

**FIRST AMENDED DEVELOPMENT AND
ECONOMIC INCENTIVE AGREEMENT**

This First Amended Development and Economic Incentive Agreement ("Amended Agreement") is made and entered into by and between the City of Lampasas, Texas ("City"), a Texas Municipal Corporation, and Stephen McDonald/S2M2 Inc., (referred to herein as "S2M2" or "Developer") a private residential property developer on the 9th day of September, 2019, which the City and S2M2 hereto agree will become, for all purposes, the "Effective Date" of the Amended Agreement. The City and S2M2 are hereinafter jointly referred to as "Parties" and individually as a "Party."

RECITALS

WHEREAS, it is the City goal to promote local economic development and to stimulate and support business and commercial activity, thereby growing employment opportunities and the workforce in the City; and

WHEREAS, the City has identified a shortage in the availability of single family homes in Lampasas, which has and will continue to have an overall negative effect on the economic development opportunities within the Lampasas community; and

WHEREAS, the City has determined that one mechanism that can be implemented to move toward its objective of spurring economic growth in the City is to offer incentives for the development of the Brodie Estates Subdivision ("Subdivision"), which will be a single family residential neighborhood, including the Developer's expenditure of the capital investment related to the Project infrastructure and improvements associated with the residential Project, all of which the City believes will increase economic development within the corporate boundaries of the City; and

WHEREAS, S2M2, the Developer of the Subdivision, desires to construct this residential development that will require a financial investment less any contributions from the City of not less than four hundred seven thousand five hundred ninety U.S. Dollars (\$407,590.00) in utility and roadway infrastructure that will benefit the Subdivision, and which will consist of a minimum of twenty-two (22) single family residential dwellings within the corporate limits of the City of Lampasas (the "Project"); and

WHEREAS, as a part of the Project, pursuant to this Amended Agreement, S2M2 shall be obligated to make agreed upon improvements to the public infrastructure, including upgrades to and installations of various drainage, water, wastewater and public roadways ("Public Improvements") in the area near or abutting the Project, which combined cost of such infrastructure less any contributions by the City, is estimated to have a combined current approximate value of a minimum of four hundred seven thousand five hundred ninety U.S. Dollars (\$407,590.00), all of which will be required, pursuant to this Amended Agreement and the development plans for the Project are required to serve the Project; and

WHEREAS, in addition to providing various public utilities and roadway access to the Project, the Public Improvements will provide benefits to other areas of the City, as well, and will benefit the community and its future expansion, as a whole, including specifically the overall development to the water, wastewater and drainage systems of the Lampasas community; and

WHEREAS, accordingly, after evaluation and careful assessment, the City has determined that a substantial and material economic benefit to the local economy and public infrastructure will inure to the citizenry and City as a whole from the development of this Project; and

WHEREAS, City is authorized by the State of Texas, pursuant to legislations including the Texas Local Government Code, §380.001, *et seq.*, to promote state and local economic development and to stimulate business and commercial activity within the City; and

WHEREAS, the Parties entered into an original Economic Development Agreement on or about June 13, 2019, however, the Developer subsequently approached the City requesting additional funding and considerations from the City pertaining to the Subdivision and for the process related to the final platting of same, mandating various changes to the original Agreement, which the Council hereby approves; thus, the terms and provisions of this First Amended Agreement shall replace and supersede the original Economic Development Agreement between the Parties, in all regards, and if any conflict shall exist between the two agreements, the Parties agree and acknowledge that this Amended Agreement shall control; and

WHEREAS, as an economic incentive to S2M2, the City desires to: (1) install at the City's cost, certain electrical infrastructure to each platted lot in the Subdivision, and (2) contributions to S2M2 for certain Project expenses, pertaining to S2M2's costs for construction of the Subdivision's infrastructure, which will benefit not only the Subdivision, but will also provide benefits to the general area of the City of Lampasas the in terms of reliability, redundancy, and utility and roadway access; and

WHEREAS, as further economic incentives to S2M2, the City has agreed to fund certain surveying, engineering and construction costs related to on-site drainage infrastructure to serve the Subdivision, which drainage improvements the council finds will also benefit the area adjacent to the Subdivision, with maximum funding from the City for this component of economic incentive to be not more than one-hundred fifty thousand dollars (\$150,000.00) or the actual cost of such engineering, surveying and construction work, whichever is less.

