean the largest commitment due by the City to the Developers as determined in Article. V.

2.24 "Open for Business" means open for full-time business operations with products and/or services that are necessary for Continuous Operation of the Water Park.

2.25 "Property Tax Revenues" means the M&O portion only of the City ad valorem taxes attributable to a completed feature or improvement of the Project for the Term of the Agreement and collected by the City in each Fiscal Year.

2.26 "Reimbursement Amount" shall mean the portion of the Property Tax Revenues, that the City agrees to pay to the Developers during the Term of the Agreement, but limited to the maximum City Commitment as stated herein, if the Developers satisfies the conditions thereto stated in this Agreement. The Reimbursement Amount shall not include any other revenues or other fees collected by the City from the Project.

2.27 "Reimbursement Account" shall mean the special account created by the City as described in Article V of this Agreement.

2.29 "Term" means the period defined in Article III of this Agreement.

2.30 "Waterpark"/ "Project" means a waterpark costing a minimum of \$10Million and include but not be limited to such elements as tube chutes, momentum rivers, torrent rivers, water slides, pools, shade structures, and other elements typically found in a three (3) acre or greater waterpark.

### **ARTICLE III**

#### **TERM**

The term of this Agreement (the "Term") will begin on the Effective Date and will terminate upon the first to occur of (a) Ten (10) full calendar years after the Completion of the Project; (b) payment in full from City to Developers of the entire City Commitment contemplated herein; or (e) termination as provided for herein.

### **ARTICLE IV**

#### **DEVELOPERS REQUIREMENTS**

4.1 Development of Project. If the Developers performs the following requirements, pertaining to the Water Park, City agrees to pay the Chapter 380 Payments as stated in this Agreement with respect to the Project:

(A) If Developers achieves Completion of the Water Park within the time frame described below, subject to extension for Force Majeure or delay due to meeting governmental environmental compliance requirements, Developers shall receive the Chapter 380 Payments as stated herein. Should Developers fail to achieve Completion of the Water Park within this time frame Developers shall forfeit all Chapter 380 Payments and this Agreement shall terminate.

(B) Developers must Commence Construction of the Water Park no later than Fifteen (15) months after the Effective Date of this Agreement, subject to extension upon approval by the City Manager or designee, and must reach Completion of the Water Park no later than Thirty Six (36) months after it Commences Construction, subject to extension upon approval by the City Manager or his designee. Notwithstanding the foregoing, this Section 4.1 (B) is subject to whole or partial exception only if approved by Resolution of the Beaumont City Council.

(C) The Developers shall pay, or cause third parties to pay, its engineering, planning, accounting, architectural, legal fees and expenses, survey, testing, laboratory costs, license fees, land clearing and grading costs, advertising and other bidding costs, amounts due under construction contracts, costs of labor and material, insurance premiums, interest, carry cost, financing fees and other costs and expenses incurred in connection with the construction of Developers improvements and features.

(D) If requested by the City, the Developers must reasonably assist the City in the preparation of any documentation necessary to enable the City to prepare and obtain approval of any of the documents or actions required of the City to perform any of its obligations under this Agreement. The City shall not be responsible for any of such costs out of its current revenues or other sources, except in accordance with payment of Chapter 380 Payments to the Developers as provided in this Agreement.

(E) Upon Completion of the Project and during the term of this Agreement, the Developers and/or its designee shall maintain the property, improvements and premises in a commercially reasonable manner, comparable to the maintenance of similar establishments, and minimize Down Times.

(F) Developers may spend Chapter 380 Payments received as Reimbursement Amounts or in satisfaction of other City Commitment on improvements or other lawful uses only within the Project boundaries.

4.2 Operational Requirement. During the Term following Completion of a Water Park on the Ford Park Project site, a Water Park must be Continuously Operated, subject only to seasonal considerations, legitimate Down Time, or to Force Majeure. If a Water Park once in operation is not Continuously Operated during any calendar year, subject to the foregoing, then upon written notice thereof being given to Developers or Operator by the City and the failure of Developers, within sixty (60) days after the city gives said notice, to commence Continuous Operation of the Water Park, Developers shall not be entitled to any Chapter 380 Payments for the remainder of the Term unless Developers obtains a Variance under Section 13.18 herein. Failure of the Water Park to Continuously Operate as defined herein will be considered an incident of default and will jeopardize the Chapter 380 payments to both the Water Park Developers and the Hotel Developers for the remainder of the term.

4.3 Trade name and Related Matters. Prior to when Developers Commence Construction of the Water Park, (and as a condition precedent to such being deemed to have occurred), Developers shall enter into a Management agreement (the "Management Agreement") (Exhibit "D") and a licensing agreement (the "Licensing Agreement") (Exhibit "E") with an operator.

4.4 Management. The Management Agreement (**Exhibit "C"**) will provide that (i) Developers and operator will include the trade name described in Section 4.4 and "Beaumont" in the signage and promotional materials pertaining to the Water Park so long as the Licensing Agreement is in full force and effect and (ii) the operator will operate the Water Park and will, among other things, provide the employees and the expertise and management required for such operation. If the Management Agreement is terminated or expires during the Term of this Agreement, City shall have the right to approve the replacement operator or the replacement party who does so control the operations and policies of the operator, as applicable, provided in all events City shall exercise its approval right in a reasonable manner. If City and Developers are not able to agree on a replacement operator or a replacement control party for operator within sixty (60) days following the recommendation of Developers or operator, as applicable, Developers may proceed to retain the replacement operator or operator may transfer control to the replacement control party, as applicable, but City may elect to suspend payment of any further Chapter 380 Payments for the Water Park Project and any expansion of the Water Park Project in the event that during the thirty-six (36) month period immediately subsequent to such replacement, for a period of twelve (12) consecutive months the Water Park (i) fails to achieve revenue at least equal to eighty percent (80%) of its revenue during the twelve (12) months immediately preceding such replacement; or (ii) it is not operated and maintained to the same standards of operation, maintenance, and aesthetics as water parks in demographically similar markets, including with respect to safety.

4.5 Compliance with City Standards. Developers acknowledges that, unless specifically otherwise provided in this Agreement, development of the Project must comply with all applicable City codes and ordinances. For any development requirements not covered in this Section or in the remainder of the Agreement, the applicable City code and ordinance provisions shall control.

## **ARTICLE V**

### **PROJECT FINANCING AND FUNDING**

5.1 Project Financing: Reimbursement Account / Reimbursement Amount. The City hereby covenants and agrees upon the Effective Date of this Agreement to create a special account (the "Reimbursement Account") for the benefit of the Developers for the purpose of paying the Reimbursement Amount. The City shall fund the Reimbursement Account through the Term of this Agreement from the following sources and in the following manner: (i) with respect to the portion of the Reimbursement Amount calculated based on the M&O portion only of the Property Tax Revenues, the City shall annually fund the Reimbursement Account from the M&O portion only of the Property Tax Revenues collected within the Project. The City shall establish a separate account for Reimbursement. This account shall always remain unencumbered by the City and segregated from all other funds of the City.

#### 5.2 City Commitment.

(A) Pursuant to its authority under Chapter 380, the City hereby agrees to pay the Reimbursement Amount to the Developers. It is intended by the parties that the Reimbursement Amount will be paid by the City solely out of the Reimbursement Account and used to make Chapter 380 Payments to the Developers as provided in this Agreement (the "City Commitment"). The City Commitment will commence upon Completion of the Water Park and will continue through and until the Reimbursement Amount has been paid. The City agrees that it will pay the Reimbursement Amount during the term of this Agreement, as an unconditional obligation of the City (but solely from the Reimbursement Account), if the Project is Commenced and Completed as required herein and generates the Reimbursement Amount. The reimbursement will not begin until the Water Park is completed and operational.

(B) The Parties agree that the maximum City Commitment shall be as stated in Sections 5.3 and

6.1 herein, and such obligation on behalf of the City will be limited solely to the funds deposited into the Reimbursement Account pursuant to this Agreement. Upon such time as the City has paid the maximum City Commitment in full, the City shall have no further obligation under this Agreement.

(C) Property Tax Revenues. During the Term of this Agreement, the City shall determine annually the amount of the Property Tax Revenues received by the City and attributable to completed features within the Project boundaries in cooperation with the Developers. The City hereby agrees to deposit into the Reimbursement Account annually from available funds in the City's General Fund an amount equal to the M&O portion only of said Property Tax Revenues in the percentages stated in Section 5.3 herein, and hereby pledges such fund to the payment of the City Commitment as provided herein. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Account, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of the Developers during normal business hours upon request made not less than five (5) business days prior to the date of such examination. The City shall maintain such books and records throughout the term of this Agreement and store the same for four years thereafter.

### 5.3 Reimbursement Amounts to be Paid by City to Developers.

Property Tax Revenues: Developers shall provide the City an annual paid property tax bill, no later than March 1 of each year, stating Developers' figures attributable to the completed features within the Project boundaries and the corresponding amount of Property Tax Revenues. Within Sixty (60) days of receiving written request from Developers, accompanied by all reasonable supporting documentation from Developers that it has fully complied with its performance requirements, subject to the satisfaction of Developers' Commitments under Article IV herein and Developers' timely and full compliance with all applicable terms and conditions contained in this Agreement, City shall pay to Developers the applicable Chapter 380 Payments attributable to the completed features of the Water Park within the Project boundaries based on the percentages stated below for the applicable Tax Revenues collected by City on the completed Water Park features, subject to the limitations set forth herein. Developers may spend said Chapter 380 Payments received as Reimbursement Amounts or in satisfaction of other City Commitment on improvements or other lawful uses only within the Project boundaries.

## **ARTICLE VI** **COMMITMENT OF PARTIES**

6.1 The City Incentive Commitment to the Water Park Project is as follows:

Ad Valorem Tax abatement reimbursement at 100% for a period of ten (10) years.

6.2 The obligation and commitment of the Developers is as follows:

(A) Developers are obligated to construct and maintain during the term of this agreement a Water Park with a minimum of a ten acre area together with at least a \$10 million Water Park improvement.

## **ARTICLE VII** **COVENANTS, WARRANTIES, OBLIGATIONS AND DUTIES** **OF DEVELOPERS AND OPERATOR**

If the Developers shall have made any false or substantially misleading statement herein or failed to timely and fully perform as required in this Agreement, such shall be an Act of Default by Developers,

subject to Section 11.1 herein. Failure to fully comply with any one covenant or warranty shall constitute an Act of Default by Developers, subject to Section 11.1 herein. Developers, as of the Effective Date, make the following covenants and warranties to City, and agrees to timely and fully perform the following obligations and duties.

7.1 Litigation. No litigation or governmental proceeding is pending or, to the knowledge of Developers, or its respective general partner and officers, threatened against or affecting Developers, or the Property that may result in any material adverse change in Developers' business, properties or operation.

7.2 Untrue Statements. To the best of its knowledge, no certificate or statement delivered by Developers to City in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading except those which have been replaced by subsequent certificates or statements heretofore given to the City in substitution.

7.3 Bankruptcy. There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Developers has not been informed of any potential involuntary bankruptcy proceedings.

7.4 Licenses and Authority. To the best of its knowledge, Developers have acquired and maintained all necessary rights, licenses, permits and authority to carry on its respective businesses in Beaumont, Texas, and will continue to use commercially reasonable efforts to maintain all necessary rights, licenses, permits and authority to do so.

7.5 Payment of Taxes. Developers shall timely pay all taxes due and owing by it to all taxing authorities having jurisdiction. In addition, Developers shall timely pay all employment, income, franchise, and all other taxes hereafter to become due and owing by it, respectively, to all local, state, and federal entities subject, however to its right to contest the same in a lawful manner.

7.6 Timely Commencement; Continuous Operations. Developers acknowledge and agrees that if it fails to Commence Construction of the Water Park and pursue its Completion within the time periods herein provided, and Operator acknowledges and agrees that if the operator fails to Continuously Operate the Water Park as herein provided, in either of said cases or events, the City has the right to terminate this Agreement as herein provided.

7.7 Management Changes. Developers shall notify City in writing of any substantial changes in management of Developers or operator within seven (7) days after Developers' or operator's knowledge thereof. Substantial changes mean changes in Chairman of the Board, President, or Chief Executive Officer.

7.8 Ownership Changes. Developers shall notify City in writing of any changes in ownership of any part of the Project or of Developers or operator within seven (7) days after Developers' or operator's knowledge thereof.

7.9 Succession of Ownership. No change of ownership or management of any part of the Project and/or a change of ownership or management of Developers or of operator shall abate, waive, terminate or in any way relieve Developers of its respective obligations herein.

7.10 Non-discrimination. Developers agree that, as to all of the programs and activities arising out of this Agreement, it will not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled.

7.11 Lessee/Owner Lists. Developers or operator shall provide to City in writing lists of all Project tenants or other persons making sales or purchases of taxable items or real property in the Project, (the "Lessee/Owner List"). Developers or operator will periodically and timely notify City of changes to the Lessee/Owner List. Developers and operator are responsible as herein provided for supplying to City such identifying information for each person on the Lessee/Owner List as is required by the Comptroller to issue their sales tax area reports.

7.12 Employment of Undocumented Workers. The Developers does not and agrees that it will not knowingly employ any undocumented worker.

### ARTICLE VIII

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### ARTICLE IX SUSPENSIONS/TERMINATION

Subject to the terms of Article V herein, City, under the following circumstances, and at its sole discretion, may temporarily suspend making Chapter 380 Payments under this Agreement and/or terminate this Agreement, without liability to Developers, and all future payment obligations shall automatically cease upon anyone of the following events:

9.1 Receiver. The appointment of a receiver for Developers, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

9.2 Bankruptcy. The adjudication of Developers as a bankrupt.

9.3 Bankruptcy Petition. The filing by Developers of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

9.4 Failure to Comply with Audit Requirements. The failure of Developers or Operator to reasonably cooperate with the City in the monitoring process described in Article X below.

### ARTICLE X REPORTING AND AUDITING

10.1 Audit by the City. The City may audit Developers' and operator's records to determine their compliance with the terms of this Agreement. This audit will be done by the City on an annual basis in March of each year. During the monitoring process, the City will make maximum use of any State submissions for the determination of Reimbursement Amount. Developers and operator shall provide the City an annual report, no later than March 1 of each year, stating Developers' and operator's figures attributable to the completed features within the Project boundaries and the corresponding amount of Ad Valorem, Property Tax paid to the City by Developers.

10.2 Access to Records / Right to Audit. Developers and operator, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and

information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

## **ARTICLE XI** **DEFAULT**

11.1 Default. Subject to Force Majeure and any consent given under Section 11.2 or Variance granted under Section 13.18, should Developers fail to timely, fully and completely keep or perform any one or more of the covenants or warranties made by Developers in this Agreement (but excluding achieving satisfaction of any condition to the Developers' right to receive Chapter 380 Payments under this Agreement), such failure to perform shall be an Act of Default by Developers and, if not cured and corrected within sixty (60) days after written notice to do so or by express waiver by the Beaumont City Council, City may terminate this Agreement and cease making any further Chapter 380 Payments which have not been earned by performance by Developers theretofore. Developers shall be liable to City for any actual damages sustained by the City as a result of said Act of Default by Developers under this Agreement, subject to the provisions of Section 13.20.

11.2 Consent and Excuse. In the event of unforeseeable third party delays which are not Force Majeure and upon a reasonable showing by Developers that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using commercially reasonable efforts, the Beaumont City Council may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld, delayed, or conditioned.

11.3 City Delay. Any delay for any amount of time by City in providing notice of Default to Developers or Operator hereunder, shall in no event be deemed or constitute a waiver of such Default by City of any of its rights and remedies available in law or in equity.

11.4 City Waiver. Any waiver granted by City to Developers or Operator of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Developers or of a subsequent Act of Default of the same act or event by Developers.

## **ARTICLE XII** **CITY'S LIABILITY LIMITATIONS**

Should City fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by City and City shall have sixty (60) days to cure and remove the Default after receipt of written notice to do so from Developers or Operator.

## **ARTICLE XIII** **MISCELLANEOUS PROVISIONS**

13.1 Sign Permitting. Prior to submitting any building permit applications for any sign, Developers shall obtain necessary approval from City for plans for signs in compliance with City codes and ordinances.

13.2 Permitting. Subject to Developers' complying with all applicable laws, City agrees to cooperate with Developers to expeditiously process permits, including plat applications, site plan applications, building permit applications, building and construction inspections required for the Project to be in a state of Completion.

13.3 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

13.4 Assignment. Except as provided below, Developers may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City, which approval will not be unreasonably withheld, delayed or conditioned. The City does, however, in the best interest of the citizens of Beaumont, reserve the right to exercise its right to withhold approval should it reasonably determine that a prospective third party does not satisfy the requirements established herein. The City agrees, however, that the Developers may assign all or part of its rights and obligations under this Agreement to any entity affiliated with the Developers by reason of controlling, being controlled by, or being under common control with the Developers; to a subsequent Developers of all or any part of the Project; to a tenant in the Project or to a third party lender or REIT advancing funds for the construction or operation of the Project. The City expressly consents to any assignment described in the preceding sentence, and agrees that no further consent of City to such an assignment will be required. The Developers agrees to provide City with written notice of any such assignment.

13.5 Termination. If Developers elects not to proceed with the development of a Water Park as contemplated by this Agreement, Developers will notify City in writing, and this Agreement and the obligations of the parties will be deemed terminated and of no further force or effect as of the date of such notice Developers and all parties shall be fully released of any further obligations under this Agreement relating to Project.

13.6 Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the party, or an agent of the party; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective three (3) business days after deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Developers: Pate Development, LP  
Attention: Britt Pate

550 N. 159<sup>th</sup> St. E., Suite 204

Wichita, Kansas 67230

Ph: (316) 448-1000

Facsimile: (316) 219-5256

Deven Bhakta

ZJZ Hospitality Inc.