NOW, THEREFORE, in consideration of the foregoing and the covenants, agreements, representations, and warranties hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties hereto, City and S2M2 agree as follows:

AMENDED AGREEMENT

Section 1. S2M2 Contractual Obligations

In consideration of the City, agreeing to provide the consideration and Economic Incentives to S2M2 for construction of the Project noted herein below, S2M2 shall:

- (a) S2M2 agrees this Amended Agreement is conditioned upon the City's approval of the final plat for the Subdivision development; and
- (b) This Amended Agreement in no way represents approval of or alters the requirements of the Subdivision's final plat and S2M2 agrees to comply with all obligations of final platting of the Subdivision; and
- (c) Initiate and/or continuously proceed with all necessary planning activities for the Project within 30 days of the Effective Date of the original Agreement; and
- (d) Continue, without interruption, the development of the Project, referred to herein as the Subdivision, which the Developer agrees shall consist of a minimum of twenty-two (22) single-family residential dwellings on the twenty-two (22) residential lots, as shown on Exhibit "A" (i.e., the 'preliminary plat'), attached hereto and incorporated herein for all purposes, (also referred to herein as the "Subdivision Concept Plan") as proposed and approved by the City as part of the original Agreement, until the Subdivision's development is fully completed, with one-hundred percent (100%) completion of all construction of the single-family residential dwellings to occur on or before the end of year four (4), after the Effective Date of the original Agreement; and
- (e) Initiate and diligently move forward with over the term of this Amended Agreement, the installation and construction of the improvements to public infrastructure, detailed on Exhibit "B," attached hereto and incorporated herein for all purposes, with such improvements to public infrastructure having estimated current total value of a minimum minus any contributions from the City of four hundred seven thousand five hundred ninety U.S. Dollars (\$407,590.00), and with all such public improvements to be one-hundred percent (100%) completed within 2 years after the Effective Date of the original Agreement; and
- (f) Provide complete and acceptable documentation to the City demonstrating S2M2's actual investment as to the public infrastructure components, prior to the City's final acceptance of the public infrastructure and any reimbursement by the City for its participation in the cost of same; and
- (g) Provide the City with an engineer's certification that all public infrastructure has been installed by the Developer as per the specifications for the Project and as per all applicable City, State or Federal standards; and

- (h) Provide any required or requested bonds in accordance with the City's Subdivision Ordinance in effect as of the Effective Date of this Amended Agreement and complete the construction of all public infrastructure in accordance with the Subdivision Regulations, in effect as of the Effective Date, and prior to recordation of the Final Plat after its approval by the Council and prior to Developer's or Developer's representative's sale or conveyance of any lot or dwelling unity in the Subdivision; and
- (i) Provide a maintenance bond for all public infrastructure in accordance with the City's Subdivision Regulations for the duration of the construction of the Subdivision, and for a period of two (2) years following the date of final acceptance of the last piece of public infrastructure accepted by the City; and
- (j) Provide maintenance (including mowing) of all public infrastructure until such time the Subdivision is complete and the Final Plat for the Subdivision has been accepted and filed in the County Deed Records by developer.
- (k) Complete construction on the Subdivision Project, as detailed above in subsection (h) on or before December 31, 2023; and
- (l) Provide the City with a semi-annual report , (on November 30th and June 30) of all construction activities related to the Project and Subdivision, through build-out, and provide interim status reports to the City Manager and/or his assignee, as requested by the City, on a more frequent basis, if requested by the City; and
- (m) Construct all Public Improvement infrastructure components of the Project within 24 months and strictly to City specifications and provide inspections as required by city codes, at the discretion of the City Manager; and
- (n) Promptly notify the City Manager, in writing, at any time that S2M2 identifies issues that may cause a delay in the ongoing development of the Project or otherwise cause S2M2 to miss any of the deadlines set forth herein for the Project; and
- (o) For property owned by S2M2, keep current on the payment of any and all taxes owed to any taxing jurisdiction in which the Property is located; and
- (p) Keep current in the payment of all charges and fees for utility services provided by the City to the Property; and
- (q) Comply with all Federal, State and Local regulations and laws pertaining to the construction of the Project; and
- (r) Cooperate with the City in promptly providing requested documentation to confirm compliance with the terms of this Amended Agreement.