4639 Corona Drive, Suite 55

Corpus Christi, TX. 78411

with a copy to:

Attorney: David G. Crockett

1005 N. Market

Wichita, Kansas 67214

Ph: (316) 263-9662

Facsimile: (316) 263-7220

with a copy to:

City: City of Beaumont Attn.: City Manager  
P.O. Box 3827  
Beaumont, Texas 77704  
Ph: (409) 880-3716  
Facsimile: (409) 880-3112

with a copy to:

City Attorney  
P.O. Box 3827 Beaumont,  
Texas 77704 Ph. (409) 880-  
3715  
Facsimile: (409) 880-3121

Any party may designate a different address at any time by giving Notice to the other party.

13.7 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.

13.8 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither City, nor its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

13.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

13.10 Paragraph Headings, Etc. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

13.11 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

Indemnity:

13.12 Developers agrees to defend, indemnify and hold harmless City, including its employees, agents and representatives (collectively indemnitees), from and against any claim, demand, cause of action, liability, loss or expense arising from injury, death or from damage to or loss of property to

the extent arising directly or indirectly or out of any acts or omissions of Developers, its contractors or subcontractors. Developers' defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Indemnitees or arising from use by Developers of construction equipment, tools, signs or facilities furnished to Developers by Indemnitees.

13.13 Developers' defense and indemnity obligations shall include the duty to reimburse any attorney's fees and expenses incurred by Indemnitees for legal action to enforce Developers' indemnity obligations. Developers' duty to defend Indemnitees shall be independent and in addition to the duty to indemnify and hold harmless, such that Developers shall not be entitled to reimbursement from Indemnitees for defense costs and attorneys' fees incurred in defending Indemnitees, even in the event that a claim proves to lack merit. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by Developers or any of its contractors or subcontractors under Workers' Compensation acts, disability acts or other employee benefits. In the event Developers is obligated to defend City, Developers shall provide competent counsel for such defense within ten (10) calendar days of City's request for defense. In the event Developers does not provide counsel within such time period, then City may appoint its own counsel, which will be for Developers' account until Developers substitutes counsel of its choice acceptable to the City.

13.14 In the event that the indemnity provisions in this Contract are contrary to the law governing this Contract, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by applicable law.

#### Insurance:

13.15 Developers shall, at its sole cost, require its contractors and subcontractors of all tiers to, obtain and maintain in force for the duration of the Contract insurance of the following types, with limits not less than those set forth below for: 1) all Developers' work, both on and off worksite, and 2) all contractors' and subcontractors' work on and off the worksite.

13.15.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the State of Texas with a minimum limit of (proper amount TBD) per accident and, for bodily injury by disease of (proper amount TBD) per employee. Developers shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

13.15.2 Commercial General Liability Insurance with a minimum combined single limit of liability of (proper amount TBD) each occurrence for bodily injury and property damage; with a minimum of liability of (proper amount TBD) each person for personal and advertising injury liability. The policy shall be endorsed by City, including its respective agents and representatives as additional insureds with coverage identical to those provided in this section.

13.15.3 Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of (proper amount TBD) per occurrence.

13.15.4 If Developers will utilize tools or equipment in the performance of its services under the Contract, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and vehicles shall be obtained.

13.15.5 All insurance provided by Developers under this Section 13.15 shall include a waiver of subrogation by the insurers in favor of City. Developers hereby releases City, including its employees, agents and representatives, for losses or claims for bodily injury, property damage or other insured claims, REGARDLESS OF THE CAUSE INCLUDING NEGLIGENCE OF CITY, arising out of Developers' performance under the Contract.

13.15.6 Certificates of Insurance satisfactory in form to City shall be supplied to City evidencing that the insurance required above is in force, that not less than thirty (30) days written notice will be given to City prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Developers shall also provide with its Certificate of Insurance executed copies of the additional insured endorsements and dedicated limits endorsements required in this Article 13.16.

13.15.7 Additional Insured: Developers will add City to its Comprehensive General Liability Insurance Policy as an additional insured to be given the same liability insurance coverage as Developers. Developers shall also provide with its Certificate of Insurance executed copies of the additional insured endorsements and dedicated limits endorsements.

13.15.8 Certificates of Insurance satisfactory in form to City shall be supplied to City evidencing that the insurance required above is in force, that not less than thirty (30) days written notice will be given to City prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force.

13.16 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

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

- Exhibit "A:" Water Park Project Description
- Exhibit "B:" Project Boundaries: Field Notes/Metes and Bounds
- Exhibit "C:" Management Agreement
- Exhibit "D:" Application for 380 Incentives

13.18 Variances. The Beaumont City Council, in its sole discretion, may grant and approve variances to Developers or Operator from the performance criteria and development standards described herein upon application in writing therefore by Developers on behalf of itself or the Operator.

13.19 Balance Owed under the Agreement. The total amount of money awarded in an adjudication brought against City for breach of this Agreement is limited to the following: (i) the balance then due and owed by City under the Agreement plus any balance which may become due by City during the remaining term of the Agreement, including any amendments thereto; (ii) interest as allowed by law; and (iii) attorney's fees as allowed by law.

13.20 Damages not included. Damages awarded in an adjudication brought against City or Developers arising under the Agreement, including any amendments thereto, may not include: (i) consequential damages, except as expressly allowed under Section 13.19 above; (ii) exemplary damages; or (iii) damages for unabsorbed home office overhead.

#### **ARTICLE XIV** **GENERAL TERMS**

14.1 Entire Agreement. This Agreement embodies the complete Agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

14.2 Law. This Agreement is subject to all legal requirements in City Charter and Code of Ordinances of City of Beaumont, Texas and all other applicable County, State and Federal laws, and Developers and Operator agree that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of laws provisions of Texas law.

14.3 Venue. Venue for any legal action related to this Agreement is in Jefferson County, Texas.

14.4 Confidential. City, its officers and employees, and its agents or contractors retained to perform economic development services for City, shall treat as confidential the financial statements and information together with any proprietary information delivered by Developers, Operator or their respective representatives to City and its representatives and shall not release such information to the public, unless required by law or court order. City shall immediately notify Developers of requests or court orders to release such information.

14.5 Exhibits. Exhibits "A" through "E" attached hereto are made a part of this Agreement for all purposes as if they were set forth herein in their entirety.

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EXECUTED to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015  
**PATE DEVELOPMENT, L.P.**

Signed on this 7<sup>th</sup> day of APRIL, 2015

By: [Signature]  
Brian Pate, President of General Partner

**ZJZ HOSPITALITY, INC.**

Signed on this 7<sup>th</sup> day of APRIL, 2015

By: [Signature]  
Deven Bhakta

**CITY OF BEAUMONT, TEXAS, a home-rule municipal corporation**

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2015

ATTEST:  
Tina Broussard, City Clerk

CITY OF BEAUMONT  
Kyle Hayes, City Manager

CHAPTER 380  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
BETWEEN  
THE CITY OF BEAUMONT, TEXAS AND  
PATE DEVELOPMENT, L.P.  
AND  
ZJZ HOSPITALITY, INC.

EXHIBIT "2"

## CHAPTER 380

### ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Chapter 380 Economic Development Incentive Agreement ("Agreement") is entered into as of \_\_\_\_\_, 2015 by and among the CITY OF BEAUMONT, TEXAS, a home rule city ("City"), ZJZ Hospitality, Inc., a Texas corporation ("Operator" and "Developer"), and Pate Development, L.P, a Texas limited partnership or its assigns ("Developer").

#### RECITALS

WHEREAS, Jefferson County solicited proposals for the development of a Ford Park Convention Hotel and Waterpark inside the City limits; and

WHEREAS, the Developers submitted a proposal for the development of a Convention Hotel and Waterpark at Ford Park; and

WHEREAS, the Developers desire to develop a 200 room Embassy Suites Convention Hotel as more particularly described in the conceptual plan for the project attached hereto as Exhibit "A" (the "Project") as more particularly defined below), in Beaumont, Jefferson County, Texas; and

WHEREAS, the City has established a program in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") under which the City has the authority to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the Developers have applied for development incentives from the City of Beaumont (**Exhibit "E"**); and

WHEREAS, the Beaumont City Council has adopted Resolution No. \_\_\_\_\_ authorizing City to make certain economic development incentives to Developers in recognition of, conditioned upon and derived from the positive economic benefits that will accrue to City through Developers' development of a convention hotel project at an approximate Capital Investment by Developers of \$30,000,000, all as more particularly described herein on **EXHIBIT "A;"** and

WHEREAS, the incentives to Developers under this Agreement are exclusively performance-based so that no abatements will be made to Developers until and unless the 200 room Embassy Suites Convention Hotel and Waterpark, as described below, are constructed and operated; and

WHEREAS, Developers estimate the total Capital Investment in the Project (as defined herein) will be approximately Thirty Million Dollars (\$30,000,000), for the convention suites hotel, all as more particularly described herein and in the field notes and metes and bounds attached hereto as **EXHIBIT "B,"**; and

WHEREAS, the City has concluded and hereby finds that this Agreement promotes economic development in the City of Beaumont and, as such, meets the requirements under Chapter 380 and the City's established economic development program, and, further, is in the best interests of the City, Developers and Operator; and

WHEREAS, the City recognizes the positive economic impact that the Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new businesses, and the additional tax revenue generated by the Project for the City; and

WHEREAS, in consideration of the development, construction and building of the 200 room Embassy Suites convention hotel, which will assist in stabilizing the existing Sales Tax Revenues, Property Tax Revenues and Hotel Occupancy Tax Revenues (as defined herein) to the City and create approximately fifty-one (51) full time equivalent (FTE) jobs located at the Project, the City agrees to use such funds in order to provide the Reimbursement Amount (as defined herein) to the Developers directly in the amounts described in Article V of this Agreement; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380 and other law, the Developers have agreed to comply with certain conditions to the payment of those benefits;

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developers agree as follows:

## **ARTICLE I** **REPRESENTATIONS**

1.1 Representations of the City. The City hereby represents to the Developers that as of the date hereof

(A) The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas under the laws of the State of Texas and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

(B) The City has the power, authority and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery and performance hereof  
(i) will not, to the best of its knowledge, violate any applicable judgment, order, law or regulation, and  
(ii) do not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the City under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

(C) This Agreement has been duly authorized, executed and delivered by the City and, constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms

except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

(D) The execution, delivery and performance of this Agreement by the City does not require the consent or approval of any person which has not been obtained.

1.2 Representations of the Developers. The Developers hereby represent to the City that as of the date of execution hereof;

(A) The Developers are duly authorized and existing and in good standing as a limited partnership under the laws of the State of Texas, and shall remain in good standing as such in the State of Texas during the Term of this Agreement.

(B) The Developers have the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to the Developers or of the provisions of Developers' partnership agreement or instrument to which Developers are a party or by which it may be bound, and (ii) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Developers under any agreement or instrument to which the Developers are a party or by which the Developers or their assets may be bound or affected.

(C) The Developers agrees to provide evidence to the City, no later than the date it Commences Construction of the 200 room Embassy Suites Convention Hotel, which evidence is subject to the administrative approval of the City or its designee(s), whose approval shall not be unreasonably withheld, of sufficient available funds to perform its obligations under Article IV herein to complete the convention hotel and water park, at the time it needs to have the funds in order to do so.

(D) This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Developers, enforceable in accordance with its terms except to the extent that (i) the enforceability of such instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies including specific performance may be unavailable.

## **ARTICLE II** **DEFINITIONS**

The recitals to this Agreement are hereby incorporated for all purposes. The terms, "Agreement," "Chapter 380," "City," "Developers," "Operator," and "Project," shall have the meanings as referenced above, and the following words or phrases shall have the following meanings:

2.1 "Act of Default" or "Default" means failure to timely, fully, and completely comply with one or more requirements, obligations, performance criteria, duties, terms, conditions or warranties, as stated in this Agreement.

2.2 "Annual Approved Spending Plan" means a detailed plan stating Developer's proposed use of Hotel Occupancy Tax revenues to be spent on the Project, accompanied by an opinion by the Texas Attorney General or other legal opinion, the source of which is agreed upon by Developers and City, confirming that said Spending Plan complies with the terms of Section 351 of the Texas Tax Code, as it may be amended from time to time, applicable to the Hotel Occupancy Tax Revenues.

2.3 "Assessed Taxable Value" means the taxable assessed ad valorem tax values set annually by the Jefferson County Appraisal District with respect to the Property, improvements, and tangible personal property included in the Project, including all improvements now or hereafter included therein, but excluding any assessed value attributable to the Property as of January 1, 2015 and excluding any assessed value attributable to inventory.

2.4 "Base Year Value" means the "Taxable Value" of all realty improvements of the Developers and/or their Affiliates, and which are located within the County as of January 1, 2015, as certified by the Jefferson County Appraisal District.

2.5 "Certificate of Occupancy" shall mean that document entitled "Certificate of Occupancy" (or other similar title) issued by City upon substantial completion of certain portions of the Project in accordance with all applicable codes, regulations, and ordinances of City. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, but shall include any temporary certificate of occupancy or other document authorizing temporary or conditional occupancy.

2.6 Chapter 380 Payment(s)" means the amount(s) payable by City to Developers under Article V of this Agreement, to be paid from Property Tax Revenue or Hotel Occupancy Tax Revenue.

2.7 "Commence Construction" means (i) to commence the work of constructing the improvements or features with all approvals thereof required by applicable governmental authorities obtained as necessary; (ii) a notice to proceed has been issued to the contractor; (iii) onsite construction of the site development components (such as drainage, extensive grading or utilities) is underway and being pursued; and (iv) sufficient available funds are evidenced as required in Section 1.2 (C) herein.

2.8 "Completion" means, issuance of Certificates of Occupancy for the improvements or features for which Certificates of Occupancy may be issued, and all the improvements or features as outlined in Article IV are ready to Open for Business.

2.9 "Compliance" means timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty, condition or warranty as stated in this Agreement.

2.10 "Construction Sales and Use Tax Revenues" means the locally paid portion of sales and/or use tax revenues paid to the City by the Texas State Comptroller as the result of purchases of

taxable items in connection with the construction of an improvement or feature of the Project during the term of the Agreement, with a goal to use suppliers and providers local to Beaumont.

2.11 "Continuously Operate" means (i) operation in accordance with the standards of operation of comparable facilities, without interruption for any reason other than Down Times and (ii) possession of all personal property and inventory necessary for the operation in accordance with the standard of operation of comparable facilities.

2.12 "Convention Hotel Area" means an approximately 3.329 acre area depicted in Exhibits "A" and "B" that may include parking area similar to the space within the area depicted for the lease area.

2.13 "Development Fees" means any and all fees imposed by City upon Developers (including but not limited to Developer's affiliates, assigns, successors, related parties, contractors and subcontractors) in any way related to Developer's platting, zoning, permitting, designing, building, constructing or developing the Project. Development Fees shall include but not be limited to permitting/approval fees, inspection fees and supervision fees.

2.14 "Down Times" means temporary cessation of operation of all or substantially all of a facility for, and only for, limited periods of time for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) during the period following any fire or other casualty or condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent, and only to the extent, necessary to adjust the claim and take other actions related to the repair and restoration of the facility;

(b) as a result of such commercially reasonable interruptions for repairs, remodeling or installation of new equipment as are incidental to the normal operation of the facility after notice to the City with regard thereto;

(c) during any period required by applicable law, to the extent, and only to the extent, that the necessity of compliance is not the result of Developer's failure to timely fulfill its obligations under this Agreement;

(d) in keeping with the standard hours and days of operation of comparable facilities taking into account the seasonal nature of the Project and the fact that operation of portions of the Project are subject to weather conditions; or

(e) during any period of Force Majeure or during any period Developers, Operator or any other operator of any element of the Project reasonably deems it is socially irresponsible to operate all or part of the facilities due to circumstances which are not Force Majeure but under which a socially responsible operator would temporarily curtail or cease operations, such as if a pervasive flu or other communicable illness were present or threatened; provided, however, that during the Down Times described in clauses

(a) through (e) above, Developers and Operator shall (i) use their commercially reasonable efforts to minimize the disruption of such Down Time and (ii) use their commercially reasonable efforts to minimize the disruption to the areas of the facility which remain open to

the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the facility.

2.15 "Effective Date" means the first date by which this Agreement has been signed by all of the parties hereto.

2.16 "Eligible Property" means that property identified and described in Exhibit "B" which is eligible for the tax incentives provided for herein.

2.17 "Federal Bankruptcy Code" means Title 11, United States Code, as amended, and any successor statute.

2.18 "Fiscal Year" shall mean the twelve consecutive month period designated by the City as its fiscal year. As of the date of this Agreement, the City's fiscal year commences on October 1 and ends on September 30.

2.19 "Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Agreement or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's negligence or willful misconduct and (d) could not be avoided by the Party who suffers it by the exercise of commercially reasonable efforts (provided that such commercially reasonable efforts shall not require such Party to expend a material amount of money to avoid the act giving rise to a Force Majeure). Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include but not be limited to: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disruption, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) the unavailability of necessary and essential equipment or supplies; (vii) a breach by the City of this Agreement or any other actions, omissions of or delays by a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach or noncompliance by the affected Party of its obligations under this Agreement or any applicable law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition; or (C) weather conditions which could be anticipated by experienced contractors operating at the relevant location and exercising commercially reasonable business judgment.

2.20 "Hotel"/ "Project" means a 200 room Embassy Suites Convention Hotel.

2.21 "Hotel Occupancy Tax Revenues" means the seven percent (7%) Hotel Occupancy Tax revenues derived from the operation by Developers of the Project for the Term of the Agreement received by City from the imposition by City of a municipal sales and use tax on the price paid for use or possession of rooms in a hotel or other transient lodging accommodations at a rate of seven percent (7%) pursuant to Chapter 351, Texas Tax Code, as it may be amended from time to time, or any successor statute but does not mean the additional two percent (2%) collected by Jefferson County.