Section 2. Alternative Performance Guarantee

The City's Code of Ordinances requires that all developers shall file performance guarantees with the City, prior to submission of the Final Plat to ensure that the construction of all public infrastructure improvements for subdivision are completed in full compliance with City standards and engineering specifications, and that the construction done by developers passes required engineering tests, prior to the City's approval of a final plat for the subdivision.

In the case of this Subdivision, however, the Developer has requested that he not be required to file the standard performance guarantees, as set forth and required by the City Code, and has requested that the City approve the final plat for the Subdivision and forgo the requirement that the Developer obtain and provide the City with a performance bond that would ensure that the Developer has performed all of its construction responsibilities for the Subdivision's infrastructure, prior to recordation of the final plat. Further the Developer has requested the recordation of the Final Plat be delayed until the public infrastructure as detailed in this agreement is completed and the 90 day requirement required by City Code be waived.

The Council has considered the Developer's request and has agreed to allow the Developer to enter into this Amended Agreement, as an alternative form of performance security, which will ensure for the City and its citizens that all infrastructure related to the Subdivision that is designed, engineered, constructed and installed by the Developer and its contractors, shall fully meet the City's regulations, Codes and standards and will be constructed to pass all testing, as follows:

- a. Infrastructure Improvements. Developer agrees to construct and install the infrastructure improvements necessary to serve all lots in the Subdivision (the as shown on Exhibit B). The infrastructure improvements shall be constructed in conformance with the City's requirements, procedures, and specifications (including without limitation environmental protection requirements such as erosion controls and site restoration), pursuant to construction plans, permits, and specifications approved by the City prior to commencement of construction, and subject to observation, certification, and acceptance by the City as required by the City Manager. The Developer's Engineer shall submit a letter certifying that construction of the infrastructure was completed in accordance with the Project design specifications submitted to the City for this component of the Project,
- b. Field Changes/Deviations from Subdivision Plans. If a field change/deviation is required, the Developer shall submit a request for same to JONES-HEROY [Engineer] for review and approval, and JONES-HEROY [Engineer] shall, following its review, provide the City Manager with a written recommendation related to the requested change/deviation. The City Manager shall review the recommendation of JONES-HEROY [Engineer] and shall issue a determination on the requested change/deviation. The City Manager shall have final authority to approve or reject the requested change/deviation from the Plans attached as Exhibit B. During the course of construction of the Subdivision infrastructure improvements, if circumstances arise during which the Developer's Engineer and the City's Engineer disagree as to the necessity of, or the details concerning any

suggested or recommended field change/deviation to the Subdivision Plans, either Engineer may appeal the matter to the City Manager for a determination, and the City Manager's decision regarding the matter shall be final.