2.22 "Insolvent" means failure to timely pay debts in the ordinary course of business or failure to pay all debts when and as they become due, or insolvent within the meaning of the Federal Bankruptcy Code.

2.23 "Licensing Agreement" has the meaning assigned to such term in Article IV.

2.24 "Management Agreement" has the meaning assigned to such term in Article IV.

2.25 "Maximum City Commitment" shall mean the largest commitment due by the City to the Developers as determined in Article. V.

2.26 "Open for Business" means open for full-time business operations with products and/or services that are necessary for Continuous Operation of the Hotel.

2.27 "Property Tax Revenues" means the M&O portion only of the City ad valorem taxes attributable to a completed feature or improvement of the Project for the Term of the Agreement and collected by the City in each Fiscal Year.

2.28 "Reimbursement Amount" shall mean the portion of the Property Tax Revenues, and Hotel Occupancy Tax Revenues that the City agrees to pay to the Developers during the Term of the Agreement, but limited to the maximum City Commitment as stated herein, if the Developers satisfy the conditions thereto stated in this Agreement. The Reimbursement Amount shall not include any other revenues or other fees collected by the City from the Project.

2.29 "Reimbursement Account" shall mean the special account created by the City as described in Article V of this Agreement.

2.30 "Resort Lodging" means any lodging unit, rented for less than thirty (30) days at one time that generates Hotel Occupancy Tax Revenues for the City.

2.31 "Resort Retail" means the sale of goods and services by retailers of varying types each of whose site square footage shall not exceed 20,000 square feet, an exception to which may be made subject to approval by the City Manager or designee.

2.32 "Resort Residential" means any residential unit that does not generate Hotel Occupancy Tax Revenues for the City and from which Property Tax Revenues shall not be generated as stated herein for purposes of computation of the Reimbursement Amount to be paid to Developers as stated herein.

2.33 "Term" means the period defined in Article III of this Agreement.

2.34 "Waterpark" means a waterpark costing at least \$10 Million and include but not be limited to such elements as tube chutes, momentum rivers, torrent rivers, water slides, pools, shade structures, and other elements typically found in a three (3) acre or greater waterpark.

### **ARTICLE III** **TERM**

This AGREEMENT shall be enforceable upon execution by both parties which date is defined herein as the "Effective Date." The term of this Agreement (the "Term") will begin on the effective

date and will terminate on the first to occur of (a) Twelve (12) full calendar years after the Completion of the Project; (b) payment in full from City to Developers of the entire City Commitment contemplated herein; or (c) termination as provided for herein.

#### **ARTICLE IV**

#### **DEVELOPER REQUIREMENTS**

4.1 Development of Project. If the Developers performs the following requirements, pertaining to the hotel, City agrees to pay the Chapter 380 Payments as stated in this Agreement with respect to the Project:

(A) If Developers achieve Completion of the Hotel within the time frame described below, subject to extension for Force Majeure or delay due to meeting governmental environmental compliance requirements, Developers shall receive the Chapter 380 Payments as stated herein. Should Developers fail to achieve Completion of the Hotel within this time frame Developers shall forfeit all Chapter 380 Payments and this Agreement shall terminate.

(B) Developers must Commence Construction of the Hotel no later than Fifteen (15) months after the Effective Date of this Agreement, subject to extension upon approval by the City Manager or designee, and must reach Completion of the Hotel no later than Thirty Six (36) months after it Commences Construction, subject to extension upon approval by the City Manager or his designee. Notwithstanding the foregoing, this Section 4.1 (B) is subject to whole or partial exception only if approved by Resolution of the Beaumont City Council.

(C) The Developers shall pay, or cause third parties to pay, its engineering, planning, accounting, architectural, legal fees and expenses, survey, testing, laboratory costs, license fees, land clearing and grading costs, advertising and other bidding costs, amounts due under construction contracts, costs of labor and material, insurance premiums, interest, carry cost, financing fees and other costs and expenses incurred in connection with the construction of Developer improvements and features.

(D) If requested by the City, the Developers must reasonably assist the City in the preparation of any documentation necessary to enable the City to prepare and obtain approval of any of the documents or actions required of the City to perform any of its obligations under this Agreement. The City shall not be responsible for any of such costs out of its current revenues or other sources, except in accordance with payment of Chapter 380 Payments to the Developers as provided in this Agreement.

(E) Upon Completion of the Project and during the term of this Agreement, the Developers and/or Operator or the designee of one or both of them shall maintain the property, improvements and premises in a commercially reasonable manner, comparable to the maintenance of similar establishments, and minimize Down Times.

(F) Developers may spend Chapter 380 Payments received as Reimbursement Amounts or in satisfaction of other City Commitment on improvements or other lawful uses only within the Project boundaries.

(G) The Developers shall complete construction of an adjacent Waterpark with improvements valued at a minimum of \$10 Million.

4.2 Operational Requirement. During the Term following Completion of a 200 room Embassy Suites Convention Hotel on the Ford Park Project site, an Embassy Suites Hotel must be Continuously Operated, subject only to legitimate Down Time or to Force Majeure. If an Embassy Suites Hotel once in operation is not Continuously Operated during any calendar year, subject to Force Majeure, then upon written notice thereof being given to Developers or Operator by the City and the failure of Developers, within sixty (60) days after the city gives said notice, to commence Continuous Operation of the Embassy Suites Hotel, Developers shall not be entitled to any Chapter 380 Payments for the remainder of the Term unless Developers obtains a Variance under Section 13.18 herein.

4.3 Trade name and Related Matters. Prior to when Developers Commence Construction of the Embassy Suites Hotel, (and as a condition precedent to such being deemed to have occurred), Developers shall enter into Management agreement (the "Management Agreement") with the Developer/Operator (**Exhibit "C"**). The Developer/Operator shall secure and provide to City upon receipt a franchise agreement with Hilton Worldwide (**Exhibit "D"**) to operate an Embassy Suites Hotel and use the trademarks and products or service systems that the franchisor has developed and established.

4.4 Franchise. The Franchise Agreement will provide that (i) Developers/Operator and their successors will have a license to use the "Embassy Suites" trade name in connection with the Convention Hotel for the entire term of this Agreement, subject to compliance with the terms and conditions of the Franchise Agreement and (ii) Developers/Operator and their successors will have the right for the entire Term of this Agreement to incorporate the most current state of the art hotel amenities available to Developers and Operator that are available from time to time to all other Hotels operating under the "Embassy Suites" trade name (and once purchased, Developers, Operator and their successors retain the rights to use such amenities regardless of the existence of the Management Agreement and subject to the Franchise Agreement). If, prior to the expiration of the Term of the Franchise Agreement, (i) the Franchise Agreement is terminated or expires for any reason or (ii) Developers and Operator are no longer permitted to use the "Embassy Suites" trade name or technology in connection with the Hotel, then upon written notice thereof being given to Developers by the City and the failure of Developers, within sixty (60) days after the City gives said notice, to re-establish its right to use the "Embassy Suites" name or technology in connection with the Convention Hotel, Developers shall not be entitled to any Chapter 380 Payments for the remainder of the Term unless Developers obtains a Variance pursuant to Section 13.18 herein.

4.5 Management. The Management Agreement will provide that (i) Developers and Operator will include the terms "Embassy Suites Hotel" and "Beaumont" in the signage and promotional materials pertaining to the Hotel if allowed by Hilton Worldwide, subject to the Franchise Agreement so long as the Franchise Agreement is in full force and effect and (ii) the Operator will operate the Hotel and will, among other things, provide the employees and the expertise and management required for such operation. If the Management Agreement is terminated or expires during the Term of this Agreement, City shall have the right to approve the replacement operator or the replacement party who does so control the operations and policies of the Operator, as applicable, provided in all events City shall exercise its approval right in a reasonable manner. If City and Developers are not able to agree on a replacement operator or a replacement control party for Operator within sixty (60) days following the recommendation of Developers or Operator, as applicable, Developers may proceed to retain the replacement operator or Operator may transfer control to the replacement

control party, as applicable, but City may elect to suspend payment of any further Chapter 380 Payments for the Hotel Project and any expansion of the Hotel Project in the event that during the thirty-six (36) month period immediately subsequent to such replacement, for a period of twelve (12) consecutive months the Hotel (i) fails to achieve an occupancy rate at least equal to eighty percent (80%) of the Hotel's occupancy rate during the twelve (12) months immediately preceding such replacement; or (ii) the Hotel is not operated and maintained to the same standards of operation, maintenance, and aesthetics as Embassy Suites hotels in demographically similar markets, including with respect to safety

4.6 Compliance with City Standards. Developers acknowledges that, unless specifically otherwise provided in this Agreement, development of the Project must comply with all applicable City codes and ordinances. For any development requirements not covered in this Section or in the remainder of the Agreement, the applicable City code and ordinance provisions shall control.

4.7 Resort Rentals Ownership. Resort Rental properties may be owned by Developers, person or entity for rentals by customers of less than thirty (30) days at a time. Hotel Occupancy Tax Revenues and the M&O portion of Property Tax Revenues generated by Completed Resort Rental properties owned by Developers, another person or entity and rented as stated herein are eligible for the Chapter 380 Payments to Developers as stated herein. Hotel Occupancy Tax Revenues, and Property Tax Revenues, generated by Completed Resort Rental properties owned by persons other than Developers and rented as stated herein are eligible for the Chapter 380 Payments to Developers as stated herein.

## **ARTICLE V**

### **PROJECT FINANCING AND FUNDING**

5.1 Project Financing: Reimbursement Account / Reimbursement Amount. The City hereby covenants and agrees upon the Effective Date of this Agreement to create a special account (the "Reimbursement Account") for the benefit of the Developers for the purpose of paying the Reimbursement Amount. The City shall fund the Reimbursement Account through the Term of this Agreement from the following sources and in the following manner: (i) with respect to the portion of the Reimbursement Amount calculated based on the M&O portion only of the Property Tax Revenues, the City shall annually fund the Reimbursement Account from the M&O portion only of the Property Tax Revenues collected within the Project, (ii) with respect to the portion of the Reimbursement Amount calculated based on the Hotel Occupancy Tax Revenues, the City shall timely fund the Reimbursement Account in an amount equal to the Hotel Occupancy Tax Revenues from the Hotel Occupancy Tax Revenues collected for the Term of this Agreement. The City shall establish a separate account for Reimbursement. This account shall always remain unencumbered by the City and segregated from all other funds of the City.

#### 5.2 City Commitment.

(A) Pursuant to its authority under Chapter 380, the City hereby agrees to pay the Reimbursement Amount to the Developers. It is intended by the parties that the Reimbursement Amount will be paid by the City solely out of the Reimbursement Account and used to make

Chapter 380 Payments to the Developers as provided in this Agreement (the "City Commitment"). The City Commitment will commence upon Completion of the Hotel and Waterpark and will continue through and until the Reimbursement Amount has been paid. The City agrees that it will pay the Reimbursement Amount during the term of this Agreement, as an unconditional obligation of the City (but solely from the Reimbursement Account), if the Project is Commenced and Completed as required herein and generates the Reimbursement Amount. In the event the hotel project is completed prior to the completion of the Waterpark, the reimbursement will not begin until both the Hotel and Waterpark are completed and operational.

(B) The Parties agree that the maximum City Commitment shall be as stated in Sections 5.3 and 6.1 herein, and such obligation on behalf of the City will be limited solely to the funds deposited into the Reimbursement Account pursuant to this Agreement. Upon such time as the City has paid the maximum City Commitment in full, the City shall have no further obligation under this Agreement.

(C) Property Tax Revenues. During the Term of this Agreement, the City shall determine annually the amount of the Property Tax Revenues received by the City and attributable to completed features within the Project boundaries in cooperation with the Developers. The City hereby agrees to deposit into the Reimbursement Account annually from available funds in the City's General Fund an amount equal to the M&O portion only of said Property Tax Revenues in the percentages stated in Section 5.3 herein, and hereby pledges such fund to the payment of the City Commitment as provided herein. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Account, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of the Developers during normal business hours upon request made not less than five (5) business days prior to the date of such examination. The City shall maintain such books and records throughout the term of this Agreement and store the same for four years thereafter.

(D) Hotel Occupancy Tax Revenues. The City hereby agrees to deposit timely from available funds in the City's Hotel Occupancy Tax Fund an amount equal to said Hotel Occupancy Tax Revenues portion of the City Commitment in the percentages stated in Section 5.3 herein into the Reimbursement Account, and hereby pledges such fund to the payment of the City Commitment as provided herein. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Account, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of the Developers during normal business hours upon request made not less than five business days prior to the date of such examination. The City shall maintain such books and records throughout the term of this Agreement and store the same for four years thereafter. Developers shall comply with the terms of Section 351 of the Texas Tax Code, as it may be amended from time to time, applicable to the Hotel Occupancy Tax Revenues. Further, Developers shall deliver to City, upon the City's request, such information and reports which the City reasonably requests as evidence that Developers are in compliance with such statutes. Should any expenditure of Hotel Occupancy Tax Revenues by

Developers be for a use that is found to be illegal, the City shall have no liability in connection thereof.

### 5.3 Reimbursement Amounts to be Paid by City to Developers.

(A) Property Tax Revenues: Developers shall provide the City an annual paid property tax bill, no later than March 1 of each year, stating Developers' figures attributable to the completed features within the Project boundaries and the corresponding amount of Property Tax Revenues. Within Sixty (60) days of receiving written request from Developers, accompanied by all reasonable supporting documentation from Developers that it has fully complied with its performance requirements, subject to the satisfaction of Developers' Commitments under Article IV herein and Developers' timely and full compliance with all applicable terms and conditions contained in this Agreement, City shall pay to Developers the applicable Chapter 380 Payments attributable to the completed features of the Hotel within the Project boundaries based on the percentages stated below for the applicable Tax Revenues collected by City on the completed Hotel features, subject to the limitations set forth herein. Developers may spend said Chapter 380 Payments received as Reimbursement Amounts or in satisfaction of other City Commitment on improvements or other lawful uses only within the Project boundaries.

(B) Hotel Occupancy Tax Revenues: Developers shall provide the City a semi-annual report, no later than March 1 and September 1 of each year, stating Developers' or Operator's occupancy figures attributable to the completed features of the Convention Hotel within the Project boundaries and the corresponding amount of Hotel Occupancy Tax paid to the City. Within Sixty (60) days of receiving written request from Developers, accompanied by Developers' annual Approved Spending Plan (as defined herein) and all reasonable supporting documentation from Developers that it has fully complied with its performance requirements, subject to the satisfaction of Developers' Commitments under Article IV herein and Developers' timely and full compliance with all applicable terms and conditions contained in this Agreement, City shall pay Developers an amount not to exceed the applicable Chapter 380 Payments attributable to the completed features within the Project boundaries, in an amount equal to the amount indicated in the annual Approved Spending Plan, based on the percentages stated below for the Hotel Occupancy Tax Revenues collected by City on the completed features, subject to the limitations set forth herein; provided, however, that Developers must comply with the terms of Section 351 of the Texas Tax Code, as it may be amended from time to time, applicable to the Hotel Occupancy Tax Revenues. Further, Developers shall deliver to City, upon the City's request, such information and reports which City reasonably requests in order for City to verify that Developers are in compliance with said statutes. Any Hotel Occupancy Tax Revenues remaining unspent by Developers, and all accrued interest thereon, if any, at the expiration or earlier termination of this Agreement shall be returned by Developers to City, which obligation shall survive the expiration or earlier termination of this Agreement. By this Agreement, City is delegating, pursuant to Section 351.101(c) of the Texas Tax Code, as it may be amended from time to time, the management or supervision of certain programs and activities to be funded by Hotel Occupancy Tax Revenues. Developers may spend such funds received as Reimbursement Amounts or in satisfaction of other City Commitment on improvements or other lawful uses only within the Hotel Project boundaries.

Developers shall apply for reimbursement for the applicable City Tax Revenues only from the City. Failure to do so would be an Act of Default hereunder.

**ARTICLE VI**  
**COMMITMENT OF**  
**PARTIES**

6.1 The City Incentive Commitment to the Embassy Suites Convention Hotel Project is as follows:

- (A) Ad Valorem Tax abatement reimbursement at 100% for a period of ten (10) years.
- (B) Hotel Occupancy Tax reimbursement at 100% for a period of twelve (12) years.

6.2 The obligation and commitment of the Developers is as follows:

- (A) Developers are obligated to construct and maintain during the term of this agreement an Embassy Suites Convention Hotel with a minimum of 200 guest rooms together with at least an approximately \$10 Million Waterpark improvement.
- (B) Developers are obligated to pay the City \$25,000.00 per year upon reaching a net operating income of \$250,000.00 per year from hotel operations and an additional \$25,000.00 per year upon reaching a net operating income of \$500,000.00 per year from hotel operations.

**ARTICLE VII**  
**COVENANTS, WARRANTIES, OBLIGATIONS AND**  
**DUTIES OF DEVELOPERS AND OPERATOR**

If the Developers or Operator shall have made any false or substantially misleading statement herein or failed to timely and fully perform as required in this Agreement, such shall be an Act of Default by Developers, subject to Section 11.1 herein. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Developers or Operator, subject to Section 11.1 herein. Developers and Operator, as of the Effective Date, make the following covenants and warranties to City, and agree to timely and fully perform the following obligations and duties.

7.1 Litigation. No litigation or governmental proceeding is pending or, to the knowledge of Developers, Operator or their respective general partner and officers, threatened against or affecting Developers, Operator or the Property that may result in any material adverse change in Developers' or Operator's business, properties or operation.

7.2 Untrue Statements. To the best of their knowledge, no certificate or statement delivered by Developers or Operator to City in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the

statements contained therein from being misleading except those which have been replaced by subsequent certificates or statements heretofore given to the City in substitution.

7.3 Bankruptcy. There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Developers and Operator have not been informed of any potential involuntary bankruptcy proceedings.