- c. City's Acceptance of Infrastructure Improvements Upon completion of the Subdivision's infrastructure improvements, the Developer agrees to provide to the City a complete set of construction plans for the Subdivision's infrastructure improvements installed by the Developer, certified "record drawings" by the registered professional engineer responsible for preparing the approved construction plans and specifications. The Engineer's Certification shall include a statement that the infrastructure improvements have been constructed in accordance and compliance with this Amended Agreement. Upon certification of all infrastructure improvements by Developer's registered professional engineer, in accordance with the terms of this Amended Agreement, and upon certification by Developer's registered professional engineer of the completion of all other improvements required by the City's Ordinances or by the City as part of the subdivision process, the City's Engineer shall review the "record drawings" plans. If the City's Engineer approves the "record drawings" plans, the City shall accept the dedication of the infrastructure improvements to the City. If the City's Engineer does not approve the "record drawings" plans, the City shall not accept the dedication of the infrastructure improvements or any other improvements in the Subdivision, and the City will provide notice to the Developer explaining the reasons for its non-acceptance and non-approval of the "record drawings" plans. The Developer will have thirty (30) days from his receipt of the notice of deficiency to correct the problems identified by the City. Developer acknowledges and agrees that his failure to correct the deficiencies identified by the City will render the Project incomplete and shall result in non-recording of the final plat for the Subdivision and non-issuance of any building permits for residential or other structures on the lots in the Subdivision.
- d. Certificates of Testing. Upon Developer's completion of the installation of the infrastructure improvements, the Developer agrees to provide to the City certificates from certified laboratories indicating satisfactory results of all City required hydrostatic and bacteriological testing of the Subdivision's infrastructure improvements.
- e. Recording of Final Plat. Prior to recording of the final plat, the City's Engineer shall be required to file a letter with the City stating that, based upon the City's Engineer's observations and review, the Subdivision's infrastructure improvements have been installed in the Subdivision in full compliance with the design and plans approved for the Subdivision and, further, that the City's Engineer recommends to the City Council that the City accept the Subdivision's infrastructure improvements as constructed by the Developer. Only after the City Council's acceptance of all Subdivision infrastructure improvements in accordance with the City of Lampasas Subdivision Ordinance and this Amended Agreement, may the Developer record the final plat for the Subdivision in the records of Lampasas County. Only after recording the Final Plat does the Subdivision become a 'legal plat' of record and make the lots and/or any structures constructed thereon, within the Subdivision, eligible for legal sale.

- f. **Building Permits.** Only after the City Council's acceptance of all Subdivision infrastructure improvements in accordance with the City of Lampasas Subdivision Ordinance and this Amended Agreement will the City issue any building permits to allow construction on the lots in the Subdivision. Developer acknowledges and agrees that Developer's failure to complete the installation of the Subdivision infrastructure improvements in accordance with the terms of this Amended Agreement shall result in non-recordation of the final plat for the Subdivision and the non-recordation for any property deeds for lots in the Subdivision, as well as non-issuance of any building permits for structures in the Subdivision.

Section 3. City Economic Contributions to S2M2

In the event that Developer performs its contractual obligations pursuant to this Amended Agreement, as stated herein above, in Section 2, the City shall provide incentives to the Developer and perform its obligations under this Amended Agreement, as stated herein below:

1. **Electrical Infrastructure:** In consideration of S2M2's investment minus any contributions from the City of approximately seven hundred fifty thousand (\$750,000.00) U.S. dollars including land acquisition costs, in the development of the Subdivision within the City's corporate limits, including the money invested by the Developer in the public infrastructure detailed herein, and S2M2's satisfactory performance of all other acts and obligations hereinafter described, as an incentive for S2M2's investment in the City, the City agrees to extend residential electric utility infrastructure from the City's existing electric distribution system to each of the Subdivision's platted residential lots. The total City financial incentive provided to S2M2 for this component of the Amended Agreement related to the Project is currently estimated to be valued at twenty four thousand five hundred dollars (\$24,500.00), contributed by the City, to S2M2 and the Project. The Plans and Cost summary related to this City incentive is set forth on **Exhibit "C,"** which is attached hereto and incorporated herein for all purposes.
2. **Water Distribution Looping & Upsizing:** Provided a utility easement can be obtained from property owners adjacent to the Subdivision, in locations that will allow for the looping of the City's water distribution system and therefore benefit the municipal water distribution system, as additional economic incentive to the Project, the City agrees to contribute to S2M2 an amount equal to S2M2's actual costs not to exceed forty thousand U.S. Dollars (\$40,000.00) for the engineering, easement acquisition, construction and materials required for the water line improvements from Cloud Street to the subject development and the incremental costs for the upsizing of lines as may be needed that will be made by S2M2 related to the Project's connectivity and improvements to the water distribution system of the City. S2M2 shall provide an engineer's opinion of probable costs to the City for approval prior to beginning work on this portion of the project.