7.4 Licenses and Authority. To the best of their knowledge, Developers or Operator have acquired and maintained all necessary rights, licenses, permits and authority to carry on their respective businesses in Beaumont, Texas, and will continue to use commercially reasonable efforts to maintain all necessary rights, licenses, permits and authority to do so.

7.5 Payment of Taxes. Developers and Operator shall timely pay all taxes due and owing by them to all taxing authorities having jurisdiction. In addition, Developers and Operator shall timely pay all employment, income, franchise, and all other taxes hereafter to become due and owing by them, respectively, to all local, state, and federal entities subject, however to their right to contest the same in a lawful manner.

7.6 Timely Commencement; Continuous Operations. Developers acknowledge and agree that if it fails to Commence Construction of the Hotel and pursue its Completion within the time periods herein provided, and Operator acknowledges and agrees that if it fails to Continuously Operate the Embassy Suites Hotel or another hotel as mutually agreed by the parties, as herein provided, in either of said cases or events, the City has the right to terminate this Agreement as herein provided.

7.7 Management Changes. Developers and Operator shall notify City in writing of any substantial changes in management of Developers or Operator within seven (7) days after Developers' or Operator's knowledge thereof. Substantial changes mean changes in Chairman of the Board, President, or Chief Executive Officer.

7.8 Ownership Changes. Developers and Operator shall notify City in writing of any changes in ownership of any part of the Project or of Developers or Operator within seven (7) days after Developers' or Operator's knowledge thereof.

7.9 Succession of Ownership. No change of ownership or management of any part of the Project and/or a change of ownership or management of Developers or of Operator shall abate, waive, terminate or in any way relieve Developers or Operator of their respective obligations herein.

7.10 Non-discrimination. Developers agree that, as to all of the programs and activities arising out of this Agreement, it will not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled.

7.11 Lessee/Owner Lists. Developers or Operator shall provide to City in writing lists of all Project tenants or other persons making sales or purchases of taxable items or real property in the Project, (the "Lessee/Owner List"). Developers or Operator will periodically and timely notify City of changes to the Lessee/Owner List. The Lessee/Owner List shall include Developers and/or Operator. Developers and Operator are responsible as herein provided for supplying to City such identifying information for each person on the Lessee/Owner List as is required by the Comptroller to issue their sales tax area reports and Hotel Occupancy Tax area reports.

7.12 Employment of Undocumented Workers. The Developers do not and agree that they will not knowingly employ any undocumented worker.

## ARTICLE VIII

[Intentionally Left Blank]

## ARTICLE IX SUSPENSIONS/TERMINATION

Subject to the terms of Article V herein, City, under the following circumstances, and at its sole discretion, may temporarily suspend making Chapter 380 Payments under this Agreement and/or terminate this Agreement, without liability to Developers, and all future payment obligations shall automatically cease upon anyone of the following events:

9.1 Receiver. The appointment of a receiver for Developers, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

9.2 Bankruptcy. The adjudication of Developers as a bankrupt.

9.3 Bankruptcy Petition. The filing by Developers of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

9.4 Failure to Comply with Audit Requirements. The failure of Developers or Operator to reasonably cooperate with the City in the monitoring process described in Article X below.

## ARTICLE X REPORTING AND AUDITING

10.1 Audit by the City. The City may audit Developers' and Operator's records to determine their compliance with the terms of this Agreement. This audit will be done by the City on an annual basis in March of each year. During the monitoring process, the City will make maximum use of any State submissions for the determination of Reimbursement Amount. Developers and Operator shall provide the City an annual report, no later than March 1 of each year, stating Developers' and Operator's occupancy and sales figures attributable to the completed features within the Project boundaries and the corresponding amount of Ad Valorem, Property Tax and Hotel Occupancy Tax paid to the City by Developers.

10.2 Access to Records / Right to Audit. Developers and Operator, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

**ARTICLE XI**  
**DEFAULT**

11.1 Default. Subject to Force Majeure and any consent given under Section 11.2 or Variance granted under Section 13.18, should Developers fail to timely, fully and completely keep or perform any one or more of the covenants or warranties made by Developers in this Agreement (but excluding achieving satisfaction of any condition to the Developers' right to receive Chapter 380 Payments under this Agreement), such failure to perform shall be an Act of Default by Developers and, if not cured and corrected within sixty (60) days after written notice to do so or by express waiver by the Beaumont City Council, City may terminate this Agreement and cease making any further Chapter 380 Payments which have not been earned by performance by Developers theretofore. Developers shall be liable to City for any actual damages sustained by the City as a result of said Act of Default by Developers under this Agreement, subject to the provisions of Section 13.20.

11.2 Consent and Excuse. In the event of unforeseeable third party delays which are not Force Majeure and upon a reasonable showing by Developers that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using commercially reasonable efforts, the Beaumont City Council may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld, delayed or conditioned. Provided however, the City reserves its right to exercise consent and or excuse such delays in a reasonable and prudent manner which is in the best interest of the citizens of the City of Beaumont.

11.3 City Delay. Any delay for any amount of time by City in providing notice of Default to Developers or Operator hereunder, shall in no event be deemed or constitute a waiver of such Default by City of any of its rights and remedies available in law or in equity.

11.4 City Waiver. Any waiver granted by City to Developers or Operator of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Developers or of a subsequent Act of Default of the same act or event by Developers.

**ARTICLE XII**  
**CITY'S LIABILITY LIMITATIONS**

Should City fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by City and City shall have sixty (60) days to cure and remove the Default after receipt of written notice to do so from Developers or Operator.

**ARTICLE XIII**  
**MISCELLANEOUS**  
**PROVISIONS**

13.1 Sign Permitting. Prior to submitting any building permit applications for any sign, Developers shall obtain necessary approval from City for plans for signs in compliance with City codes and ordinances.

13.2 Permitting. Subject to Developers' complying with all applicable laws, City agrees to cooperate with Developers to expeditiously process permits, including plat applications, site plan applications, building

permit applications, building and construction inspections required for the Project to be in a state of Completion.

13.3 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

13.4 Assignment. Except as provided below, Developers may not assign all or part of their rights and obligations under this Agreement to a third party without prior written approval of City, which approval will not be unreasonably withheld, delayed or conditioned. The City does, however, in the best interest of the citizens of Beaumont, reserve the right to exercise its right to withhold approval should it reasonably determine that a prospective third party does not satisfy the requirements established herein. The City agrees, however, that the Developers may assign all or part of their rights and obligations under this Agreement to any entity affiliated with the Developers by reason of controlling, being controlled by, or being under common control with the Developers; to a subsequent Developers of all or any part of the Project; to a tenant in the Project or to a third party lender or REIT advancing funds for the construction or operation of the Project. The City expressly consents to any assignment described in the preceding sentence, and agrees that no further consent of City to such an assignment will be required. The Developers agree to provide City with written notice of any such assignment.

13.5 Termination. If Developers elect not to proceed with the development of a 200 room Embassy Suites Convention Hotel or Waterpark as contemplated by this Agreement, Developers will notify City in writing, and this Agreement and the obligations of the parties will be deemed terminated and of no further force or effect as of the date of such notice Developers and all parties shall be fully released of any further obligations under this Agreement relating to said Project.

13.6 Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the party, or an agent of the party; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective three (3) business days after deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Developers: Pate Development  
Attention: Britt Pate

550 N. 159<sup>th</sup> St. E., Suite 204  
Wichita, Kansas 67230  
Ph: (316) 448-1000  
Facsimile: (316) 219-5256

Deven Bhakta  
ZJZ Hospitality Inc.

4639 Corona Drive, Suite 55  
Corpus Christi, TX 78411

With a copy to:

Attorney David G. Crockett  
Crockett & Gilhousen  
1005 N. Market Street  
Wichita, Kansas 67214  
Ph: (316) 263-9662  
Facsimile: (316) 263-7220

with a copy to:

City: City of Beaumont Attn.:  
City Manager  
P.O. Box 3827  
Beaumont, Texas 77704  
Ph: (409) 880-3716  
Facsimile: (409) 880-3112

with a copy to: City Attorney

P.O. Box 3827 Beaumont,  
Texas 77704 Ph: (409)  
880-3715  
Facsimile: (409) 880-3121

Operator:

Any party may designate a different address at any time by giving Notice to the other party.

13.7 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.

13.8 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither City, nor its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

13.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

13.10 Paragraph Headings, Etc. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

13.11 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

Indemnity:

13.12 Developers agree to defend, indemnify and hold harmless City, including its employees, agents and representatives (collectively indemnitees), from and against any claim, demand, cause of action, liability, loss or expense arising from injury, death or from damage to or loss of property to the extent arising directly or indirectly or out of any acts or omissions of Developers, its contractors or subcontractors. Developers' defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Indemnitees or arising from use by Developers of construction equipment, tools, signs or facilities furnished to Developers by Indemnitees.