3. **Engineering and Construction Costs for On-Site Drainage:** As an additional Economic Incentive for the Developer related to the Project, the City Council agrees to contribute to S2M2 an amount to pay for S2M2's actual costs for surveying, engineering and constructing the Subdivision's on-site drainage infrastructure, in an amount not to exceed One Hundred Fifty Thousand U.S. Dollars (\$150,000.00), finding that the on-site drainage infrastructure also benefits the drainage for areas surrounding the Subdivision by reducing storm-water runoff from the Subdivision by a minimum of 10 cfs (which is equal to 5%) over the current existing drainage conditions during a '100 year storm event', as verified by engineering calculations submitted to the City by the Developer's engineer. S2M2 shall submit to the City an invoice detailing the actual amount spent by S2M2's for the on-site drainage surveying, engineering and construction costs.
4. **Potential Future Construction of Off-Site Drainage Infrastructure:** The City desires to construct off-site drainage facilities to enhance the benefits of the on-site drainage for the surrounding area and to address drainage issues previously identified by a City 'area-wide drainage analyses. To this end, the City has commissioned engineering plans for various off-site drainage improvements and is awaiting that final cost estimate. If doing so would result in a cost savings to the community, the City may elect to have the Developer install the off-site drainage infrastructure that is a result of this study and engineering effort, for the benefit of the area surrounding the Subdivision, in conjunction with the drainage work being performed by the Developer for the Subdivision's on-site drainage infrastructure. However, the City reserves the right not to pursue the installation of the area-wide off-site drainage infrastructure installation, and/or to seek other alternatives for the installation of this off-site drainage infrastructure, at the City's sole option. If the City enters into a future arrangement with S2M2 install the off-site drainage infrastructure, as noted herein, then the City agrees that it shall reimburse S2M2 for the costs of construction of off-site drainage infrastructure in the actual amount of the construction costs incurred by S2M2 for such work. The Parties acknowledge and agree that prior to undertaking any such future work on the installation of off-site drainage infrastructure on behalf of the City, the Parties will enter into a mutually agreeable, written, memorandum of the terms agreed upon for this component of the work, which will be ratified by the City Council prior to the commencement of any construction by S2M2 on such work for the City.
5. **City's Economic Incentive Payment Schedule and Process:** The City's Economic Contributions for S2M2'S Project Expenses shall be paid as follows:
 - a. City shall contribute funds related to the Project components by payment to S2M2 in an amount of the actual costs not to exceed forty thousand U.S. Dollars (\$40,000.00) for expenses related to engineering, easement acquisition and construction of the water line looping and incremental line upsizing by S2M2 done to complete connectivity between the development and water distribution lines in Cloud Street, resulting in

improved public infrastructure within the City. Release and payment of these funds by the City shall occur upon S2M2's completion of the construction of the water line improvements, submission of complete documentation and invoicing detailing actual public improvement expenses pertaining to this phase of the Project only, and receipt of an Engineer's Letter of Concurrence, providing the City's final acceptance of the Public Improvement infrastructure for which these City funds are apportioned.

- b. City shall contribute funds related to the Project components to S2M2 up to a maximum of one hundred fifty thousand U.S. dollars (\$150,000.00) for the surveying, engineering and construction of the Public Improvement component of the Project's on-site drainage infrastructure, which the City council has also determined will benefit the area adjacent to and surrounding the Project. Release and payment of these funds by the City shall occur upon S2M2's completion of the on-site drainage infrastructure construction, submission of complete record drawings and documentation and submission of all invoices detailing actual public improvement expenses pertaining to this phase of the Project only, submission of the Developer's Engineer letter certifying that construction of the infrastructure was completed in accordance with the Project design specifications submitted to the City for this component of the Project, and receipt of the City Engineer's 'Final Letter of Concurrence' certifying the additional benefits guaranteed and warranted by the Developer related to the construction of the drainage infrastructure will, in fact, inure to the City as designed and built by S2M2, and providing the City's final acceptance of the Public Improvement infrastructure for which these City funds have been apportioned.
- c. In the event that the City enters into a future agreement with S2M2 to construct the additional off-site drainage improvements as discussed in Section 4 above, then the City shall reimburse S2M2 for S2M2's actual construction costs, which will be further detailed in the future written agreement concerning same and approved by the Council. Release and payment of funds for such future work, by the City, would occur upon S2M2's completion of the off-site drainage construction, submission of complete as built mapping and documentation and submission of all invoices detailing actual public improvement expenses related to that component of the Project only, and receipt of the City Engineer's Final Letter of Concurrence, providing the City's final acceptance of the off-site drainage infrastructure, for which City funds were apportioned.
- d. It is acknowledged and agreed by both S2M2 and the City that the maximum total amount of all Economic Incentive and developmental funding that the City agrees to provide to S2M2, shall not exceed those

amounts set forth herein.

- e. S2M2 further acknowledges and agrees that the City's purpose in entering into this Amended Agreement is to encourage development of the 22 lot Subdivision on the Property, as the residential development designed and proposed by S2M2, i.e., the Project, which includes the various ancillary public infrastructure improvements detailed herein in this Amended Agreement. Therefore, S2M2 agrees to develop the Project as detailed herein, to fully complete such development, as the Project, and to do so solely for the use and purpose as the designed and approved residential Subdivision Property, pursuant to the schedule agreed upon by S2M2 as detailed herein in Section 2 above, and to be fully completed on or before the end of the 48th month after the Effective Date of the original Agreement.
- d. The Developer acknowledges and agrees that if the Project, including all public infrastructure, is not fully completed and installed on or before the 48th month after the Effective Date of the original Agreement, such delay shall be deemed by the City to be a *material breach and default* by the Developer and, as such, it shall result in the termination of the Amended Agreement and any and all payment obligations by the City, and will trigger Recapture of any and all economic incentives already paid to S2M2 by the City, if any, pursuant to Section 4, below.

Section 4. Recapture/Termination

In the event that S2M2 allows ad valorem taxes owed by S2M2 on the Property, to the City or other taxing entity, to become delinquent by more than ninety (90) days, then this Amended Agreement shall automatically terminate, with no opportunity for appeal or redress by S2M2. On such occurrence, the termination by material breach by S2M2 shall trigger Recapture of Economic Payments and any other development contributions made by the City of Lampasas, if any, as set forth herein below.

Except as noted above, in the event that the City determines that S2M2 is in default of any of its responsibilities, noted herein, or of any of the terms, provisions, or conditions contained in this Amended Agreement, then the City shall give S2M2 notice that it has thirty (30) days to cure the default identified by the City. In the event such default is not cured by S2M2 within the 30 day cure period, or if S2M2 has not commenced and prosecuted with continuous and sufficient diligence a satisfactory cure of the default(s) to the full satisfaction of the City within the thirty (30) days cure period, then this Amended Agreement shall automatically terminate, with no opportunity for appeal or redress by S2M2, and the City may trigger Recapture of any economic incentive Payments made by the City, if any, to S2M2.

The date of termination as a result of default, as that term is used in this Section

4. shall be, in every instance, the 31st day after the day the City sends notice of the default(s) in the mail to the address shown in this Amended Agreement to S2M2, or by hand delivery, or by alternative transmission as set forth herein. Should the default be cured by S2M2 within the thirty (30) day cure period, S2M2 shall be responsible for so advising the City, in writing, and for obtaining a written 'release from the default by cure' from the City. If S2M2 fails to obtain the written release from the City on or before the 31st day, the Amended Agreement will be considered to be terminated, with no further action required by the City.