13.13 Developers' defense and indemnity obligations shall include the duty to reimburse any attorney's fees and expenses incurred by Indemnitees for legal action to enforce Developers' indemnity obligations. Developers' duty to defend Indemnitees shall be independent and in addition to the duty to indemnify and hold harmless, such that Developers shall not be entitled to reimbursement from Indemnitees for defense costs and attorneys' fees incurred in defending Indemnitees, even in the event that a claim proves to lack merit. This indemnification obligation shall not be limited in any way by any limitation on the amount of type of damages, compensation or benefits payable by Developers or any of their contractors or subcontractors under Workers' Compensation acts, disability acts or other employee benefits. In the event Developers is obligated to defend City, Developers shall provide competent counsel for such defense within ten (10) calendar days of City's request for defense. In the event Developers do not provide counsel within such time period, then City may appoint its own counsel, which will be for Developers' account until Developers substitutes counsel of their choice acceptable to the City.

13.14 In the event that the indemnity provisions in this Contract are contrary to the law governing this Contract, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by applicable law.

Insurance:

13.15 Developers shall, at their sole cost, require its contractors and subcontractors of all tiers to, obtain and maintain in force for the duration of the Contract insurance of the following types, with

limits not less than those set forth below for: 1) all Developers' work, both on and off worksite, and 2) all contractors' and subcontractors' work on and off the worksite.

13.15.1 Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the State of Texas with a minimum limit of (proper amount TBD) \_\_\_ per accident and, for bodily injury by disease of (proper amount TBD) \_\_\_ per employee. Developers shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

13.15.2 Commercial General Liability Insurance with a minimum combined single limit of liability of (proper amount TBD) \_\_\_ each occurrence for bodily injury and property damage; with a minimum of liability of (proper amount TBD) \_\_\_ each person for personal and advertising injury liability. The policy shall be endorsed by City, including its respective agents and representatives as additional insureds with coverage identical to those provided in this section.

13.15.3 Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of (proper amount TBD) \_\_\_ per occurrence.

13.15.4 If Developers will utilize tools or equipment in the performance of their services under the Contract, Equipment Floater Insurance (Tools and Equipment Insurance) covering physical damage to or loss of all major tools and equipment, construction office trailers and vehicles shall be obtained.

13.15.5 All insurance provided by Developers under this Section 13.15 shall include a waiver of subrogation by the insurers in favor of City. Developers hereby releases City, including its employees, agents and representatives, for losses or claims for bodily injury, property damage or other insured claims, REGARDLESS OF THE CAUSE INCLUDING NEGLIGENCE OF CITY, arising out of Developers' performance under the Contract.

13.15.6 Certificates of Insurance satisfactory in form to City shall be supplied to City evidencing that the insurance required above is in force, that not less than thirty (30) days written notice will be given to City prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Developers shall also provide with their Certificate of Insurance executed copies of the additional insured endorsements and dedicated limits endorsements required in this Article 13.16.

13.15.7 Additional Insured: Developers will add City to its Comprehensive General Liability Insurance Policy as an additional insured to be given the same liability insurance coverage as Developers. Developers shall also provide with their Certificate of Insurance executed copies of the additional insured endorsements and dedicated limits endorsements.

13.15.8 Certificates of Insurance satisfactory in form to City shall be supplied to City evidencing that the insurance required above is in force, that not less than thirty (30) days written notice will be given to City prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force.

13.16 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

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

Exhibit "A:" Embassy Suites Hotel Project Description  
Exhibit "B:" Project Boundaries: Field Notes/Metes and Bounds  
Exhibit "C:" Management Agreement  
Exhibit "D:" Franchise Agreement  
Exhibit "E" Application for 380 Incentives

13.18 Variances. The Beaumont City Council, in its sole discretion, may grant and approve variances to Developers or Operator from the performance criteria and development standards described herein upon application in writing therefore by Developers on behalf of itself or the Operator.

13.19 Balance Owed under the Agreement. The total amount of money awarded in an adjudication brought against City for breach of this Agreement is limited to the following: (i) the balance then due and owed by City under the Agreement plus any balance which may become due by City during the remaining term of the Agreement, including any amendments thereto; (ii) interest as allowed by law; and (iii) attorney's fees as allowed by law.

13.20 Damages not included. Damages awarded in an adjudication brought against City or Developers arising under the Agreement, including any amendments thereto, may not include: (i) consequential damages, except as expressly allowed under Section 13.19 above; (ii) exemplary damages; or (iii) damages for unabsorbed home office overhead.

#### **ARTICLE XIV** **GENERAL TERMS**

14.1 Entire Agreement. This Agreement embodies the complete Agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

14.2 Law. This Agreement is subject to all legal requirements in City Charter and Code of Ordinances of City of Beaumont, Texas and all other applicable County, State and Federal laws, and

Developers and Operator agree that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas without regard, however, to the conflicts of laws provisions of Texas law.

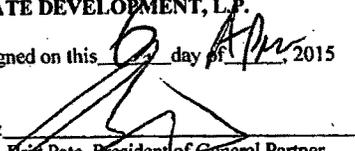
14.3 Venue. Venue for any legal action related to this Agreement is in Jefferson County, Texas.

14.4 Confidential. City, its officers and employees, and its agents or contractors retained to perform economic development services for City, shall treat as confidential the financial statements and information together with any proprietary information delivered by Developers, Operator or their respective representatives to City and its representatives and shall not release such information to the public, unless required by law or court order. City shall immediately notify Developers of requests or court orders to release such information.

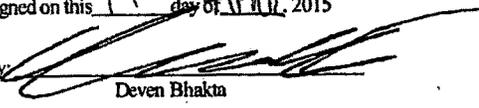
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EXECUTED to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015  
PATE DEVELOPMENT, L.P.

Signed on this 6 day of April, 2015

By:   
Britt Pate, President of General Partner

ZJZ HOSPITALITY, INC.  
Signed on this 7<sup>th</sup> day of April, 2015

By:   
Deven Bhakta

CITY OF BEAUMONT, TEXAS, a home-rule municipal corporation

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2015

ATTEST:

Tina Broussard, City Clerk

CITY OF BEAUMONT

Kyle Hayes, City Manager

**April 14, 2015**

Consider approving the award of a bid to LD Construction of Beaumont for the East Lucas Street Asphalt Resurfacing Project (Idylwood to Magnolia)

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# BEAUMONT

TEXAS

**TO:** City Council

**FROM:** Kyle Hayes, City Manager

**PREPARED BY:** Dr. Joseph Majdalani, P.E., Public Works Director *JM*

**MEETING DATE:** April 14, 2015

**REQUESTED ACTION:** Council consider a resolution authorizing the award of a bid to LD Construction of Beaumont in the amount of \$313,110.50 for the East Lucas Street Asphalt Resurfacing Project (Idylwood to Magnolia).

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## BACKGROUND

The section of East Lucas from Idylwood to Magnolia is a heavily traveled, four (4) lane roadway. The existing roadway has experienced numerous failures and requires resurfacing to extend the life of the roadway.

On Thursday, March 26, 2015, bids were solicited for furnishing all labor, materials, equipment and supplies for the project. Two (2) bids were received as follows:

Contractor	Location	Bid
APAC	Beaumont, Texas	\$349,413.18
LD Construction	Beaumont, Texas	\$313,110.50

A total of 60 calendar days are allocated for the completion of the project. LD Construction is a Certified MBE/HUB company.

## FUNDING SOURCE

Capital Program.

## RECOMMENDATION

Approval of resolution.

**Section 0210  
BID SCHEDULE**

**For Lucas Street Rehab Project**  
For the City of Beaumont, Texas

Item No.	Item Code	Estimated Quantity	Unit	Description	APAC		LD Construction	
					UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
340	2001	14,930.00	SY	1 1/2" TY D ASPH CONC LEVEL-UP	\$ 7.15	\$ 106,749.50	\$ 6.30	\$ 94,059.00
340	2002	15,107.00	SY	1" TY F ASPH CONC SURFACE COURSE	\$ 4.75	\$ 71,758.25	\$ 5.00	\$ 75,535.00
354	2021	14,756.00	SY	PLANE ASPH CONC PAV (2" TO 5")	\$ 3.10	\$ 45,743.60	\$ 4.50	\$ 66,402.00
361	2001	400	SY	FULL-DEPTH CONC PAV REPAIR W/ ASB	\$ 230.00	\$ 92,000.00	\$ 125.00	\$ 50,000.00
500	2001	1	LS	MOBILIZATION	\$ 11,000.00	\$ 11,000.00	\$ 15,000.00	\$ 15,000.00
502	2001	2	MON	BARRICADES SIGNS AND TRAFFIC HANDLING	\$ 4,500.00	\$ 9,000.00	\$ 2,500.00	\$ 5,000.00
712	2001	7,114.50	LF	JOINT SEAL	\$ 1.85	\$ 13,161.83	\$ 1.00	\$ 7,114.50

**Total Estimated Construction Cost**

**\$ 349,413.18**

**\$ 313,110.50**

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF BEAUMONT:

THAT the City Council hereby approves the award of a contract to LD Construction, of  
Beaumont, Texas, in the amount of \$313,110.50 for the East Lucas Street Asphalt  
Resurfacing Project (Idylwood to Magnolia).

PASSED BY THE CITY COUNCIL of the City of Beaumont this the 14th day of April,  
2015.

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- Mayor Becky Ames -