In every case of termination due to S2M2's default, as set forth above: (1) the City shall have determined in its sole discretion whether the default that occurred by S2M2 in the terms and conditions of this Amended Agreement was material to the City; and (2) whether the default was not timely and fully cured to the City's satisfaction. If these two conditions are found by the City to exist, then S2M2 will have been deemed to have forfeited any and all Economic Development incentive payments it has already received from the City, as well as any rights to incentives or developmental payment not yet distributed by the City under this Amended Agreement. Accordingly, pursuant to this Amended Agreement upon such material uncured default, S2M2 shall be legally obligated to return all economic incentive funds previously provided to S2M2 by the City to the City on or before the 30th day after the City notifies S2M2 that it has terminated the Amended Agreement, because of S2M2's uncured breach and provides S2M2 with the amount that is being recaptured by the City from S2M2. ("Recapture") Further, after default, S2M2 shall not be entitled to any further funding from the City under this Amended Agreement, or any future funding, development or incentive agreement with the City of Lampasas. Maximum amounts required to be repaid to the City pursuant to this Amended Agreement shall be no more than the combined total amounts outlined in Section 2 of this Amended Agreement. Further, in the event of default, as part of the Recapture, S2M2 shall be contractually obligated to pay the City the full value of the electrical system installation and any fees or expenses which would have otherwise been realized by the City, without the benefit of this Amended Agreement, but which were waived by the City as part of this Amended Agreement as an additional economic incentive to the Developer for the Project.

Section 5. Certification of Compliance by S2M2

On written request by City, but at a minimum of at least once per year even without request from the City, S2M2 shall certify in writing to the City its compliance with all provisions of this Amended Agreement. Such certification shall include all documentation establishing that all taxes related to the Property have been timely and fully paid, as required by law, and that the Project and the Subdivision development targets and development goals have been satisfied. The City, at any reasonable time, shall have the right to review all records of S2M2 related to the Project and provisions of this Amended Agreement and S2M2 shall cooperate with such review, as required.

In accordance with Chapter 2264, Texas Government Code, S2M2 certifies that neither S2M2, nor any branch, division, subcontractor or department of S2M2 will or does

knowingly employ any undocumented workers. S2M2 further certifies that in the event that S2M2, or any branch, division, subcontractor or department of S2M2 is convicted of a violation under 8 U.S.C. Section 1324a (f), S2M2 shall repay the amounts previously provided to S2M2 by the City pursuant to this Amended Agreement, as noted in the Section 4 above related to Recapture. Should such conviction occur during the term of this Amended Agreement, then such a conviction shall be cause for the immediate termination of this Amended Agreement and Recapture.

Section 6. Term

This Amended Agreement shall be effective for a period of four (4) years from its Effective Date, which the Parties intend to coincide with the date that the Amended Agreement is executed as shown by the signature of the City Manager hereon below, unless otherwise terminated pursuant to the provisions otherwise set forth herein.

Section 7. Entire Agreement

This Amended Agreement contains the entire agreement between the City and S2M2 with respect to the Project and the incentives offered to S2M2 by the City, as set forth and contemplated herein. This Amended Agreement may only be amended, altered, or revised by the mutual approved written instrument signed by both the City and S2M2.

Section 8. Successors and Assigns

This Amended Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. S2M2 may assign all or part of its rights and obligations hereunder only upon prior written approval of the City, which approval shall be at the sole discretion of the City Council of Lampasas.

Section 9. Notices

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses or at such addresses provided by the Parties in writing hereafter:

S2M2: Stephen McDonald/S2M2, Inc.
 901 Naruna Road
 Lampasas, Texas 76550

City: City Manager
City of Lampasas
312 E 3rd Street
Lampasas, Texas 76550

Section 10. Interpretation

Regardless of the actual drafter of this Amended Agreement, this Amended Agreement shall, in the event of dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either Party

Section 11. Applicable Law

This Amended Agreement is made and shall be construed and interpreted under the laws of the State of Texas and exclusive venue for any claim, dispute, lawsuit or other legal proceeding arising out of this Amended Agreement shall lie in Lampasas County, Texas.


Section 12. Dispute Resolution

The Parties hereto agree that prior to filing legal claims and actions; the Parties will make good faith efforts to resolve any disputes that arise through mediation and negotiations, with the costs of such mediations to be shared equally by the Parties, except that each Party shall bear their own attorney costs, if any are incurred.

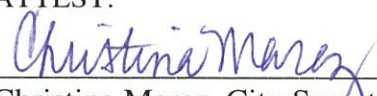
Section 13. Severability

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

IN WITNESS WHEREOF, the parties hereto have executed this Amended Agreement on the 26th day of ~~September 2019~~ May 2020 BTD


THE CITY OF LAMPASAS


Finley deGraffenried, City Manager


ATTEST:


Christina Marez, City Secretary

Approved as to Form:
(Separate cover)
J.C. Brown, City Attorney

S2M2, Inc.


Stephen McDonald

ATTEST:


Christina Marez, City Secretary

STATE OF TEXAS

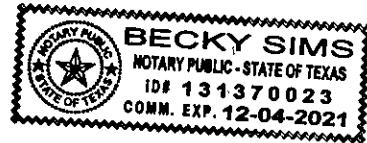
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COUNTY OF LAMPASAS

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The foregoing instrument was acknowledged before me this 26th day of May, 2020, by Finley deGraffenried, known to me to be the City Manager of the City of Lampasas, Texas.

Becky Sims
Notary Public



My Commission expires: 12-4-21

STATE OF TEXAS

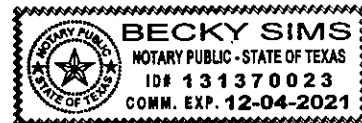
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COUNTY OF LAMPASAS

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The foregoing instrument was acknowledged before me this 26th day of May, 2020 by Stephen McDonald.

Becky Sims
Notary Public



My Commission expires: 12-4-21

Exhibit B

S2M2 Public Improvements

Water Distribution

780 LF 6" C900 Water Pipe
Fire Hydrants, Valves, casings, fittings, etc

Estimated Value: \$ 78,523.00

Waste Water

730 LF SDR-26 Sewer Pipe
Manholes, clean outs, etc.

Estimated Value: \$ 90,960.00

Drainage

440 LF 36" HDPE Culverts
2 – 36" Headwalls
Detention Pond Outfall Structure
Engineering & Survey

Estimated Value: \$ 150,000.00

Additional potential drainage benefits from construction of proposed drainage facilities:

1. Aids in historical drainage issues affecting the surrounding areas.
2. 10 Cfs reduction of flows during 100 year flood event (5% total reduction)

Roadway

1840 LF of Curb/Gutter
3750 sq. yards Asphalt
4350 sq. yards 8" Flex Road Base
Fill, erosion control, etc.

Estimated Value: \$189,200.00

Contingency

\$ 48,907.00

Total: \$ 557,590.00

Exhibit C

City Estimated Cost of Electrical Infrastructure Installation

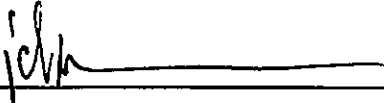
ESTIMATED COST TO BUILD OVERHEAD LINES IN BRODIE ESTATES

CONSTRUCTION OF NEW LINES	\$13,000.00	
COST OF TRANSFORMERS	\$11,500.00	
	<hr/>	
	\$ 24,500.00	TOTAL

ALL LINES WILL BE BUILT ON THE STREET SIDE

FIRST AMENDED DEVELOPMENT AND ECONOMIC INCENTIVE AGREEMENT

Approved as to Form:



J.C. Brown City Attorney